



# Execution of Documents

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# What is “Committing” the University?

- Usually, entering into contract or agreement
- “Approving” the purchase of goods or services in PeopleSoft
- Can be very broad, e.g., agreeing to allow University marks to be used





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By:

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Company Address)

A (very)  
real  
example . . .

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PEPPERDINE



# Legal Stuff: Contracting “101”

- ▶ **Exchange of promises that the law will enforce**
  - A promise in exchange for something of value
- ▶ **Writing is not required, oral contracts can be enforced**
- ▶ **Acting as an Agent**

# Agency Basics

- ▶ **Example: Dean = Agent**
- ▶ **Pepperdine = Principal (no other legal entity exists)**
- ▶ **An Agent's acts commit the Principal**
  - **Actual authority: Expressly given by Pepperdine**
  - **Ostensible authority: Authority given that Pepperdine causes or allows a third party to believe the Dean possess; from an external viewpoint**
- ▶ **Principal is committed to third parties who have relied on agent's authority**
- ▶ **Agent who acts without authority or in excess of authority may be held accountable to the principal**

# So, What Happens if You Commit the University Without Authority...

- University likely required to perform its obligations
- University may view event as outside the scope of job responsibilities and:
  - Hold employee personally responsible

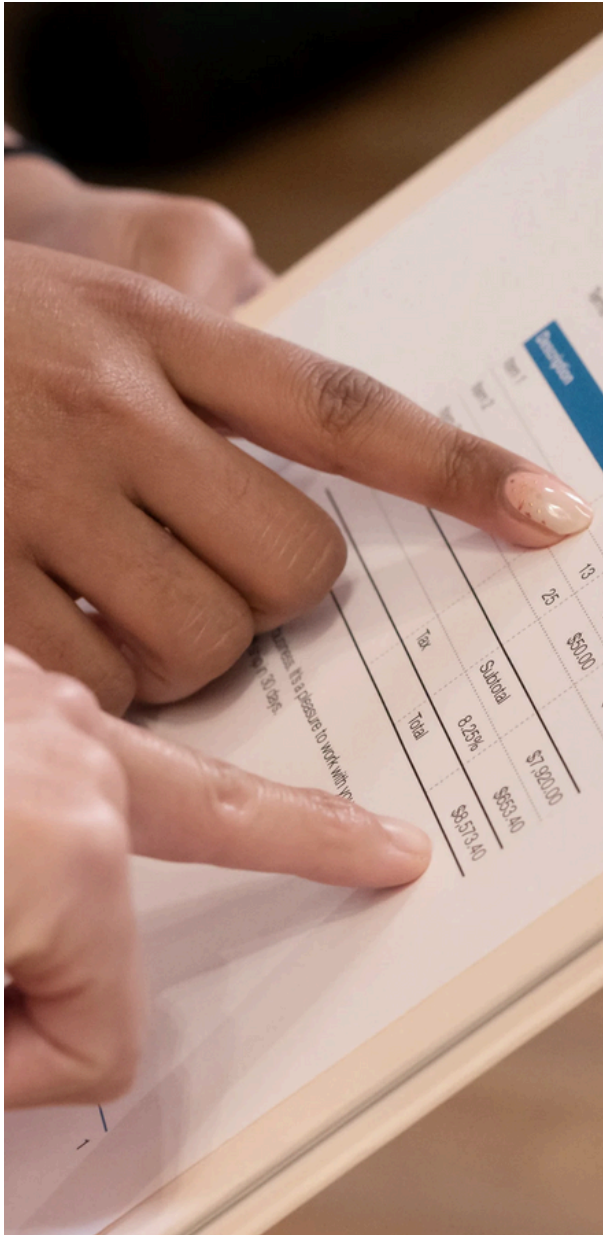


# Who Can Commit the University?

## Execution of Documents Policy

Amount of Transaction	Authorized Person
\$0 - \$25,000	Designated PeopleSoft "Approvers"
\$25,001 - \$50,000	Any "Authorized Officer"♦ acting alone
\$50,001 - \$3,000,000	Any two "Authorized Officers." It is preferred that one of the two authorized persons be either the Executive Vice President, the Chief Financial Officer or Controller. <i>See</i> Execution of Documents Policy, Section D.
2% or less of the current GOB <sup>+</sup>	Any two of the President, Executive Vice-President, Provost, and Chief Operating Officer, in consultation with the Chief Financial Officer
Over 2% of the current GOB	Board of Regents
Recurring Transactions	<i>See</i> Execution of Documents Policy, Section E





# Four "Golden Rules" of Contracting

## Rule One

READ the contract from top to bottom



## Rule Two

Determine whether the contract should be reviewed by General Counsel

- Is the contract amount \$75,000 or more?
- Does the contract involve a high or unusual risk?

# That begs the question....



- ▶ **Question:** What if the contract amount is under \$75,000, but I've never negotiated a contract before?
- ▶ **Answer:** Review General Counsel's "Tips on Contracts Under \$75,000"



**...and more  
questions...**

- ▶ **Question:** How can I assess whether the contract presents a high or unusual risk?

**GREAT QUESTION!**

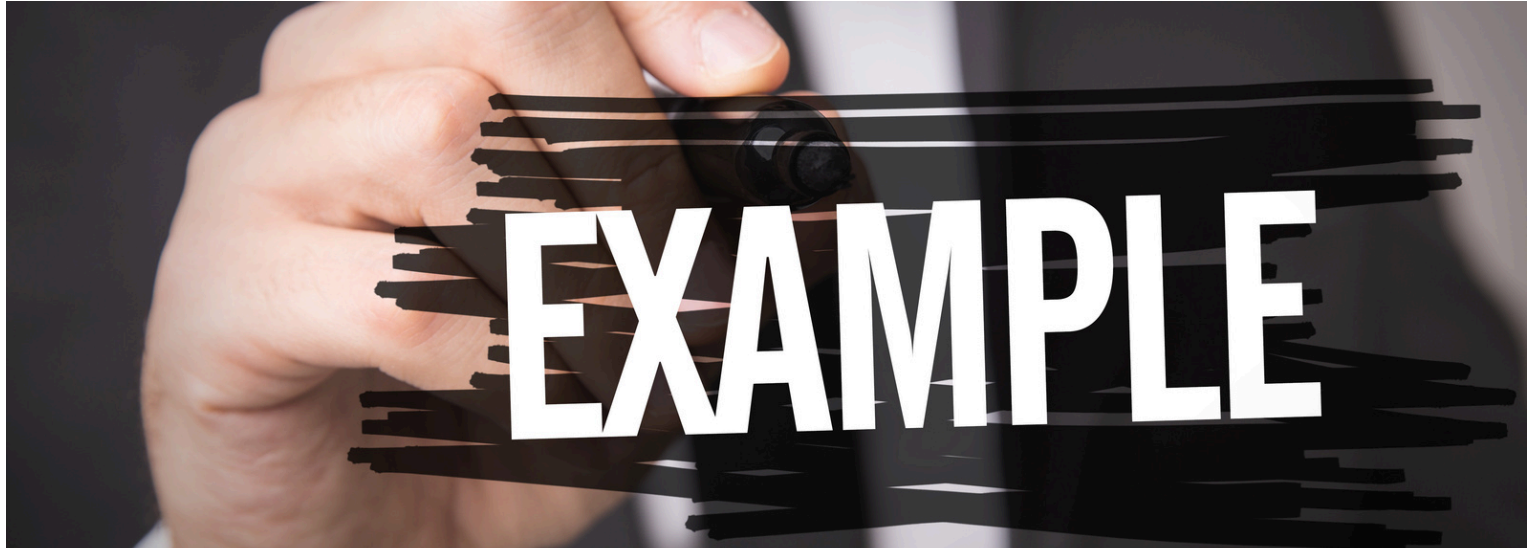
- ▶ **Answer:** Analyze the risk and pay attention to your "Spidey sense."



## **What is risk?**

- ▶ **Financial**
- ▶ **Reputational**
- ▶ **Liability**





**Scenario One: University enters into a large contract to buy cases of copy paper on a recurring basis.**

# ANALYSIS

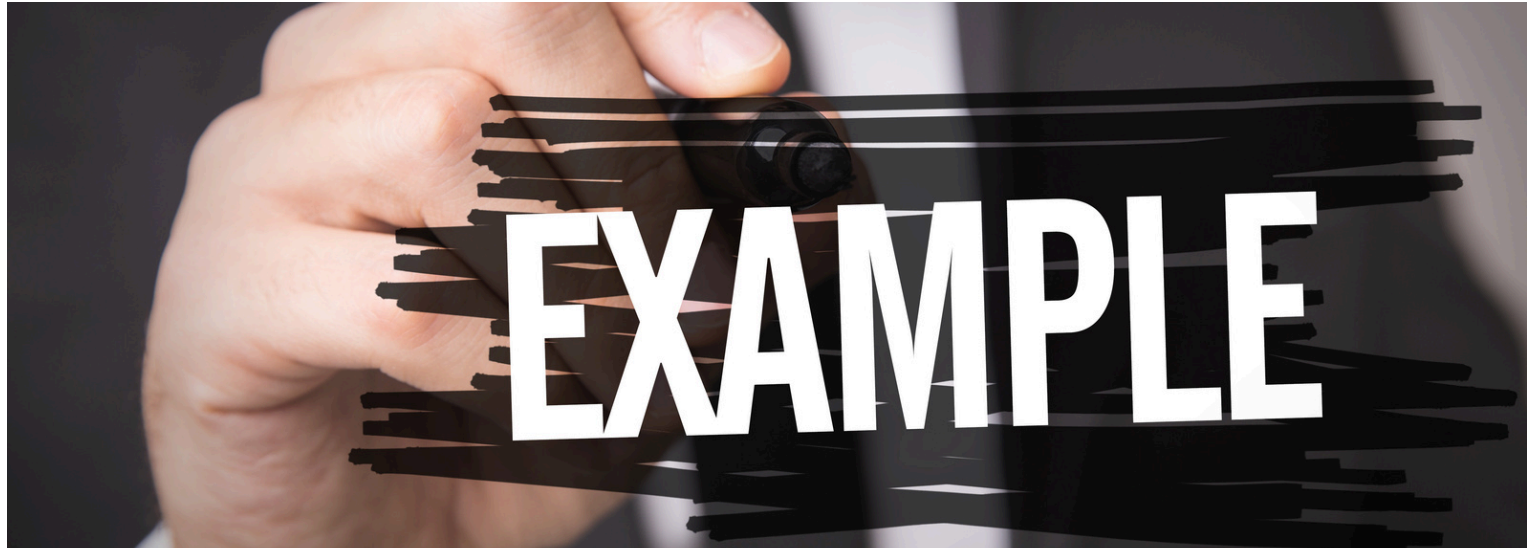


**Nature of Risk:** Although the contract amount is large and the University buys large quantities of copy paper on a recurring basis, a contract for the sale of paper poses a very low financial, reputational or liability risk to the University.

**Likelihood of Occurrence:** The likelihood that someone would be harmed with respect to a contract for the purchase of copy paper is fairly low.

**Risk:** LOW





**Scenario Two: University enters into contract for a mobile rock climbing wall to be present at a University-sponsored event at a cost of \$1,500.**

# ANALYSIS



**Nature of Risk:** Although the contract amount is small, and the sponsoring of a rock climbing wall is a unique or infrequent event, this could be a high-risk event in that it combines potentially inexperienced or distracted climbers with potentially poorly maintained equipment and/or inexperienced or poorly-trained staff. There is a possibility of injury or death resulting from this type of activity.

**Likelihood of Occurrence:** The risk of falling could be high with respect to such an inherently risky activity.

**Risk:** HIGH

# Managing Risk

- Identify exposures creating risk
- Quantify/qualify risk
- Conduct Risk Analysis
  - Nature of Risk x Likelihood of Occurrence = **RISK**
- Mitigate Risk
  - Reduce Likelihood of Occurrence
  - Minimize Impact of Occurrence



# **Contractual Transfer of Risk**

- ▶ **Indemnification**
- ▶ **Insurance**
- ▶ **Limitation of liability and disclaimers**
- ▶ **Termination for Convenience**



## **Rule Three**

Information, Information, Information:

How the Contract Review Form Helps  
the Office of the General Counsel

A scenic landscape featuring a winding asphalt road with yellow double lines that curves through lush green fields and dense forests. The sky is a vibrant blue with scattered white clouds. The entire image has a torn-paper edge effect.

# The Road to General Counsel



## Rule Four

Take the comments received from the Office of the General Counsel to negotiate a better contract.

**REMEMBER:**

**CONFIDENTIAL**

Knowledge  
Empowers  
You



**Attorney/Client Privilege**

**Empowerment**

**Negotiate (everything is negotiable)**



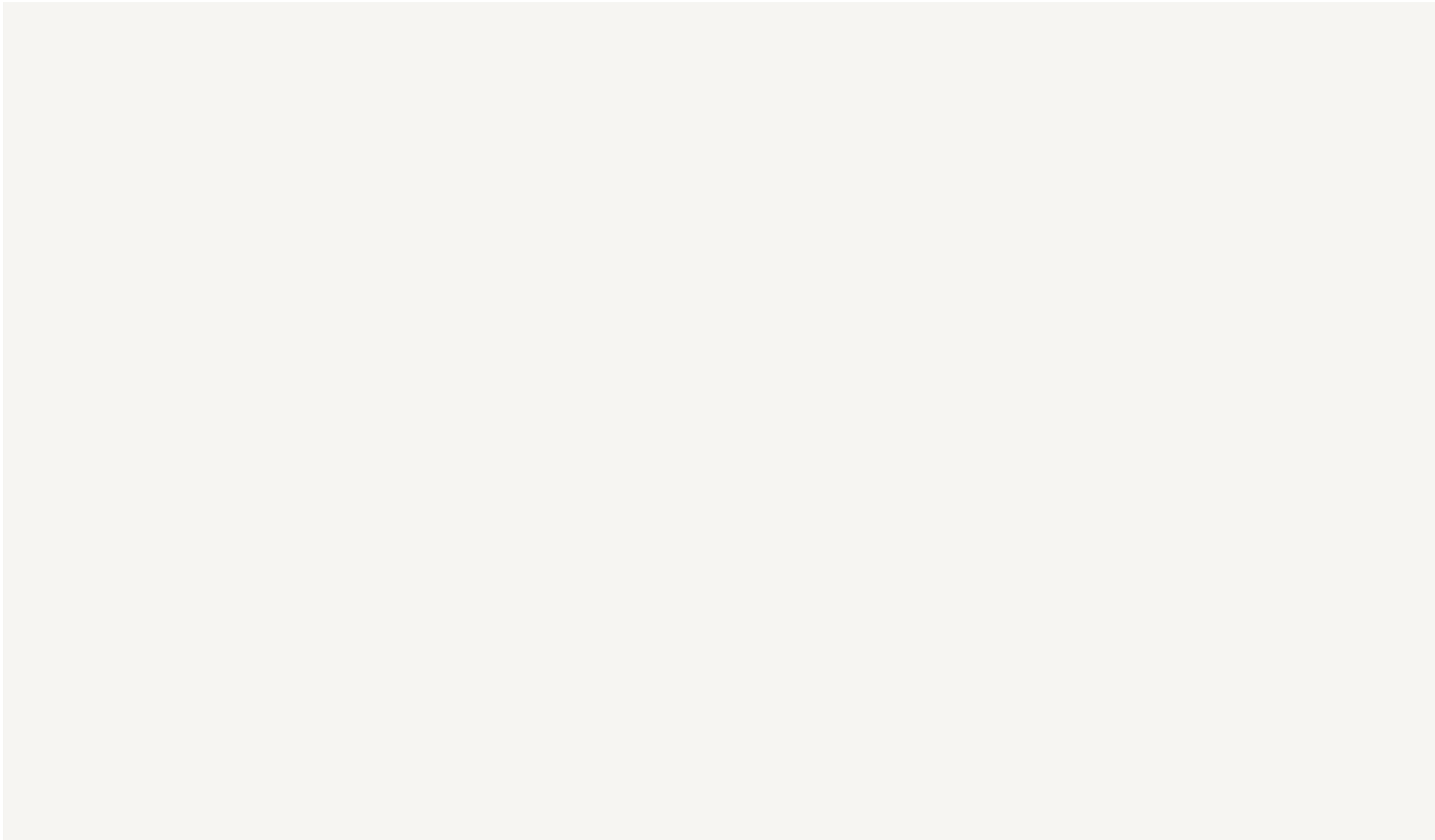
# Negotiation of Contracts

- University employees may engage in the negotiation of any contract only after obtaining the express approval of an appropriately authorized University officer, agent, or employee.
- Under no circumstances should any employee give verbal or written assurances or commitments on behalf of the University without being so authorized.

# Written Final Approval Required

All employees negotiating contracts on behalf of the University shall inform the other party that no terms are final until approved in writing by a University officer, agent, or employee who is authorized to do so.

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**Answer: YES! Before renewal, take the opportunity to propose adjustments in the terms as necessary and communicate with the General Counsel's Office regarding potential new requirements.**

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Question: Which contract should I choose?

**Answer: There are several options, including:**

- 1. Standard Consultant Services Agreement**
- 2. Construction Contracts**
- 3. Purchase Order Terms & Conditions**
- 4. Other Party's Contract**
- 5. Special Contracts**

# Common Questions

Question: Are there any limits as to where and when vendors may make deliveries to the Malibu Campus?"

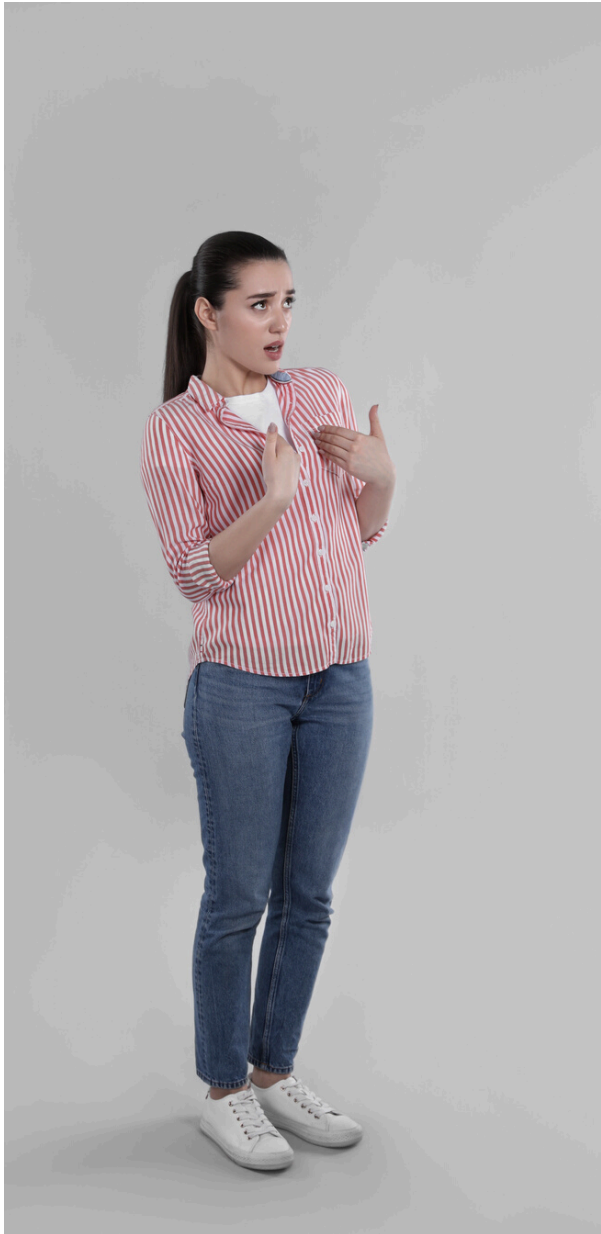
Answer: Yes. The University will direct delivery trucks and similar vehicles, where feasible, to use the Seaver Drive entrance to the University at all times of the day. Such restrictions are not considered feasible if delivery trucks are unable to maneuver the Seaver Drive grade; if they are making deliveries along the portion of John Tyler Drive, between Banowsky Boulevard and Stotsenberg Track, that borders Malibu Country Estates residences; or cause unsafe traffic congestion. The University will further prohibit deliveries to the loading dock area of "Campus Walk" located adjacent to the Tyler Campus Center, which have the potential to cause noise disturbance at the MCE, between 10:00 p.m. and 7:00 a.m. unless necessary due to safety, security, or extraordinary circumstances. The University will notify its vendors of this restriction and include such provisions in vendor contracts where appropriate.

# Contracting Protocol Take-Aways

1. Obtain Express Authority.
2. Seek General Counsel Review
3. Negotiate Contract.
4. Obtain Written Final Approval.







# Indemnification

**An indemnification clause in a contract identifies ahead of time, who is responsible for what.**

**One Party agrees to be financially responsible for specific types of damages.**

**Creates incentives for the parties involved to be responsible!**

**In-N-Out Burger  
is responsible  
for their own  
mobile  
kitchen truck's  
maintenance...**



**A vendor is  
responsible for  
its driver's safe  
driving while on  
our campus...**



**An Earth Day  
vendor is  
responsible for  
properly  
installing and  
maintaining  
their booth  
display...**



# Insurance Requirements

Why does Pepperdine require outside parties to have insurance?

▶ **The other party's insurance will pay the indemnification. Pepperdine wants this!**

▶ **We do not want to have the University's insurance respond.**



# Certificates of Insurance

What are they good for?

- ▶ **They serve as evidence of coverage.**
- ▶ **They will disclose that the policy(ies) includes protection for the indemnification.**
- ▶ **Acord format is the standard format utilized by the industry.**



# Insurance Requirements

Pepperdine's Consultant Services Agreement:

- ▶ **“Consultant” must maintain specified insurance during the term of the agreement**
- ▶ **Insurance limits to look for:**
  - Per Occurrence – this is the most that the policy will pay as the result of a particular incident/claim
  - Aggregate - the "Aggregate Limit" is the most the policy will pay as a result of all occurrences during the policy term (usually one year)



# Insurance Requirements

Pepperdine's Consultant Services Agreement:

- ▶ **Commercial General Liability: \$3,000,000**
  - Personal injury
  - Independent contractors
  - Contractual
  - Participants
- ▶ **Workers' Compensation (statutory limit): \$1,000,000**
- ▶ **Business Auto Liability: \$1,000,000**
- ▶ **Sexual Abuse, Harassment, and Molestation: \$3,000,000**

# Why Sexual Misconduct Coverage?

## Penn State

- \$250M+ defending the claims
- \$109M settlement

## Michigan State

- \$500M settlement

## University of Southern California

- \$1.1B settlement

## Los Angeles Unified School District

- \$52M settlement

## Reputational costs

# Insurance Requirements

Pepperdine's Consultant Services Agreement:

- ▶ **Add the University as an additional insured on the actual certificate of insurance**
  - Many policies require a written contract to provide additional insured status
- ▶ **State that they cannot be canceled without 30 days notice**
- ▶ **Documentation must be received prior to the effective date of the contract**



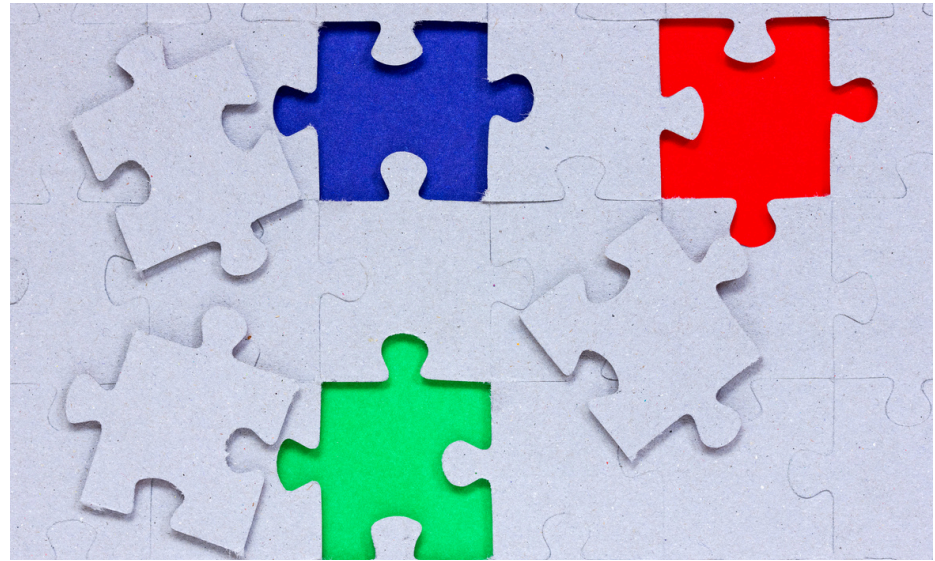
# Contracting at Pepperdine

Process of contracting

- Signing authority
- Review with Supervisor
- Contracts over \$75,000 or those that may present a unique risk should be reviewed by the General Counsel Office

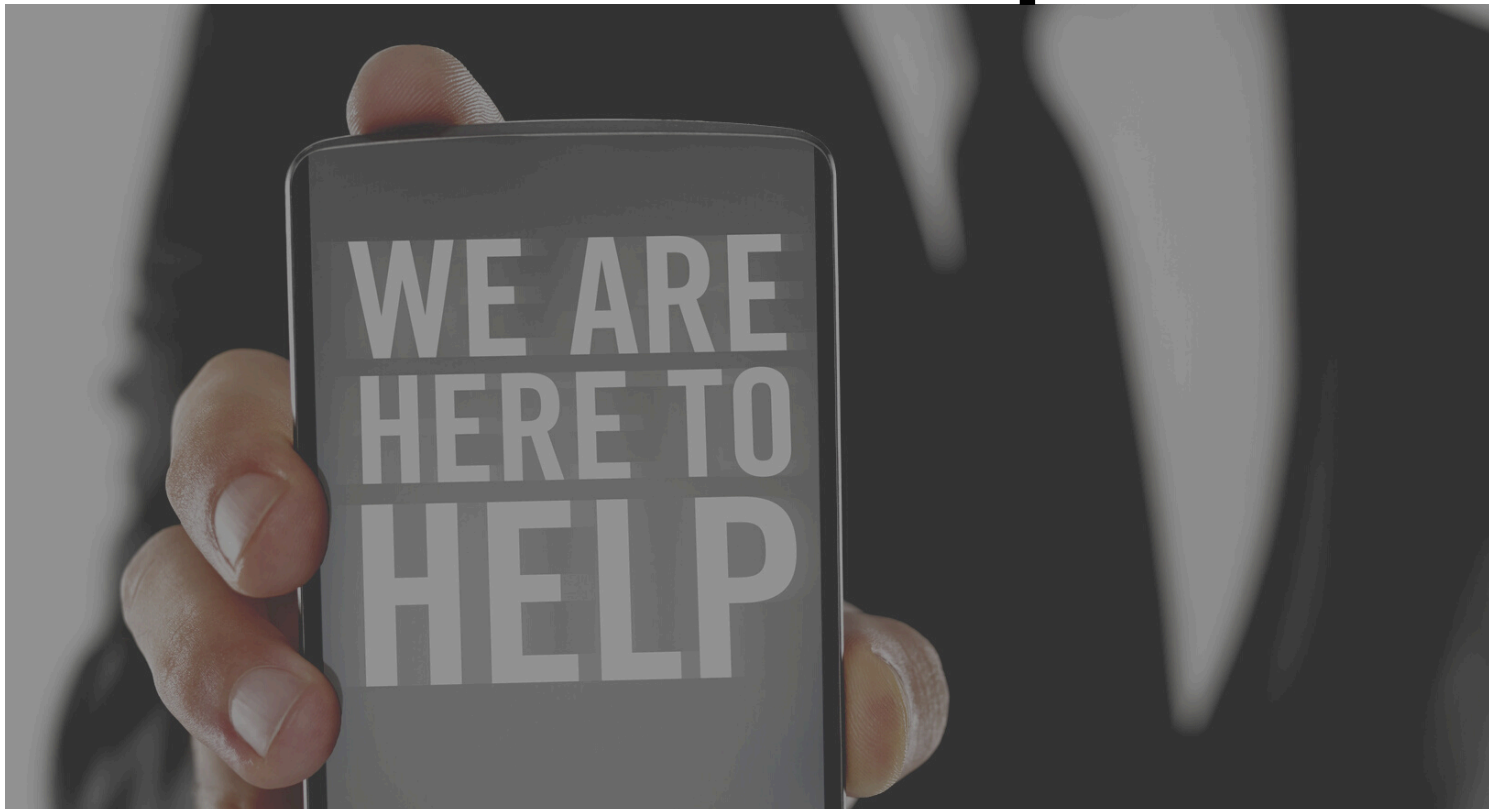
# Troubleshooting

What happens when the outside party will not or cannot agree?



- ▶ **Duty to manage University resources**
- ▶ **Who has the leverage?**
- ▶ **Business decisions**
  - Benefits: how important?
  - Potential costs: safety, assets, and University reputation

**Insurance & Risk and  
the General Counsel's Office  
are here to help!**





**QUESTIONS**