

# **ADM 315 – McPherson College Risk Management Policies**

The role of Risk Management is to make and implement decisions that will minimize the adverse effects of accidental losses as well as business losses to the College.

Responsibilities involve:

- Identification of risks and liability exposures by performing risk assessments and analysis with departments.
- Evaluation and selection of risk management techniques.
- Review of contractual agreements to transfer risk and liability exposures and ensure that insurance requirements are appropriate.
- Management of claims against the College involving bodily injury, property damage, automobile, and other types of losses.
- Administer and management of the College's Liability, Property, student health, and other programs through insurance and self-insurance programs.

The Office of Financial Services also works very closely with campus organizations and departments involving student and academic programs, travel-related matters, motor vehicle record checks for employees and students, student driver safety classes, certificates of insurance, and use of facilities.

## **Bus Chartering Procedures:**

As of 2012, a new bus chartering policy is in place. In addition, the College has signed a contract with a single provider and requires campus departments and student organizations to do business with this provider.

When a bus provider is hired, the only documentation a department should accept for signature from the provider is the "Confirmation" evidencing the date(s) of service, pick-up and drop-off information, cost and billing detail (total expense and deposit are determined between the provider and College department), description of vehicle, and it may contain other detail related directly to the trip. It must not include any provision stating that the College would be responsible for property damage, liability, negligence, etc.

Obtain certificates of insurance and request to be added as an additional insured under the chartering company's policy.

**Invoices and Payments:** Bus chartering invoicing and payments are on an as used basis.

### **Trip Cancellation Procedures:**

In cases where cancellation by the College of a trip is necessary due to unforeseen circumstances, the College will strive to notify the bus provider as soon as possible.

1. In cases where cancellation by the College of a trip occurs no less than six (6) hours before embarkation from the bus provider's workplace, there will be no trip and/or penalty charges assessed. Any prepaid trip deposit will be returned to the College.
2. In cases where cancellation by the College of a trip is necessary due to unforeseen circumstances is less than six (6) hour notification, any penalty charges assessed will not equal the full cost of the planned trip. Such charge should be no larger than is needed to defray the bus provider's expenses, i.e. hourly compensation for the bus driver commuting to/from work site.
3. The College will work closely with the bus provider to confirm and schedule, with as much advance notice as possible, all anticipated trips to ensure a positive working relationship. Transportation often occurs before

or after normal 8:00 am – 5:00 pm business hours. Firm departure dates will be shared with the bus provider as soon as they are available, especially in the case of College Athletics department team trips.

### **Trip Tardiness/No Show**

Should the coach or bus and driver arrive at the trip point of origin more than thirty (30) minutes late from the arranged time or not arrive at all, all charges connected with alternate arrangements, either made by McPherson College authorized personnel or the bus provider, will be the responsibility of the bus provider.

## **Driving College Owned and Rented Vehicles Including Safety and MVR Review**

Only McPherson College faculty, staff, students and volunteers, who have an acceptable Motor Vehicle Record (MVR) and have been approved to drive a College Vehicle (College-owned, leased, or rented vehicles), by Facilities Management and Human Resources offices, are authorized to reserve and operate College Vehicles. Students are only allowed to operate a College Vehicle in the United States and its territories.

### **Minimum Age and Experience Requirements**

The following minimum age and experience requirements apply to all individuals (employees, students, and volunteers) authorized to drive any vehicle on school business:

- Drivers of high occupancy vehicles must be at least 21 years of age *and* have been licensed for a minimum of three years prior to driving on school business.
- Drivers who require a Commercial Driver's License (CDL) (Class A, B, or C per statute) to perform their job duties for the school must be at least 21 years of age *and* have been licensed for a minimum of three years

prior to driving in a CDL capacity on school business. CDL drivers must comply with applicable requirements for medical certification and drug testing.

- Driver Licensing Requirements

- School employees, who drive on the job, must have a valid Driver's License, of the classification appropriate to the type of vehicle being driven.
- Foreign Drivers Licenses and International Drivers Licenses are not acceptable for driving on school business. Individuals with non-U.S. driver's licenses must obtain a valid US Driver's License prior to driving on school business.

### Motor Vehicle Record Review

The school is required to review the Motor Vehicle Record (MVR) of all authorized drivers to evaluate their licensing status and citation history. Based on the MVR review, each driver's status is classified as acceptable, conditional, or unacceptable. This section describes the MVR review process and the point system used for assigning driver status.

- A standard MVR review includes the most recent 36 month period from the date of the request. If the full 36 month record is not reasonably available for review, the available record will be evaluated by Risk Management on a case-by-case basis. Citations that are more than 36 months in the past are not included in the review.
- MVR review is initially conducted for new hires as part of the school's background screening process.
- Standard MVR review is scheduled at least annually for all registered drivers. MVR review is also performed after any vehicle accident involving a school driver, on an increased frequency for conditional drivers, and on request from a supervisor if there is a reasonable basis for the request.
- All MVR reviews required for hiring decisions are conducted by Human Resources. Human Resources reviews

the MVR and advises the hiring authority of the applicant's status as acceptable, conditional, or unacceptable, so this information can be incorporated into the hiring decision.

- In the event of an adverse finding only (conditional or unacceptable), RM&S forwards this information to the driver's supervisor and Department Head with any specific driving limitations and instructions that arise from the driver's MVR review.
- If MVR review outside the hiring process (students, volunteers, current employees) requires an out-of-state record for any portion of the 36 month driving record, the record must be obtained through Human Resources.
- MVR review information is considered a personnel record, and is therefore not subject to public records inspection or release unless required by subpoena, court order, or law. Each driver's Motor Vehicle Record (MVR) is evaluated using the point system outlined below:
  - For purposes of this Fleet Safety Policy, a Moving **Violation** is any citation issued for which the Motor Vehicle Division assigns points to the driver's record, except those listed below as Serious Violations. Examples include speeding, traffic control violations, failure to yield, etc.
  - Example of a **Serious Violation** includes any **conviction** for Driving Under the Influence (DUI), Reckless Driving, Racing on Highways, Aggressive Driving, Leaving the Scene of an accident, etc.

Moving Violation = 3 points

At Fault Accident = 4 points

ACCEPTABLE	CONDITIONAL	UNACCEPTABLE
4 or fewer points	6–8 points	9 or more points

No more than one moving violation or at-fault accident in the last 36 months	More than one, but not more than two moving violations in the last 36 months	Three or more moving violations in the last 36 months OR any serious violation in the last 36 months
Example:	Example:	Example:
1 speeding ticket = 3 points	2 speeding tickets = 6 points	3 speeding tickets = 9 points 1 DUI
	1 At Fault Accident = 4 points	2 Speeding tickets and 1 At fault accident = 10 points
Acceptable=MVR	Any of these situations = Conditional MVR	Either situation = Unacceptable MVR

#### Requirements for Conditional or Unacceptable MVR Status

The following management actions are required for current school drivers who have a ***Conditional*** motor vehicle record:

- Upon determining that a school driver has a conditional MVR, RM&S will provide written notification to the driver's supervisor and the Department Head, with instructions and the expected duration of conditional status, assuming no additional moving violations are received. The driver's supervisor must obtain written authorization from their Department Head to allow the driver to continue driving on school business while their MVR is in conditional status. Conditional MVR drivers must complete defensive driving instruction as instructed by RM&S. While in conditional status, the MVR will be reviewed every 90 days to monitor if additional moving violations have occurred.
- Failure to maintain an acceptable or conditional driving record may result in the driver's department taking action up to and including suspension or revocation of school driving privileges and/or termination of

employment.

The following management actions are required for current school drivers who have an **Unacceptable** motor vehicle record:

- Upon determining that a driver has an unacceptable MVR, RM&S will provide written notification to the driver's supervisor and Department Head with instructions and the expected duration of unacceptable MVR status, assuming no additional moving violations are received.
- The driver must be advised in writing by either the supervisor or Department Head that the driver is prohibited from driving any vehicle on school business until the driver receives written notification from their supervisor that their driving status has returned to either conditional or acceptable status. Drivers who transition from unacceptable to conditional status require written authorization to drive.
- A current MVR review must be conducted by RM&S prior to re-instatement of driving privileges.
- Failure to maintain an acceptable or conditional driving record may result in the driver's department taking action up to and including suspension or revocation of driving privileges and/or termination of employment.

The following management actions are required for **job applicants** who have either **Conditional** or **Unacceptable** MVRs:

- Human Resources will evaluate the MVR of job applicants as part of regular pre-hire background screening and will advise hiring departments and RM&S of a job applicant's MVR status.
- The hiring department is responsible for evaluating the essential functions of the job and determining whether to proceed with the hiring of the applicant.
- If an applicant is hired with a conditional MVR, then the requirements outlined above are immediately applicable upon hiring.

No applicant may drive on school business with an unacceptable driving record.

### **Student Driving (Undergraduate & Graduate Students)**

The required age for driving outside the boundaries of McPherson County is a minimum of 21 years of age. Nontraditional students over 25 may drive 15-passenger vehicles. **Please note:** Student drivers must be relieved of driving responsibilities every 3 hours; if travel will exceed three (3) hours (one way), then two (2) approved drivers are required. .

### **Domestic Vehicle Rentals (United States), Including Puerto Rico**

If renting a vehicle in the United States, including Puerto Rico, there is no need to purchase the Collision Damage Waiver that is offered by the rental agency. However, if an accident occurs that involves injuries or damage to the rental vehicle, another vehicle, or other property damage (to a structure, building, guardrail, etc.), it must be reported *immediately* to the local police agency, rental agency, and to the Financial Services Office at McPherson College, no matter how minor the injury or damage is.

### **International Vehicle Rentals**

Employees who rent a vehicle outside of the United States, except for Canada, must purchase the Collision Damage Waiver offered by the rental agency. An employee must be an approved College driver prior to arranging for and operating a vehicle in another country and the approved College driver must meet all applicable laws in the country where operation of a vehicle will occur. Please review "Rental Vehicles Allowed" for the types of vehicles that are approved to be rented under the College name. Students are not allowed to operate vehicles outside of the United States, including Canada and Mexico.

Every accident with or without injuries, including any



property damage, needs to be reported *immediately* to the local police, the rental agency, and to the Offices of Public Safety and the Financial Services Office at McPherson College.

Refer to McPherson College Staff Policy, #6.08 Vehicle Rental and McPherson College Staff Policy #6.09 15-Passenger Van Rental.

### **Motor Vehicle Accident Reporting Procedures**

In the event of an accident, which causes injury to persons or property, dial 911. Then contact your supervisor immediately.

For non personal injury or property damage accidents. please review the lease documentation in the vehicle's glove compartment. Then contact your supervisor immediately.

### **Rental Vehicles Allowed**

If renting a vehicle from an outside rental agency (e.g., Enterprise, Hertz, Avis, an international agency, etc.), 15-passenger vans, minivans and compact, mid-size, and full-size cars can be rented under McPherson College policies.

If a department needs to rent a large vehicle for special purposes for domestic travel (e.g., a U-Haul van/truck), *please contact Financial Services prior to making any rental arrangements*; these requests will be reviewed on a case-by-case basis and will also need to be reviewed by the respective department's supervisor and possibly by others. Not all requests may be able to be accommodated. Only College employees who are approved College drivers and have sufficient experience driving large vehicles will be approved to operate such vehicles, as determined by Financial Services and the respective department's supervisor. Students are only permitted to drive smaller vehicles and in the United States only (e.g., sedan, minivan, etc.). It is common for a rental company to issue a rental agreement and request evidence of auto insurance from the College. A rental agreement is

considered a contract; therefore, it would be governed by the College's contract policy; only certain individuals at the College have signatory authority, which is stated in the contract policy.

### **Motor Vehicle Accident Deductibles**

When an at-fault motor vehicle accident occurs involving a College Vehicle, the department will be charged an automobile insurance deductible to assist with covering the cost to repair the vehicle. The vehicle damage assessment is conducted by the McPherson College garage and by an outside automobile repair shop. The deductible that will be charged to a department will either be \$500 or \$1,000, which will depend on the type of College Vehicle. Only approved College drivers are authorized to operate a College Vehicle.

### **Transporting Individuals Not Affiliated with McPherson College**

Individuals not affiliated with McPherson College should provide proof of health and automobile insurance prior to being transported in any college owned or rented vehicle.

## **Forms:**

### **McPherson College Travel Form**

The McPherson College Travel Form can be used by faculty and staff who are coordinating student events or trips as a way to ensure that important emergency contact, participant information, release of liability and medical information is on hand in the event of an emergency. The forms must be retained in a secure location in the relevant department/school for 3 years from the date of the event/trip for all participants who are age 18 and older and must be retained indefinitely for minors (those under age 18).

The McPherson College Travel Form is located on the college intranet under HR forms, McPherson College Travel Form.

## **McPherson College Travel Release of Liability Waiver**

Each person participating in a college-related activity must sign a waiver and the event organizer must sign the waiver as a witness. Waivers must be retained in a secure location in the relevant department/school for 3 years from the date of the event for all participants who are age 18 and older and must be retained indefinitely for minors (those under age 18).

A release of liability waiver form is located on the college intranet under HR forms, McPherson College Travel Release of Liability Waiver.

## **Injuries:**

If an injury occurs on campus:

- Students: Office of Student Life
- Visitors: Facilities Director
- Employees: Human Resources Office

If an injury occurs to a student or employee during travel (off campus) for any College-sanctioned trip, please notify the Academic Affairs Office.

If an employee is injured, the Workers' Comp First Report of Injury Form must be completed within 24 hours and submitted to the Human Resources office. The Workers' Comp First Report of Injury Form is located on the college intranet under HR Forms, Workers' Compensation. Workers' Compensation insurance covers those who are injured or become ill as a direct result of their job. Questions may be forward to Human Resources.

## **Insurance:**

**Insurance Requirements for Vendors (SUBJECT TO CHANGE DEPENDING ON SCOPE OF WORK). These requirements do not apply to construction projects.**

McPherson College requires Certificate(s) of Insurance be on

file with our Financial Services Office for review and approval prior to the commencement of any work by your firm. Mailing address is McPherson College, 1600 East Euclid, McPherson KS 67460.

McPherson College brokers with IMA in Wichita, KS for its insurance.

**1. The standard insurance requirements are as follows**

Vendor agrees to obtain and maintain in full force and effect the following insurance (at Vendor's own expense to cover activities of Vendor and its agents, subcontractors and/or employees) before commencement of any awarded work and throughout the duration of the Agreement: **Commercial General Liability** insurance on an occurrence form, including broad form blanket contractual liability coverage, for claims arising in connection to this Agreement for personal injury, bodily injury, and property damage, including products and completed operations, with available limits not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 general annual aggregate. **Comprehensive Automobile Liability Insurance** covering all owned, non-owned and hired vehicles with limits of liability not less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage. **Umbrella/Excess Liability Insurance** over all underlying exposures with limits of not less than \$5,000,000 per occurrence. **Workers' Compensation** policies, including Coverage B Employer's Liability, in full compliance with the Workers' Compensation Laws of the State of Kansas and all states where the work is performed or in which a claim shall be presented. If employer is located or resides outside the State of Kansas, the certificate must evidence the policy coverage applies to All States.

**2. In addition, and if applicable to the scope of work by**

**Vendor, the following insurance policies may also be required: Professional Liability/Errors & Omissions Insurance and/or Technology Services Errors & Omissions/Technology Products Errors & Omissions** with minimum limits of not less than \$1,000,000 limit and in the annual aggregate (or higher limits may be required), inclusive of defense costs, and must indicate if it provides occurrence or claims-made coverage. If Professional Liability coverage is written on a claims-made form, coverage must be maintained for a minimum of three years after completion of contract. If Professional Liability policy has a self-insured retention or deductible greater than \$25,000 it is required that an audited financial statement be submitted for review. Any insurance written on a claims-made form must indicate retro date. McPherson College must be named as an additional insured under Professional Liability/Errors & Omissions Insurance and/or Technology Services Errors & Omissions/Technology Products Errors & Omissions policy. Further, an appropriate **endorsement** deleting the Insured vs. Insured exclusion must be evidenced, so as not to impede a claim by College for a wrongful act of Vendor.

**Cyber Liability Insurance** requirements are the following, but the policy limits may change depending on the scope of work and cyber exposures. Network Security / Privacy Liability with breach response coverage: Liability should have a minimum of \$1,000,000 limit and in the annual aggregate and include breach response, inclusive of defense costs. If cyber liability policy or policies are written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the Agreement. McPherson College must be named as an additional insured under the cyber policy. Further, an appropriate **endorsement** deleting the Insured vs. Insured exclusion must be evidenced, so as not to impede a claim by College for a wrongful act of

**Vendor.Commercial Crime Insurance/Employee Dishonesty Coverage** for loss of money, securities and other tangible property belonging to McPherson College, or for which such money, securities and other tangible property McPherson College is legally liable for, resulting directly from a fraudulent or dishonest act by Vendor's employee, or a Vendor's subcontracted employee, while performing professional services for McPherson College, in an amount not less than \$100,000 (limit may change depending on work performed for College) for any one loss or occurrence. Coverage will also extend to Third-Party Customer Extension, along with a Loss Payee Provision.

### **3. For ALL policies required**

All insurance carriers shall be licensed in the State of Kansas, acceptable to McPherson College, and with a minimum rating of "A-," Class VII in Best's Key Rating Guide published by A.M. Best and Company, Inc. Insurance shall be on a **yearly basis** written for not less than any amounts of liability specified as part of this contract. The insurance may be provided in a policy or policies. The terms of all insurance shall be acceptable to the College. The limits of liability shall be as stated herein, unless prior to commencement of any work written approval is granted by the College for variance from those limits. Each insurance policy required to be provided, with the exception of the Workers' Compensation and Employer's Liability, shall be endorsed to name as additional insured McPherson College, their directors, members, officers, employees, students, and all other persons or entities as may be reasonably required by McPherson College (see separate requirements for Professional Liability and Cyber Liability policies above). The coverage afforded the additional insured under these policies shall be primary insurance and shall include Products and Completed Operations coverage. Additional insured endorsement CG

2010 and CG 2037 or its equivalent, without modification, is mandatory providing additional insured status to the College including Completed Operations coverage. If the additional insured has other insurance, which is applicable to the loss, such other insurance shall be on an excess, secondary and non-contributory basis. Waiver of Subrogation for General Liability policy and Auto Liability policy must be included and Vendor shall waive all rights of recovery, under subrogation or otherwise, against McPherson College, and will be stated as such on the Certificate of Insurance. Vendor shall furnish to McPherson College a Certificate(s) of Insurance evidencing all insurance as required herein and must contain a provision the coverage and limits of liability afforded under the policies shall not be materially altered, non-renewed, canceled, reduced or allowed to expire without thirty (30) days prior written notice to the certificate holder. Submittals of any of the foregoing documentation may also be required for any subcontractors. Subcontracting is allowable only with prior approval of the College. Vendor and subcontractors must abide by necessary procedures, requirements and regulations outlined in the contract.

#### **Certificates of Insurance**

A Certificate of Insurance is a document that evidences specific insurance coverage. The Certificate provides verification of the insurance and contains information on an insured's policies including; limits of coverage, insurance company name, policy number, named insured, additional insured, the policy effective/term dates, etc. A certificate is provided to third parties who require it in the course of doing business with the insured party.

Certificates are usually requested by opposite parties in an agreement, contract, or transaction to make certain the other party has the appropriate insurance

coverage.

The College's insurance requirements for third parties are subject to change depending on the scope of work. If you have any questions, please contact Financial Services. McPherson College requires a Certificate of Insurance when the College contracts with an outside party.

There will be times when College departments are required to provide a Certificate of Insurance to a third party for an off-campus event or activity. Please complete the Certificate of Insurance Request Form below at least 10 days prior to the scheduled event.

### **Student Health Insurance**

All athletes and international McPherson College students are required to carry student health insurance. They can purchase this from the college if needed. It is preferred that all students be covered by student health insurance of some type. We prefer the international students purchase this insurance even though they may have a policy that is accepted in the US.

## **Property and Liability:**

McPherson College protects its assets through a Property Insurance Plan brokered with IMA, Wichita, KS. This involves the College purchasing insurance to protect against risks, such as fire, weather damage, or theft, and also insures for a broad scope of property losses, such as computers, equipment, and building contents, as well as for third-party liability losses. Insurance deductibles may also apply. All damage to or loss of College-owned property is to be reported to Financial Services immediately to determine if the loss is insured, self-insured, or qualifies for a third-party claim.



**Personal Property is Not Considered College-owned property.** Therefore, it is not covered by the College's Property Insurance Plan.

### **Computer Theft or Damage**

The College maintains an insurance program to cover the theft of College-owned computer equipment. In each instance of theft or damage, the department must report the details of the occurrence immediately to Financial Services and Information Technology Services. Details must include the date; time and location of loss; and equipment type and identification.

## **Travel:**

Financial Services works closely with campus departments on domestic and international travel arrangements. This involves faculty and staff who travel with students for academic programs, student organizations, sport teams, etc. Financial Services will assist with identifying risks associated with your travel, and then recommend how to implement risk management techniques, such as contracts, insurance, transportation methods, etc.

### **Domestic Travel:**

Travel resources include:

- ADM230 Expenses & Expense Reimbursement
- ADM 315 Risk Management Policies
- Staff Policy 6.08 Vehicle Rental
- Staff Policy 5.09 15-Passenger Van Rental
- McPherson College Travel Form
- Release of Liability Waiver

### **International Travel**

For all International travel, please contact the Office of Academic Affairs.

All McPherson College faculty, staff, and students are covered by insurance for medical and evacuation emergencies.

## **Contracts:**

### **Overview**

Many McPherson College employees, in the course of their regular work for the institution, are faced with the need to negotiate and execute contracts which legally bind the College. This policy and contract management guide is intended to provide those employees with a framework for understanding the specifics of the contract creation, review and acceptance process; the essential elements which should be incorporated into all contracts to which the College is a party; and the limits, constraints, authorities, and approvals required before a contract can be executed on behalf of McPherson College.

### **Reason for Policy**

Because all contracts create legally binding obligations, entering into a contract exposes College resources and College employees themselves to certain statutory and legal risks. To protect against this risk exposure, it is essential that departments or individual administrators intending to enter into a contract with outside parties follow established procedures with regard to responsibility and authority to execute contracts (including financial limits) as well as review procedures designed to ensure that proper contract requirements and approvals have been satisfied.

### **(A) Policy Statement**

Contracts entered into on behalf of McPherson College must be reviewed and approved by designated College personnel to ensure compliance with established College policy regarding contract language and stipulations. Contracts may only be executed by College designated signatories as specified in

this policy.

The Performance of Work, Ordering of Goods, or Contracting of Services encompassed by a contract between McPherson College and a third-party vendor should under no circumstances commence prior to the review and approval of a formal contract as set forth in this policy document.

## **(B) Definitions**

**Contract** – A legally enforceable agreement, contract, lease, or license between two or more parties (for the purpose of this policy, letters of intent and purchase orders, whether or not legally enforceable, should be treated as contracts).

Included in this definition are:

- Contracts for the purchase (or the provision by the College) of goods and services (including purchase orders);
- Contracts for the purchase (or sale by the College) of real property;
- Contracts for the construction, renovation or maintenance of new or existing facilities;
- Contracts for the purchase (or sale by the College) of investments;
- Contracts to borrow funds (debt) or establish lines of credit;
- Contracts to establish annuity arrangements with donors;
- Contracts for the engagement of performers or entertainers;
- Contracts for the purchase (or sale by the College) of professional services;
- Contracts for the purchase or use (or sale by the College) of patents or intellectual property;
- Contracts between a governmental agency or private funding source and the College for external funding of research projects or other activities;

- Contracts/agreements for student workers with outside agencies to participate in volunteer activities or “service learning”;
- Contracts for the use of College resources or facilities such as athletic venues, dining facilities, or other owned College properties;
- Contracts to lease facilities for college use.
- Contracts or subcontracts with another educational institution to participate in funding for research (or to subcontract funded research)

**Signatory Authority** -The authority of specifically designated (groups of) employees/representatives to sign on behalf of the College according to the tiers of financial limits or limits established in the corporate resolution set forth by this Contract Policy.

**Delegated Signatory Approval**-The delegation of signatory authority to authorized representatives to execute contracts on behalf of a College department where the total contract amount is less than \$50,000.00. Signatory approval may be granted to employees by the terms of this Contract Policy or in letter form by the President or a Vice President for Finance of the College.

**Sponsored Activities** -All grant funding agreements should be signed by the Vice President for Finance or a designated member of the finance staff.

### **(C) Policy: Contract Requirements, Mandatory Clauses, and Contract Exclusions**

**Insurance**—The College requires certain minimum levels of insurance coverage in each of several areas for any parties contracting with McPherson College and contracting parties should attest to such coverage within the language of any contract, in addition to providing requisite certificates under McPherson insurance requirements(see Insurance

attachment):

- General Liability including Products and Completed Operations: Minimum \$1,000,000.00
- Automobile Liability: Minimum \$1,000,000 Combined Single Limit (if operating vehicles or driving on McPherson campus or McPherson-owned or rented property.
- Workers Compensation: required for all parties performing work on College-owned or rented property.

Insurance amounts required may be higher for architects and contractors or others on major projects whose value exceeds \$5,000,000.00 and the College may further require that umbrella liability coverage be in place and acknowledged within contract language.

**Note:** The College itself may be required to provide general liability insurance when using a third party's real estate or equipment, to insure art work or equipment we are renting or leasing, or to insure vehicles we are renting. Where such insurance is required of McPherson College by a contract, the initiating employee should be in contact with the Vice President for Finance for guidance and documentation before executing any contract on behalf of the College.

**Indemnification Clause**-Any contracts executed on behalf of McPherson College should include an indemnification clause intended to protect the College against negligent acts by the contracting third party. Such clause should contain the following language:

[Contracting Party] agrees to defend, indemnify, and hold harmless McPherson College, its respective affiliates, contractors, officers, directors, trustee, employees and agents from and against all claims, liabilities, damages, and expenses, including attorney's and other professional's fees, arising out of or related to the intentional or negligent acts or omissions of [Contracting Party], its

affiliates, contractors, officers, directors, trustees, employees or agents.

**Independent Contractor Clause**—Any contracts executed on behalf of McPherson College should include an independent contractor clause to ensure against the contracting party alleging employment status with the College. Such clause should contain the following language:

**Neither** [Contracting Party]\_\_, nor any person assisting [Contracting Party]\_ in its obligations under this agreement, shall be deemed to be an employee of McPherson College. Furthermore, the arrangements contemplated by this agreement shall not be deemed to constitute a partnership or joint venture between [Contracting Party]\_ and McPherson College. Neither [Contracting Party]\_\_, nor any other person assisting [Contracting Party]\_\_, shall be covered by an employee benefit program maintained by McPherson College including, but not limited to, health insurance and worker's compensation benefits.

**Identification of McPherson College**—The College shall be identified as **McPherson College** in all contracts and agreements. The **official address** for the College shall be **Office of the Vice President for Finance, 1600 E Euclid St, McPherson College, McPherson, Kansas 67460**. Contracts executed on behalf of the College should specify a primary contact person for all subscribing parties as well as phone and fax numbers for such contact persons.

**Legal Counsel Review**—If a prospective contract/agreement includes provisions:

- that pose substantial monetary, legal, or physical risks to the College;
- that contain non-standard clauses with which the College representative is not familiar or comfortable;
- that touch upon highly technical conditions, scope of

work, or specific guarantees of performance

the Financial Services should be contacted to ascertain if outside counsel should be consulted prior to execution of the contract.

Contact with outside counsel for the purpose of contract review, should only be initiated through the Financial Services.

**Entire Agreement Clause**-The College requires that contracts include an entire agreement clause that clearly states that the written contract constitutes the whole agreement and that no verbal or side agreements will be acceptable or enforceable.

**Force Majeure Clause**-Contracts should contain a “force majeure” clause that addresses delay in performance or inability to perform caused by forces beyond the parties control (war, acts of god, natural disasters, etc.).

**Governing Law Clause**-The College requires that contracts specify that all contract provisions are governed by the laws of the State of Kansas.

**Termination in Event of Default Clause**-The College requires that contracts incorporate a “termination in event of default” clause. Such clause should define the events of a default clearly and should apply equally to both parties. Included in such events would be unsatisfactory performance, non-payment, unexpected change in contract terms, and any others as applicable to a specific contract. Such clause should also incorporate a provision for written notification of default to the defaulting party, including exact address and method of communication acceptable for such notice of default. Additionally, such clause should contain provision(s) for remedy of default, specifying acceptable corrective action and time allowed for completion of such corrective action.

**Mandatory Clause Exclusions:** The College will not execute contracts which contain the following clauses or limitations:

- Automatic Renewal—No contract should include an automatic renewal clause
- Single Indemnification Clause(benefiting third party only) —The College does not allow single indemnification clauses that only protect the outside contracting party
- Limitation of Liability —No contract should contain language allowing the outside contracting party to limit their potential liability.
- Serving of alcohol—Except for approved Caterers, no contract should specify the provision of alcoholic beverages.
- Assessment of late fees — Any contracts executed on behalf of McPherson College should not include a clause permitting the supplier to assess late fees for amounts past due. In the event such late fee language cannot be removed from a contract after negotiation, late fees should be capped at a dollar amount per occurrence of 5% or less of past due amounts and no late fees should be assessed resulting from instances of force majeure

**Payments Under a Contract:** Where possible, contract language should specify that payment of College obligations under the contract will be made by College check under terms specified in the contract, preferably with early payment discount options.

When the College agrees to reimburse expenses of the contracting party for such items as meals, mileage, hotels, airfares, copies and documents, third party consultants, etc., contract language should specify that such reimbursements will **only be made** upon presentation of receipts for such expenses by the primary contracting party.

**Specific Performance:** Wherever possible, contract language should carefully specify the obligations of the contracting



party to perform a service for McPherson College including defined out comes such as operation standards for equipment or objective measures of workmanship on construction as well as absolute timeframes for completion of work. Where contracts involve the delivery of products or systems, specifications related to such products or systems should be carefully and completely defined and provisions for testing and standards for formal acceptance should be embedded in the contract language.

#### **(D) Policy: Signature Authority and Review Process**

Six levels of signature authority and approval govern the execution of contracts on behalf of McPherson College. The signature levels defined below is required on any contract binding the College according to the schedule of monetary value of purpose below :

(1) Unless stated otherwise below, contracts with value **in excess of \$50,000\***: President or Vice President for Finance.

(2) Unless stated otherwise below, contracts with value **in excess of \$10,000 but less than \$50,000\***. President; Vice Presidents; Deans; Director of Facilities or Athletic Director.

(3) Unless stated otherwise below, contracts with value up to **\$10,000**: President; Vice Presidents; Deans; Director of Facilities; Controller; or Athletic Director.

#### **Other areas per corporate resolution:**

(4) Contracts or agreements outside the ordinary course of the college's business (including without limitation real estate sales contracts), Farm Service Agency documents outside the ordinary course of the college's business, and official reports are to be signed by the President or the Vice President for Finance. Brokerage accounts may be opened as needed upon the signature of President or the Vice President

for Finance.

(5) Contracts or documents transferring ownership of real property owned by McPherson College (including, without limitation, mineral deeds, oil and/or gas leases but not including documents creating residential leases of farm tenancies) must be signed by both

1. a) The President or VP for Finance and
2. b) The Chair, Vice Chair, Secretary, or Treasurer of the Board of Trustees.

6) Loans on behalf of the college require the signatures of both the President and Vice President for Finance.

**(E) Policy & Practice: Contracts Prepared and Submitted by Vendors and Performers/Contracts Not Easily Changed**

Administrators charged with managing contract activity for McPherson College will frequently find themselves faced with pre-formatted contracts prepared by vendors, their attorneys, and/or their agents and presented to McPherson as the terms under which they (the vendor) will perform or deliver goods and services. Managing this aspect of the contract relationship for the College is as important as negotiating a brand-new agreement with a vendor and poses the additional difficulty of securing the interest of the College in the context of another party's contract language which often overtly favors the outside contracting party.

In order to guarantee the College interest is well served and that risk to the College is adequately managed within the context of a vendor-prepared contract, an administrator should follow these steps:

- Read the contract fully and carefully and understand the College's risks and the contracting party's obligations under the contract.
- Consider the terms of the contract in the context of the

College requirements outlined above:

Does the contract provide for adequate insurance coverage by the vendor?

Does the contract provide for indemnification of the parties –if so, is the indemnification only to the vendor?

Does the contract contain an “Entire Agreement” clause? Does the contract provide (unacceptable) Limitation of Liability for the outside contracting party?

Does the contract conform to the other provisions outlined in ‘**contract policy**’ above?

Where vendor-submitted contracts contain language unduly favoring the outside contracting party, it is important to remember that such contracts can and should be amended by negotiation and by adding clauses to secure College interests which satisfy the contract policy requirements noted above or, alternatively, striking out unacceptable clauses which pose excessive risk to the College.

*In such cases, an administrator acting as the initiator or principal contact for such a proposed contract should seek the review and guidance of the Vice President of Finance. After such review, an amended contract may be executed by McPherson and returned to the vendor for final acceptance and signature/initialing of College initiated changes/clauses. This process is most likely to be successful with smaller and mid-sized local and regional vendors.*

There also may be vendor prepared agreements, especially those from very large corporate entities like IBM, Microsoft, Oracle, Siemens, Sunguard, etc. related to site licenses, service agreements, software packages and on-line software services, and/or major construction where vendors will not be flexible as to the alteration of the contractual terms offered to McPherson. In these cases, the review of the contract by

the Office of the Vice President for Finance, and even by outside counsel prior to execution *is essential* to assure that College interests are not unduly compromised by the terms of the contract.

#### **(F) Contract Checklist (for initiators and reviewers)**

Before embarking on a contract finalization process have you:

- Reviewed **Contract Management Policy**?
- Thoroughly read and understood the contract?
- Tried to identify (and quantify) the risks inherent in the contract?
- Determined the approvals required to complete the contract process?

#### **Check List:**

1. Does my level of signatory authority or approval allow me to execute this contract? Do I need to obtain the signature approval of a supervisor or senior manager to finalize this agreement?
2. Has the budget for expenses associated with this contract been approved?
3. Will delivery of goods or services under this contract fall in the same budget year as the funding?
4. Do the vendors under this contract have a history with the College; if not, have the vendors been reviewed and approved by the Financial Services?
5. Do other departments need to be involved in the review or implementation of this contract?
6. Does the contract contain special requirements or unique clauses? If so, have they been reviewed by the next levels of management? What special risks do they pose to the College?
7. Are the performance standards for services provided or goods/systems delivered clearly set forth in the contract?

8. Will this contract give rise to annual price increases, ancillary contracts and/or recurring costs to the College such as maintenance agreements, contract renewals, or requirements for additional equipment? If so, have such additional/ongoing costs been reviewed by the budget office and funded?
9. If the contract is the result of a Request for Quotation or a Request for Bid, is that documentation a part of the contract or attached as an exhibit?
10. Has the contract been submitted to the business office and stored with other contracts in a centralized location?

### **(G) Other Considerations**

As noted previously in this document, many contracts executed by College personnel in the course of supporting the College mission originate not with McPherson College but with the vendor or contractor providing a good or service to the College.

It is important to emphasize that the use of common sense, careful practices, and thorough communications should be the guiding principles for personnel whose College responsibilities extend to negotiating, approving, and executing contracts on behalf of McPherson. All of the aspects of good contract management defined elsewhere in this policy document will not necessarily apply collectively in each and every situation and to each and every contract.

For example, software licenses and usage contracts as well as contracts for access to online resources or databases do not involve vendor personnel on College property and may render considerations of insurance coverage irrelevant. The complete absence of indemnification clauses for both parties might well not constitute a fatal flaw in contract language structure. Liability limitations may well be excluded if the monetary risk inherent in the contract is effectively inconsequential.

Such a list of caveats and nuanced considerations around contract requirements could be extensive.

What is of paramount importance in the execution of contracts is that the standards of review and approval outlined here be sensibly adhered to in order to assure that appropriate oversight has been exercised before the College is legally bound. Additionally, it is crucial that the monetary thresholds for approval authority be followed in order to meet the requirements of our outside audit firms for prudent administration and strong management controls.

Office of:

Rick Tuxhorn, CPA, CGMA

Vice President for Finance