

## The Importance of a Good Indemnity Provision

by Heather Hosfeld

If you have ever sent a contract to our office for review, you have probably encountered one of the most heavily negotiated contract provisions – indemnification. In our experience, many people do not take time to work through and understand this provision because it often appears as a paragraph-long sentence written in anything other than plain English. However, because it is such an important tool for protecting the assets of the University, I wanted to take the opportunity to briefly explain its purpose.

So, what does it mean to “indemnify” another party? The word “indemnify” means to restore the victim of a loss, in whole or in part, by payment, repair, or replacement. Indemnification is a contract tool that we can use to shift and allocate risks between the University and another party (e.g., vendor, research sponsor, prime contractor, etc.) based upon economic considerations and without regard to either party’s relative degree of fault. We use indemnity provisions to ensure that the University is protected financially in the event that something goes wrong. The “wrong” can range from a minor economic loss to a lawsuit involving serious injury or even death depending upon the nature of the contract.

All of the University’s standard contracts contain indemnity language that is favorable to the University. Most often, we will ask another party to indemnify us in the event that we are injured due to that party’s employees or agents acting negligently or in an intentional and wrongful way. However, if a vendor or other third party insists that you use its contract, it will likely contain an indemnity provision that is most favorable to them. This is, of course, where the negotiation comes in.

As a general rule, you should send all non-Lehigh contracts to our office for review. Contracts should be sent to [incontrx@lehigh.edu](mailto:incontrx@lehigh.edu) along with a completed Contract Review Checklist (see <http://www.lehigh.edu/~inogc/HowtoSubmitContractsforReview.htm>). Please do not ever sign a contract containing an indemnification provision unless we have had an opportunity to review the provision first. If you have any questions about our contract review process, please contact the General Counsel’s Office at **8-3572**.

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