How to Speed up the Contract Review Process
Northeastern University
Brown Bag Lunch Seminar July 2011

WELCOME!!!

SIMPLIFY YOUR LIFE!!
• Four Parts to Today’s Seminar
  1. Current Contract Review Process
  2. Steps You Should Take to Speed Up Process
  3. Know the Pitfalls
  4. Know the Pressure Points
1. Current Contract Review Process

- Cover Sheet, Draft Copy, COI*
- Sent in hard copy to Office of University Counsel
- Sharepoint notice to you: “We got it.”
- Add as many people to the Sharepoint notifications list as you want.

* If necessary
1. Current Contract Review Process (cont’d)
   • **Standard** Review Time 2 weeks

   • Negotiation, drafting, push out timeframe

   • UC approves: Sharepoint notice:
     • “It’s sent for signature.”

   • Alternative Sharepoint notice:
     • “Sent back to department.”
1. Current Contract Review Process (cont’d)

- Approvals Sent to Treasurer or Provost’s Office
- Sharepoint Message: “Contract ready for Pickup”
  - No Changes after NU signs
  - 490 Renaissance Park
  - 110 Churchill Hall
- Counterparty signature
- Department keeps a copy; UC does not.
2. Steps You Should Take
   • Use Templates Whenever Possible

   • They’re Available From UC Webpage
     • Dept/College-specific templates not on UC webpage

   • Send the coversheet, completed and signed
     • Don’t skip questions

   • Include Copy of the Previous Agreement

   • Include necessary Certificate of Insurance (COI)
2. Steps You Should Take (cont’d)
• Which Template Should I Use?

➢ **Professional Services Agreement (Long/Short Forms)**
  o Use when buying expertise/knowledge
  o Use when buying what’s in someone’s head
  o Usually project related – software developers, consultants, etc.

➢ **Service Provider Agreement**
  o Use when buying what’s in someone’s feet or back
  o Usually a one-time event
  o Caterers, lighting, staging, security, etc.
2. Steps You Should Take (cont’d)

• Which Template Should I Use?

➢ **Non-Disclosure Agreement**
  o Confidentiality Agreement
  o Typically Used When in Confidential Talks
  o Forerunner to Research/Collaboration Agreements

➢ **Performer Agreement**
  o Use When Buying an Artistic Performance of Some Kind
  o Singers, dancers, speakers, readers, musicians, etc.
2. Steps You Should Take (cont’d)
   • Which Template Should I Use?

   ➢ **Talent Agency Agreement**
     o Use for Use of Student Likeness in University Communication
     o May Be Used for Faculty and Staff

   ➢ **Videographer/Photographer Agreement**
     o Use When Hiring for Such Services
2. Steps You Should Take (cont’d)
   • Which Template Should I Use?

   ➢ Student Confidentiality Agreement
      o Use for Student Workers Who Have Access to NU Information

   ➢ License Agreement Addendum
      o Use with All Agreements to License Software
      o New Template - Will Be Posted on UC Website Soon
2. Steps You Should Take (cont’d)

- Do Your Due Diligence on the Counterparty
- Complete the Template Accurately
  - NU is always the contracting party
  - Type the legal name of the counterparty (two places)
  - State the services/work to be performed
  - State the maximum amount to be paid for the work
  - State on the cover sheet changes to template
  - You don’t sign the contract
  - Complete or delete bracketed language
  - Make sure business terms are clear
2. Steps You Should Take

• Not a Template Form + Significant Transaction =
  • Call Us before 1st Meeting w/counterparty
  • Deal Meeting, Deal Lawyers Present
  • We’re FREE!!

• Know the Pitfalls.

• Know the Pressure Points.
3. Pitfalls (You Should Avoid These)

- Not Using UC Templates
- Using the Wrong Template
- Not Completing the Template Correctly
- Inviting UC Late to the Dance
- Previous Agreement Not Included
- COI Weaknesses
  - No COI submitted, Non-compliant, out-of-date
- No SSNs on Contracts
4. NU Pressure Points (Non-templates)

- Signed contract in place before work begins
- Cannot pay a counterparty without a contract
- Potential for problems too great
4. NU Pressure Points (Non-templates)

- Warranties
- Indemnity
- Confidentiality
- Work Product/Work for Hire/Intellectual Property
- Limits of Liability
- Dispute Resolution and Governing Law
- Termination
- Use of NU’s Name
- Amendments
4. NU Pressure Points (Non-templates)

• **Warranties**
  • The Concept: “This stuff is their stuff to sell or license to us.”
  • We buy, license, etc., only from the owner or authorized dealer.
  • We don’t like disclaimers of warranties.
  • Common warranties we need from Counterparty (not an exhaustive list):
    • Work will be done according to specifications
    • It has the IP rights necessary to license them
    • It has the requisite skills and experience
    • It will provide a “Supervised, Clinical Education Experience”
    • It will comply with all laws applicable to the transactions
4. Pressure Points (Non-templates)

- **Indemnity**
  - The Concept: “If NU gets sued by a Third Party because of the Counterparty’s acts/omissions, Counterparty must pay NU.”
  - Typical indemnities we seek (all):
    - For breach of the agreement by Counterparty
    - For negligence/bad behavior of Counterparty
    - For breach of confidentiality by Counterparty.
  - University typically does NOT agree to indemnify anyone.
  - NU Board authorization required for indemnity.
4. Pressure Points (Non-templates)
   • Confidentiality
     • The Concept: “Safeguard and defend confidential information from unauthorized access, use or disclosure.”
     • Substantial Financial Risk & Reputation Risk among others
     • MA Privacy Law, FERPA, HIPAA, Other States’ laws
     • EU Privacy Directives
4. Pressure Points (Non-templates)

• **Work Product/Work for Hire/Intellectual Property**
  
  • The Concept: “If a counterparty is doing work for NU and NU has paid for the work, the work entirely belongs to NU.”
  
  • Typically arises in Professional Services Agreements and License Agreements
  
  • That’s NU Policy and standard practice at other places too
  
  • Some variations are permitted from time to time
4. Pressure Points (Non-templates)

• **Limits of Liability**
  • The Concept: “We want the Counterparty to stand behind its product/work.”
  • We don’t like unreasonable limits of liability.
    • If NU doesn’t cause the harm, it should NOT have to pay for it.
    • Others always try to exclude “consequential damages.”
  • Not necessarily a direct correlation between the dollar value of the contract and amount of potential liability.
  • NU resources are for its Education and Research missions. NU doesn’t bear a counterparty’s financial risk.
  • A SOL acts the same way and we don’t like those either.
4. **Pressure Points (Non-templates)**

- **Arbitration or Trial**
  - Arbitration is a substitute to a trial for dispute resolution.

- **Governing Law**
  - 99% of time: Massachusetts
  - Other times: “silent,” “court of competent jurisdiction,” “home court advantage”
  - International contracts: this is *always* an issue.

- **Jurisdiction/Venue**
  - We don’t usually agree to appear any where but MA.
4. Pressure Points (Non-templates)

• **Termination**
  • Every contract needs an exit strategy.
  • Terminate “for convenience” (“with or without cause”)
  • Usually terminate upon ___ days prior written notice

• **Amendments to Agreements**
  • Must be in writing
  • Must be signed by both parties
  • Not oral
  • Not automatic
4. Pressure Points (Non-templates)
   • Use of NU Name and IP
     • Highly controlled
     • Use rarely permitted
     • Always required: prior, written approval in each case
4. Pressure Points (Non-templates)
   • How are Pressure Points Managed?
     • Communication is key!

     • Always depends on the circumstances. For example,
       • Number of changes necessary
       • Types of changes necessary
       • Some counterparties accept interlineations
       • Some counterparties want edits typed

     • Resolution can involve negotiation with counterparties
4. Pressure Points (Non-templates)
   • How are Pressure Points Managed?
     • You work with UC to resolve issues with counterparties
     • Your level of involvement varies depending on circumstances
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Questions?

Our main number is 617-373-2157

Thank you for your attendance and participation!