



Medical College of Georgia

Administrative
Policy Library

Negotiation And Execution Of Contracts

CITATION REFERENCE

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Policy Statement

This policy provides an overview of the process of negotiating and executing contracts involving the Medical College of Georgia (“MCG”). Unless excepted below (see **Process/Procedures**), all contracts involving MCG must be executed in accordance with the terms of this policy.

Reason For Policy

This revised policy more clearly delineates the steps to be followed and the actions that need to be taken in the contracting process, as well as setting forth the roles and duties of those responsible for negotiating, reviewing or approving the contract.

Entities Affected By This Policy

All schools, departments and offices that negotiate and enter into contracts involving MCG are affected by this policy.

Who Should Read This Policy

All persons who negotiate and/or draft contracts and all persons responsible for reviewing, approving, and/or executing contracts involving MCG should be aware of this policy.

Contacts

Contact	Phone	e-mail/URL
Office of Legal Affairs	706-721-4018	legal@mcg.edu

Website Address For This Policy

<http://www.mcg.edu/Policies/documents/NegotiationandExecutionofContracts.pdf>

Related Documents

See the attached documents appended to this policy:

- Attachment A: *Items To Consider When Drafting A Contract*
- Attachment B: *Due Diligence Considerations*
- Attachment C: *Contract Routing And Approval Form*

Definition

This policy uses the term ‘**contract**’ to mean any document that creates an obligation, right, or liability for MCG. Such a document may be called a Contract, an Agreement, a Memorandum of Understanding, a Letter of Agreement, or similar terminology. Examples of contracts covered by this policy include, but are not limited to, affiliation agreements, clinical service agreements, business associate agreements, collaborative agreements, continuing education agreements, consulting agreements, licensing agreements, material transfer agreements, and research agreements (sponsored and non-sponsored). This policy applies to the initial contract and to every amendment, renewal or extension of such a contract.

Overview

This policy provides guidance to those persons responsible for negotiating and drafting contracts involving MCG and to those persons responsible for reviewing, approving and/or executing such contracts. The office that will be responsible for implementing and managing the contract should negotiate the terms of the contract and should conduct the necessary due diligence in order to evaluate the benefits and risks the contract presents to MCG. The Office of Legal Affairs stands ready to assist and participate in contract negotiations and the drafting process. Once negotiated, a contract needs to be reviewed and approved by the applicable department chair/office head and dean/vice president. In addition, certain contracts require review by particular offices. For example, revenue producing contracts need to be reviewed by the Office of the Controller, sponsored agreements need to be reviewed by the Division of Sponsored Programs Administration, contracts involving information technology need to be reviewed by the Division of Information Technology Support and Services, and contracts involving educational agreements with other universities, colleges or schools need to be reviewed and approved by the Associate Provost, Academic Affairs. Contracts not involving MCG, but only MCG affiliated entities (such as MCG Health, Inc., MCG Research Institute, Inc., etc.) are not subject to this policy and shall be executed in accordance with those entities’ policies.

Unless excepted below, all contracts involving MCG must be executed in accordance with the terms of this policy. A contract executed in conflict with this policy may be invalid as a matter of law, and, in any event, the President of MCG may elect to declare such a purported contract to be void from inception. Failure to follow this policy may potentially result in individual personal liability for those who signed the contract on behalf of MCG.

Certain Contracts / Transactions Excepted From This Policy. Certain contracts, because of the parties involved or because of the contract’s size or nature, are governed by other entities’ contracting procedures or are otherwise excepted from this policy.

Regents' Contracts. Certain contracts must be executed or approved by the Chancellor or the Board of Regents and, accordingly, are governed by the Board of Regents' policies. These contracts include leases and other transactions involving real property, settlement agreements over \$100,000, and construction contracts. The Office of Legal Affairs (706-721-4018) can assist with these agreements.

Purchasing Contracts. The authority to execute Purchasing agreements flows from the Georgia Department of Administrative Services rather than from the Board of Regents or the President. Accordingly, Purchasing agreements are governed by the Georgia Department of Administrative Services (DOAS) policies. (DOAS purchasing policies may be found at: <http://statepurchasing.doas.georgia.gov>.) Purchasing contracts involve the expenditure of funds by MCG to procure supplies, materials, equipment and services. Examples of a Purchasing contract include an agreement for MCG to engage a consultant, to purchase office furniture, IT software or PC hardware, to rent a venue, or to hire a caterer; such contracts are handled by the Purchasing Department (Materials Management). In contrast, contracts where MCG is selling a product or service, such as an agreement whereby MCG provides one of its employees as a consultant to someone else, would not be a Purchasing contract. For help in determining whether a contract should be handled by the Purchasing Department, please contact the Purchasing Department (706-721-2213) or the Office of Legal Affairs (706-721-4018).

Contracts by Affiliated Entities. Because our affiliated entities are legally separate from MCG, a contract between an affiliated entity and a third party should be executed in accordance with that affiliated entity's policies. Such affiliated entities include:

MCG Health, Inc.;

MCG Physicians Practice Group;

MCG Dental Practice Group;

MCG Nursing Faculty Practice Group;

MCG Allied Health Faculty Practice Group;

MCG Research Institute, Inc.;

Georgia Health Sciences University Foundation, Inc.; and

Health Center Credit Union.

However, a contract between MCG and an affiliated entity, such as MCG Health, Inc., is subject to this policy.

Certain Departmental Sales Transactions. Many MCG departments are authorized to provide certain services or products to customers, both internal MCG customers and external public customers. Sales of such services and products are provided as an adjunct to a department's instructional or research

activities and support or relate to MCG's mission. Departmental sales that are made not pursuant to a contract, but rather are simply invoiced, need not be routed for approval pursuant to this policy. Such sales, though, must nevertheless be properly documented and accounted for in accordance with applicable accounting standards and procedures. However, if a contract is drafted to govern a departmental sale, then that contract must be routed for approval in accordance with this policy.

Standardized "Form" Contracts. Certain transactions are relatively routine in nature and the same "form" contract is used over and over without change. In those instances, such a contract, provided that no changes are made to it, need not be routed to the Office of Legal Affairs for approval. However, to be enforceable, such contracts, like all other contracts, must be signed by an MCG official with the appropriate signatory authority. (See **Signing the Contract** below.) Examples of such standardized "form" contracts and where they may be found are: (1) faculty employment contract forms (found at the Board of Regents Academic Affairs Handbook, Section 4.11.01 "Faculty Contract Forms," [http://www.usg.edu/academics/handbook/section 4/4.11.01.phtml](http://www.usg.edu/academics/handbook/section%204/4.11.01.phtml)); (2) MCG House Officer Notice of Appointment Form (found at MCG's Graduate Medical Education website, <http://www.mcg.edu/resident/coordinate.htm>); and (3) MCG Residence Life Academic Year Housing Agreement (please contact the Director of Residence Life). If you believe another contract should be treated as a standardized "form" contract, please contact the Office of Legal Affairs.

Negotiating and Drafting the Contract. The office/division/department that will be responsible for implementing and managing the contract should negotiate the terms of the contract. A list and discussion of several items and terms that may appear in contracts (such as provisions concerning attorneys' fees, confidentiality, damages, indemnification, and intellectual property) are found in Attachment A: *Items To Consider When Drafting A Contract.* This office/division/department is also responsible for conducting the necessary due diligence examination to evaluate the benefits and risks that the contract presents to MCG. A fuller discussion of a due diligence examination is found in Attachment B: *Due Diligence Considerations.*

The head of the MCG unit that will be responsible for the contract should be aware that the contract is being negotiated. If the potential contract will impact other MCG units or affiliated entities, those units and entities should be involved early in contract negotiations. The Office of Legal Affairs is available to assist and participate in contract negotiations and the drafting process.

Because the language of the contract will govern the interpretation of the contract should a dispute arise, it is extremely important that the contract's terms and conditions are written as clearly as possible and accurately set forth the duties and obligations of each party. For example, services to be provided pursuant to the contract should be described fully; at a minimum, the other party's "contracted for" performance should be set forth in sufficient detail so that a reasonably prudent

person could understand the scope of the services to be provided. Payment terms should also be clearly set forth, particularly concerning how much, when, to whom, and in what manner. The contract should also set out its beginning and ending dates.

The language of the contract should reflect an understanding and expectations of what the contract is to achieve. In addition, the language should make clear that the contract sets forth the entire agreement between the parties and that the parties stipulate that they have made no representations, inducements or promises except those specifically set forth in the contract.

By law, all contracts with the Medical College of Georgia must be in writing. Agreements drafted by the other party to the contract may be used if their terms are acceptable to MCG.

Everyone who is involved with negotiating or submitting a contract for approval has a duty to give due consideration to the meaning of the contract, the risks and benefits the contract may bring to MCG, and the wisdom of executing it. See Attachment B: *Due Diligence Considerations*. Everyone involved with a contract also has a duty to disclose and manage any conflict of interest. See MCG's Individual Conflicts of Interest Policy (<http://www.mcg.edu/policies/documents/IndividualCOI.pdf>), Institutional Conflicts of Interest Policy (<http://www.mcg.edu/policies/documents/InstitutionalCOI.pdf>) and Ethics Policy (<http://www.mcg.edu/policies/documents/ethicspolicy.pdf>).

Contracting With Nonprofit Organizations. Additional considerations are required when contracting with a nonprofit organization.¹ Before a state contracting organization, such as the Board of Regents/MCG, enters into a contract with a nongovernmental nonprofit organization which would provide services or facilities to the state, Georgia law requires the state entity to determine the financial viability of the nonprofit organization and whether it is capable of providing the services contemplated in the contract. Thus, when negotiating a contract with a nongovernmental nonprofit organization, the responsible MCG office/division/department shall require the nonprofit organization to furnish financial and such other information as the office/division/department may deem necessary in order to make this determination. Such information may include financial statements, Internal Revenue Service exempt status determination letters, Internal Revenue Service exempt organization information returns, and other related materials.

The office/division/department must also determine the amount of state funds that the nongovernmental nonprofit organization expended during its fiscal year. Georgia law provides that a state contracting organization shall require a nonprofit organization that has expended \$100,000.00 or more during its fiscal

¹ A nonprofit organization is any entity that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

year in state funds to annually audit the financial affairs and transactions of all of the nonprofit organization's funds and activities. If the nonprofit organization has expended less than \$100,000.00 but more than \$25,000.00 in state funds, it must provide a copy of its annual financial statements, accompanied by either a public accountant's report or a statement by an appropriate officer of the nonprofit organization that the financial statements were prepared in accordance with generally accepted accounting principles. Such audited/unaudited financial statements and reports must be forwarded to the office/division/department within 180 days of the close of the nonprofit organizations' fiscal year.

Georgia law also requires state organizations entering into contracts with nongovernmental nonprofit organizations to report to the state auditor all such agreements and to provide each individual nonprofit organization's name, address, federal employer identification number, and fiscal year end, the nonprofit organization's contact person and telephone number, the contract date, the contract amount (total state award and total federal award), the state chart of accounts (identifying the account from which the funds going to the nonprofit organization come from), and the purpose of contract. It is the duty of the office/division/department responsible for implementing and managing the contract to gather such information.

Routing the Contract. Once those responsible for negotiating and drafting a contract have finalized the contract's language, they must route the contract to obtain the appropriate approvals and necessary signatures. All contracts must be carefully proofread. Before routing the contract internally at MCG, please obtain, if at all possible, the other party's signature on the contract.

To route a contract, the appropriate parts of the *MCG Contract Routing And Approval Form* [found at Attachment C] must be completed and the requisite approvals must be obtained.² Once all necessary approvals have been obtained, the Routing And Approval Form and at least two³ originals of the contract should be sent to the Office of Legal Affairs. The Office of Legal Affairs will review the contract for legal issues and forward it to the appropriate MCG official for execution or return it to the originating MCG unit with suggested revisions and/or comments or questions.

Signing the Contract. All contracts involving MCG must be signed by an MCG official with the appropriate signatory authority. The President has the authority to sign all contracts for MCG, and the President has delegated that authority in part to various institutional officials. The list of MCG officials who have been given such authority can be obtained from the Office of Legal Affairs. An official with signatory

2 If the contract is a sponsored agreement, the Division of Sponsored Program Administration's "Extramural Grant/Contract Agreement Routing Form" (<http://my.mcg.edu/portal/page/portal/forms/ResearchForms/DivisionofSponsoredProgramAdministration/extramural.pdf>) must be completed and submitted together with the "MCG Contract Routing And Approval Form."

3 If there are more than two parties signing the contract, please provide as many originals as there are parties to the contract.

authority from the President may not further delegate that authority to anyone else. If the appropriate official is unavailable to sign a contract, it must be routed for signature to the President or to another official with signatory authority.

Similar to those who have negotiated the contract, the MCG official who signs the contract has a duty to give due consideration to the meaning of the document, the risks and benefits it may bring to MCG, and the wisdom of executing it. He or she also has a duty to disclose and manage any conflict of interest. See *Due Diligence Considerations* in Attachment B; MCG's Individual Conflicts of Interest Policy (<http://www.mcg.edu/policies/documents/IndividualCOI.pdf>), Institutional Conflicts of Interest Policy (<http://www.mcg.edu/policies/documents/InstitutionalCOI.pdf>) and Ethics Policy (<http://www.mcg.edu/policies/documents/ethicspolicy.pdf>).

The official who signs the contract must return all of the originals to the Office of Legal Affairs, which will be responsible for storing MCG's original signed contract. The Office of Legal Affairs will return the second original signed document to the person who initiated the routing; that person will be responsible for sending the second signed original to the other contracting party. If the other party's signature was not obtained prior to the routing of the contract at MCG, the Office of Legal Affairs will return the partially-executed agreement to the person who initiated the routing, and it will be the initiating person's responsibility to obtain the other party's signature on both originals and to provide the Office of Legal Affairs with an original document signed by both parties (the other contracting party will keep the other original).

Accessing the Contract. The Office of Legal Affairs will make a paper copy or an electronic image of the original signed contract available to the person who initiated the contract, the official who signed the contract, and MCG units with a need to see the contract. To request access to a particular contract, please contact the Office of Legal Affairs.

Managing the Contract. The person and MCG office/division/department that initiated the contract are responsible for managing the contract. This includes ensuring that MCG fulfills its obligations, that the other party fulfills its obligations, and that all necessary payments are timely sent or collected as appropriate. This also includes tending to any necessary renewals or amendments to the contract.

Reporting. The Office of Legal Affairs shall make any required reports concerning contracts, such as the reporting of Service Agreements with Local and State Agencies to the Board of Regents.

Process/Procedures

Not applicable to this policy.

Responsibilities

The responsibilities each party has in connection with this policy are:

MCG Contact Person for Contract	Has primary responsibility for negotiating and drafting contract, conducting necessary due diligence, and obtaining required information. Certifies to his/her best belief that the contract is in MCG's best interest, is consistent with MCG's mission, and that MCG, and other contracting party if a non-profit organization, can meet their respective contractual obligations. Oversees routing the contract and its implementation and management after execution.
Office of the Controller	Reviews all revenue producing contracts.
Division of Information Technology Support and Services	Reviews all contracts that involve information technology.
Division of Sponsored Program Administration	Reviews all sponsored agreements.
Department Chair/Office Head/Center or Institute Director	Reviews and approves contract, representing that the contract is necessary and appropriate to the Department's/ Office's/Institute's mission and that such unit can meet its contractual obligations.
Dean/Vice President	Reviews and approves contract, representing that the contract is necessary and appropriate to the School's/MCG's mission and that such unit can meet its contractual obligations.
Associate Provost, Academic Affairs	Reviews and approves all contracts involving educational agreements with other universities, colleges or schools.

Forms

Contract Routing And Approval Form (appended as Attachment C)

Appendices

Attachment A: *Items To Consider When Drafting A Contract*

Attachment B: *Due Diligence Considerations*

Attachment C: *Contract Routing And Approval Form*

ATTACHMENT A

ITEMS TO CONSIDER WHEN DRAFTING A CONTRACT

The Office of Legal Affairs has set out below various items that may arise in contract drafting and negotiation. To discuss these items or other issues, please call us at 706-721-4018.

---Arbitration / Alternative Dispute Resolution

MCG should not agree to a clause that provides that any future disputes be resolved through binding arbitration or other form of alternative dispute resolution because MCG does not have the authority to limit the type or scope of judicial action that the State of Georgia may bring or the type of relief that the State may seek.

---Assignment

MCG generally does not agree to allow the other party to assign its rights under the contract to a third party. We suggest inserting the following language: “This Agreement shall not be assigned by either party without the prior written consent of the parties hereto.” Note that in research agreements involving MCG Research Institute, Inc., the contract should specifically provide that the parties consent to the subcontracting of the research to MCG.

---Attorneys’ Fees / Costs

MCG should not agree to a provision that awards attorneys’ fees and costs to the prevailing party in any dispute arising out of the contract because MCG does not have the authority to obligate the State to such future unspecified costs.

---Complete Agreement (or Merger) Clause

The contract should contain a “complete agreement” clause, which incorporates all prior representations made during negotiations into the current contract and provides that the representations set forth in the contract are the only representations that bind the parties. We suggest inserting the following language: “This document contains the complete agreement between MCG and [other contracting party], who stipulate that they, including persons acting on their behalf, have made no representations with respect to the subject matter of this Agreement except such representations as are specifically set forth herein and that any other representation not contained in this Agreement is not binding.”

---Confidentiality

The other contracting party may attempt to keep information that it provides to MCG, and even the terms and condition of the contract itself, confidential. Generally, MCG may agree to use that care which it uses to protect its own confidential information not to disclose to any third party information provided to it by the other contracting party. However, the contract must clearly identify certain specific instances where such an obligation of confidentiality does not apply. One of these instances involves information required to be disclosed by law, regulation or court order, including but not limited to the Georgia Open Records Act, which controls the disclosure of information once such information becomes a state record. If confidentiality is an issue, please contact the Office of Legal Affairs.

---Damages / Limitation of MCG's Liability

MCG's liability under a contract should be limited to the amount of monies that MCG receives from the other contracting party. We suggest inserting the following language: "In no event shall MCG be liable for any indirect, consequential, special or incidental damages whatsoever, for losses that may arise out of the performance of this Agreement, whether based in contract, tort (including negligence) or otherwise. Any damages arising under this Agreement for which MCG may be liable for any purpose whatsoever shall be limited to the monies actually paid by [other contracting party] to MCG."

---Damages / Limitation of Other Contracting Party's Liability

It is generally unacceptable to MCG for the other contracting party to limit its liability for breaching the contract, to restrict the remedies or relief that MCG may seek in the event of a breach, or to disclaim express and/or implied warranties. If the other contracting party is attempting to limit its liability in these or other ways, please contact the Office of Legal Affairs.

---Delivery / Risk of Loss

If an item is to be delivered to MCG, it is preferable that the contract provides that the item be tendered F.O.B. destination point. When so shipped, the risk of loss does not pass to MCG until the item is delivered to the pertinent MCG facility.

---Effective Date of Contract

Normally, a contract becomes effective when it signed by both parties. In some instances, a contract is worded such that the effective date of the contract is a date before the parties have actually signed the contract. Although this practice should be avoided if possible, if it is essential that the effective date of the contract be before the date that the parties have signed the contract, then the effective date should be referred to "as of" the date in question. Performance should not begin under a contract until the contract has been signed by all parties.

---Governing Law and Venue

The contract should state that: "This Agreement shall be governed and construed in accordance with the laws of the State of Georgia. Venue for any action to enforce the terms and conditions of the Agreement shall be in Richmond County, Georgia." If the other contracting party will not agree to the applicability of Georgia law and prefers that the law of another state govern, then the Agreement should remain silent on this issue. Also, MCG cannot agree to submit to federal court jurisdiction, regardless of where the federal court is located; doing so may constitute a waiver of Georgia's Eleventh Amendment rights under the U.S. Constitution.

---Indemnification / Hold Harmless / Exculpatory Clause

MCG does not have the authority to indemnify or hold harmless parties with whom it contracts and thus cannot agree to any contractual provision that attempts to impose such an obligation or otherwise attempts to limit the liability of the other contracting party. Similarly, MCG cannot agree to a provision that exculpates, or excuses, the other contracting party's fault or liability. In addition, if the other contracting party attempts in any way to limit its liability, such as only to acts of "gross" negligence and "willful" misconduct, please contact the Office of Legal Affairs.

---Independent Contractor Status

When MCG contracts with outside third parties, the contract should include language that makes clear that the parties are independent contractors. We suggest inserting the following language: “MCG and [other contracting party] shall be deemed to be and shall be independent contractors. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.”

---Insurance

For insurance purposes, MCG, as a state agency, is covered by Georgia’s Department of Administrative Services’ State Tort Claims Policy and General Liability Agreement. As such, MCG cannot agree to contractual provisions that require MCG to purchase private insurance policies, to obtain insurance from a particular carrier or in an amount acceptable to the other party to the contract, or to name the other party to the contract as an insured beneficiary. If the other party wants to reference MCG’s insurance coverage in the contract, we suggest inserting the following language: “The Medical College of Georgia’s faculty members and other employees are covered by a self-insurance fund administered by the Georgia Department of Administrative Services. This coverage has limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.” You may also provide the other party with a copy of the Department of Administrative Services’ Certificate of Insurance. To obtain a copy of the Certificate of Insurance, please contact the Office of Legal Affairs.

If appropriate, the contract should require the other party to obtain (or maintain) insurance and should specify that the other party provide written proof of insurance, satisfactory to MCG, within ten business days of the execution of the contract.

---Intellectual Property / Patent Rights

MCG’s claims to intellectual property and patent rights should be protected. If these items are an issue in the contract being negotiated, the Office of Legal Affairs should be contacted.

---Late Payment Fees

MCG does not agree to pay a charge or fee for late payment. Accordingly, sections or provisions in a contract that would obligate MCG to pay a late fee should be stricken.

---Length of Contract

Ordinarily, MCG does not agree to enter into a contract longer than one year in duration. Exceptions to this may exist in certain circumstances, such as if the contract does not obligate MCG to pay money and gives MCG an unrestricted right to cancel the contract at any time. If you believe that it is necessary to enter into a contract for a period longer than one year, please contact the Office of Legal Affairs. Contracts may also be renewed. See **Renewal of Contract** below.

---MCG is not Contracting Party

MCG does not, nor do its schools or departments, have the legal authority to enter into a contract in its own name. MCG is a unit of the Board of Regents of the University System of Georgia; the Board of Regents enters into contracts on MCG’s behalf. Accordingly, the contract should be drafted for “The Board of Regents of the University System of Georgia on behalf of the

Medical College of Georgia.” In addition, that phrase should be included over the signature line for the appropriate MCG official. See **Signatory Authority of MCG Officials** below.

---Non-Discrimination

MCG prohibits illegal discrimination and favors a diversified workforce. Accordingly, we suggest inserting the following language: “Neither MCG nor [other contracting party] shall discriminate against any person on the basis of age, disability, gender, national origin, race, religion, sexual orientation, or status as a veteran in the performance of this Agreement.”

---Notice

The contract should contain the full name, title, address and telephone number of a designated contact person for the other contracting party.

---Payment

Particularly if the contract provides that the other party will pay MCG, the contract should clearly establish the time, place and method of payment.

---Renewal of Contract

As noted above, contracts are ordinarily limited to a period of one year. Contracts may, however, be renewed. A contract should not automatically renew and it should not renew without MCG having to affirmatively indicate in writing its agreement to renew the contract. If you desire to renew a contract beyond its initial term, the following language should be inserted: “This Agreement may be renewed for additional periods of one year each if agreed upon in writing by both parties.” Contracts requiring MCG to expend funds may not be renewed unless the necessary funds have been appropriated.

---Severability Clause

A severability clause allows a contract to remain enforceable if one or more of its provisions are found to be invalid. We suggest inserting the following language: “If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this contract, such provision is fully severable and this Agreement must be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part of this contract. The remaining provisions of the contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or its severance from this Agreement.”

---Signatory Authority of MCG Officials

The President of MCG has the authority to sign all contracts for MCG and the President has delegated that authority in part to various MCG officials. The Contract Signatory Authority list, which can be obtained from the Office of Legal Affairs, shows which officials have been delegated authority to sign what type of contracts.

---Tax-Exempt Status

As a state institution operating under the Board of Regents of the University System of Georgia (itself a public body of the State of Georgia), MCG is ordinarily not required to pay income or sales taxes. Accordingly, any section of a contract that provides for taxes to be withheld from

payments owed to MCG or sales taxes to be added to payments owed by MCG should be deleted.

---Templates

Contract templates have been developed for both clinical and non-clinical research agreements. These may be accessed at the Office of Legal Affairs website, <http://www.mcg.edu/services/legal>. Standardized “form” contracts have been developed for certain relatively routine transactions, such as MCG faculty employment contracts (accessed at [http://www.usg.edu/academics/handbook/section 4/4.11.01.phtml](http://www.usg.edu/academics/handbook/section%204/4.11.01.phtml)), MCG house officer notices of appointment (accessed at <http://www.mcg.edu/resident/coordinate.htm>), and MCG student housing leases (contact the Director of Residence Life).

---Termination

If the contract allows early termination by the other contracting party, the contract should also provide that the other party shall pay all costs accrued by MCG as of the date of the termination, including non-cancelable obligations incurred prior to the effective date of termination. In addition, the other party shall repay to MCG any monies that it received from MCG for any obligations that the other party has not fulfilled at the time of termination.

---Use of MCG Name

It is important to prevent the unauthorized use of the MCG name. A contract should provide that: “[Other contracting party] shall not use MCG’s name in any advertising or publicity material or make any form of representation or statement in relation to the work conducted under the terms of this Agreement that would constitute an express or implied endorsement by MCG of any commercial product or service, and that it will not authorize others to do so, without first having obtained written approval from MCG.”

---Warranties

MCG should not “warrant” or make guarantees in a contract. If this is important to the other contracting party, MCG can agree to language that states that MCG will use reasonable efforts to perform in accordance with the terms and conditions of the contract.

---“Whereas” Clauses

These clauses generally appear at the beginning of a contract. They often provide background information about the parties and the reason(s) the parties are entering into the contract. Such clauses may aid in establishing the intent of the parties and in interpreting the contract should a disagreement later arise.

ATTACHMENT B

DUE DILIGENCE CONSIDERATIONS

When MCG enters into a contract, it enters into a relationship with another party that offers potential risks and benefits. All MCG personnel involved with a contract should consider the implications of such a relationship before they negotiate, draft, approve, or sign the contract. Such considerations should, at a minimum, include:

- Does a contractual relationship with the other party support the mission of MCG?
- What are the potential costs and benefits of the contract? Are such costs and benefit of a one-time or recurring nature?
- Does MCG have the ability to fulfill what would be its obligations under the contract?
- Does the other party have the ability to fulfill what would be its obligations under the contract? Has MCG contracted with this party before? Have other entities that have previously contracted with this party been contacted?
- Does the individual who will sign the contract on behalf of the other party have the authority to do so?
- What are the consequences for MCG and the other party if either failed to fulfill its respective obligations?
- Could another unit within MCG or within an MCG affiliated entity provide the “to be contracted for” goods or services?
- Will the contract impact other units at MCG beyond the unit responsible for managing the contract? If so, have the appropriate personnel at those other units been notified and their views solicited?
- Will the contract impact MCG affiliated entities (such as MCG Health, Inc., MCG Physicians Practice Group)? If so, have the appropriate personnel at those entities been notified and their views solicited?
- How will the contractual relationship appear to the Board of Regents, other State agencies, and the general public?

ATTACHMENT C



CONTRACT ROUTING AND APPROVAL FORM

Please complete the requested information and obtain all necessary approvals and signatures in boxes 1 – 3. Please also attach at least two original contracts (with all accompanying exhibits, attachments, and all other documents incorporated by reference in the contract) to this completed Form before submitting the package to the Office of Legal Affairs.

1. GENERAL INFORMATION

Type of contract / brief description: _____

Contract Period: Start ___/___/___ End ___/___/___

Other Contracting Party: _____

Is the Other Contracting Party a nonprofit organization? ___(yes) ___(no)

MCG Contact Person For Contract: _____
(Name) (Title) (Phone) (E-mail)

(School/Center/Institute) (Department)

Is this first time that this contract is being submitted to the Office of Legal Affairs for review? ___(yes) ___(no)

2. CERTIFICATION BY RESPONSIBLE MCG PERSONNEL

I have read the attached contract in its entirety. I am satisfied that the contract accurately describes the agreement between the parties, including the goods and/or services to be provided (for example, description of goods, delivery terms, statement of work) and the obligations imposed (for example, manner and dates of payment, confidentiality provisions). I believe that the contract is in MCG's best interest, that the activity is consistent with MCG's mission, and that MCG can provide the necessary services, materials, and/or funds designated in the contract. I accept responsibility for routing this contract and for managing it if it is executed. If this contract is a sponsored agreement, I have attached the Division of Sponsored Program Administration's "Extramural Grant/Contract Agreement Routing Form." If the Other Contracting Party is a nonprofit organization and is to provide services or facilities to MCG, I have gathered the necessary information to be reported to the state auditor and I believe, after review of the Other Contracting Party's financial and other information, that the Party is financially viable and capable of fulfilling its contractual obligations.

(Signature) (Date) (Name)

3. ROUTING AND APPROVALS

A. Approval by Dept. Chair / Office Head / Center or Institute Director

The attached contract is approved. It is appropriate and necessary to the Department's / Office's / Center's or Institute's mission and priorities and such unit can furnish the services, materials, and/or funds designated in the contract.

(Name) (Signature) (Title) (Date)

3. ROUTING AND APPROVALS (continued)

B. Review by other MCG Departments/Offices/Units (if appropriate)

Review by the Office of the Controller (for revenue producing contracts): I have reviewed the attached contract and [] have no objections, [] have certain concerns [check one] as set forth here: _____

(Name) (Signature) (Title) (Date) (Phone)

Review by the Division of Sponsored Program Administration (for sponsored agreements): I have reviewed the attached contract and [] have no objections, [] have certain concerns [check one] as set forth here: _____

(Name) (Signature) (Title) (Date) (Phone)

Review by the Division of Information Technology Support and Services (for contracts impacting information technology): I have reviewed the attached contract and [] have no objections, [] have certain concerns [check one] as set forth here: _____

(Name) (Signature) (Title) (Date) (Phone)

Review by _____ [other MCG office]: I have reviewed the attached contract and [] have no objections, [] have certain concerns [check one] as set forth here: _____

(Name) (Signature) (Title) (Date) (Phone)

C. Approval by Dean of School / Vice President

The attached contract is approved. It is appropriate and necessary to the School's / MCG's mission and priorities and such entity can furnish the services, materials, and/or funds designated in the contract.

(Name) (Signature) (Title) (Date)

D. Approval by Associate Provost, Academic Affairs (if appropriate)

(The Associate Provost must review and approve all education contracts, agreements and memoranda of understanding with universities, colleges, or schools). The attached contract is approved.

(Name) (Signature) (Date)

4. REVIEW BY OFFICE OF LEGAL AFFAIRS (for OLA use only)

Received by OLA: ___/___/___ Assigned to _____ on ___/___/___ Review completed on ___/___/___ by _____

Returned to Originating Dept: ___/___/___ Received back from Originating Dept: ___/___/___

Original contracts sent to: [] Office of the President, [] Office of the Provost, [] _____ (other)
for signature: ___/___/___

PLEASE RETURN ALL SIGNED ORIGINALS TO THE OFFICE OF LEGAL AFFAIRS.

"MCG signed only" originals returned to Originating Dept. on: ___/___/___

"Signed by both parties" originals returned to OLA on: ___/___/___

Office of Legal Affairs comments:

Office of Legal Affairs * 1120 15th St., AA-211 * Augusta, GA 30912-7615
Phone: (706) 721-4018 * Fax: (706) 721-8014 * e-mail: legal@mcg.edu