

# Revised EP8.200 Policy on Contracts and Signing Authority

Since its inception on November 1, 2017, EP8.200, Policy on Contracts and Signing Authority ("Contracts Policy") has been annually updated to respond better to the University of Hawaii's needs and to address changing risks. The following is a summary of the updates effective November 1, 2020. Read the full policy at <http://go.hawaii.edu/KTj>.

## A. Definition of Dean

Since the last Contracts Policy update, UH Manoa has been reorganized, the School of Pacific and Asian Studies has merged into the College of Arts, Languages and Letters. Accordingly, the definition of "Deans" has been revised to recognize that change.

## B. Contracts Under \$25,000

In Section III.B.1, the revision clarifies the OGC's review of agreements under \$25,000. These contracts do not require and have not required OGC review, since they generally do not pose a significant risk to the University. However, some of these contracts involve significant risk, notwithstanding their low dollar amount, and are submitted to OGC to review. To more efficiently process these contract reviews, units are encouraged to complete the due diligence checklist in advance of submitting a legal services request, and to negotiate with the counterparty to resolve immediately identifiable inconsistencies in the University's favor; if the inconsistencies cannot be resolved then units should seek higher campus level authorization for answers to policy questions, risk tolerance or business decisions.

## C. Facilities Use Agreement

In Section III.B.4.b(1), language has been added about considering use of appropriate waiver and release forms, especially in connection with non-UH sponsored events conducted on University property.

## D. International Agreements

In order to make contracting more efficient for the campuses, we

have drafted an additional template agreement to Appendix 6, "Participation, Assumption of Risk, Consent, Waiver, Release and Indemnity Agreement (Outbound Students)," as referenced in Section III.B.4.c. Consideration should be given to using this agreement for University students participating in an out-of-state, international exchange or study abroad program. As always, if a University template agreement is used without any material changes, no further OGC review is required.

#### E. Minors on Campus

Another paragraph to Section III.B.4.d (Minors on Campus) has been added to indicate that agreements that call for minors that are dually enrolled as students in a University program and a K-12 school, e.g., Early College, should include provisions that delineate the responsibilities of each respective institution re violations of either institutions' policies. We have also added Appendix 16 which contains a recommended sample provision. The waiver and release forms that were a part of this section have been moved to Section III.B.6.a. Please note that this section will be revised further once a minors policy has been adopted.

#### F. Information Technology Purchases and Data Commitments Involving Software and/or Services

With the expertise of the Office of the Vice President of Information Technology (OVPIT) and Data Governance Office (DGO), Sections III.B.4.f and III.B.4.g were rewritten. Section III.B.4.f.1 (Information Technology Purchases), makes clear that purchases of electronic equipment, hardware, software and related services that (1) exceed \$25,000 or (2) will be connected or interact with the University's IT structure must be reviewed and approved by the OVPIT.

In addition, a new paragraph (Section III.B.4.f.2) has been added regarding "shrink-wrapped" software and subscriptions that do not exceed \$2500. In addition to the process requiring OVPIT review, units are generally required to attempt to negotiate with the vendor to modify or remove inconsistent terms prior to submission to OVPIT. Larger transactions for the purchase of "shrink-wrapped" software and software subscriptions must be reviewed and approved by the OVPIT.

Section III.B.4.g, "Data Commitments Involving Software and/or Services," has been revised to make clear that the DGO review and approval process applies to software and services for

institutional purposes and research projects, regardless of dollar value.

## G. New Template Agreements

In response to client requests repeating over time, we have added new templates.

1. In addition to the previous template agreements, Section III.B.6.a contains new waiver and release forms for:

- University-Sponsored One-Time Events (Appendices 7 and 7A)
- Non-University Events (Appendices 7B-7E), intended to be used with events conducted pursuant to a facilities use agreement.
- In recognition of the increase in online teaching and learning activities, Appendices 7F and 7G contain template authorization and release forms for online learning activities.

2. We have also added a template mutual non-disclosure agreement (NDA) contained in Appendix 14. As explained in Section III.B.6.b, the NDA may be used when the University and a third party wish to exchange and protect confidential information to facilitate discussions that may lead to possible collaboration in the typical research context; more complex real property and commercial transactions may require a customized NDA.

3. Right of Entry and Use and Occupancy Agreement Templates.

Contained in Appendix 15 (Template Property Agreements) are real property agreement templates for (a) Right of Entry Agreements for Non-Invasive/Investigative Work; and (b) Use and Occupancy Agreement for Nearby Construction Projects. These are specialized templates, but have repeated surprisingly frequently over time. To the extent that there are substantive revisions to these template agreements, OGC review prior to submission to the Vice President for Budget and Finance/Chief Financial Officer or the Director of UH System Administrative Services are required.

## H. Specific Provisions in Contracts

In the third Section of the Contracts Policy (Section III.C.) providing specific provisions for university contracts, we have added the following:

1. The past year has reminded us that inclusion of a force

majeure clause is advisable. Such a clause allows either party to excuse, delay, or suspend performance of the contract when their performance is prevented by certain catastrophic events. Appendix 10 contains a recommended force majeure provision.

2. Some academic contracts may affect an individual faculty member's workload. A new section reminds those reviewing these contracts to also review the UHPA CBA to ensure that the contract is consistent with its terms.

We will be offering training sessions as we have done in years past. That said, we do not anticipate the need to be great given the scope of these changes.

Please contact Carrie Okinaga ([carrieok@hawaii.edu](mailto:carrieok@hawaii.edu)) or Trish Kimura ([kimuratm@hawaii.edu](mailto:kimuratm@hawaii.edu)) if you have any questions.

Mahalo!