



Contract Tip Sheet

This document outlines contract language to which MSU Office of General Counsel might object. In being aware of this language before moving a contract forward for review, staff can cut back on negotiation time and expediate the review process. Please note: the suggestions below may change without notice so it's best to start the contract negotiation process as early as possible to avoid delays. **This document should be for internal staff use only.**

Indemnification/Hold Harmless clauses

This language sets MSU up to take full liability for anything that goes wrong as a result of the agreement, even if it is not a result of MSU's actions. Instead, MSU may be held liable for its own actions as a result of an agreement or indemnity may be limited to the monetary amount of the agreement.

Example of objectionable language: *Grantee holds grantor harmless. Grantee agrees to hold grantor harmless from any and all liability of any sort which grantor would be subject to as a result of this grant and agrees to fully indemnify grantor if any liability shall be incurred by grantor.*

If a contract has indemnification only protecting the facility and not Michigan State University, consider asking the facility to adjust the language to the following language. The goal here is to ensure that MSU is not liable for things outside of our control.

Suggested language: *The facility and Michigan State University each agree to defend, indemnify and hold harmless the other party from and against all claims, actions or causes of action, liabilities including attorney's fees and costs arising from the defense of any claim, action, cause of action, or liabilities arising out of or resulting from any act taken or committed by the facility or Michigan State University pursuant to the performance of each party's obligations hereunder. The facility or Michigan State University each agree to defend and indemnify and hold harmless the other party for any claim, cause of action and liabilities which may be asserted by third parties arising out of the performance of either party's obligation pursuant to this agreement, except for the willful misconduct or gross negligence of the other party. The terms of this provision shall survive the termination or expiration of this agreement. Michigan State University agrees to supervise and to assume full control and responsibility for any persons, entities or things associated with the function described above.*

Insurance and Additional Insured Clauses

If a contract requires proof of insurance, please note that Michigan State University will not list any "additional insured" on their policies.

- a. **Insurance:** Michigan State University staff, students, faculty, and volunteers are covered under the University's general liability policy. In general, this covers bodily injury and property damage that we may cause to others. The general liability insurance provides Automobile Liability and Workers Compensation (Michigan).
- b. If additional documentation (actual proof of coverage) is required, please indicate this in the contract review submission process and allow extra time in the review process to receive the certificate of insurance from Risk Management.



It is illegal under the Michigan Constitution for MSU to insure any other organization. Such clauses need to be removed altogether before the contract review or before the MSU Office of General Counsel will approve an agreement.

Example of objectionable language: *At least ten (10) days prior to the date of this Agreement, Contractor agrees to name Organization and its officers and directors as an Additional Insured under Contractor's general liability, excess GL or umbrella, and professional liability insurance policies. Contractor further agrees to maintain Additional Insurance status for Organization and its officers and directors at all times while this Agreement is in effect. Contractor's insurance policies shall provide that same may not be terminated without thirty (30) days' prior notice to Organization.*

Intellectual Property Ownership

Materials developed by MSU employees and/or using MSU resources or facilities must remain the intellectual property of MSU. Jointly developed works may be jointly owned.

An exception to this rule is works for hire. Works for hire, or deliverable materials that a MSU staff person is hired specifically to create for a partner, may allow transfer of ownership upon receipt of payment in full.

Example of objectionable language: *Any intellectual property provided by the Contractor to the project will become property of Organization upon its submission. Any works jointly developed under this agreement will become property of the Organization.*

Publication/Dissemination Restrictions

Because MSU is a public university, restrictions on a PI's ability to publish or otherwise disseminate the results of their research are rarely accepted.

Example of objectionable language: *Neither Party nor its Affiliates shall publish or publicly disclose the results generated during the course of performing the Research Plans, or in the Development or Commercialization activities directed to any Selected Target conducted by either Party under this Agreement without the prior written consent of the other Party, except as otherwise expressly permitted in this Section 9.6, in Section 9.7 or otherwise in this agreement.*

Force Majeure

If a contract is missing force majeure language, please ask that this statement be added to your contract before sending for signature. This protects the university if the contract has to be cancelled due to unforeseeable circumstances.

Suggested Force Majeure Language: *The performance of this agreement is subject to acts of God, government authority, disaster, war, acts of terrorism, or other cause beyond the parties' control, which make it inadvisable, commercially impracticable, illegal or impossible to perform as originally contracted under this agreement. It is provided that this agreement may be terminated for any one or more of such reasons by written notice from one party to the other without liability. In the event that the group decides to hold its meeting despite such circumstances, the facility shall re-negotiate fees related to a reduced-sized meeting, including function space rental, based on these special circumstances during the contracted dates indicated above.*

Additional Suggested Pandemic Language: *Neither party will be deemed to be in breach of its obligations under this agreement or have any liability to the other party (including but not limited to any liability for cancellation charges), if such party cancels this agreement as a result of any of the following: (i) an epidemic, pandemic or similar outbreak that makes performance of the agreement*



impracticable or inadvisable, (ii) action on the part of federal, state, or local authorities that prevents a party from performing its obligations under the agreement; or (iii) any other cause beyond the reasonable control of such party.

Deposits and Final Payments

If a contract requires a deposit, please ask for the deposit to be waived based on the good credit status of the university. If a contract requires payment before or at the conclusion of the event request a direct bill process with a 30-day payment upon receipt of the final invoice based on the good credit status of the university. If they require direct billing credit references, please contact ANR Event Services at events@anr.msu.edu for the necessary information for submission. MSU does not allow payment before an event takes place.

Addendums, Rules, Policies

If a contract refers to an addendum, rules or subsequent policies, all documentation should be provided in full before requesting the contract review and signature.

Other Potential Issues: These are less common but still of concern.

Participation Restrictions

As an institution that accepts federal funding, MSU cannot accept terms that expect programs to restrict participation in a way that impacts a protected class, i.e., race, color, national origin, gender identity, religion, etc.

Non-Compete Clauses

Language that limits the ability of MSU faculty or staff to pursue other opportunities in their field or restricts the ability of other faculty or staff to participate in the project is generally not acceptable.

Governing Law

MSU operates under the laws of the State of Michigan and typically will not accept agreements that expect it to follow the laws of another state.

Non-Performance Penalties

Agreements that accept penalties should MSU staff fail to complete the terms as outlined can reduce the overall award amount or cost additional money, which can create financial issues for the project.

Arbitration/Dispute Resolution

MSU will not accept agreements that establish terms of arbitration up front, as this can disadvantage the institution in the future. If a contract has information about dispute resolution, please ensure the policy is similar to the text below:

Example Language: *Dispute Resolution: The law of the State of Michigan will be the governing law. In any litigation arising out of or relating to this Agreement, the prevailing party will recover attorney's fees. Each party will be responsible for attorney's fees and interest associated with the other party's efforts to collect monies owed under this Agreement.*



Export Controls & Related Restrictions

If an agreement involves the export or deemed export of goods, technology, or technical data that is considered “dual use” (commercial but could be used for military purposes), inherently military in purpose, or proprietary in nature, the MSU Office of Export Control & Trade Sanctions will be involved in its review.

Tribal Government Law

If a contract indicates that “**Tribal Government Law**” must be followed or supersedes State or Federal Law, it must be struck from the contract. Below is recommended general language about adherence to State and Federal law.

Example Language: *Compliance with Laws and Regulations of the State: The event and facility shall comply with all applicable laws and rules of the United States and the State of Michigan and its agencies, and all ordinances of the local government units within whose jurisdiction to the facility is situated.*

Religious Beliefs or Values

Contracts stating that specific **religious beliefs or values** will be actively practiced during an event or that participants with specific religious beliefs or values will be accepted to attend or participate before others must be struck from the contract.

Acceptable Language (if facility requires such language): *Groups and individuals understand and agree to respect that all XXXX staff and volunteers are charged with unapologetically pursuing the XXXX Mission, Vision, Core Values and Statement of Faith with all guests. While we do not directly proselytize our guests, they may encounter conversation, materials and/or practices consistent with those Statements and the XXXX Faith. Additionally, all guest groups and individuals agree to not provide, promote or encourage any activity, program or personal practices that may impede the mission of XXXX while on XXXXX properties.*

It is recommended that following the Cultural Sensitivity information be included in your contract if possible:

Michigan State University, through its Diversity Policy, has expressed its commitment to the elimination of racism and discrimination on the basis of race, color, sex, religion, creed, national origin, political persuasion, sexual orientation, marital status, handicap or age. As an integral part of the University, the College of Agriculture and Natural Resources supports this policy of non-discrimination. Accordingly, we ask that all items displayed at the facility be sensitive to all members of society. This would include the avoidance of words, images, and situations that suggest all or most members of a particular group are the same.

Breakage and Damage

If a contract has a breakage or damage policy that indicates Michigan State University is liable for the expenses the following text should be included in the contract.

Suggested Language: *Licensee agrees to pay XXX, the amount we consider to be reasonable and necessary at current market and industry standards to repair or replace property equipment damaged or destroyed during Licensee’s use.*

Waiver Subrogation

If a contract has a statement about subrogation, please ensure the policy is similar to the policy below.

Example Language: *Waiver of Subrogation: The Licensee hereby waives any and every claim which arises in its favor and against the Licensor, or against any of the Additional Indemnities set forth herein, for any and all loss or damage covered by valid and collectible insurance policies to the extent of the insurance proceeds paid with respect thereto. Such waiver shall be in addition to, and not, in*



derogation of, any other waiver or release contained in this License with respect to any loss or damage to property of the Licensees. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), the Licensee shall notify its insurers of such waiver.

Binding Effect Assignability

If a contract includes **Binding Effect Assignability**, please sure the contract reads similar to the policy below or strike such policy if possible.

Example Language: *Binding Effect Assignability: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement or any rights hereunder may not be assigned by the Licensee without prior written request and approval of the Licensor. However, the Licensor shall have the right with reasonable prior notice, or otherwise to Licensee, to freely assign its rights to any party it deems appropriate assignee. Furthermore, Licensee shall within 30 days execute whatever documentation requested by Licensor for the purpose of evidencing the Agreement between the parties to a third party for the purposes requested by Licensor. For the purposes of this paragraph a transfer and ownership of the Licensee shall be deemed an assignment and must be approved by the Licensor.*

