

# **OGC Contracts Procedures**

## **I. Purpose**

Under the statutes of the State of Illinois, the Board of Trustees of Northern Illinois University (“Board” or “Board of Trustees”) has certain specific powers, among which is the power “to enter into contracts” (110 ILCS 685/30-40). Pursuant to this authority, the Board has promulgated Regulations of the Board (“Regulations”) concerning contracts. These Regulations govern all contractual agreements entered into and executed by Northern Illinois University (“University”) and serve as the primary guide in the development and execution of such contractual agreements. The University enters into contracts with third parties that involve a wide array of activities, including, but not limited to, services, consulting, maintenance, supplies, performances, facilities use, construction, research, employment, affiliations and publications. These OGC Contracts Procedures (“Procedures”) are developed within the context of the Regulations and are intended to provide guidance on the contract negotiation, review and administration process, as well as on signature authority. The goals of these Procedures are to ensure that all agreements meet the University’s legal compliance requirements, and avoid unintended contractual obligations not in the best interests of the University. These Procedures operate in conjunction with the various procedures and guidelines referenced herein. These Procedures supersede all previous University policies and procedures concerning contract and signature authority, however all delegations of signature authority previously granted prior to the Effective Date of these Procedures shall remain in effect.

## **II. Scope**

These Procedures apply to all contracts which commit funds, personnel, equipment, property or facilities of the University, or establish any legal obligation on behalf of the Board. A contract is an agreed set of terms and conditions governing the relationship between two or more parties. A contract may be called by many different names, such as agreement, letter of agreement or memorandum of agreement, or have a title that does not include the term “contract” or “agreement”. The term “University contract” or “contract” as used within these Procedures includes, but is not limited to, an agreement, memorandum of understanding, memorandum of agreement, letter of intent, estimate, proposal or any other written document, settlement of dispute, affiliation agreement, liability waiver, assignment of rights, licensing agreement or any renewal, amendment or change to such a written document. A University contract may be binding even though the University is receiving something of value at no charge to the University. A University contract does not include contracts between departments/units within the University, contracts entered into by or for entities that are legally separate from the University (e.g., University Foundation, Northern Illinois Research Foundation), or contracts entered into by student organizations. These Procedures do not apply to signatures or approvals required for internal University processes and transactions (e.g., facilities reservations for University units).

### III. Implementation

#### A. Authority

The Board of Trustees is the sole authorized contracting entity at Northern Illinois University pursuant to 110 ILCS 685/30-40. While the Board of Trustees may enter into a contract on behalf of a University unit, the only party authorized to enter into contracts on behalf of the University is the Board.

#### B. Delegation to Execute Contracts

(1) **Written Delegation.** The President of the University (“President”) has been authorized by the Board to delegate to members of the staff (individually referred to as a “Delegate”) the authority to sign contracts. Such delegations of authority are provided in written form by the President and shall be listed in the Contracting Authority Signature Delegation List. The Contracting Authority Signature Delegation List is available on the OGC website. All delegations are made to a position within the University, thereby delegating authority to the individual holding the position at the time of delegation. When there is turnover in a position, the successor has the authority of the previous incumbent. Individuals in an acting or interim position also have the general signature authority of that position. The authorizations listed in the Contracting Authority Signature Delegation List apply to any successor positions as a result of any title changes.

Any delegation of signature authority given under these Procedures may be modified or withdrawn by the President at any time.

Any questions related to the scope of a Delegate’s signature authority shall be determined by the member of staff to whom the Delegate reports. The individual to whom a Delegate reports has the authority to determine the scope of the Delegate’s signature authority, provided such scope is consistent with the President’s delegation, and may restrict the signing authority of any subordinate with signature authority, in writing.

Any individual with signature authority must execute current signature cards as required by the University.

Intergovernmental agreements entered into pursuant to the Intergovernmental Cooperation Act (5 ILCS 220/) shall be executed by the President pursuant to the authority delegated by the Board.

(2) **Restrictions.** No faculty, staff member or student of the University shall sign any contract on behalf of the University unless the individual holds a position which has been delegated signature authority pursuant to these Procedures. An individual who has not received a written delegation of authority to sign contracts should not sign any University

contract as such term is defined in the Scope section of these Procedures. Any contract signed by an individual without duly delegated authority shall not be binding upon the University. In addition, any individual who signs a University contract without delegated authority is subject to disciplinary action up to and including dismissal and may be held personally liable for the contract and any damages caused to the University. Those individuals to whom contract signature authority has been delegated may not sub-delegate that authority to any other person unless permitted in writing by the President.

(3) **Responsibilities.** Any individual who signs a contract on behalf of the University is responsible for ensuring compliance with all University policies and procedures when entering into that contract, including confirming that the contract has undergone all required administrative review and received all necessary approvals, and during the contract term, shall be responsible for adherence with all applicable laws pertaining to that contract, and ensuring compliance by the University with the terms of the contract. Furthermore, any individual who signs a contract on behalf of the University is responsible for ensuring that no contract is executed without available and approved budget funds for financial expenditures.

Any individual with signature authority must bring to the attention of the appropriate Vice President or to the President contracts, regardless of value, that present significant academic, operational, financial and/or reputational implications. All unit, department and division heads ultimately remain accountable for the obligations of any contract approved and executed under the auspices of their unit, department or division regardless of whether they personally signed the contract.

## **C. Conflict of Interest**

No employee may approve or sign a contract in violation of the University's or State of Illinois' ("State") policies on conflict of interest, including, but not limited to, the State Officials and Employees Ethics Act, and the Board's disclosure of interest policies and related bylaws and procedures. All employees are required to disclose to senior leadership real, potential or apparent conflicts of interest. Where a conflict exists as determined by the University Ethics Officer, the conflict must be approved by the appropriate University and/or State officials prior to the execution of any contract.

## **D. Contract Development and Review**

(1) **Advance Review by Requesting Department.** Requesting departments are responsible for reading the contract and determining and/or ensuring the following:

(a) The contract and all documents that are incorporated by reference in the contract, including exhibits, appendices and terms and conditions, as well as fully executed copies of any applicable original agreements, any addenda/amendments to the original agreements and supporting documentation (if applicable), are attached when a contract is submitted to the appropriate office for review;

(b) The requesting department agrees with the contract terms and conditions, and has verified that the University can comply with all of the terms and conditions in

the contract and has designated funding available to satisfy any and all financial obligations under the contract;

(c) The contract matches the verbal understanding of the parties, and all terms and conditions of the contract conform to the final negotiations and agreement of the parties;

(d) No real, potential or apparent conflict of interest exists in regard to the contract; and

(e) (i) All terms of the contract are accurate and acceptable (including, but not limited to, scope of work, pricing, due dates, payment requirements, confidentiality requirements, etc.); (ii) the contract has received the appropriate level of departmental and University review prior to execution; (iii) the requesting department will be knowledgeable of, adhere to and monitor compliance, payment, expiration date and all other obligations under the contract; (iv) the requesting department will collect and maintain any required certificates of insurance, if applicable; and (v) the requesting department will ensure compliance with all applicable University policies or procedures in connection with the contract.

(2) **Advance Review by Relevant Departments.** The requesting department shall ensure compliance with University and/or divisional policies and procedures regarding contract review. No University contract shall be executed until the proposed contract has been reviewed and approved in advance by other units that are impacted by the terms and conditions and/or obligations of the contract and any necessary subject matter expert reviewers. The requesting department shall ensure that additional reviews and approvals are coordinated through any affected University unit, including, but not limited to, the Division of Administration and Finance, the Division of Information Technology (“IT”), the Division of International Affairs, the Office of Sponsored Programs Administration, the Office of Risk Management, the Ethics and Compliance Office, and/or the Department of Facilities Management and Campus Services. For example, a software contract should be reviewed by IT to determine whether IT can support the software.

(3) **Processing of Contracts by Procurement Services and Contract Management.** Any University contract which (1) either commits funds from the University or is revenue-generating or zero-dollar, and (2) involves a vendor or service provider (a person or entity that provides goods or services to the University) shall be submitted to Procurement Services and Contract Management (“PS/CM”), and not the Office of General Counsel (“OGC”).

(4) **Advance Review by Office of General Counsel.**

**i. General OGC Procedures**

It is the policy of the University that any University contract must be reviewed for legal form and sufficiency by the OGC prior to execution by authorized University personnel unless (i) a current University-approved template (“UAT”) is used and no material modification is made to the UAT other than the completion of business terms,

such as the description of the transaction, the dollar amount involved and the term of the contract, or (ii) as otherwise agreed to as an exception to these Procedures as documented by the OGC in the OGC Contract Review Procedures. Any amendment or revision to an existing contractual agreement must be in writing and must also be reviewed and approved in writing by the OGC unless an aforementioned exception applies. Notwithstanding the provisions stated in these Procedures, the OGC reserves the right to review any contractual document it deems appropriate. Any contract submitted to the OGC for review should be in an electronic format (“Word” is preferred). Failure to provide the contract to the OGC for review could affect statutory protections reserved for the University and state officials employed by the University and significantly increase the University’s legal risk.

## **ii. University-Approved Template**

Whenever possible, a UAT should be used in contractual arrangements with third parties. The University-Approved Template List is available on the OGC website. OGC review is not required when for the contract transaction being completed, a contract is prepared on a UAT for that transaction and (a) the UAT is used for the particular type of transaction and/or vendor/entity for which its use has been approved; and (b) the UAT remains unchanged except for the completion of transaction-specific business terms, such as the description of the transaction, the dollar amount involved and the term of the contract, and/or legal terms are changed in compliance with published OGC Contracting Guidelines issued by the OGC; and (c) subject matter experts (e.g., Risk Management, Information Technology, International Affairs, Facilities, Marketing and Communications) and/or University units potentially affected by the contract and its terms and conditions deem the transaction and such terms and conditions to be acceptable; and (d) the underlying transaction does not present unreasonable financial, reputational, operational, financial or academic risk and/or liability to the University.

Departments may develop templates for particular types of transactions, matters or vendors for approval by the OGC. The OGC will work with departments to develop such standard, approved forms upon request.

## **iii. Exceptions to OGC Advance Review**

The following categories are a sampling of contractual agreements specifically excepted from OGC review:

1. **Academic Appointments.** Academic appointments are subject to prior review by the Provost’s Office, in consultation with the Department of Human Resources, and, therefore, do not require OGC review.

2. **Employment Agreements.** Standard employee offer letters or employment agreements which do not materially deviate from OGC-approved templates or terms do not require OGC advance review.

3. **Research Agreements.** Research agreements administered by the Division of Research and Innovation Partnerships (“RIPS”) are subject to the contract protocol developed for RIPS in consultation with PS/CM and the OGC.

4. **Purchases of Goods/Services through Procurement and Other Vendor/Service Provider Contracts.** PS/CM has responsibility for reviewing and processing all University contracts involving the procurement of goods and services and other vendor and service provider-related contracts. The OGC will also review a University procurement contract at the request of PS/CM and in accordance with the OGC Contract Review Procedures. PS/CM shall forward to the OGC all contracts for review in accordance with the OGC Contracts Review Procedures. Section III(D)(4)(ii) of these Procedures applies to UAT’s processed by PS/CM.

5. **Student Agreements.** Contracts related to financial aid and loans to students, student housing and other agreements to which students are a party are handled by the appropriate department within the University.

## **E. Required Board and/or University Approvals**

The Board Regulations provide that certain contracts and agreements must be approved and executed at the Board level and that other contracts and agreements may be approved and executed at the University level.

## **F. Execution**

After all appropriate approvals to a contract have been received and documented and the parties are in mutual agreement, all parties must fully execute the contract prior to performance. Before sending an agreement for signature on behalf of the University, the University department responsible for the contract should review the contract to ensure that no modifications to the final university-approved version of the agreement have been made.

Signatures delivered by facsimile transmission, by e-mail of a ".pdf" format data file, or by transmission of a data file in another legible format have the same force and effect in contracts as traditional signatures on original documents, if the chosen delivery method is mutually acceptable to the parties.

Unless otherwise allowed in writing by the President, all contracts must be signed by hand. The use of rubber stamps requires specific authorization of the President.

Pursuant to state statute, any contract in the amount of \$250,000 or more in a fiscal year, or any order against a master contract in the amount of \$250,000 or more in a fiscal year, or any contract amendment or change to an existing contract that increases the value of the contract to or by \$250,000 or more in a fiscal year, must be signed or approved by the President, and shall also be signed or approved in writing by the General Counsel and Chief Financial Officer.

## **G. Records Retention**

All executed procurement contracts should be maintained by PS/CM for purposes of recordkeeping, audit reporting and execution of disbursements. The requesting department is responsible for keeping a copy of the executed contract, including any attachments and other supporting documentation in accordance with the University's records retention schedules and any contractual requirements.

Copies of all executed non-procurement contracts for which the OGC provides legal counsel should be provided to the OGC, with an original copy maintained by the applicable requesting unit. Departments are responsible for maintaining fully executed copies of contracts in accordance with the University's records retention schedules and any contractual requirements.

**Related Forms:** Contracting Authority Signature Delegation List  
University-Approved Template List  
OGC Contract Review Procedures

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