

COLUMBUS STATE UNIVERSITY

CONTRACT APPROVAL POLICY

I. PURPOSE

To identify the process by which contracts are reviewed, approved and executed by Columbus State University officials in order to constitute a binding legal obligation on behalf of the University.

II. SCOPE OF POLICY

Unless specifically excluded from this policy or a specific policy of the Board of Regents of the University System of Georgia (BOR) or the Georgia Department of Administrative Services (DOAS), all contracts entered into on behalf of the University must be executed in accordance with the express terms of this Policy and no employee shall sign/execute a contract unless that person has been delegated such authority pursuant to the University President's Delegation of Authority.

III. APPLICATION OF POLICY

To be binding upon the University, contracts must be approved and executed by individuals authorized to do so by the University. To constitute a "contract" under this Policy, there must be a meeting of the minds at least two (2) or more parties (one of which must be the University or one of its affiliated organizations, i.e., Foundation, Alumni Association) regarding the agreement's essential terms and which commits the University's funds, personnel, equipment, property or facilities. A contract or agreement can exist in many forms, such as:

- Amendments, Addendum or Renewal of existing agreements;
- Memorandum of understanding/agreement;
- Release and/or waiver;
- Agreements to volunteer services;
- Grants, awards from governmental or non-governmental institutions;
- Articulation agreements;
- Employment contracts;
- Licenses;
- Assignments;
- Non-disclosure agreements;
- International agreements;
- Leases;
- Other written or electronic document that commits the use of funds, personnel, facilities, equipment, property, or other resources of the University.

IV. CONTRACT APPROVAL AND ROUTING FORM

To ensure compliance with this Policy, the initiation of a contract should start with the use of a Contract Approval and Routing Form.¹ The use of such form will ensure the proper and timely routing of University contracts through the signature approval process. This form should be attached to the front of the University contract. The form provides contact information and shows the next steps in the routing process so that University contracts can be handled expediently.

V. CONTRACTS EXEMPT FROM LEGAL REVIEW

The following types of contracts are currently exempt from legal review:

- a. Routine purchase orders, bills of sale, invoices, and solicitations governed by the State Purchasing Act. These matters are handled by the University Purchasing Department.
- b. Pre-approved or standardized university contract templates, such as:
 - Performance and Artist Contracts;²
 - Facilities Use Contracts;
 - Student/Faculty Housing Contracts;
 - Releases/Waivers;³
 - certain Affiliation Agreements;
- c. Employment and reappointment contracts;⁴ and
- d. Affiliated Entities, such as the CSU Foundation, Foundation Properties, Inc., and the CSU Alumni Association, are legally distinct organizations not controlled by the University. Although not specifically subject to this Policy, contracts entered into by affiliated entities that obligate the use of University resources should be reviewed under the terms of this Policy.

Substantive modifications or amendments to the contracts identified above without review and approval by the Office of General Counsel are not permitted.

¹ The Contract Approval and Routing Form is attached as Exhibit 1.

² The Performance/Artist Contract is attached as Exhibit 2.

³ Student, Group and Contractor Waivers of Liability Forms are attached as Exhibit 3.

⁴ The Human Resources Department and the Provost work jointly in the hiring of faculty, including the preparation and execution of contracts.

VI. APPROVAL OF CONTRACT

Before execution by a designated University official, a contract binding the University should usually be reviewed and approved by other individuals. Generally, a contract requires review and approval of the following individuals (or their documented designees). Certain responsibilities under this policy necessarily overlap.

- Initiator of the Contract
 - The University employee initiating the contract is primarily responsible for accurately and fully completing the Contract Routing Form and ensuring the following:
 - That the proposed contract language is accurate and complete and reflects the current state of negotiations; all exhibits are attached; and the Department or Division is willing and able to comply with the terms.
 - That the contract is appropriate to the University's mission, complies with applicable University System and University policies, meets programmatic and operational needs, and the unit can furnish the services, materials, or funds required.
 - That the contract is sufficiently clear, consistent, and fiscally prudent.
 - That no conflicts of interest exist or any potential or actual conflicts of interest have been reported and managed according to University policy.

- Department or Division Head
 - The contract is appropriate to the University's mission, complies with applicable University System and University policies, meets programmatic and operational needs, and the unit can furnish the services, materials, or funds required.

- Academic Dean
 - Ensures that the College can furnish the services, materials, and/or funds (including any matching requirements) designated in the contract, that the contract is appropriate and necessary to the College's mission and priorities.

- The Office of Legal Affairs / Risk Management
 - The Office for Legal Affairs along with the Risk Manager is responsible for the following:

- Identifying and advising the initiating unit and appropriate University officials of significant potential liability or risk.
 - Determining that the terms of the contract comply with Board of Regents and University policies and applicable federal, state and local laws, rules and regulations.
 - Ensuring that the contract review approval process has been followed.
- Vice President for Business and Finance
 - Must always review contracts requiring the expenditure of University funds in the amount of \$25,000.00 or above. Authorized signatories may execute contracts pursuant to the President's Delegation of Authority Memorandum up to \$24,999.99 without the necessity of review by the Vice President for Business and Finance.
- Additional Reviewers
 - Depending upon the nature of the contract, review and approval may require a further level of review to ensure that it complies with system and university policies, is consistent with the university's mission, or where it may impact a department or unit other than the one initiating it.*
 - Office of Sponsored Programs (for grants and sponsored program contracts)
 - CSU Foundations (for contracts entered into or funded by CSU affiliated foundations)
 - CSU Purchasing Department (contracts involving the purchase of goods and services)
 - Office of the Provost (contracts relating to academics)
 - University Information and Technology Services (for software contracts utilizing UIT services)

* For example, an academic/athletic contract that requires implementation or significant resources by UIT.

VII. SIGNATURE/EXECUTION OF CONTRACTS

Only an authorized official may sign/execute a contract on behalf of the University. The President must sign certain types of contracts and may sign any other type of contract for the on-going operations of the University. All other contracts may only be signed by University administrators who have authority delegated directly from the President or properly sub-delegated to another.

A contract signed/executed by any employee without appropriate review or exemption under this policy is not binding on the University and may subject the individual who signed without

authority to personal liability. Any University official who signs a contract upon review and approval certifies that to the best of his or her knowledge the contract has been appropriately reviewed and is consistent with the University's mission and priorities and is not in conflict with the needs, mission, or priorities of any other division within the University.

By signing a duly approved contract, the authorized University official obligates the University to the contract's terms.

SCOPE OF LEGAL REVIEW

All contracts, except for those that are exempt or pre-approved, require approval as to the legal terms from the Office of General Counsel (OGC) prior to execution. If the contact person has conducted an initial review of the contract, made changes but still requires assistance before officially initiating the formal contract review process, the OGC is available to assist in revisions or additions to the contract.

After the contract review process has been initiated and the contract has been circulated to all required reviewers via the contract approval and routing form, the OGC will review and edit the draft for legal compliance. If necessary, the OGC will become involved in negotiating or discussing edits with third parties when requested or when necessary. Once the contract is approved by the OGC and executed by the appropriate University official, it will be sent to the to the contract initiator.

VIII. PROFESSIONAL SERVICES CONTRACTS

The purchase of professional services is subject to University purchasing guidelines for goods and services and should always be memorialized in a contract⁵ notwithstanding that the professional services may be exempt from the requirements of the State Purchasing Act or the competitive bid requirements may be applicable.⁶

IX. CONTRACT RETENTION

The University complies with the Board of Regent's record retention guidelines, which can be reviewed at <http://www.usg.edu/usgweb/busserv/series/index.phtml>. Unless otherwise requested, departments/units should maintain a copy of the final, executed agreements for retention purposes. Any University contract provisions dealing with document retention by the parties must be satisfied, even if such contractual provisions require longer retention periods than the Board's guidelines.

MISCELLANEOUS ISSUES RELATED TO CONTRACT APPROVALS

⁵ A Professional Services Contract Form is attached as Exhibit 4.

⁶ Certain categories of professional services are exempt from the State Purchasing Act and can be found in the Georgia NIGP Exempt List, a partial list of which is attached as Exhibit 5.

I. NON-CSU DRAFTED CONTRACTS

Often, parties seeking to enter into a contract with University will submit contracts they have drafted for CSU's approval and signature. Due to the wide array of contractual arrangements and the relative sophistication of third-party vendors, contracts submitted to CSU for signature may or may not contain adequate language to comply with Georgia law.

Rather than spend unnecessary time attempting to revise these contracts, the Office of General Counsel has drafted a CSU Contract Addendum⁷ that can be attached to any non-CSU contract. Use of the Addendum ensures that contractual arrangements, even with the use of a non-CSU contract submitted by a vendor, are compliant with Georgia law.

II. PROHIBITED CONTRACT TERMS

CSU is prohibited from agreeing to certain contractual terms because it is an instrumentality of the state of Georgia. It is incumbent upon individuals initiating or signing contracts to review the contract thoroughly before submitting it for contract review and either highlight or remove those prohibited terms from the contract.

It is advisable to inform parties with whom you may be negotiating the term of a contract of the existence of these contract terms in order to avoid surprises or delays in the contract approval process. Most sophisticated parties having done business with any governmental unit should generally be aware of the limitation imposed upon public entities like CSU.

a. Indemnification / Hold Harmless agreements

State agencies are prohibited from agreeing to indemnify or hold harmless third parties. These provisions have been determined to violate the prohibition against pledges of the State's credit and the prohibition against gratuities. The Attorney General has repeatedly ruled these provisions to be invalid as unauthorized attempts to contractually waive the State's sovereign immunity.

b. Governing Law

Contracts in which the University is a party cannot contain a provision in which the University agrees to be subject to the laws of another state. Georgia law requires that actions be brought only in the superior court of Fulton County, Georgia when involving an alleged breach of written contract by a state agency. O.C.G.A. § 50-21-1(b). Additionally, Georgia law requires that all tort actions against Georgia under the Georgia Tort Claims Act be brought only in the state court or superior court of the county in which the alleged loss occurred. O.C.G.A. § 50-21-28. The Attorney General has exclusive authority and control over all matters of litigation or potential

⁷ Addendum attached as Exhibit 6.

litigation involving State agencies and has clearly articulated that Georgia governmental institutions are precluded from entering into agreements that expressly subject them to another's state's law.

c. Arbitration / Waiver of Right to Jury Trial

Contracts containing provisions subjecting the University to arbitration or waiver of the right to a jury trial contract are invalid. The Attorney General has exclusive jurisdiction in all legal matters related to the executive branch of Georgia government. O.C.G.A. § 45-15-34. The Attorney General is the "legal advisor of the executive branch" and is required to "represent the state in all civil actions tried in any court." O.C.G.A. §§ 45-15-3(4) & (6). Whether a matter involving the University is litigated before a jury or resolved through arbitration is a decision within the exclusive purview of the Attorney General and cannot be contractually limited or altered by CSU.

d. Multi-Year contracts

The Georgia General Assembly appropriates revenue and other sources of state funds to its instrumentalities from year to year. Because the ability to meet its financial obligations is dependent upon these appropriations, the University may not execute a contract for the purchase of goods or services that obligates future fiscal years' appropriations. Accordingly, the term of a contract with the College requiring the expenditure of funds may not extend beyond the current fiscal year, unless the College has on hand at the time of execution, the appropriated and dedicated funds sufficient to meet its entire obligation under the contract. The University may enter into a contract that can be renewed at its discretion each fiscal year for multiple years; however, included in the contract must be specific renewal clauses and funding language that clearly provides the University with the right to terminate the contract if funds are not appropriated in following fiscal years.

There is no prohibition from entering into a multi-year contract that does not require funding.

e. Contractual Fees, Costs and Penalties

The University is prohibited the from agreeing to pay attorney's fees, interests, penalties, cost of add-on goods or services not priced in the contract, unknown cost increases during the life of the contract, unknown damages to a third party, or any other expense that cannot be calculated.

f. Taxes

The University is exempt from most use and sales taxes and will object to contract language asserting it is responsible for the payment of taxes or that the University agrees to reimburse the vendor for the payment of taxes. At most, the University will agree to language that sets forth "CSU will pay taxes lawfully imposed upon it under Georgia law".