



COLORADO STATE UNIVERSITY CONTRACTS MANUAL

Office of the General Counsel
Colorado State University

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CHAPTER 1

INTRODUCTION

1.1 FORWARD AND PURPOSE

This Manual is a compilation of the policies and procedures of the Office of the General Counsel ("OGC") relating to the contracting process at Colorado State University. The primary purpose of this Manual is to facilitate the contracting process by clarifying the steps required to initiate and draft contracts and to obtain all necessary approvals and required signatures. This Manual discusses various problems, concerns and legal issues with respect to certain types of contracts, and contains standard contract forms, suggested contract clauses, and references to relevant laws, rules, manuals, and handbooks.

This Manual may be accessed via the website of the Office of the General Counsel, as well. When accessed electronically through the OGC web site, the Manual offers hyperlinks to numerous websites maintained by other University departments, state government agencies, and others. Users experiencing inactive or inaccurate hypertext links in this document are encouraged to contact our office to report the problem.

1.2 USE OF THIS MANUAL

University contracts should be administered according to the policies and procedures contained in this Manual. However, this Manual is a guide only, and is not intended to supersede Federal or State statutes, rules and regulations, or other published University manuals, policies and procedures. In case of conflicts between the Manual and other published sources, please contact the Office of the General Counsel.

The policies expressed in this Manual are designed to be implemented as written whenever feasible. It is recognized, however, that exceptional circumstances occasionally arise and may require the use of good administrative judgment to interpret the policy so as to provide an appropriate response. Any time a contract cannot readily be written or processed in conformity with the guidelines set forth in this Manual, users are encouraged to contact the Office of the General Counsel to discuss the problem and obtain direction towards the goal of completing a valid, enforceable and legally sufficient document for CSU.

1.3 UPDATES AND DISTRIBUTION

This Manual is intended to be an evolving document subject to regular update, revision and improvement.

Users are encouraged to take part in a continuing dialogue with the OGC regarding changes needed in this Manual. Suggestions regarding content and format are welcome.

1.4 ABOUT THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel for the CSU System, is responsible for drafting and reviewing contracts between the Board, on behalf of its two institutions, and external parties in the public and private sectors. All contracts are made in the name of the Board of Governors of the Colorado State University System, acting by and through the appropriate institution. The OGC attorneys have been delegated authority by the State Attorney General to review and approve contracts on behalf of the Attorney General and the State Controller.

Among the responsibilities of the OGC are: to establish standard contract procedures, and to publish such procedures as necessary to advise and inform the University community; to interact with campus faculty, staff and managers to provide advice and assistance on University contracts; to provide legal sufficiency review of various contracts; to coordinate with State agencies as appropriate on contract transactions; to maintain contract files; and to keep abreast of current laws affecting CSU contract administration.

The intent of the OGC is to help YOU do business on behalf of the University. We encourage faculty and staff to ask questions, make suggestions and utilize the resources available through our office.

1.5 DEFINITIONS

Unless the usage clearly shows otherwise, the following definitions apply in this Manual.

THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM (also called the "BOG" or the "Board"): The governing board of the Colorado State University System, which includes CSU and CSU - Pueblo. The Board of Governors of the Colorado State University System, acting by and through Colorado State University was formerly known as the State Board of Agriculture (name changed pursuant to HB 02-1260, effective August 8, 2002). The Board was established by state statute (C.R.S. §§ 23-30-101 & 102) as allowed and authorized by the Colorado Constitution (Art. VII, Section 5).

The Board is a public body corporate, capable in law of suing and being sued; of taking, holding, and selling personal property and real estate; of contracting and being contracted with; of having and using a corporate seal; and of causing to be done all things necessary to carry out the provisions of (the Board's enabling statute). See C.R.S. § 23-30-102.

CONTRACT: Unless otherwise indicated, the terms "contract" and "agreement" are used interchangeably. A contract is any agreement between two or more persons or legal entities which creates a legally enforceable obligation to do or not to do a particular thing; in other words, a promise or set of promises, for which the law provides a remedy if breached. Contracts covered in this Manual include, among other things:

- Agreements to buy or sell goods or tangible things;
- Agreements to provide or obtain services;

- Memoranda of Understanding (MOUs) between agencies for the accomplishment of a particular purpose;
- Grants and subgrants awarded by private and public organizations;
- Internship agreements;
- Leases of personal property such as tools and equipment;
- Leases, deeds and other conveyances of real property; and
- All other contracts, agreements and conveyances to which the University is a party and expects to have either or both a legal right to obtain performance, and an obligation to perform.

CSU STANDARD CONTRACT FORM: A template or form specified for use by OGC, with pre-established terms and conditions, which may be filled out, completed, and signed by the authorized representatives of the parties in accordance with the provisions of this Manual. CSU contract forms are contained in Appendix A to this Manual and are also available via the OGC website. CSU standard contract forms are usually able to be created and approved much faster than non-standard contracts. For more information about CSU standard contract forms, please see "Using CSU Standard Contract Forms," section 1.6 below.

INDEMNIFY: A legal term used in contracts, often in a phrase such as "to indemnify, defend, and hold harmless," or similar terminology. A person who agrees to "indemnify" another assumes liability for the specified sums, damages, and losses that the indemnified party incurs in the performance of the contract. So, for example, if a contractor indemnifies CSU from any and all claims arising out of the contractor's acts or omissions, this means that, if CSU gets sued by an outside party on the basis of something that the contractor did (or failed to do as it should have), the contractor must pay any damages awarded in that suit. To "hold harmless" or "save harmless" is a similar concept, sometimes used interchangeably with "indemnify," but may also be interpreted to mean that one party is giving up its rights to sue the other from the specified kinds of claims or damages. A promise to "defend" another obligates the promisor to pay legal fees and expenses arising from the specified claims and causes (but not necessarily any damages awarded in the suit). Indemnification, hold harmless, defense and similar contract clauses in favor of the outside party in State Contracts are generally prohibited under the Colorado Constitution and the opinions and policies of the Colorado Attorney General and the State Controller.

INTERAGENCY AGREEMENT (IA): A formal, legally binding, written agreement between two principal State agencies of the State of Colorado. These agreements are governed under Chapter 3 of the State Fiscal Rules (Rule 3-1). Although generally exempt from the requirement of Attorney General approval, these agreements are on standard forms and must be approved by the Office of the General Counsel. Differs from an Intergovernmental Agreement in that both parties must be agencies of the state, not political subdivisions such as counties, municipalities, or governmental entities of other states.

INTERNSHIP AGREEMENT: An agreement whereby a student of the University receives academic credit for obtaining practical learning and experience from participation in a program of an outside public or private agency, institution, or business. An Internship

Agreement is usually made between the University and the host institution, with the student entering into a separate agreement (if required) according to the institution's guidelines. In most cases, Internship Agreements do not involve the expenditure of funds by the University.

MEMORANDUM OF UNDERSTANDING (MOU): A written agreement, usually between two or more governmental agencies or educational institutions, which creates and controls a program, cooperative arrangement, or working plan. Also referred to as a Memorandum of Agreement (MOA) or, in some cases, Intergovernmental Agreement (IGA), a MOU is usually considered a legally binding contract and is more or less subject to the same considerations as other contract types.

PURCHASE ORDER (PO): A standard CSU form of commitment voucher issued by the Purchasing Department for the purchase of goods or services. A PO is a "contract" within the meaning of the law, but is not considered a "State Contract" under the State Fiscal Rules. A PO is a "unilateral" contract because only one party--the buyer, CSU--signs the document. The seller's acceptance of the PO and its terms is often indicated, or implied as a matter of law, by the Seller's act of beginning performance. If the Seller signs or otherwise formally accepts the PO in writing, it is considered a "bilateral" contract, but the effect is the same. Purchase Orders are subject to certain limitations of use under the State Fiscal Rules.

STATE CONTRACT: Pursuant to the State Fiscal Rules, Rule 3-1, the term "State Contract" means: a formal legally binding agreement between two State Agencies or one State Agency and another party, or an amendment to such agreement, which ultimately results in the disbursement of State funds. Purchase orders are not included in the State Fiscal Rules' definition of "State Contracts" because, although such documents represent procurement contracts, their formulation and execution are treated separately under the Fiscal Rules. The requirements of the State Fiscal Rules do not apply to revenue contracts where the University is the recipient of funds (e.g., a contract to receive a federal grant) (unless, of course, the granting agency is a State of Colorado agency in which case the Fiscal Rules apply either as an Interagency Agreement or expenditure contract by that agency).

STATE FISCAL RULES: Rules issued by the Colorado State Controller governing the financial administration of the State. The State Fiscal Rules may be viewed or downloaded from the [web site of the State Controller](#).

1.6 USING CSU STANDARD CONTRACT FORMS

In Appendix A of this Manual, and on the [OGC web site](#), the user will find a selection of CSU Standard Contract Forms designed to aid in the preparation, negotiation and execution of valid contracts between CSU and others. These forms are periodically updated by OGC, and the newest versions are posted to the site. Because the forms do change from time to time, it is always advisable to check the web site and download the correct form with each use. Save completed contract forms on your local drive in order to retain a record of what you have done, but do not save the forms as "templates" to be used over again.

On the CSU Contracts website, most forms are downloadable in Microsoft Word format. These forms are designed so that certain fields may be filled in by the user; the terms and conditions of the contracts are generally not able to be edited. When changes must be made to the uneditable portions of a CSU Standard Contract form, it is necessary to contact OGC for assistance.

CHAPTER 2 CONTRACTING AT CSU

2.1 CONTRACTING AT CSU-OVERVIEW

Contracts at CSU are usually initiated when a University employee identifies the need to do business with any outside party, including vendors of goods and services; customers or clients of goods or services that can be provided by the University; other governmental departments or agencies; or even a foreign nation or organization. The interested department initiates a typical transaction by first contacting the Purchasing Department to determine how a vendor or contractor will be selected (unless the purchase is one that can be made by appropriate use of the CSU A-Card or by processing an AFE—see sec. 2.3 below). The procedures described in this Chapter all assume that, where required, vendor/contractor selection has already been accomplished with the advice and approval of a CSU Purchasing Agent, and the basic terms of the "deal" have been established.

An existing contractual relationship may also be modified, extended or renewed without interruption by using an appropriate form (see CSU Standard Contract form 2-3 for a Contract Amendment). Depending upon the circumstances, the contractual relationship may be extended for a period of time to allow the completion of the work; to add, reduce or modify the work to be done under the contract; or to change any other term or specification. Bear in mind that contracts cannot be extended or modified without approvals, and any additional work is subject to the original procurement (and must be within its scope).

The first step in making the contract come together is usually to determine whether the transaction is one for acquisition of goods or services by the University; sales or other performance by the University; or some other kind of agreement.

2.2 DETERMINING THE TYPE OF CONTRACT REQUIRED

Sometimes, it is difficult to determine what kind of contract is required for the transaction. Some contracts may involve acquisitions of both goods and services, or may involve both acquisition and revenue-generating activities. Most of the time, you can determine which type of contract is required by answering the following questions:

- Is the primary purpose of the transaction to acquire goods, material, equipment or other tangible things? If so, it's likely that the transaction can be accomplished by using a PO or other form of commitment voucher without a contract. Contact the Purchasing Department for assistance.
- Is the purpose of the contract to obtain personal services or performance from another? If so, it is likely an Independent Contractor Agreement (CSU Standard Form 2-1).
- Is the agreement one for acquiring both goods and services? If in doubt whether the agreement is one for the acquisition of goods or services, or if it involves both,

it is best to contact the CSU Purchasing Department before attempting to select a CSU Standard Contract form.

- Is the activity for which the contract is needed one which will produce revenue to the University or any of its departments? If so, it is likely to be either a Service Agreement or a Research Agreement. (See Chapters 5 and 8 of this Manual).
- Is this a lease of land or building space, with CSU acting either as the Lessor (landlord) or Lessee (tenant)? You will need to contact the Real Estate Office (see Chapter 7).
- Are you creating or renewing an agreement involving another government agency, educational institution or other organization for a cooperative program? The likely form of contract will be a MOU or Interagency Agreement (see chapter 9 and Form 9-1). [Contact OGC](#) for assistance.

Not sure, or none of the above? [Contact the Office of the General Counsel](#).

2.3 GETTING STARTED-INITIATING THE CONTRACT

Depending upon the type of contract and the appropriate form, initiating the formation of an appropriate agreement is usually accomplished after the required procurement process has been completed. The CSU Purchasing Department has sole authority and responsibility to select the appropriate vendor or contractor through the required procurement process. CSU faculty and staff take note: it is unlawful for you to sign or authorize any contract for expenditure of funds by CSU without first having engaged the Purchasing Department in the vendor selection and approval process, except when making authorized purchases on your A-Card, using an AFE, or using your state Travel Card, as appropriate.

2.3.1 Contract for the Purchase of Goods and Things. Some kind of writing is required for every acquisition made with University funds, even if it is small. For goods, materials, equipment or any tangible thing, the best place to start is to consult the CSU Purchasing Manual or contact a Purchasing Agent for assistance. Small purchases (up to \$3,000) can usually be accomplished using the ACARD procurement card. Larger purchases require the use of a CSU Purchase Order (PO) or a written contract.

A-Card and AFE transactions, as well as POs, are referred to as "commitment vouchers" under the State Fiscal Rules because they evidence the obligation of the State to expend funds but are differentiated from "state contracts," which require bilateral signatures and specified approvals. A bilateral "state contract" contains terms and conditions which may be individualized for the specific transaction and is useful, even when not required, where CSU wants to specify certain requirements, specifications, deadlines, milestones, or performance measures (see "Performance Contracting" in section 2.10).

2.3.2 Contract for the Acquisition of Services - Independent Contractor Agreements. Every acquisition of personal services for the University—whether it be physical labor, consulting,

equipment maintenance, or any other kind of services to be rendered by another party—requires a written agreement with the party to provide the service (the "Contractor"). For services which are purchased infrequently, at a fixed amount less than \$100,000, it may be appropriate to utilize a PO without a written contract; the Purchasing Agent will determine whether or not a contract is required. The Independent Services Contract form, CSU Standard Form 2-1, is the preferred method of contracting for all personal services acquisitions. However, occasionally other forms may be used in lieu of or in addition to the CSU Standard Contract form (such as the contractor's own forms, or forms designed for a particular type of agreement). Before completing any contract form, you will need to gather some information about the Contractor, including:

- Full legal name, including the business or trade name used by the Contractor;
- Type of business organization, such as sole proprietorship, partnership, corporation, limited liability company, or other, and the state and country in which the business is incorporated or registered (usually obtained by asking the Contractor and checking the [Colorado Secretary of State's website](#) to assure the Contractor is registered to do business in this state);
- Address of the Contractor's business;
- Tax identification number (for sole proprietors, SS No. is usually used); and
- Fax, e-mail and other contact information to be used for sending payments, correspondence and notices under the contract.

Next, you will need to determine the contract price. This may be a fixed sum payable upon invoice after the work has been satisfactorily completed, or it may be determined on the basis of time, amount of work product, results achieved, or some other measure. If the price is fixed, it may be payable in installments (but note: there can be no payment made in advance for services not yet rendered, except upon a showing of some exceptional circumstance or reason to be approved by the Controller). Where a competitive selection method has been used, the price has likely already been established; but, if the total contract price is not fixed, or cannot be determined at the beginning of performance, then the contract must contain a maximum (or "not-to-exceed") amount within which the contractor's performance will be completed.

Then, you will need to prepare a description of the work to be performed. This can be short and simple, such as "train 3 staff members on XYZ software program for 6 hours," or it may require a complex set of instructions, specifications, milestones or other descriptive terms. More discussion of the concept of "performance contracting" and the steps to be taken in developing the scope of work or Performance Work Statement (PWS), is found in section 2.10 below. Briefly, a PWS is a scope of work document that describes the requirements in terms of measurable outcomes rather than specifying the steps, means or methods of accomplishing the work.

2.3.3 Memorandum of Understanding or Interagency Agreement. For creating or renewing a cooperative agreement with another government agency, educational institution, or other organization, begin by gathering all the information that will be needed—including an item-by-item description of the goals to be accomplished, the steps to be taken by each agency in reaching those goals, the financial obligations, and other terms. A CSU standard form contract may then be prepared using CSU Standard Contract Form 9-1 (see Chapter 9 for more detailed

information regarding this type of agreement). Contact OGC for assistance with the preparation of a MOU or other appropriate form of agreement. All MOUs must be reviewed and approved by OGC.

2.3.4 Service Agreement--To Perform Services for an Outside Party. These educational business agreements result in revenue accruing to the University. Depending upon the type of services involved, and the required fund account to be credited with the revenue, the service provider will use one of several approved CSU Standard Contract forms. In general, the appropriate contract form is determined by first determining the correct fund accounting for the activity. This determination is made by referencing the fund account selection criteria set forth on the [Office of Sponsored Programs' website](#). These selection criteria essentially differentiate between sponsored research activities (5-3 fund) and standard, non-scientific services (usually 2-2 fund), but a number of other fund types may also be used.

For service agreements that are performed as 2-2 fund activities, or that otherwise do not belong under the criteria for Sponsored Programs responsibility, CSU Standard Contract 5-2, Service Agreement for Self-Funded Activities, is the preferred form to use. Where an external client or buyer insists upon using its own form of agreement, it must be reviewed by the Office of the General Counsel. More information about these agreements is contained in Chapter 5. All service agreements require some specified University approval; the designated signatories vary according to the form of agreement, amount and fund account type.

2.3.5 Research Agreements. When agreeing to perform research activities for a public or private sponsor, or anytime there are restrictions on the revenues paid to CSU for the services, you must contact the Office of Sponsored Programs before initiating a contract or subgrant. The CSU Standard Form Research Agreement is number 8-1.

2.3.6 Lease of Building Space or Land. In order to obtain the use of building space or land for use by the University or a department, you must contact the CSU Real Estate Office (REO), which operates under the auspices of the Colorado State University Research Foundation (CSURF). This step is also required if you propose to lease out University space to another party (such as lab space or use of an area for a conference). Certain approvals are required, and these types of transactions often take time-so, plan ahead, and be prepared to explain the need for the transaction in detail.

2.3.7 Lease of Equipment. When equipment, furniture, or other movable things are needed on a short-term basis, a rental agreement or equipment lease may be the appropriate transaction. Many vendors of leased equipment have standing agreements with CSU, allowing for a simple transaction to be accomplished without negotiating a new contract. A list of these vendors may be found on the Purchasing Department website. Contact the Purchasing Department for assistance with these leases.

2.4 FORM OF CONTRACTS AND AGREEMENTS

2.4.1 Transactions Using a Vendor's Contract or other Non-Standard Form. Many times the transaction to be accomplished involves the use of a form contract or agreement supplied by

an outside vendor or other party (a "vendor agreement"). While CSU is not always prohibited from transacting business using vendor agreements, State Fiscal Rule 3-1 limits the use of vendor agreements to a \$5,000 maximum contract amount. In addition, vendor agreements are almost always written most favorably for the vendor; the review and approval process is therefore somewhat more complicated than when using CSU standard contract forms. There are certain required contract provisions which the University, as a State entity, must use in every state contract, as well as certain provisions which CSU is prohibited from accepting (or may do so only under certain circumstances and conditions). These are discussed in section 2.9.1.10, below. In order to assure that these requirements are addressed, CSU sometimes uses CSU standard contract Form 2-2, called the Contract Acceptance Form, over a vendor agreement to create one unified contract.

Once again, if the transaction is basically a purchase of goods or services, the best place to start is with the Purchasing Department which will help you understand, negotiate and use the vendor's contract form. For any other type of agreement, use of an outsider's forms must be approved in advance by the Office of the General Counsel, so your inquiry should begin there.

2.4.2 Master Agreements; Task Orders. One type of contract for which use of a Purchase Order alone would be inappropriate consists of those contracts in which multiple projects or work scopes are expected to be utilized over a period of time. In these cases, a general agreement can be signed to define the purposes of the contract, the relationship of the parties and the parameters for delivery of the services or products to be obtained. Specific details of the scope of the work to be done and the price to be paid are then provided in one or more Task Orders, in which the purchaser delineates those items and the seller agrees to perform the tasks and submit an invoice which conforms to the contract. Often the seller's method of accepting the Task Order is simply to begin performance, without any written acknowledgment of agreement to perform the specific tasks. These transactions are accomplished using a Master Task Order Contract (CSU Standard Form 2-2MA).

2.5 FISCAL RULE CONTRACTS

2.5.1 Office of the State Controller. The office of the State Controller is located within the Colorado Department of Personnel and Administration, Division of Finance and Procurement. Pursuant to the Controller's Statute (C.R.S. § 24-30-202), the Controller issues the State Fiscal Rules as part of the duty to manage the financial affairs of the state. The Fiscal Rules are binding upon institutions of higher education. The Fiscal Rules cover, among other things, the policies and procedures applicable to all disbursements and expenditures of state funds, including the requirements for use of approved commitment vouchers (purchase orders and state contracts).

2.5.2 State Contracts. Rule 3-1 of the State Fiscal Rules sets forth the procedures applicable to all "state contracts," also called "fiscal rule contracts," defined as those which ultimately result in the disbursement of state funds. State contracts are distinguished from other forms of "commitment vouchers," such as purchase orders, in that they contain transaction-specific terms and conditions of agreement and are signed by both parties (making them "bilateral contracts"). By contrast, a purchase order usually contains only the standard terms

and conditions prescribed by the state, and is usually not signed by the contractor (making it a "unilateral contract"). A standard CSU Purchase Order (PO) forms a binding contract with the vendor when the PO is accepted by the vendor, which may occur either by express written acknowledgment, or as a result of the vendor commencing delivery or performance after having received the PO. The standard CSU purchase order terms and conditions are reproduced in Form 2-6.

2.5.3 Reasonable and Necessary Expenditures Only are Allowed. Under State Fiscal Rule 2-1, all expenditures must be for official State business purposes only and must be reasonable and necessary under the circumstances. Fiscal Rule 2-1. These are the basic tests which the State Controller, and anyone reviewing a state contract on behalf of the Controller as a primary or sub-delegate, must apply. No disbursement of state funds may be made without a proper commitment voucher. *See* C.R.S. § 24-30-202(1).

2.5.4 Requirement of Special Provisions. The applicable version of the Colorado Special Provisions, is required by law to be attached to every state contract. The Special Provisions may not be modified in any way without approval of the Controller or authorized Controller's designee and the Office of the General Counsel. Since these provisions sometimes cause difficulties contracting with vendors, it is advisable to alert the prospective contractor to them as far in advance as possible, to allow time for discussion of the provisions and for the Office of the General Counsel to seek a waiver, if justified, from the State Controller's Office. Often the Special Provisions will be included in the solicitation to which the contractor is responding with a quote or bid; this helps enormously to cut off later arguments by the contractor that it did not know of these provisions or is unwilling to agree to them as written.

2.5.5 Requirement of Legal Sufficiency Review. In order to ensure that the basic requirements of the Fiscal Rules are met, every state contract is subject to "legal sufficiency review" before becoming effective. This review may only be performed by an attorney at law who has been authorized in two respects: by the State Controller, and by the Controller's legal counsel, the Attorney General of the State of Colorado. The attorneys in the Office of the General Counsel has been delegated authority by these two officers to perform the required legal sufficiency reviews. OGC will provide legal sufficiency review, as required, and forward the contract to the CSU Controller or designated subdelegate for final approval. Please do not send contracts directly to OGC. Fiscal rule contracts should always be routed through the Purchasing Department before being submitted for legal review.

2.5.5.1 Exemptions from Review Requirement. Certain types of transactions are generally exempt from the requirement that an authorized Special Assistant Attorney General review and approve the contract documents. These include transactions accomplished using only a standard CSU Purchase Order. POs are not always appropriate for the procurement of services, because they lack specificity with respect to performance requirements, insurance, and other protections for CSU. However, they may be adequate where the nature of the services is one-time or short-term, and provided that the decision to use a PO is made by someone with the training to determine that the interests of the State are adequately protected without a more detailed contract. CSU Purchasing Agents are trained to review transactions and identify those that cannot adequately be handled on a PO. Purchase orders must be used in conjunction with a state

contract when acquiring personal services costing over \$100,000.

2.5.5.2 Compliance Review is Required: All contracts exempt from legal review must nevertheless be reviewed by someone (such as a CSU Purchasing Agent) who is authorized to perform a "compliance review." The compliance reviewer determines whether or not the contract is within all applicable rules and requirements and does not otherwise require legal review. Employees who are not specifically authorized, in writing, by the State Controller to perform such reviews do not have authority to execute agreements on behalf of CSU; contracts must be signed by the appropriately authorized designees of the Board and the Controller in order to make them binding on CSU.

2.5.6 Goods vs. Services: Sometimes it is difficult to determine whether a contract is primarily one for the procurement of goods or services. For example, an agreement to purchase a computer system may also include services such as installation, network administration, maintenance, upgrades and repairs. In some cases the contract documents don't clearly identify a purchase price for these service elements, as differentiated from the price equipment itself. The issue then is whether the services are "incidental to the transaction," in which case a purchase order may be appropriately used in absence of a contract. Services are incidental to the transaction only when the primary purpose of the contract is to acquire goods or things, and the services associated with the transaction are intended to facilitate the acquisition or provide necessary support such as delivery, installation, maintenance or upgrade. So, using the above example, if the contract is for the purchase of a computer workstation which includes a one-year on-site maintenance agreement, the services are probably incidental to that purchase; whereas, a \$100,000 contract with a computer networking consultant firm which includes purchase of computer hardware, three years of on-site network administration and support, and user training probably is less apt to be considered purely one for the acquisition of goods than it is goods and services. In the first instance, a Purchase Order is probably appropriate to accomplish the transaction, particularly if the service/maintenance contract is provided as a pre-printed form from the vendor; whereas, in the second instance, a state contract would be required to adequately protect the state's rights in the transaction.

2.6 NECESSITY OF A FIXED OR DETERMINABLE CONTRACT PRICE

One of the requirements of the law and the State Fiscal Rules is that all state contracts and commitment vouchers must be made against funds which have been appropriated and are sufficient for the payment of the obligation incurred. When a contract is approved or a commitment voucher is issued, the Controller (or Controller's delegate) is required to encumber the funds to pay the obligation, even if payment is not to be made for some time. This process is carried out at CSU through the use of the FRS system. Purchasing agents and/or the CSU Controller make entries in the system to encumber the funds in a designated account; if the funds in that account aren't sufficient to cover the obligation, the contract cannot be approved. This prevents the University from spending more money than has been appropriated and budgeted for expenses, and thus protects Colorado taxpayers.

It follows that contracts obligating the University to pay amounts which are uncertain and indeterminable from the contract itself cannot be properly approved, since the Controller would

not know what amount is required to be encumbered. Thus, contracts which create certain kinds of "contingent liabilities" (such as indemnification agreements, discussed in section 2.9.1.10 below) are generally not permitted. (Other examples of contingent liabilities would include contract provisions making the University liable for the litigation costs and attorney fees of another party in the event of a breach of contract by CSU; or for unspecified "incidental" and/or "consequential" damages. These provisions are common in vendor contracts and, while usually impermissible, under certain limited circumstances may be approved by the Office of the General Counsel.

Sometimes, however, it is simply not feasible to specify a total contract amount at the time that the contract is entered into; for example, when retaining the services of a consulting firm whose hourly rates are agreed upon, but whose total time and fees cannot be determined with certainty until the work is done. Under those circumstances, the contract must contain a "not-to-exceed" (NTE) amount instead of a contract price. The NTE amount is a maximum, or ceiling; not an obligation to pay. Thus, if the total cost of the consultant's work can reasonably be estimated at \$25,000, the contract must provide that the total obligation of the University shall not exceed \$25,000 except upon further written authorization by CSU. When the consultant reaches that mark, he or she must stop performance unless and until a contract amendment, PO amendment, and/or other commitment voucher is issued against the available funds.

2.7 REQUIREMENT OF COMPETITIVE SELECTION OF VENDORS

Another important consideration in purchasing any goods or services is whether the requirements for competitive selection apply. In general, small purchases of supplies (up to \$10,000) and services (up to \$25,000) (and for construction projects, materials and services up to \$25,000) need not be based upon a competitive selection process, and may be made from a vendor selected by the Purchasing Agent, exercising his or her professional judgment and discretion. If a mandatory state price agreement covers the items, the vendor must be selected in accordance with that agreement. Further details concerning the selection of vendors are contained in the University's Purchasing Manual.

For larger purchases of goods or services, the requirements are:

- Commodities costing between \$10,000 and \$150,000, services costing between \$25,000 and \$150,000, and construction projects between \$25,000 and \$150,000 may be purchased using a documented quote process.
- Purchases of goods and/or services in excess of these amounts must be processed by obtaining competitive sealed bids or proposals through the State of Colorado "BIDS" system. An Invitation For Bid (IFB) is used when cost alone, specifications being met, determines the award. IFBs allow vendors at least 15 days to respond. A Request For Proposal (RFP) is used when price is one of several factors used to determine the award. A committee of University personnel evaluates each proposal submitted. RFPs allow vendors at least 30 days to respond.
- A State Contract is required when purchasing personal services over \$100,000. State contracts require legal sufficiency review by the Office of the General

Counsel and approval by or on behalf of the State Controller.

The requirements for construction contracts differ from the above; see Chapter 6 of this Manual for more information.

Please contact the Purchasing Department for further information and assistance.

2.8 OTHER RULES AND GUIDELINES APPLICABLE TO FISCAL CONTRACTS

2.8.1 CSU Financial Procedure Instructions Manual. The FPI is published by the Department of Business & Financial Services and has recently been revised.

2.8.2 CSU Purchasing Manual. The Purchasing Department publishes the Purchasing Manual to assist with all acquisitions of property and services on behalf of the University.

2.9 PERSONAL SERVICES (INDEPENDENT CONTRACTOR) CONTRACTS

Any contract in which CSU agrees to expend funds in exchange for receiving the labor of a person or persons is a "personal services contract." This is true even if the contractor is a corporation or other form of business entity acting through its principals and employees. Personal services contracts are subject to a number of requirements imposed by the Colorado constitution and statutes, the State Fiscal Rules, and rules of the Director of the Department of Personnel & Administration. These laws define and shape the contracting process from procurement through the end of the contractor's performance, and even long after, when contracts are subjected to review, audit and reporting requirements. CSU's contracting forms, guidelines and processes are designed to assure compliance with all applicable laws and rules while allowing for the efficient use of outside contractors to provide the services required for the University to operate its facilities, perform research and outreach, and advance its goals and mission as a state institution.

2.9.1 Standard Contract Form. Standard CSU contract Form 2-1 is the required form for all personal services contracts of the University, except for allowable vendor agreements and subawards. Regardless of which form is appropriate, all personal services contracts contain certain standard clauses. These include:

2.9.1.1 Title. The contract document may be titled simply "Agreement" or "Contract" or may be given a longer, more descriptive title. Standard contract forms should retain the specified title if feasible. It is important to refer to the document in an internally consistent manner throughout, e.g., "this Agreement," in order to be clear. It makes little difference whether an agreement is titled a "contract," "agreement," "memorandum of understanding" or some other similar term, so long as the title is not confusing (for example, when there are numerous other documents attached as references that also have "contract" or "agreement" in their titles).

2.9.1.2 Introductory Paragraph. An introductory paragraph should identify the

contract, its effective date and its parties, such as in this example:

THIS AGREEMENT is entered into effective as of the _____ day of _____, 20 ____, by and between the Board of Governors of the Colorado State University System, acting by and through Colorado State University for the use and benefit of [department or unit name], Fort Collins, CO 80523-[dept. code] (the "University"); and [name of other party], a [type of entity, e.g. Sole Proprietor d.b.a. (trade name), Colorado Partnership, or Colorado Corporation], with its principal place of business at [address] ("Contractor").

The introductory paragraph is important because it identifies the parties, indicates their legal capacity, and establishes an effective date for the agreement to commence. Legal capacity refers to the ability of an entity to enter into and be bound by a contract. For example, a CSU department, acting on its own, lacks such capacity; only the Board is authorized to enter into contracts. Similarly, an entity that has not formed a legal business organization under Colorado statutes may lack contracting capacity, and thus CSU would be potentially unable to enforce the contract against the party in the event of nonperformance or breach.

A party contracting with the State must have legal capacity to enter into contracts and be correctly identified by its full legal name. So, for example, an individual doing business under an assumed name, or "trade name," would be fully identified as such, for example: "John Q. Smith, sole proprietor, doing business as Smith's Widget Repair." Corporations and limited liability companies should be named correctly, and the state of registration or incorporation noted (e.g., "ABC Co., a Colorado corporation"). Verification of the authority of the person signing on behalf of the entity must also be obtained by checking the [Colorado Secretary of State's website](#) and searching the business entities database, then print the results showing that the company is registered and in good standing (or, in some cases, not in good standing, which will require some followup). If the company is registered in another state, you may be able to check similar records in that state via the web. If you cannot readily verify the contractor's legal existence and status in this way, then the next step is to ask the contractor to provide the necessary documentation. Further discussion of signature authority for these entities may be found in Chapter 3 of this Manual. The name of the contractor must also exactly match the name shown on its insurance certificate (see section 2.9.2 below).

Parties that lack legal capacity, and therefore cannot contract with CSU, include minors, incompetent persons, and associations of persons which are not organized into any kind of business entity.

2.9.1.3 Recitals. Recitals are short, plain statements of the facts and circumstances giving rise to the transaction, usually prefaced with "WHEREAS;" the primary purpose being to introduce the subject matter and express the parties' intentions in entering into the contract. Recitals generally do not contain "substantive" provisions defining rights or obligations of the parties, but a court may refer to the Recitals in determining how the parties intended the contract to be interpreted or enforced. Recitals form a factual foundation for the contract. While these introductory statements need not be particularly detailed or elaborate, they should be sufficient to enable anyone reading the contract to understand its nature and purpose.

For example, recitals for an academic agreement such as a Memorandum of Understanding between two universities might include: (A) a Statement of CSU's mission and programmatic needs in entering into the agreement; (B) a similar statement for the other institution; and (C) a statement of what the parties intend to accomplish by entering into the agreement.

Also frequently included in the recitals is a reference to any prior contracts, understandings or transactions which are intended to be extended, ratified, modified or formalized by entering into the new agreement.

2.9.1.4 Statement of Consideration and Transition. Before setting forth the substance of the parties' agreement, it is helpful to include a statement making a transition from the Recitals to the body (or substantive provisions) of the agreement. This statement is also necessary to identify the "consideration" (or the benefits supporting the promises of both parties) for the Agreement. The following is an example of a common consideration/transition statement:

"NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises contained herein, the parties agree as follows:"

While a contract may be valid without a statement of consideration, the existence and sufficiency of consideration remains an essential element for an enforceable contract. A promise which is purely unilateral—given gratuitously, without benefit of any kind to the promisor—may not be enough to create a contractual obligation; and, a contract or agreement in which the benefit or obligation of all parties is absent or unclear may not be a contract at all. The statement of consideration and transition helps to assure that the parties clearly establish that mutual benefits and obligations are intended to arise from the contract.

2.9.1.5 Substantive Provisions. The substantive provisions set forth the terms of the agreement between the parties and their intent as to how the contract will be performed, usually including the term (duration) of the agreement; financial (price) terms; a Scope of Work or Performance Work Statement setting forth the requirements, outcomes, and time of performance; and any other matters that are a part of the "deal." These provisions are determined according to the facts and circumstances of each particular contract. For ease of reference, the substantive provisions should be set up as a series of numbered paragraphs (also called Articles, Clauses or Sections, depending upon the preference of the drafter). When preparing a contract, you should consider whether each of the following matters has been adequately addressed:

- 1) Rights and Responsibilities of CSU (a list of what CSU will do under the agreement).
- 2) Rights and Responsibilities of the Other Party (a list of what the other party will do under the agreement).
- 3) Term of the Agreement. (When does it start? When does it end? May it be renewed for an additional term, and if so, what notice is required)?
- 4) Financial Terms and Conditions (The contract rate or price, the manner in which it

will be paid, the due date(s) for payment, interest or late charges if the payments aren't made, and whether either party must provide invoices or permit inspection or audit of books, etc.).

5) Insurance Requirements for the party performing the services (see section 2.9.2, below).

6) Default (what happens if either party doesn't perform? What remedies should be available?)

7) Termination (a statement of the events or actions which will result in the termination of the contract, and specifying the consequences, if any, of such termination).

Termination may be for cause (also referred to as "breach"), such as when a party fails to timely perform as promised; or, it may be for convenience, i.e., because the University determines that further performance is not desired.

2.9.1.6 Conditions. "Conditions" are events which must occur or circumstances which must exist in the future as a prerequisite to some or all of the performance obligations set forth in the contract. For example, the contract may be conditioned upon a party having a valid license to perform a particular kind of service. Conditions may be precedent, which means that the condition must be satisfied before the obligation takes effect; or subsequent, meaning that the conditional event, when it occurs, satisfies a requirement and relieves a party of one or more obligations under the contract.

There are many kinds of conditions, and they are sometimes difficult to recognize within a contract. Moreover, courts may be reluctant to find that a stated "condition" is really a prerequisite to a party's duty to perform, rather than a mere statement of the other's obligation. So, for example, a contract provision stating that "CSU's obligation to pay for Contractor's services is conditioned upon Contractor performing satisfactory work and completing performance on or before January 1" might not be interpreted to mean that CSU has no duty to pay at all if the Contractor's performance is delayed until January 10; rather, a court would likely try to determine what damages were caused by such delay, and then reduce the contract price by the amount of such damages. On the other hand, a statement that "CSU's obligation to pay is expressly conditioned upon receipt of funds from the Department of Agriculture, and is strictly limited to the amount of such funds received," might indeed create a condition precedent that, if not met, relieves CSU of its payment obligation. Obviously, use of condition statements creates uncertainty and risk for the parties. To avoid these risks, and confusion over what constitutes a true condition in a contract, it is preferable to avoid condition statements altogether if the same result can be achieved by defining a particular act, or failure to act, as a default. In some contracts (such as construction contracts), it may be advisable to include detailed provisions governing the remedies for late or unsatisfactory performance, whereas in others, it may be sufficient to provide that, in the event of a failure to perform, the University may terminate the contract for default and seek any other legal remedies to which it is entitled.

2.9.1.7 "Boilerplate" Provisions. "Boilerplate" consists of provisions commonly found in most contracts, sometimes incorporated into the contract by reference to a separate,

preprinted document. Contrary to popular belief, boilerplate provisions are just as enforceable as any other terms and conditions (with exceptions that do not apply for our purposes here). At times, there may be good reason for one or both parties not wanting a particular boilerplate clause or provision, and it may be stricken.

Boilerplate is used to avoid disputes over the meaning of terms, and to foster uniformity from one contract to the next within a particular trade or industry, or in all contracts involving a particular contracting party (such as the State of Colorado). Boilerplate provisions also help to ensure that the parties will have the benefit of certain legal protections, even if the law which governs the contract is different from the law of the place where the party resides.

Examples of boilerplate clauses include:

- A provision to indicate that all notices will be given in writing and directed to specified persons at a designated address.
- A provision (known as a merger clause or integration clause) stating that the written document constitutes the entire contract, and supersedes all prior written or oral agreements relating to the same subject matter between the parties.
- A provision stating that neither party may assign any rights under the agreement without the prior written consent of the other party should also be included.
- A severability provision permitting portions of the agreement to be upheld even if other portions are found unenforceable by a court of law.
- A "*force majeure*" clause relieving the parties from liability for nonperformance caused by acts of God or other events beyond their control.
- A provision requiring all future modifications or amendments of the Agreement to be in writing.
- A governing law and venue clause stating that any legal action upon the contract must be brought in the City and County of Denver, Colorado (the "venue") and that Colorado law will apply (the "jurisdiction" of governing law).
- Provisions required as of August 1, 2006, requiring contractors to certify that they do not knowingly employ or subcontract with any illegal alien to be involved with the performance of the work, and, for sole proprietors only, requiring production of documentation to prove the contractor's lawful residency in the United States.

2.9.1.8 Special Provisions. Certain contract provisions are required by Colorado statute and the State Fiscal Rules whenever the State enters into a "fiscal contract," i.e., any contract in which CSU will be obligated for an expenditure of any amount. These are contained in the Special Provisions, which are found in the Independent Services Contract, CSU standard contract Form 2-1; as the second page to CSU Standard Form 2-2, the CSU Contract Acceptance

and Special Provisions Form; and as a separate document in Forms 2-4 and 2-5. The Special Provisions and the extent of their required use is set forth in Rule 3-1 of the State Fiscal Rules. The basic rule is that all state contracts subject to the State Fiscal Rules must contain the applicable Special Provisions (CSU Standard Form 2-4 for contracts, or Form 2-5 for Intergovernmental Agreements).

The Special Provisions sometimes cause problems during contract negotiation because outside parties often do not understand the need for these provisions and object to their content. In particular, this frequently occurs when the other party is a private party or state agency of another state. The important thing to keep in mind is that the Special Provisions: (1) must be included in every state contract obligating the University or its departments to expend any funds; and (2) cannot be modified, waived or deleted without special permission from the State Controller. The Office of the General Counsel works closely with the State Controller's office to obtain a waiver of objectionable Special Provisions in appropriate cases, but these instances are extraordinary, and waivers are not readily granted. University staff should not attempt to contact the Controller's office directly; requests for waivers must be handled by OGC.

2.9.1.9 Closing Statement. After completion of the substantive items and boilerplate, a "closing statement" is often included just before the signature blocks. The following is an example of a statement commonly used for this purpose:

"IN WITNESS WHEREOF, the parties have executed this agreement effective as of the date first set forth above."

The closing statement is included in the applicable Special Provisions for fiscal rule contracts and intergovernmental agreements. See Forms 2-4 and 2-5. For information regarding the signature blocks and authorized signatures on a CSU contract, see Chapter 3 of this Manual.

2.9.1.10 Prohibited Provisions. Finally, you should note that there are certain provisions that must not be included in any agreement to be signed by CSU:

- The University cannot agree to "indemnify," "defend" or "hold [someone] harmless" under any circumstances. These commonly used clauses may be "hidden" in preprinted contracts and may be worded in various ways, but essentially what is prohibited is any language by which CSU agrees to be responsible for claims or damages asserted against another person or entity (i.e., the other party to the contract) by any third parties. This prohibition derives from the Colorado constitution and cannot be waived, except to a very limited extent in the case of real estate leases, and then only with approval of the State Attorney General or designee.
- The University cannot agree to limit or waive the liability of any person or party for "consequential damages," unless that term specifically excludes damages to persons or property caused by the negligence or intentional misconduct of the party.

- The University cannot agree to be bound by the law of another state or country, or to submit to jurisdiction or venue in any place other than the City and County of Denver, Colorado, without the review and approval of the Office of the General Counsel.
- The University cannot agree to arbitrate any dispute (with very narrow exceptions requiring review and approval of the OGC).
- Under State Fiscal Rule 2-2, the University is generally prohibited from agreeing to make payments in advance for services or goods that have not been performed or delivered. There are exceptions to this rule where the nature of the transaction makes advance payment a necessity, but the Controller delegate responsible for executing the contract must specifically approve an advance payment. Examples of circumstances where an advance payment may be appropriate include:
 - ▶ Advance payments authorized or required under the terms of a federal grant;
 - ▶ Leases and Licenses granting the use of space, tangible property, or intangibles like access to web-based software or the right to reproduce a copyrighted work, where the consideration passes to the buyer at the time of the contract;
 - ▶ Annual payments for software or hardware maintenance;
 - ▶ Payments for entertainers, speakers or trainers, class tuition, conference registrations, and the like;
 - ▶ Insurance premiums;
 - ▶ Other transactions where the general expectation, based on standard industry practices, is for the contractor to receive funding in advance.

When an outside party insists upon including one of these prohibited provisions in its contract with CSU, the Office of the General Counsel will review the agreement and, when necessary and appropriate, work with the offices of the state Attorney General and the State Controller to create an acceptable agreement.

2.9.2 Insurance Requirements for Independent Contractors. In most instances, an independent contractor who will be providing services to the University must maintain at all times during the contract term sufficient insurance to protect the University from liability and damages which arise from the performance of the work. The standard CSU contract form contains the following insurance provision:

1. Insurance Requirements
 - A. The contractor shall obtain, and maintain at all times during the term of this contract, insurance in the following kinds and amounts:
 - 1) Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.
 - 2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

Notwithstanding this subsection A, if the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

4) (only if checked) Professional liability insurance with minimum limits of liability of not less than \$1,000,000.

B. The State of Colorado and Colorado State University shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

C. The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail (10 days for nonpayment of premium).

D. The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

E. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

F. The contractor shall provide certificates showing insurance coverage required by this contract to the State upon execution of this contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

The insurance requirements set forth in the standard provision, above, are derived from (among other sources) the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq. The Act establishes that the State and its agencies and institutions are immune from liability for tort damages, except in certain limited circumstances where governmental immunity from suit is waived by the state allowing injured persons to recover damages within certain limitations. CSU is insured against liability for claims that fall within these limited exceptions, but to a large extent, the insurance is self-funded, so that CSU's resources are directly impacted by such claims. In addition, CSU may be held liable in instances where governmental immunity and/or insurance coverage do not protect the University. The most important area in which governmental immunity does not offer protection to the University is where the claim is based on a breach of contract, rather than on tort law. Where the liability of the University arises from a contractual obligation, it is not limited by statute. This is one very important reason why the University is prohibited from agreeing by contract to become liable for claims and damages as to which it would otherwise have been immune—i.e., by accepting liability under an "indemnification" or "hold harmless" clause making the University responsible for paying damages awarded against the contractor in favor of a third party.

In order to properly protect the University and its employees and authorized volunteers from the risk of liability, it is critical that adequate insurance coverage be provided by the contractor before the contractor is allowed to begin work for CSU. In order to meet the above requirements, the contractor must not only purchase the required coverage, but must also have its insurer issue a certificate of insurance attesting to the coverage and naming the Board of Governors of the Colorado State University System as an "additional insured" under the policy or policies. In addition to the certificate, the insurance company should provide a copy of the endorsement adding this "named insured" to the policy coverage. The endorsement shows that the Contractor's insurance company will pay for the defense of claims, and any damages awarded against CSU for injuries which arise out of the conduct of the Contractor in carrying out the performance of the contract. It does not mean that the insurer will pay for injuries caused by the negligence or fault of CSU itself, its employees or volunteers. Most insurers understand what is required and will issue the certificate and the endorsement at no additional charge (or a nominal charge) to the Contractor or the University. Exceptions include some automobile liability policies, and professional liability insurance policies for which insurers often will refuse to place additional named insureds on the policy.

It is of critical importance that the University's insurance requirements be stated in the solicitation for goods or services so that a prospective contractor is prepared to meet them when it submits its bid or quotation. Failure to provide proof of insurance will usually disqualify a bidder from receiving an award. On occasion, the custom in the trade or industry of the contractor is consistent with the practice of not carrying certain types of coverage. Far more often, however, the reason that the contractor "goes bare" of coverage is simply economic—it does not want to spend the money for the insurance. A contractor who declines to purchase comprehensive liability coverage may therefore realize savings which allow it to underbid competitors and thus present a more attractive bid to CSU, but it also creates unfairness in the bidding process by giving the uninsured contractor an unwarranted economic advantage, as well as creating unacceptable risks to CSU and others.

In certain circumstances, however, the insurance requirements noted above can lead to difficulty or unfairness for the contractor, and in those instances, can sometimes be adjusted to fit the situation. CSU employees, however, do not have authority to agree to such adjustments. The decision in each case is made by the University Risk Manager, usually after consultation with the Office of the General Counsel and the Purchasing Department. Whenever it is anticipated that a contract may require modification of insurance requirements, it is advisable to contact Risk Management early in the negotiation process.

2.10 SCOPE OF WORK; PERFORMANCE WORK STATEMENTS

While the form of the contract and its boilerplate provisions are important, the heart of a personal services contract is its work scope, or "Performance Work Statement," describing the substance of the performance required of the contractor.

The traditional approach to state contracting has focused on the Scope of Work (SOW), a general description of the work and deliverables to be provided under the contract. However, the concept of "performance contracting" has gradually taken hold and is now the standard for state

contracts. As noted in a [February, 2005 audit report of state contracting practices in Colorado](#) (the "Audit Report"):

Agencies do not consistently use performance measures in state contracts . . . The Department of Personnel & Administration should help state agencies and institutions of higher education improve contractor performance and accountability by developing a methodology for determining what performance measures should be used in personal services contracts and what information will be needed to evaluate contractor performance . . . [and] require contractor performance evaluations to be completed at the end of every contract, as appropriate . . .

The Performance Work Statement (PWS) attachment describes the services, end products, deliverables, and performance objectives that the contractor must provide in order to satisfy its obligations under the contract. It must be prepared by the ordering department. When writing a PWS, it is important to be specific and include references to the specifications and requirements contained in the solicitation, as appropriate (but do not refer generally to the RFP or proposal, since these documents usually contain voluminous information that is NOT relevant to the final contract terms). When completing the Performance Work Statement, ask yourself the question: "If the contractor does not perform exactly as I had expected, will I be able to clearly demonstrate to anyone reading the contract that CSU's expectations and requirements were not met?"

The Performance Work Statement should be outcome-based; in other words, you must develop an objective method for measuring the contractor's performance. This may be based on industry standards as well as the final quality, timeliness, and responsiveness of the end products and/or deliverables. It is insufficient to state merely that the contractor will work a certain number of hours or will deliver a final report. The document must clearly define how the end product will perform. If there are interim deliverables--i.e., models, drawings, draft reports, discrete tasks, or the like--then specific deadlines should be assigned to each of the interim deliverables. You should also consider whether or not money damages should be paid to the University if the deadlines are not met, and if so, how those damages would be calculated. You should also ask yourself: From the point of view of the contractor, is there a built-in incentive to deliver the highest quality product or service? If not, try to write the PWS to include such incentives, where feasible.

Since CSU is prohibited from making advance payments for services not yet performed, or things not yet delivered (except upon express written consent of the Controller, which must be requested based upon substantial justification), progress payments and incentives should be structured around the interim and final deliverables.

The Purchasing Department can assist you with the Performance Work Statement document, but it is primarily the responsibility of the ordering department to create this document.

2.11 OUTSOURCING STATE PERSONNEL FUNCTIONS--SPECIAL CONSIDERATIONS FOR PERSONAL SERVICES CONTRACTS

In addition to other considerations, contracts for the procurement of personal services are also subject to special rules promulgated by the state [Department of Personnel and Administration \(DPA\)](#). These rules are designed to: (1) prevent state agencies from contracting with private entities for services which can be obtained from state-classified employees; and (2) ensure that contracts for personal services are not misused and that the prices paid for services are reasonable and competitive.

These goals are accomplished through the DPA's Personal Services Contracts Program, which carries out the mandates of C.R.S. §§ 24-50-501, et seq. The DPA promulgates rules and reviews personal services contracts to determine whether they result in an adverse effect on the state personnel system by potentially displacing state workers. Chapter 10 of the state [Personnel Director's Administrative Procedures](#) contains the rules governing the use of contractors by state agencies. Certain types of contract services are exempt from this review; all others must be reviewed, unless the University has obtained a waiver from the Department for the particular type of service involved. The University's Director of Human Resource Services, is authorized by the Department of Personnel to make the determination whether a contract is permissible given its potential impact on the state classified personnel system.

Even those contracts which clearly have no impact on state workers may be subject to review requirements by the DPA. The DPA may examine such agreements to determine whether there is truly an independent contractor relationship, as opposed to an employment relationship. Pursuant to Colorado Constitution, Article XII, sec. 13(9) and C.R.S. § 24-50-114, temporary employment of state workers is subject to a six month limitation. The DPA's review process is designed to avoid allowing agencies to circumvent this rule by using independent contract agreements.

In addition, Colorado law makes it impermissible to contract with a person or firm to obtain services if the person providing the services was employed by the State within the six-month period preceding the contract, and performed functions related to the work that he or she would do under the contractual relationship.

The Purchasing Agent makes an initial determination that the contract is permissible and then routes the contract to the University's Director of Human Resource Services for a review as to the applicability of the DPA's program requirements. All personal services contracts must be processed through the Purchasing Department, and must receive final approval from HRS (as well as all other required approvals) before the Contractor may be permitted to start work. Any person who procures services without following this procedure risks being found personally liable for payment to the Contractor.

2.12 MONITORING AND EVALUATING CONTRACT PERFORMANCE

2.12.1 Monitoring Performance. To this point, the material in this Manual has focused on the formation of a contract in which CSU will obtain performance of services, delivery of goods or intangibles, or payment in exchange for services from another party to a contract. Many times it seems that once the contract has been fully executed by the parties and work has commenced, the contract documents are no longer important and can be filed away.

However, the contract is not over until all required performance by all parties is complete and has been accepted by the other parties. During the active phase of the contract, while the performance is occurring, it is the responsibility of the CSU department that initiated the contract to closely monitor contract performance and outcomes. As noted in the State Audit Report referenced above:

Effective contract monitoring occurs throughout the life of a contract and can include developing a clear scope of work, managing and documenting ongoing day-to-day contract issues, monitoring the progress of the work performed by a contractor to ensure the quality of the services provided, and ensuring the State receives value for the money spent.

To truly be effective, contract monitoring must also include timely, effective communications between the contractor and the responsible University representatives. When a contractor's performance is not consistent with the specifications, requirements, or expectations of the University as contained in the contract documents, the contractor must be promptly informed of the deficiencies and afforded a reasonable opportunity to correct them, to the extent feasible. Without such communications, CSU risks losing the right to enforce the contract according to its terms, as well as risking the delays, expenses and losses that inevitably result from improper or incomplete performance. As well, CSU must always be aware of its own responsibilities to clearly communicate expectations, inspect and accept services and deliverables as they occur, and to timely and competently perform its own obligations under the contract.

The State Controller's Office publication, the *Colorado Contract Procedures and Management Manual*, recommends the following procedures for effective contract monitoring and post-performance evaluation:

Monitoring may take many forms and the best form to use depends on the circumstances of the situation, such as complexity of work, prior experience with the contractor, length of contract, etc. Monitoring may consist of:

- Contractor Reports. Reports such as progress to date, explanation of costs, problem description, certification that services meet specifications, forecasts, levels of service provided.
- Inspections and observations. Depending on the situation, these should occur based on complaints, upon completion of work, surprise inspections, and periodic samples. Inspections and observations should have a rating scale or form to note problems or quality of service.

2.12.2 Post-Performance Evaluation. Even after the completion of the agreed-upon performance, a contract is not truly over until the responsible CSU employees have done three things:

- Evaluated the outcomes of the contract, including the timeliness, quality, and responsiveness of the contractor's performance;
- Assured that proper payments have been made as agreed; and
- Taken whatever steps are required to close out the contract, including compliance with any termination provisions.

As further noted in the State Audit Report:

Without performance evaluations, it can be difficult to determine if contractors meet the performance expectations and standards included in the contract and ensure the State receives full

value for the funds it expends. Evaluations can also be useful when determining if a contractor should be used on future projects.

While specific, detailed regulations for contract monitoring and performance evaluations are not currently in place, it is predictable that an integrated, statewide contract management system, including specific requirements for effective monitoring, evaluation and reporting, will soon be enacted. Even in the absence of specific regulations, monitoring and performance evaluation remain as critical aspects of the contracting process at CSU. At present, guidance on post-performance evaluation and reporting is limited, but the *State Contracts Manual*, referenced above, suggests:

An effective evaluation of contract performance will determine if full value was received, if the results satisfied the needs, and if experience with the current contract holds any lesson for future contracting. Although early monitoring of contract activity is the best guarantee of successful contract performance, post-completion evaluation is a necessary and valuable requisite for proper contract administration. A proper evaluation will document answers to the questions: Was full value received? Did the results satisfy the needs? Are there any lessons to be learned for future contracting?

Additional guidance is contained in Chapter 10, section 8.1 of the [*State Contracts Manual*](#).

2.13 CONTRACT AMENDMENTS, RENEWALS, AND TERMINATION

Most contracts entered into on behalf of the University will run their course as the parties intended and will end when they expire at the end of the term. However, on occasion the parties will want to extend or renew the term before it expires; in other instances one or both parties may want to end the contract before its original expiration date.

2.13.1 Amendments and Extensions. A contract may be amended by mutual agreement of all parties at any time, even if the original contract does not specifically provide for that to occur. Once amended, the original contract (or, at least, those portions of it that are affected by the amendment) is superseded by the amendment and can no longer be given any force or effect. An amendment may be used whenever the contract requires modification to meet the changed expectations, conditions or circumstances of the parties; however, one party cannot unilaterally force an amendment on the other. The usual circumstances for an amendment are: to add or delete work from the scope, especially when available funds increase or decrease; to extend the term of the contract for an additional period, either to allow for additional work, or to allow additional time for the original scope of work to be completed; or to reflect changes in design, specifications, or requirements that are necessitated by events occurring after the original execution of the agreement. Amendments are distinguished from "change orders" in that they change the scope of work in some respect, with or without a change in contract price or period of performance. A change order, on the other hand, may change specifications or requirements within the original scope of the contract. So, for example, on a construction project, the parties may agree to substitute a different style of interior doors, with a corresponding change in the price, by executing a change order; whereas, to add an additional room to the building, an amendment would be required.

All contract amendments must be signed by the authorized representatives of the parties in the same manner as the original contract.

2.13.2 Extension of Period of Performance. The parties may agree to amend the contract to extend the original period of performance, either to expand the scope of work or to allow more time for the original scope to be completed. In the latter case, the contractor is generally not entitled to additional time or compensation unless the University agrees, or is responsible in part for the cause of the delay in completion of performance. However, in many cases the University and the contractor have worked closely together during the performance period and will mutually agree to reasonable extensions of the performance period.

2.13.2.1 By Mutual Agreement: Often the parties will consider entering into an additional period of performance, or a renewal term, in order to increase the scope of work to be performed. University representatives must be cautious when doing so, for several reasons:

- The original procurement may be limited in its scope such that additional work, over an additional period of time, was not contemplated by the bidders; the contractor may therefore have an unfair advantage over competitors if an increase in work scope is allowed. Contact the responsible Purchasing Agent before attempting to enter into any contract extension or renewal to assure that all procurement rules are being observed.
- Additional work at the same or similar pricing may be unfair to the University, since the contractor has already recovered for its startup costs, costs of equipment or materials, and the like. Take care to consider whether the additional work should be provided at lower pricing than the original scope of work.
- The original scope of work must be fully performed for the price agreed, so that an amendment or extension does not have the effect of paying the contractor more than was bargained for in the first place. In other words, there must be a separate and distinct Performance Work Statement for the additional contract period, and the University must receive new value in exchange for any additional compensation.
- Market pricing for commodities purchased under the original contract may have changed. If prices have increased, the contractor will surely let the University know that the cost of additional work will be higher; but, if prices have decreased and the University does not check available market data before agreeing to pay for additional work based on the original pricing, then funds are not being spent prudently and the amendment should not be allowed. Again, the purchasing agent will assist the department with these considerations.

2.13.2.2: By Automatic Renewal: Some contracts contain clauses that create an expectation, or even an automatic right of the contractor to gain additional performance periods after the expiration of the initial term. Typically this takes the form of an "evergreen" clause, which can keep a contract on a period renewal track indefinitely unless certain specified events or circumstances cause it not to renew (such as the University notifying the contractor by a certain date that it will terminate the contract at the end of the then-current term). While automatic renewals may sometimes benefit CSU, they are disfavored under state law because

they potentially obligate the University to continue performing the contract after the procurement period has ended (the bid was for a given period of time that has expired), or because the commodities or services are no longer needed, or market pricing has changed. A much more preferable way of writing the contract to allow for additional performance periods is an option clause which gives the University, as the buyer, the right but not the obligation to renew the contract for one or more additional terms. Standard clauses and contract forms are used to create and exercise options.

2.14 OTHER RESOURCES

Besides this Manual, there are a number of other sources of information and rules concerning the University's contractual and financial transactions with other entities. Some of the most important ones are:

- [CSU Purchasing Manual](#). The CSU Purchasing Manual sets out detailed instructions needed to effect a purchasing transaction. Purchasing transactions controlled by the Purchasing Manual include most acquisitions of goods, services, equipment, supplies, and miscellaneous property made by the University. It is important to distinguish between acquisitions made solely with a Purchase Order and acquisitions made where a contract is also involved. Where a contract is involved, this Manual and the State Fiscal Rules must be consulted and followed. More likely than not, the contract in any acquisition transaction is subject to the State Fiscal Rules and must meet the requirements of those rules.
- [State Fiscal Rules](#). The State Fiscal Rules contain the State Controller's policies and procedures to be followed by State agencies (including institutions of higher education). The rules are applicable to all contracts which ultimately result in the disbursement of state funds ("fiscal contracts"). The Office of the General Counsel, Purchasing Department and the Director of Business and Financial Services apply these Fiscal Rules to all expenditure contracts undertaken by the University. For those who regularly participate in the preparation of contracts at CSU, it is a good idea to be familiar with these Rules.
- [Financial Procedure Instructions Manual](#). The FPI, available online from the Department of Business & Financial Services, contains detailed instructions on accounting for expenditures and revenues which arise from transactions with outside parties. FPI section B-2 covers contracting generally, and section C-4, among others, deals specifically with revenue-producing activities. Please contact B&FS for more information.
- State Controller's Office, [Colorado Contract Procedures and Management Manual](#). A comprehensive guide to state contracting and management procedures applicable to all state of Colorado agencies and institutions.

2.15 FORMS LIST

The following [Forms](#) referred to in Chapter 2 may be downloaded from the [OGC-Contracts web page](#):

- Form 2-1: Independent Services Contract
- Form 2-2: CSU Contract Acceptance Form and Special Provisions for Vendor Contracts
- Form 2-2MA: Master Agreement Form
- Form 2-3: Contract Amendment
- Form 2-4: Special Provisions for Contracts
- Form 2-5: Special Provisions for Intergovernmental Agreements
- Form 2-6: CSU Purchase Order Terms and Conditions

CHAPTER 3

SIGNATURE AUTHORITY TO BIND CSU CONTRACTS

3.1 GENERAL DISCUSSION

Colorado State University ("CSU"), established under Article VIII, Section 5 of the Colorado Constitution and C.R.S. §§ 23-31-101, et seq., does not have the legal status to contract in its own name. However, the Board of Governors of the Colorado State University System, the body that by law governs CSU, does have legal authority to contract in its own name. C.R.S. § 23-30-102(1) provides in part: "The Board of Governors of the Colorado State University System is a body corporate, capable in law of suing and being sued; of taking, holding, and selling personal property and real estate; of contracting and being contracted with; of having and using a corporate seal...". *See also* the definition of the Board of Governors of the Colorado State University System in the Definitions section above. Therefore, any "CSU" contract should be in the name of the Board as follows: "The Board of Governors of the Colorado State University System by and through Colorado State University for the use and benefit of [Department]." References in contracts to the "State Board of Agriculture" are outdated since the name of the Board was changed in 2002, and can no longer be accepted in any new contract or amendment.

Without some specific action to delegate its signature authority, only the Board (by its President) can sign contracts for CSU. However, the Board has delegated specified contracting authority to the CSU President (and to the President of CSU-Pueblo), and permitted re-delegation of such authority by the President to appropriate institutional administrators. The scope of the President's delegation is "to approve and execute all contracts, agreements, grants, warrants, and other binding legal instruments presented in the name of the Board for the State of Colorado, which are either: (1) expressly approved by resolution of the Board, or (2) usual, necessary, and appropriate to the normal operation of the institution and within the budgeted expenditures as approved by the Board." The resolution further provides that the President may sub-delegate signature authority to the appropriate Colorado State University administrators (which may include Vice-Presidents, Directors, Deans and department heads). The President has exercised this power to re-delegate contracting authority to various individuals within the University. A complete description of this authority is contained in the [CSU Signature Delegation Chart \(Appendix B to this Manual\)](#).

The CSU Signature Delegation Chart sets forth the many instances in which signature authority has been sub-delegated by the President, in a format designed to allow each University department to easily find the proper delegation for the transactions it typically encounters. If you are unable to locate the delegation for the agreement which you require, please contact the Office of the General Counsel for assistance.

3.1.1 Other Delegations of Authority. It is important not to confuse the Board delegation and sub-delegations with delegations of authority granted by other State officials, such as the State Controller, the Colorado Attorney General, the Executive Director of the Department of State Buildings and Real Estate Programs (SBREP) and the State Purchasing Director. Those delegations are separately noted, in a few instances, in the Chart as "required approvals."

However, it is not the primary purpose of the Signature Delegation Chart to define or explain these other delegations. In order to determine whether the State Controller has delegated authority to the University Controller for a particular contract, for example, it may be necessary to contact the OGC for assistance. In most instances, contracts will be made using pre-approved forms, or will be routed to OGC for required approvals, so that all delegations and sub-delegations are properly observed and applied.

3.2 THE IMPORTANCE OF SIGNATURE DELEGATION

Why is it necessary to determine who is authorized to sign contracts on behalf of the University, and what are the consequences if a contract is signed by the wrong person?

The signature delegation authority discussed above is the exclusive origin of legal capacity to bind the University to a contract. That means that if authority is lacking, CSU has not legally obligated the State of Colorado to the contractual provisions as intended. This has three separate, but obviously interrelated, consequences:

- CSU may be unable to enforce the terms of the contract in order to obtain the benefits promised by the other party;
- The University's obligations to the other contracting parties may not be enforceable as against funds or property of the State; and
- The person(s) who improperly authorized the State to incur those obligations may be personally liable to the Contractor and/or the State for any losses sustained as a result of the failure to obtain an authorized signature. [C.R.S. §24-30-202(3)].

There are other reasons, of course, why it is important to obtain the proper signatures on every contract. Proper approval helps to ensure that funds are spent prudently and in accordance with the purposes for which they have been appropriated. The authorized signatory (or one of those whose approval signature is required) is likely to be the person charged with the responsibility of budgeting for expenditures for the department or office involved, so he or she needs to be aware of how available funds are being spent. In many cases, special expertise is required to determine whether the contract is properly written and is in accordance with applicable regulations and guidelines. And the Dean, Department Head or administrator responsible for the contract is unlikely to be pleased if a problem develops with respect to the contract, and he or she was not properly advised of it in the first place.

In addition, the lack of a valid, authorized contract may create liabilities to the University which otherwise would be allocated to others and/or covered by insurance.

For these reasons, it is critical that every contract be approved, in advance, by the persons properly delegated authority to conduct such transactions.

3.3 THE CSU SIGNATURE DELEGATION CHART: OVERVIEW

The CSU Signature Delegation Chart contained in Appendix B to this Manual sets forth the existing delegation of authority to bind the University to contracts and agreements. The Chart is also available online and may be viewed, printed or downloaded for further use and reference.

The Chart is organized in columns from left to right for each type of transaction. The following table summarizes the heading and description of each of the Chart's columns:

1. Transaction Number: Each transaction in the Chart is assigned an identifying number which remains correlated with that transaction, regardless of how the Chart is sorted. This allows the user to sort by different column headings without changing the correlating identifiers. The easiest way to sort the Chart is to choose the desired sort method on the Office of the General Counsel website and view the resulting chart.
2. Transaction Type: Transactions are categorized into one of 6 general types, labeled A through F. A key appears at the bottom of each page of the Chart, as follows: KEY: A=Sales and Performance by University; B=Acquisitions by University; C=Acquisition of Construction and Related Services; D=Academic and Miscellaneous Transactions; E=Enrollment Services Transactions; F=Research & Sponsored Programs. The Transaction Type is for ease of use only and does not necessarily indicate any particular delegation of authority.
3. Transaction Description: The type of contract or agreement for which signature authority has been delegated is described in this column. Transaction descriptions are necessarily somewhat general, and in some instances, it may not be possible to locate a description which precisely matches the transaction which the user desires to accomplish. In such cases, it is always advisable to contact the office having primary administrative responsibility for the type of transaction involved, or the Office of the General Counsel, for assistance.
4. Department Contact: This column shows the name of the University department or office which is assigned primary administrative responsibility for handling most transactions of the type described. This is the initial contact point for University personnel wishing to accomplish the transaction. It is advisable to contact this department as soon as the need for the transaction is identified so that the contracting process can proceed smoothly and efficiently.
5. Primary Delegate: This column shows the position of the person to whom signature authority has been delegated by the CSU President. The Primary Delegate is always a Vice-President (or General Counsel) of the University. Authority for many transactions has been further sub-delegated by the VP, but the Primary Delegate always retains authority to sign for the University pursuant to his or her delegation. A Primary Delegate may change, add to or eliminate sub-delegations at any time by providing notice of the intended action to the Office of the General Counsel. The President retains authority to approve or disapprove of all sub-delegations.

6. Subdelegate: This column shows the position of the person(s) to whom the Primary Delegate has subdelegated authority for the transaction type, subject to any restrictions or limitations noted. Subdelegations must be in writing and must be filed with the Office of the General Counsel before becoming effective.

7. Subsequent Subdelegate: In a few cases, the Primary Delegate has agreed that the signature authority may be further subdelegated by the Subdelegate. The position of any such further subdelegate(s) is shown in this column. In general, redelegation of authority is not valid without prior approval of the Primary Delegate, and must be made in writing and on file with OGC.

8. Approvals: Most contracts require not only an authorized signature to bind the University, but additional signatures as "approvals" to demonstrate to the signature delegate that the transaction has been properly reviewed and approved. Often these approvals cross departmental and administrative areas. It is important to discuss the desired transaction with all persons having "approval" designation before initiating the contract, so as to avoid misunderstandings, unanticipated problems and lack of approval later on.

3.4 OBTAINING REQUIRED SIGNATURES

Once a proposed contract has been drafted, the parties have agreed on its form and content, and the required approvals have been requested and given, the contract must be signed on behalf of each of the parties by their duly authorized signatories. For CSU, authority follows the Signature Delegation Chart as set forth above; for other parties, signatories should be identified as follows:

- Individuals must sign for themselves ("John Smith") and, if doing business under a trade name, for the sole proprietorship ("John Smith, d/b/a Smith Widget Hauling"). A federal tax I.D. number, which may or may not be the same as the individual owner's social security number, should be included after the signature if the party will receive funds from Colorado State University under the contract.
- Partnerships may sign only by a general partner. Limited partners may not sign a contract to bind a limited partnership.
- Registered Limited Liability Partnerships (LLPs) may be bound by the signature of a Partner.
- Limited Liability Companies (LLCs) may sign only by a Manager or Member-Manager of the company. This may lead to some confusion in that, in most instances, the term "manager" denotes an employee who does not have the requisite authority to bind a business entity.
- Corporations usually provide in their Articles of Incorporation, or by later resolution, that the corporation may execute contracts by the signature of one or

more corporate officers, such as the president, vice-president, or treasurer. A person with the title of "manager," "sales executive," "regional vice-president," or other such designation cannot safely be assumed to have the requisite authority to bind the corporation. Therefore, when the person signing on behalf of a corporation is anyone other than its president, an attestation by the corporation's secretary must accompany the signature to evidence the signer's authority to bind the corporation (or, in the alternative, a copy of a signed corporate resolution stating such authority may be provided).

- Government entities usually must sign by a Contracting Officer or, for state government, by an agency head signing on behalf of the Governor. Request information on the authority of the signatory when executing these contracts. Contracts requiring the expenditure of State government funds must be approved by the State Controller on behalf of the purchasing party.
- One person may sign for another if the signer has been authorized pursuant to a "Power of Attorney." For example, an insurance company may give power of attorney to an issuing agent to bind the insurance company to the policy contract, or a landowner may give power of attorney to a relative to sign a deed. A Power of Attorney must be duly notarized to be authentic, and should always be reviewed by the Office of the General Counsel prior to acceptance as evidence of the authority to sign.

3.5 SIGNATURE BLOCKS FOR CSU AND CONTRACTING PARTIES

The final element of any written agreement is a set of signature blocks for authorized signatories. The signature block for the University should be set up as follows:

<p>CONTRACTOR:</p> <p>_____</p> <p>Legal Name of Contracting Entity</p> <p>_____</p> <p>Social Security Number or FEIN</p> <p>_____</p> <p>Signature of Authorized Officer</p> <p>_____</p> <p>Print Name & Title of Authorized Officer</p> <p>CORPORATIONS: (A corporate seal or attestation is required.)</p> <p>Attest (Seal)</p> <p>By: _____ (Corporate Secretary or Equivalent)</p>	<p>STATE OF COLORADO: BILL OWENS, GOVERNOR Board of Governors of the Colorado State University System, acting by and through Colorado State University:</p> <p>By: _____</p> <p>Printed Name: _____ Title: _____</p> <p>APPROVED:</p> <p>By: _____ Dean or Department Head</p> <p>LEGAL SUFFICIENCY: John W. Suthers Attorney General, State of Colorado</p> <p>By: _____ Associate Legal Counsel</p> <p>ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.</p> <p>STATE CONTROLLER: LESLIE M. SHENEFELT</p> <p>By: _____</p> <p>Date: _____</p>
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As shown above, certain elements are usually included in the other party's signature block, such as the legal status of the entity; the title of the person signing; and, in the case of a business entity, an indication of how the person was authorized to sign on behalf of the party. These elements help establish the contractor's legal capacity to contract, and its signatory's authority to bind the contractor to the agreement.

For CSU, legal sufficiency and Controller's signature blocks are only required for Fiscal Rule Contracts (see Chapter 2). "Approval" signatures vary according to the Signature Delegation Chart.

Questions about signatures on CSU contracts should be directed to the Office of the General Counsel.

CHAPTER 4

INTERNSHIP/PRACTICUM AGREEMENTS and MISCELLANEOUS/ACADEMIC TRANSACTIONS

4.1 INTERNSHIP AGREEMENTS

4.1.1 General Discussion. The University strives to provide practical education experiences to its students. One way to accomplish this objective is through internship agreements (sometimes referred to as practicum agreements). The frequency of use of internships varies from department to department. In some departments, such as Occupational Therapy, internships are required for all students as part of the preparation for a professional certification, while in others, an internship is completely voluntary. Internship agreements provide unique opportunities to obtain practical, hands-on experience in a chosen field during the educational process.

4.1.2 Compensation, Insurance and Liability Issues. In a typical internship arrangement, a CSU student will perform the duties required by a host institution at an off-campus internship site. So, for example, an Occupational Therapy intern may travel to an adult day care center or medical office location, where she or he will work with certified OT and other professionals caring for clients or patients of that institution. Under such circumstances, CSU lacks the ability to directly supervise and control the student in carrying out the work. While the host institution may in fact exercise such control, it usually is not prepared to take on the intern as a regular, paid employee, whom one would expect to be covered by worker's compensation, liability insurance and other benefits and protections. Therefore, CSU must continue to accept such responsibilities to the extent it may reasonably do so and remain protected from undue liability. CSU's responsibilities must be strictly limited by the contract.

4.1.2.1 Worker's Compensation Insurance. So long as the host institution does not pay the student any compensation for the work performed, CSU provides worker's compensation coverage for the student while working in the course and scope of the assignment. This arrangement is preferred. However, once any kind of benefit or remuneration is provided by the host, that institution becomes a de facto employer of the intern (at least for worker's compensation coverage purposes) and may not be able to look to CSU for such responsibilities. For these reasons, most student interns are not compensated for their work.

In some cases, the college or department in which the student is enrolled and the sponsor, or host of the internship, may agree that student interns should be compensated. Under such circumstances, the student should become an employee of the sponsor (host). When compensation of interns is contemplated, the student's department head or college dean should contact Business & Financial Services or OGC for further assistance in contracting with the internship sponsor.

4.1.2.2 Liability Insurance. Unlike worker's compensation, CSU's general and professional liability insurance policies do not cover student interns and therefore any contract

provision stating that CSU will provide such insurance must be stricken or modified. Student interns may be required by the host institution to individually purchase liability insurance coverage to protect themselves, the host, and the University from liability for damages caused by the intern's negligence or misconduct in carrying out the duties of the internship program. In addition, host institutions often require student interns to carry health insurance so that the host is not responsible for paying costs of medical treatment required by the student during the training. While CSU is statutorily forbidden from requiring a student to purchase health insurance coverage, the contract between CSU and the host institution can provide that CSU will advise potential student interns of the host's requirements, and can require students to provide proof of such insurance to the host before being allowed to commence the internship assignment.

4.1.3 Use of Standard Contract. Form 4-1 may be used unaltered by a department to establish an internship/practicum arrangements with another institution and provide for CSU student's access to an internship site. If variance from the standard form is required, the OGC should be consulted during the negotiation/drafting stage.

4.2 RELEASES AND WAIVERS FOR VOLUNTARY PARTICIPANTS IN UNIVERSITY ACTIVITIES

On occasion the University sponsors events, or University faculty or staff members acting within the scope of their official duties participate in the conduct of events which are essentially recreational, voluntary and/or community-oriented rather than of direct benefit to the University itself. These may include outings, field trips, ski trips, fun runs, and many other kinds of events involving students or non-students. According to University policies:

- University employees acting as sponsors or instructors of the field activity must be designated and authorized by the University to perform such roles in order to assure appropriate liability protection for their acts.
- For activities that are not sponsored by the University, clear separation should be maintained by the University from such activities. Employees should refrain from assuming duties where possible.
- It is important that students acknowledge an understanding of the risk involved in any particular activity, and, where necessary, specific risks which are unusual and which are associated with that particular activity. The Office of Risk Management is able to provide a generic release (waiver) which can be customized for the specific event and should be signed by each student participant. A standard release form, CSU standard contract Form 4-2, may be used or modified to fit the particular situation.

The University Risk Management Office is the primary contact for questions about the use of this form. Risk Management is located in the Loss Control section of the Environmental Health Services (EHS) office in the Division of Administrative Services, 141 General Services Building, and may be reached by calling 491-6745. (Please note that EHS is separate and distinct from the academic Department of Environmental Health, which is part of the College of Veterinary Medicine and Biological Sciences).

4.3 ACADEMIC AND MISCELLANEOUS TRANSACTIONS

There are numerous other types of contracts and agreements entered into by CSU each year, too varied to be listed comprehensively in this Manual. Among these are agreements providing for tuition subsidies, stipends, and scholarships from outside agencies and donors; gifts and donations to the University and its departments; accreditation agreements; financial aid agreements with students and financial institutions; and agreements involving the expenditure of student fees by the ASCSU. These are within the signature authority of the Senior Vice-President /Provost and Vice-Provost subdelegates.

4.3.1 Contracts for Performances by Entertainers on Campus. Among these miscellaneous transactions are those contracts used to bring performers of many different arts and entertainment genres to campus. These contracts are usually handled by the office of the Campus Activities Director, under the authority of the Director of the Lory Student Center. A standard CSU form suitable for many of these transactions is included as Form 4-3.

4.4 FORMS LIST

- | | |
|-----------|---|
| Form 4-1: | CSU Internship/Field Placement Agreement |
| Form 4-2: | Release from Responsibility, Assumption of Risk, and Waiver |
| Form 4-3: | Performance Event Contract (for entertainment and events on campus) |

CHAPTER 5

REVENUE AND SERVICE CONTRACTS

5.1 GENERAL DISCUSSION

5.1.1 Revenue Contracts. The term "revenue contracts," as used in this Manual, includes any agreements or transactions in which income to the University is realized, other than through the sale of services or research deliverables provided by CSU. Revenue contracts generally fall into one of the following categories:

- (i) Athletic Department sponsorships;
- (ii) Licensing of CSU name/logo; and
- (iii) Vending agreements, including concessions and other food vendor agreements;

5.1.2 Service Agreements. The term "service agreements" is used in this Manual to denote educational business transactions with outside parties, other than sponsored research (5-3 fund) activities, whereby the University or any of its departments provides professional, scientific or technical services to an outside entity in exchange for compensation.

5.2 SELECTION/AWARD PROCESS

In some cases, revenue contracts are most appropriately awarded through a competitive process that affords the public a fair and equal opportunity to compete, similar to the process followed for many expenditure contracts. For example, when space in a CSU building is available to be leased to a retailer, food vendor or other business from which revenues will be gained, competitive bidding may maximize revenues as well as providing fairness to the business community. However, competitive bidding is not required by law for revenue contracts.

The RFP process is generally used in situations where the competitive bid process is not practicable or not advantageous to the University. Where factors other than price, such as professional competence, are most critical, the RFP process is preferred.

A sole source selection of the other party to a revenue contract may be appropriate when that party is the only one who can reasonably accomplish the transaction to the University's satisfaction, or when other methods of selection are prohibitively expensive or otherwise infeasible for the transaction. Approval of the use of a sole source normally must be obtained from the Director of Purchasing.

5.3 RELATIONSHIP TO UNIVERSITY'S MISSION. Revenue and service contracts must be consistent with the University's overall mission and goals; should generate maximum revenue to the University when feasible; and should be planned in order to afford the public a fair and equal opportunity to compete. The use of a competitive selection process for revenue contracts, when appropriate, serves these goals.

5.4 APPLICATION OF STATE FISCAL RULES. There are fewer state regulations imposing specific requirements for revenue contracts than there are for expenditures. The State Fiscal Rules are generally inapplicable to revenue contracts. However, the State Fiscal Rules apply to contracts which require the disbursement of state funds even if the contract's overall purpose is to generate revenues. When the revenue-producing activity is one that the University could conduct directly, but chooses to utilize an outside contractor instead, then the division of revenue between the contractor and the University may be viewed as an "outsource contract" subject to the Fiscal Rules, even though CSU does not disburse the funds (see [State Fiscal Rule 3-1](#)).

All revenue contracts are subject to review by the Office of the General Counsel before execution.

5.5 SERVICE AGREEMENTS

Service agreements are used by University departments and faculty members who offer services to the public, or to particular clients or customers, in exchange for compensation; usually, these are scientific or technical services which reflect the special expertise that the University can provide. Service agreements are generally divided into two categories: those which involve scientific, or research-related, services and those which do not. These two types of agreements differ as to fund accounting requirements, contract format, and approval processes.

5.5.1 Research-Related Service Agreements. An agreement which facilitates the provision of services to an external client based on applying known techniques, models, or testing procedures to the materials, data, or other tangible things supplied by the client, is considered a research-related service agreement. Collection and analysis of data usually results in a final report to the customer, and generally speaking, there is little (if any) likelihood that the activity will lead to a patentable discovery or invention. For this reason, standard contract terms do not include intellectual property ownership or transfer, although such terms may be required by the client and in such instances must be negotiated with the assistance of the Office of the [Vice President for Research](#). The activity must be substantially related to the University's mission of research, instruction and public service. In addition, the agreement should allow the University to retain the right to publish significant results, with due regard to the client's confidential and/or proprietary information. Restriction of the University's and the faculty's right to publish works arising from, or relating to the services may be permitted in exceptional circumstances only upon review and approval by the VPR.

This type of agreement differs from sponsored research in that the funds are allocated for the customer's specific needs, are usually non-federal, and are based on a fixed-price or time-and-materials budget rather than cost-reimbursable. Funds remaining after the University's expenses are not returnable to the client. Fund accounting is accomplished in the 53 or 65 account series, with oversight from the [Office of Sponsored Programs](#) and, where required, the [Regulatory Compliance Office](#). It differs from non-research related services in that the services are scientific in nature, requiring the use of research facilities, equipment and personnel, and therefore the approval of the VPR (or authorized delegate) is required. Examples include animal

care and technical services; erosion control testing services; hydraulic testing; growth and sale of bioreactor fermentations; wind tunnel testing; and statistical analyses.

A standard contract form, attached to this Manual as Form 5-1, is to be used whenever possible for providing research-related services. Any transaction which requires a modification to the standard form (or use of the client's form) should be referred to the Office of the General Counsel.

5.5.2 Standard Service Agreements. All service agreements which are not research-related are standard service agreements. Examples include sale of excess animal inventory or products; soil, water and plant testing; multi-media products and services; analysis of blood and tissue samples; reading of x-rays for referring veterinarians; and electron microscopy services. Standard contract Form 5-2 is used for these purposes.

5.6 REQUIREMENT OF ADVANCE APPROVAL OF REVENUE AND SERVICE CONTRACTS

University faculty and staff are not free to enter into revenue or service contracts with outside entities in the absence of an advance approval by the appropriate administrators. Revenue contracts usually must be supported by a business plan, or detailed budget, showing the direct and indirect costs associated with the activity; its relationship to the University's basic mission and purpose; and the projected revenues from the activity. For guidance on preparing a business plan in advance of seeking approval of a revenue contract, please consult the Business & Financial Services [Self-Funded Accounting Manual](#) or contact the [Office of the Vice President for Administrative Services](#) for additional guidance.

5.7 FORMS LIST:

Form 5-1: Research Related Services Agreement

Form 5-2 Service Agreement

CHAPTER 6

CONSTRUCTION CONTRACTS

6.1 STATE-FUNDED CONSTRUCTION; APPROPRIATION.

6.1.1 Definition of Capital Construction. The terms "Capital Construction" and "Controlled Maintenance" are defined by statute, C.R.S. § 24-30-1301, as follows:

(1) "Capital construction" means:

- (a) Purchase of land, regardless of the value thereof;
- (b) Purchase, construction, or demolition of buildings or other physical facilities, including utilities, or remodeling or renovation of existing buildings or other physical facilities, including utilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to the health and safety of persons which are not covered by codes, to effect conservation of energy resources, to effect cost savings for staffing, operations, or maintenance of the facility, or to improve appearance;
- (c) Site improvement or development;
- (d) Purchase and installation of the fixed and movable equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities and for the conduct of programs initially housed therein upon completion of the new construction, remodeling, or renovation;
- (e) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any capital construction project and to supervise the construction or execution of such capital construction projects;
- (f) Any item of instructional or scientific equipment if the cost will exceed fifty thousand dollars.

(2) (a) "Controlled maintenance" means:

(I) Corrective repairs or replacement used for existing state-owned, general-funded buildings and other physical facilities, including, but not limited to, utilities and site improvements, which are suitable for retention and use for at least five years, and replacement and repair of the fixed equipment necessary for the operation of such facilities, when such work is not funded in an agency's operating budget to be accomplished by the agency's physical plant staff;

(II) That controlled maintenance funds may not be used for:

(A) Corrective repairs or replacement for buildings and other physical facilities and replacement or repair of the fixed and movable equipment necessary for the operation of physical facilities, when such work is funded in an agency's operating budget to be accomplished by the agency's physical plant staff; for the repair and replacement of fixed and movable equipment necessary for the conduct of programs (such repair and replacement is funded as capital outlay); or for rented or leased facilities or facilities constructed and maintained by self-liquidating property funds. Minor maintenance items shall not be accumulated to create a controlled maintenance project, nor shall minor maintenance work be accomplished as a part of a controlled maintenance project unless the work is directly related.

(B) Any work properly categorized as capital construction or capital outlay.

(b) "Controlled maintenance" may include the purchase of the services of architects, engineers, and other consultants to investigate conditions and prepare recommendations for the correction thereof, to prepare plans and specifications, and to supervise the execution of such controlled maintenance projects as provided by appropriation by the general assembly.

6.1.2 Approval of State-funded Construction. Capital Construction or Controlled Maintenance projects costing more than \$500,000 require a specific appropriation of the funds by the Legislature pursuant to statute, C.R.S. § 24-75-303(3)), which provides:

No capital construction project for a state supported institution of higher education which is estimated to require total expenditures exceeding five hundred thousand dollars may be commenced unless:

- (a) The project is authorized by legislative appropriation; or
- (b) The project is to be constructed, operated, and maintained solely from student fees, auxiliary enterprise funds, wholly endowed gifts and bequests, research building revolving funds, or a combination of such sources, and in accordance with C.R.S. § 23-1-106(9).

Some construction and controlled maintenance projects are funded by CSU from sources other than appropriated state monies, and therefore do not require legislative approval. However, [such projects must still be authorized by the Board and approved by the Colorado Commission on Higher Education \(CCHE\)](#) and [State Buildings and Real Estate Programs](#) as well as authorized officials for CSU, where appropriate.

6.2 HOW CONSTRUCTION CONTRACTS ARE PROCESSED AT CSU.

6.2.1 Initiation through Facilities Management. All construction projects at CSU are initiated through [Facilities Management](#) (FM). Major projects must be included in the University's [Physical Development Plan \(PDP\)](#) which is available online. Small projects (those under \$100,000) are approved through a process defined by FM, and require various approvals including the appropriate College Dean, the Director of Facilities and the [Vice President for Administrative Services \(VPAS\)](#). Small projects determined to be critical may be forwarded to the VPAS for central funding consideration, however, most small projects will need to be funded by the academic department. Departments may initiate small projects by [contacting FM Construction Services](#).

6.2.2 State Contract Required. Under State Fiscal Rule 3-1, a State Contract is required for all capital construction expenditures over \$100,000. For all practical purposes, the same rule applies for contracts less than such amount, since a Purchase Order, standing alone, is probably not sufficient for most capital construction services. Fiscal Rule 4-1 more specifically provides:

A purchase order may be used for construction not exceeding \$100,000 if the Director of State Buildings Program or a delegate records written approval on the face of the purchase order. Such approval by the Director of State Buildings Program or a delegate shall require compliance with approved building codes and signify compliance with bonding requirements in C.R.S. 38-26-106 and 24-105-201. In addition, the purchase order shall be bilateral requiring written acknowledgment of acceptance by the contractor prior to the beginning of work.

Although the quoted section allows for the use of a PO instead of state contract, the additional requirements make it clear that a purchase order standing alone, without a contract setting forth the usual terms and conditions relating to construction services and the specific work to be performed, is probably not sufficient to fully protect the interests of the University. In fact, CSU uses standard State Buildings contract forms for most construction agreements, regardless of price.

6.2.3 Review and Approval. Facilities Management is responsible for coordinating all required review and approval processes for construction contracts. These may include:

- [State Buildings and Real Estate Programs \(SBREP\)](#). Most construction and real-estate related contracts must be approved by the department of State Buildings and Real Estate Programs pursuant to statute (C.R.S. § 24-30-1301, et

seq.). The authority to approve and sign construction contracts on behalf of SBREP has been delegated to Tommy Moss, Architect, Facilities Management, for most construction and controlled maintenance contracts performed at CSU.

- [CCHE](#). CCHE approval is required for any capital construction project regardless of the source of funds. The Commission may make exceptions for program and physical planning projects which will require less than \$500,000 of state monies. (See [CCHE Policy Manual, section III, part Q](#)). Current CCHE policy provides that for projects estimated to cost between \$50,000 and \$500,000, a written request must be submitted for an exemption from the program planning and approval requirements. CCHE requirements are complex, and all requests for approval must be directed to CSU Facilities Management, not directly to CCHE, by the interested department.

6.3 SPECIAL REQUIREMENTS FOR CSU-FUNDED CAPITAL CONSTRUCTION OVER \$500,000.

CSU-funded construction may be for Capital Construction or Controlled Maintenance projects costing up to \$500,000. Any Capital Construction project with a total value of over \$500,000, except those funded from auxiliary enterprises, student fees, or research building revolving funds, must be specifically appropriated by the state Legislature. Such projects, even though funded with "cash funds" of CSU, are treated as state-funded unless otherwise exempted by footnote to the Long Bill (the appropriations measures passed annually by the Colorado General Assembly).

6.4 ARCHITECT/ENGINEERING AGREEMENTS

6.4.1 Special Statutory Treatment. Architect/Engineering agreements ("A/E agreements") are a special category of fiscal contracts. A/E agreements are subject to a state statute (C.R.S. §§ 24-30-1401, et seq.) that "provides managerial control by the state over competitive negotiations for the acquisition of the professional services provided by architects, engineers, landscape architects, and land surveyors."

6.4.2 Standard Contract Forms. A/E agreements for state-funded construction projects are accomplished using a standard [SBREP contract form](#) (State Form SC 5.1). Facilities Management is the office with primary administrative responsibility for such agreements. State Form SC-5.1A-S (A/E Agreement) is used to contract for small A/E service contracts where competition is not required ("as needed" services). State Form 6-AC-02 (A/E Consulting Agreement) is used to contract for all state funded A/E services where the services result in survey, study, report, or recommendation.

6.5 CONSTRUCTION CONTRACT ROUTING AND APPROVALS

Construction contracts are prepared by the responsible CSU Facilities Project Manager and routed to the OGC (except for those as to which legal review is not required). After review, counsel sends the contract documents to the VPAS for signature and returned to OGC; they are

then routed for final approval by the Controller delegate in Business & Financial Services. Finally, OGC again reviews the contract documents, inserts dates on the contract and bonds, and routes them back to Facilities.

CHAPTER 7

LEASES

7.1 CSU AS LESSEE (TENANT)-OBTAINING THE USE OF NON-OWNED LAND AND BUILDINGS FOR CSU PROGRAMS

7.1.1 Initiating a Lease. All leases and other CSU real estate matters are handled through the CSU Real Estate Office (970-472-0491). CSU departments desiring to lease land or building space should contact REO before entering into negotiations or any agreement with a landlord or owner. CSU coordinates the efficient acquisition and use of land and building space, obtaining all required approvals, and negotiates with the lessor for favorable terms.

7.1.2 Required Approvals.

7.1.2.1 CCHE Approval: Under Colorado statute C.R.S. 23-1-106(8), all CSU leases are subject to the requirement of CCHE approval. The [CCHE Policy Manual](#), Section III, Part E, subsection 5.00 further provides:

Any acquisition or utilization of real property by a state-supported institution of higher education, which is conditional upon or requires expenditures of state-controlled funds or federal funds shall be subject to the approval of the Commission, whether acquisition is by lease, lease-purchase, purchase, gift or otherwise.

The requirements for obtaining CCHE approval vary depending upon the annual lease cost. CSU REO will determine the correct approval process and transmit all required documentation to CCHE.

When possible, leases should be commenced in January or July. Requests for lease approvals should be filed as soon as the information is available. For leases costing less than \$75,000 per year, a program plan is not required. CCHE will grant or deny approval and will send notification to REO. CCHE approval must be received before the Office of the General Counsel may sign the lease. Under no circumstances may a CSU department or employee permit a lease arrangement to commence, or commit CSU to a lease obligation, prior to all approvals being finalized and all authorized signatures obtained. CSU cannot issue payment for an unauthorized lease, but the person(s) responsible for incurring such an unauthorized obligation may be held personally liable for payment.

7.1.2.2 Legislative Approval: Not required unless the transaction is intended as a lease-purchase (title to property passes to University at the end of the lease, or there is an option to buy). Some transactions may be accomplished without special legislative action. Lease-purchases of real property or equipment may be accomplished by CSURF in appropriate circumstances; for more information contact REO.

7.1.2.3 Board Approval: Board approval is required for all real property lease-purchase transactions.

7.1.2.4 State Buildings and Real Estate Programs (SBREP): All leases (CSU as lessee) are subject to approval by SBREP. Use of standard forms is required. Submission of leases for approval is handled by REO.

7.1.2.5 Controller & Legal Sufficiency Review: OGC reviews and approves all leases prior to submission for the Controller's approval.

7.1.3 Requirement to Use State Broker. Outside the front range region and in Larimer County, REO may negotiate directly with private landlords for building or office space. In the Denver Metro area, Boulder and El Paso County, the State of Colorado maintains an exclusive brokerage arrangement with one or more brokers, and acquisition of any building space requires the use of the designated brokers. Contact REO for more information.

7.2 CSU AS LESSOR (LANDLORD)

7.2.1 Buildings. The VPAS has been delegated the authority to sign leases of building space where CSU is the lessor, and has subdelegated this authority to the Director of Facilities. These leases are accomplished using lease documents developed by CSU.

7.2.2 Land and Water Leases. Occasionally, it will be necessary or convenient for the University to lease undeveloped land, such as for crop research or temporary facilities. Approval by the VPAS is required. If the land lease price exceeds \$5,000 per year, extends more than five years, or is part of a lease-purchase agreement, Board approval is also required. CCHE approval is also required for most land leases. REO coordinates this process, and all leases are reviewed by OGC. Finally, the VPAS is also delegated authority to sign leases of CSU water rights for not more than one year or \$5,000 in value.

7.2.3 Lory Student Center Leases. Leases of space within LSC for retail, office or other uses are initiated by the office of the LSC Director and approved by the VPAS.

7.3 EQUIPMENT LEASES AND RENTAL CONTRACTS

7.3.1 Short-Term Equipment Rentals. For short term rentals of equipment (such as tools, moveable machinery, etc.) under \$3,000 and three months duration, the University maintains master with local equipment rental vendors. These master contracts put into place pre-approved terms and conditions for short-term rental of equipment and allow Departments to rent equipment and tools with the efficiency of just the issuance of a Purchase Order. Emergency requirements for rental of equipment and tools can be better met with master contracts in place with various local equipment rental vendors. The master leases currently in place may be viewed online. For assistance with rental of equipment, tools or other moveable items, please contact the Purchasing Department.

7.3.2 Equipment Lease Agreements. Agreements to lease or lease-purchase equipment over a longer term are subject to certain limitations and requirements. CSU generally will not enter into "finance leases" where the cost of the lease includes a finance, or credit charge, component. Where necessary and appropriate, this type of lease may be accomplished through CSURF's Leasing Programs. Contact the CSU Purchasing Department to inquire about any desired equipment lease or lease-purchase transaction.

7.4 FACILITIES USE (SHORT-TERM LEASE) AGREEMENTS

University buildings and facilities are frequently used on a one-time, short-term basis by campus groups and student organizations, as well as by outside parties, for events such as performances, lectures, rallies and shows. Student organizations wishing to arrange for use of any campus facility should contact the Campus Activities Center for further information.

To create a contract for the use of a CSU building, facility or grounds area by an outside party, other than for a student organization, contact Facilities Management Events Support department. A standard form used by FM to contract for such uses is included with this Manual as CSU Standard Form 7-2.

7.5 FORMS LIST

Form 7-1: Equipment Lease-Master Rental Agreements with Local Vendors

Form 7-2: Use Agreement for Campus Facilities

CHAPTER 8

RESEARCH AND TECHNOLOGY TRANSFER AGREEMENTS; INTELLECTUAL PROPERTY

8.1 RESEARCH AGREEMENTS

Research agreements allow the University to foster cutting-edge research supported by public and private sponsors. These agreements differ from Service Agreements, discussed in Chapter 2, in that the services are not performed as an ongoing business activity by the University, but rather are directed under a particular grant or award; and the results of the work usually remain the property of the University, not the sponsor (although, in many instances, the activity may add value to a sponsor's idea or product). Sponsors may provide specific instructions or protocols to be followed in the research project, and expect the University to provide detailed reports of the methods used and results achieved through the research protocols. New inventions, discoveries and improvements to technology are expected in such activities, whereas in service agreements, development of new ideas and inventions is rarely, if ever, the focus of the relationship.

Research agreements must be supported by funding for Facilities & Administrative (F&A) costs (also called "indirect costs") as well as for the labor and materials provided by the University. CSU sets standard cost rates to be applied in Research Agreements in accordance with federal cost accounting principles.

Other forms of agreement may be used to create subordinate relationships under a research grant. Subgrants, subcontracts, cooperative agreements, research consortium agreements, and MOUs are examples of such agreements, and are usually between CSU and other educational or governmental agencies or institutions. For example, the proposal awarded to CSU faculty may include authorization to contract with other universities or state agencies, acting as subgrantees to carry out certain tasks or projects in connection with the research. These subgrants may contain provisions required by federal law or regulation (so-called "flow-down" provisions). Research Agreements are coordinated and managed by the Office of Sponsored Programs which maintains its own set of standardized contract forms for many kinds of agreements. All research agreements are subject to approval by the Vice-President for Research (VPR) who has, in turn, delegated authority to sign most such agreements to the Associate VPR and the Director of Sponsored Programs. Persons wishing to initiate a Research Agreement should begin by contacting OSP. A sample Research Agreement is included in this Manual as Form 8-1.

When the ideas, products or improvements derived from research are of the type which can and should be protected by patent or copyright, the University is aided in protecting its rights in the ideas or inventions (known as "intellectual property") by the Colorado State University Research Foundation (CSURF), which provides resources and acts as an agent for the University in managing and licensing intellectual property rights.

8.2 TECHNOLOGY AND MATERIALS TRANSFER

8.2.1 Technology Transfer. In 1993, the Colorado General Assembly recognized that the transfer of newly created technologies from university research to the private sector and the resulting potential creation and expansion of Colorado companies were essential to the economic growth of the state, promoted the public good, and should be encouraged. Statutes were enacted to encourage institutions of higher education to transfer innovations and ideas in technology to the private sector. (See C.R.S. § 23-5-121). Since then, technology transfer has undergone a number of changes, including increasing involvement in the process by the CCHE. Technology transfer is an important part of the research and educational mission of the University.

8.2.2 Material Transfer Agreements. Materials transfer agreements are used when proprietary materials or products are transferred, usually by a sponsor, to another party for use in research, testing or development activities. A [standard MTA agreement form](#) is available on the OSP web site.

8.3 CONFIDENTIALITY (NON-DISCLOSURE) AGREEMENTS

8.3.1 Use in Sponsored Research. In many sponsored research agreements, proprietary and confidential information of the sponsor (the "Disclosing Party") is provided to the University (the "Receiving Party") on the condition that it be protected from disclosure. The sponsor will usually request that a confidentiality/non-disclosure agreement (NDA) be signed prior to entering into a research agreement or providing materials or information for study. CSU may agree to hold confidential any trade secrets, as well as the specific details of bona fide research projects, and certain other information provided by a sponsor in connection with a research or service agreement (subject to Colorado law regarding public access to records, see C.R.S. § 24-72-204(2)(a)).

8.3.2 Where CSU is the Disclosing Party. In other cases, CSU will be the party desiring to provide information to an outside entity with the understanding that by doing so, CSU's rights in the information remain protected from disclosure to the public or to others who have no contractual relationship with the University. The same considerations generally apply. Of course, in many cases, both parties will want to be able to act as either a discloser or a recipient of confidential information, and the NDA can easily be drafted to accommodate this.

All of these transactions require the use of a confidentiality, or non-disclosure agreement binding one party to protect the confidential information and intellectual property of the other from disclosure. The Vice-President for Research is authorized to approve confidentiality agreements which bind the University and has subdelegated this authority to the Associate VPR and the Director of Sponsored Programs.

8.3.3 CSU Faculty, Employees as Individual Parties. On occasion, an outside party will request that a CSU faculty member or other employee sign a confidentiality agreement in his or her individual capacity, rather than as a CSU representative. While faculty members may enter into such agreements, it is often not in their best interests, nor that of the University, to do so. One reason is that the Office of the General Counsel cannot provide legal counsel to an employee

acting as an individual and is therefore limited in its ability to assist with the terms of such an agreement. In addition, the faculty member risks personal liability if the terms of the agreement are later alleged to have been breached by an unauthorized disclosure. Perhaps most importantly, if the agreement is one that in reality concerns the business of the University, it is more appropriate for the University to act as the contracting party, providing some protection to the faculty member and allowing the OGC to help negotiate fair terms and conditions in the NDA. If a sponsor insists on having individual CSU employees separately promise to abide by the NDA's conditions, this can, with the consent of those individuals, be done as an exhibit or attachment to the NDA between CSU and the sponsor, leaving CSU as the party primarily responsible for the contract. Contact the assigned research administrator in the [Office of Sponsored Programs](#) for assistance with these agreements.

8.3.4 Standard Contract Form. CSU standard contract Form 8-4 is designed for use whenever an outside party desires a NDA with the University. Where the activity is not related to any sponsored program or research, but concerns other University business relationships, the Office of the General Counsel will provide an appropriate non-disclosure agreement form or will review and approve an outside party's contract form, as appropriate. Contact OGC for these non-research related NDA transactions.

8.3.5 Issues and Problems in NDAs. Typical NDAs contain a number of clauses that can be problematic for CSU and should be addressed during the negotiation and drafting stage of the contract. For example, many outside parties will present agreements that are worded so broadly that they purport to cover almost every communication, writing, or bit of information about the party, the project, and the contract as being "confidential information" (CI). The consequences of agreeing to such a clause are that it becomes extremely difficult and time-consuming for CSU and its employees to track the disclosure, safekeeping, and control over dissemination of the CI. In addition, such broad provisions probably run afoul of the Colorado Open Records statutes, making it more difficult for the disclosing party to defend against a disclosure demanded from CSU under the law. These consequences put CSU and its employees at a greater risk of being sued for breach of the contract, even when there was not a reasonable basis to believe that certain information was considered to be CI when it was disclosed. The solution to this problem is to draft the contract so that the disclosing party must clearly identify which information is CI when it is disclosed, and keep the definition of CI narrow so it does not extend to information that should reasonably be considered non-confidential.

Other problematic issues can include terms such as indemnification and limitation of liability, governing law, attorney fees, and similar clauses that create potential liabilities for CSU that should be avoided.

For further information about the use of these forms, or NDAs in general, contact the Office of Sponsored Programs or the OGC.

8.4 INTELLECTUAL PROPERTY PROVISIONS IN CONTRACTS

"Intellectual Property" (IP) is a broad term which can include ideas embodied in original works of authorship or art, as well as inventions, discoveries, and proprietary information,

trademarks, logos and service marks which are identified with or owned by an institution, business organization or private party.

8.4.1 CSU Trade and Service Marks. Intellectual property interests of the University must be protected, whether those rights are pre-existing (such as the right to use and reproduce CSU's name, logos, and trademarks) or are anticipated to be created under the contract (such as new designs and logos). In practice, items such as trademarks and logos are treated separately from other IP rights and are often implicated in contracts having nothing to do with scientific or service activities (e.g., a contract with a beverage vendor who desires to display the CSU Rams Head logo on cups or vending machines).

8.4.2 License of Trademarks and Logos. In contracts under which it is anticipated that the University's name, logos, or trademarks may be used or reproduced by an outside party, adequate protections must be included in the contract language. A typical provision designed to address these issues is as follows:

Intellectual Property. University is and shall remain the sole owner of its own name, designs, symbols, logos, trademarks and service marks. Notwithstanding any other provision of this Agreement, for the term of this Agreement, and in conjunction with the services contemplated herein, the University hereby grants Contractor a non-exclusive, non-transferable, limited license to use such trademarks and intellectual property associated with the Colorado State University and its programs for the purposes of carrying out the activities described in this Agreement. Contractor shall display and use all trademarked and copyrighted materials of the University in the manner reasonably designated and approved in advance by the University. This license shall terminate upon expiration or termination of this Agreement, or upon notice by University of termination of the license granted herein, whichever occurs first.

Other contracts may involve the University's use of an outside contractor's copyrightable materials. A typical provision addressing the rights involved in such a transaction is:

The University is hereby granted an irrevocable, nontransferable, nonexclusive, paid-up, perpetual license to display publicly, perform, copy, reproduce, prepare derivative works, and distribute any works, drawings, documents, data or software delivered under this contract. For purposes of this license, "University" includes any other person or entity performing services for the University to the extent required for use, modification, or maintenance of the works, drawings, documents, data or software delivered under this contract.

Please note: all contracts involving the use or reproduction of CSU's logos, trademarks and other copyrighted materials must be reviewed by the Office of the General Counsel and, in most instances, must be approved by the Director of [Communications & Creative Services \(CCS\)](#). Please contact the OGC for more information.

8.4.3 Patentable and Copyrightable Inventions, Discoveries and Ideas. As a major research institution, CSU is home to numerous researchers whose work may result in the discovery, improvement and/or development of ideas, processes, inventions, and works that are able to be protected under copyright and patent laws. The protection of such valuable IP rights is an important function of the University and CSURF, and is accomplished through both public filings and through proper contracting with sponsors and clients. Inventions by University employees acting within the scope of their employment or utilizing University resources must be

disclosed to CSURF pursuant to Section J of the [Academic Faculty & Administrative Professional Manual](#).

8.4.3.1 License Agreements for Commercial Use. As a State institution, CSU generally does not transfer ownership of patented or copyrighted inventions or ideas to private entities. However, the University can and often does have incentive to grant licenses to use such items (referred to as "intellectual property") to private entities, particularly to companies or individuals who have provided funding for the research leading to the development of the intellectual property. These transfers are usually made between the Colorado State University Research Foundation (CSURF), a private non-profit corporation which manages IP rights on CSU's behalf, and the sponsor. An example of the standard form License Agreement used by CSURF is attached (Form 8-2) for reference purposes only. All transactions involving IP rights must be referred to OGC for review prior to the creation of a License Agreement.

8.4.3.2 Option Agreements. As an alternative, CSURF may enter into an Option Agreement which grants a sponsor the exclusive opportunity to enter into a license agreement during a specified period. An example of an Option Agreement may be found in Form 8-3.

8.5 FORMS LIST

Form 8-1:	CSU Research Agreement
Form 8-2:	License Agreement
Form 8-3:	Option to License
Form 8-4:	Non-Disclosure Agreement for Research or Service Activity
Form 8-5:	Non-Disclosure Agreement for Non-Funded Activity

CHAPTER 9

INTERAGENCY AND INTERGOVERNMENTAL AGREEMENTS

9.1 INTERAGENCY AGREEMENTS

9.1.1 When Used. Interagency agreements (IAs) are only appropriate when both parties are agencies or principal departments of the State of Colorado. Political subdivisions such as towns, cities and counties, boards and commissions, and other public and semi-public bodies which do not fall within such categories are not agencies and thus the interagency agreement form is not used to contract with these bodies. (Instead, these would be "Intergovernmental Agreements"). However, the form may be useful as a template for such agreements, provided that inapplicable terms (such as the role of the Controller in resolving disputes) have been replaced with more appropriate provisions. The Office of the General Counsel will assist you in creating the proper form of agreement.

9.1.2 Fiscal Rule Requirements. Interagency agreements are subject to special requirements under State Fiscal Rule 3-1. While legal sufficiency review is not required under the rule, Controller approval is required, and Where CSU is the party expending funds (by transfer to the other agency), CSU's controller delegate signs; where CSU is the party receiving funds, the other agency's controller must sign. It is important to insist that proper approvals and signatures are obtained from the other party even if that agency's procedures differ from CSU's, in order to assure that CSU will be able to collect the funds owed under the agreement in the event of non-payment or a dispute over the performance of the contract. For this and for the protection of the University in general, CSU policy is for the Office of General Counsel to review all IAs despite the exemption under the rule.

All IAs should be done using a standard contract form prescribed by the State Controller. CSU's adaptation of the form is contained in CSU standard Form 9-1. This form contains a number of provisions that are required under Fiscal Rule 3-1, including:

- Identification of the parties to the contract
- Appropriation authority, including fund account number, and encumbrance number
- Scope of work
- Statement of consideration
- Payment and other performance
- Definition of breach and remedies

Also notable under the Fiscal Rule is the provision that the State Controller serves as the final arbitrator of any and all disputes arising under the contract. This means that in the event a dispute arises during performance, or payment is not made as agreed, the aggrieved agency must submit its position to the State Controller rather than filing a legal action in court. This is a significant difference from the typical public-private contract or intergovernmental agreement (below).

9.2 INTERGOVERNMENTAL AGREEMENTS

9.2.1 Generally. Intergovernmental agreements (IGAs) are a sort of hybrid between standard, independent services agreements and interagency agreements. On the one hand, other governments, and political subdivisions of Colorado state government, are not agencies subject to the State Fiscal Rules, and therefore have the capacity and authority to sue one another, and to sue or be sued by CSU, in court. On the other hand, governmental entities often require contract provisions, just as CSU does, protecting their immunity rights, recognizing their public character, and limiting remedies for breach. Also like CSU, other governments often refuse to allow indemnification provisions in their contracts. Because of these special considerations, conflicts often arise when attempting to use a standard, state form for independent contractor agreements (such as CSU standard Form 2-1).

9.2.2 Special Provisions. Unfortunately, State Fiscal Rule 3-1 only partly helps to resolve these conflicts. The Special Provisions required for all state contracts (CSU standard Form 2-4) do not apply to Intergovernmental Agreements, but in their place, an alternative Special Provisions form (CSU standard Form 2-5) is required by the Rule; and that form also includes a provision requiring a governmental entity, acting as a contractor to the state, to provide an indemnification in favor of CSU. Since CSU will not be able to agree to a mutual indemnification of the other governmental party, it is often difficult to resolve these issues in negotiation. For this reason, among others, all IGAs must be handled through the Office of the General Counsel for negotiation and approval of terms.

9.2.3 Required Approvals. Approvals for IGAs are similar to those for other independent services agreements or CSU service agreements, depending upon which party is providing the services and which is expending funds. Where CSU is the purchaser, the Purchasing Department should be the first contact for the department seeking to enter into the agreement, and approval by the appropriate CSU controller delegate will be required. Where CSU is the service provider, controller approval is usually not required, and the VPAS is usually the appropriate signatory for CSU. For these agreements, it is best to contact the Office of the General Counsel for assistance when initiating the agreement. There is no CSU standard contract form for intergovernmental agreements; they are prepared on a case-by-case basis by OGC.

9.4 FORMS LIST

Form 9-1: Interagency Agreement

CHAPTER 10

INTERNATIONAL AGREEMENTS

10.1 GENERAL DISCUSSION. Colorado State University and foreign institutions share common research, scientific, and educational objectives. Agreements may be entered into to facilitate cooperation in research, faculty and student interaction and exchange, and purchase or sale of goods and services (such as consulting services) with foreign universities, organizations and governments.

The Office of International Programs has primary administrative responsibility for initiating such agreements and coordinating student and faculty exchanges, cooperative agreements, and travel. Agreements are usually initiated through the use of an International Memorandum of Understanding (IMOU), which establishes a cooperative relationship with the foreign institution (but generally does not create fiscal obligations between the parties). Several types of agreements may follow, including a College Sponsored Study Abroad Program (COSSAP) Agreement which provides for the exchange of students and/or faculty between educational institutions, and other forms of exchange agreements. In addition, CSU may provide consulting services to foreign institutions through an International Consulting Agreement. Contact OIP for more information about these activities.

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