

The University and its contracts with foreign higher education institutions and businesses

By David Greenbaum

The University is increasing its efforts to partner with international entities and institutions to benefit student experiences. Note, though, the University has long had relationships with foreign academic institutions and has regularly bought goods and services from businesses and other entities based in foreign countries. The terms of these partnership agreements, as well as procurement contracts, will reflect very different bases of law, language, and culture between the parties. Besides the business issues of an academic or business agreement, there are some issues to consider when developing an agreement with a foreign higher education institution or international business.

Choice of language – An agreement may be drafted in English or another language. However, the University should ensure that the version of the contract that controls both parties is in English. The other party can have a version in its native language, but it should not control the relationship.

Choice of law – While Florida laws control agreements the University enters into, foreign higher education institutions and businesses may not agree to what is in their point of view, foreign law. Foreign countries, states, and provinces may have laws that do not allow the businesses located within their borders to agree to Florida or even United States law. There are several options to address this issue, depending on the goods, services, or academic activity for which the University is contracting.

Federal export control laws and other governmental restrictions limit use and access by foreign nations to purchase goods and services. The University's possession of these controlled goods or services may impose limits on the relationship between higher education institutions. When purchasing goods from foreign businesses, it may require the University to do additional due diligence to ensure that it can lawfully purchase, ship, and operate the goods. Other laws control the relationship between the University and foreign parties to address corruption, unlawful influence, and other criminal activities.

Payment based on the choice of currency – Payment is not usually an issue because the US dollar is accepted almost everywhere, and businesses have methods to establish the price of a good or service in US dollars.

Data Privacy and Security – How the data, whether business records or personal data, is secured is an essential element of any agreement and involves ensuring that specific data security protocols are used to store and transmit the data. The European Union's General Data Protection Regulation (GDPR) is a primary data security law in Europe, and its general personal data protection scheme is evident in the regulations of other countries. Note that most European

countries have data privacy laws that are in addition to European Union edicts on data privacy and protection.

Intellectual Property – Intellectual Property rights (IP) are governed by national law. Whether it's a business protecting its IP rights in its products or the University is entering into a research agreement that may result in commercially useful research, the contract should set out the IP law that controls, and how IP may be used or transferred.

The issues defined in this list is not exhaustive. Standard boilerplate terms addressing confidentiality, public records, dispute resolution, insurance, indemnification, termination, amendments, and assignments are affected by the laws applying to foreign higher education institutions or businesses. While it is essential to ensure that a contract fully describes the relationship between the parties, extra care should be taken with agreements between the University and foreign higher education institutions or businesses to address the legal, language, and cultural differences that will appear when drafting the contract.