

Date: May 28, 2009

To: C&G Liaison Meeting

From: Pam Lombardo, Director of Business Services and Risk Manager

Re: **Land Access Agreements That Contain Indemnification Language in Violation of Standing Order 100.4(dd)(9) No Longer Require The Regents' Approval**

In May 2007, The Regents agreed that General Counsel could review and approve the indemnification terms in certain limited agreements in support of research even if the indemnification provision in such agreements was in violation of Standing Order 100.4(dd)(9). Specifically, with respect to land access agreements, The Regents agreed that General Counsel could sign off on these agreements even if these agreements required the University to assume third-party liability. Prior to this only The Regents themselves could sign such agreements. This delegation is intended to expedite and facilitate the research efforts of University researchers.

The Recommendation reads, in part, as follows:

*APPROVAL OF INDEMNIFICATION TERMS IN CERTAIN LIMITED AGREEMENTS IN SUPPORT OF RESEARCH*

*The President recommends that the Committee on Finance recommend to The Regents that: The President be given authorization to permit execution of contracts with indemnification provisions (a) in material transfer agreements to transfer tangible research production to the University, (b) in research or training or public service agreements with nonprofit or governmental entities, and (c) in land access agreements, all in the furtherance of research, training or public service that might require assumption by the University of third-party liability as a result of or arising out of University acts or University contract performance, an action for which approval by The Regents is required under Standing Order 100.4(dd)(9).....*

*Land Access Agreements*

*On occasion, University researchers need to gain access to land in order to conduct research, such as observing transient natural phenomena when they are occurring. In many cases the land owners require an agreement for access to their land and facilities that could result in the University assuming responsibility for third-party liability in violation of Standing Order 100.4(dd)(9). Often, these proposed contracts do contain indemnification clauses and they like to shift the risk of the proposed University research activity on their land completely or almost so to the University utilizing wording such as the University indemnifying, defending, and holding the landowner harmless from any liability resulting from or arising out of the proposed University research activity on their land. It is frequently the case that such landowners will not negotiate on their standard terms and conditions. Usually, the landowner is gaining nothing from the University research activity while the University researcher is able to get research data otherwise largely or completely unavailable. The University's researchers involved typically are or are under the direction of professionals experienced in obtaining the needed data safely under applicable field conditions.*

*It is felt that the risk is slight to the University of assuming third-party liability from land access agreements due to the research activities of the University on land that is subject to such an agreement. Approval is recommended for the President to permit agreement to these liability provisions in land access agreements where only the University is conducting the prospective research addressed under the agreement.*

5/28/09