



Policy on Contract Review and Approval

Section 1. GENERAL

This policy defines the general process by which a contract involving Clark University (“University”) might be (1) created; (2) reviewed and approved; and (3) appropriately signed by an authorized University official. This policy applies to anyone executing a contract that in any way binds the University to providing goods, services, remuneration, or anything else to a person or entity.

Contracts must satisfy three basic criteria in order to be approved by an authorized University official:

- The contract must be appropriate to the mission and operation of the University.
- The funds and other resources must be available to carry out the obligations of the contract.
- The terms of the contract must comply with University regulations, and applicable local, state, and federal laws.

Prior to final signature, contracts need to pass through those offices having direct oversight for the activities (or their funding) and those assuring administrative, fiscal and/or regulatory compliance. All signed contracts must be provided to the, Director of Legal Operations, Rhonda Podell at rpodell@clarku.edu.

Section 2. UNIVERSITY CONTRACT DEFINED

For the purposes of this policy, a “University contract” is defined as an agreement between two (2) or more parties, one of which is the University or any of its subunits/affiliated organizations (i.e. Foundation, Athletic Association, Alumni Association, etc.), intended to have legal effect or be otherwise recognized at law. There must be a common understanding among the parties as to the essential terms, the mutual obligations, and the existence of valid and sufficient “legal consideration,” meaning that something of value is exchanged between the parties. Examples of University contracts include, among others:

- Agreements to buy, sell, donate, or rent goods, or to provide, obtain or rent services;
- Memorandum of Understanding, Agreement, or Cooperation with government agencies, universities, and other organizations for the accomplishment of particular purposes;
- Grants and sub-awards provided (funded) by government agencies and private organizations;
- Affiliation/clinical agreements;
- Leases of movable property, such as tools, equipment, vehicles, etc.;
- Leases, deeds, and other conveyances affecting interests in real property;
- Employment contracts, volunteer and consulting agreements;
- Purchases of services, such as with speakers, artists, performers, etc.;
- Liability waivers and releases, noncompete, and nondisclosure agreements;
- Assignments of rights or agreements to utilize the University's resources, logo, trademarks, name, image, or likeness
- Material transfer agreements, intellectual property and software license agreements;
- Student or faculty exchange and joint staffing agreements.

When Contracts are Required

Goods that are commonly purchased with a purchasing card or through accounts payable do not generally require a contract unless the goods are part of a construction project or require the vendor to deliver, install and/or service the goods on campus. In these cases, and regardless of the amount of the contract, it must clearly specify the manner and timing of delivery, limitation of warranties, opportunity to cure defects and payment terms. Smart Buy Plus is to be utilized for creating purchase orders. The University's standard terms and conditions are delivered to the vendors for acceptance as a part of the contracting process. Before making any purchases, please review the University's purchase-specific policies, which can be located on the [policy website](#) or by either contacting the Office of the Executive Vice President or the Budget Office.

In general, if the arrangement involves any risk or potential liability that needs to be allocated between the parties, or involves a situation where the duties and responsibilities of the parties are not so basic and obvious that they do not need to be spelled out in writing, then a contract must be used. In addition to the types of contracts already articulated in this policy, contracts are required in instances where the University is providing services, facilities or other resources to third parties. Examples include camps, conferences, persons or companies filming on campus, having other special events on campus such as weddings, receptions, seminars, etc. Contracts are also

required when the University is receiving services or the usage of facilities or other resources from a third party. This includes arrangements with independent contractors for facilities work, caterers, speakers, consultants, performers, videographers, borrowing (or lending) of art or other exhibits, etc. These are not exhaustive lists and, when in doubt, consult with the Executive Vice President before entering into a contract.

Regardless of the cost of the service provided, where the service is provided, or whether or not a contract is executed, members of the campus community should not pay for services out of their personal accounts and then seek reimbursement from the University for these expenses. Rather, all payments for services must be made directly from the University to the individual(s) providing the services in order for the University to comply with its tax and other Federal reporting obligations. Note that the University is not obligated to and does not guarantee reimbursement to anyone failing to adhere to this policy.

Certificates of Insurance

Some University contracts require that the third party provide a certificate of insurance to the University. The University employee initiating a contract is responsible for obtaining any certificates of insurance required by the contract. For ongoing contracts, the employee initiating the contract is also responsible for monitoring when certificates of insurance expire, and for obtaining new certificates. Copies of certificates of insurance must be provided to the Director of Legal/Insurance, Rhonda Podell at rpodell@clarku.edu. If the contract calls for the University to provide the certificate of insurance, please contact the Director of Legal/Insurance, Rhonda Podell at rpodell@clarku.edu and allow for at least three business days for the certificate to be issued.

Identification of the University

The University shall be identified as Trustees of Clark University (in some instances identification as Clark University will suffice) and must be listed as the contracting party in all agreements and contracts. Departments and individuals may be identified in the agreement, but must not contract in their own name on behalf of the University. The University's official mailing address is *950 Main Street, Worcester MA 01610* and must be listed in all contracts and agreements.

Section 3. ADMINISTRATIVE REVIEW

A person initiating a University contract is responsible for reading the contract entirely and determining that: (1) the contract language accurately reflects the current state of negotiation; (2)

the contract meets programmatic and University mission and operational requirements; (3) the contract is in the best interests of the University; (4) they can ensure compliance with the obligations it places on the University; and (5) the contract is sufficiently clear, consistent, and fiscally prudent. Note that it can take up to ten (10) business days to complete a contract review, therefore please provide the contract to the Office of the Executive Vice President (and to the VP for Information Technology Services for contracts involving technology) as soon as possible to ensure it can be reviewed in a timely manner.

When contracting with individuals for services, it is critical to make the correct determination if the individual will be considered an employee. The IRS and Commonwealth of Massachusetts have strict criteria for determining when someone is considered an employee. When contracting with an individual, the “New Vendor Request for Individual” workflow must be completed in Smart Buy Plus to determine if the individual providing services to the University should be classified as a vendor or as an employee. This process must be completed before engaging in a contract with an individual. In addition, such persons must have the cooperation and approval of any University department that may be directly or indirectly involved in the implementation, performance or funding of the contract. Accordingly, prior to being signed by the appropriate University official, all contracts must be reviewed and approved by: (1) the University Department Head (titles typically include Director, Executive Director, or Assistant or Associate Vice President), and in some instances the Vice President with administrative oversight of the department; (2) the University Department Chair, Academic Dean or Vice Provost (if the requesting department is an academic or student affairs department), and in some instances the Provost; (3) the Director of Sponsored Projects or designee for all grant-related and international contracts; the Vice President for Information Technology or designee for all hardware and software-related contracts (4) the Executive Vice President and Treasurer; and in certain circumstances, (5) the President. The following outlines the responsibility of each of these reviewing offices:

- **Department Chair/Department Head/Academic Dean/Vice Provost**
 - Guarantees that the department or unit can furnish services, materials, and/or funds provided for in the contract.
 - Assures that the contract is appropriate and necessary to the department’s missions and priorities.

- Assures that alternative activities, actions and/or providers have been considered, and that those stipulated in the contract or agreement represent the most feasible, reasonable, and fiscally prudent arrangements for the department.
- **Division Vice President/Provost**
 - Ensures that the review of the contract has taken place at the Department Chair/Director/Vice Provost level.
 - Assures that all of the criteria established for Department Chair/Director/Vice Provost consideration have been properly reviewed, and a determination made that the contract is in the best interest of the University.
 - Assures that the contract does not subject the University to undue liability or risk.
 - Assures that the contract does not contain any prohibited clauses.
 - Assures that the terms of the contract comply with University regulations, and applicable local, state, and federal laws.

Executive Vice President should review all contracts valued at \$10,000 and above, and must review all contracts valued at \$25,000 and above, before the contract is, signed. However, the Executive Vice President does not need to review in advance a contract that is drafted on a pre-approved and un-edited University contract template. The Executive Vice President must also review, in advance of signing, all contracts, regardless of value, that are international (involves a person or entity not based in the US), that include an auto-renewal provision or are multi-year contracts. Note that any auto-renewal, multi-year, or contract with a year-over-year price increase formula built within it, must also be reviewed by the Budget Office prior to being signed.

The contract review involves analyzing terms of the agreement that may be ambiguous, confusing, or otherwise creates increased liability or exposure to the University. The analysis also focuses on provisions that:

- Commit the University to defend, indemnify, hold harmless the party
- Obligate the University to pay legal and other fees as damages

- Require the University to add the party as an additional insured on a University policy
- Limit the liability of the other party or requires the University to waive its legal rights
- Require that disputes be handled through mediation or arbitration, or requires that claims be litigated in a non-Massachusetts venue
- **Executive Vice President or President**
 - Verifies that all appropriate signatures are intact, including - as appropriate – legal, accounting, information services or sponsored programs/grants review and approval.
 - Assures that the contract is appropriate and necessary to the University’s mission and priorities, and is not in conflict with the needs, mission, or priorities of any other division within the University.
 - Obligates the University to the terms of the contract.

Approvals from the above departments/units are required before the contract is executed. These approvals apprise the authorized University signatory that the terms of the contract have been appropriately reviewed.

Section 4. AUTHORIZING SIGNATURES

As a general rule, only the University President, Provost, Executive Vice President, and Vice Presidents are authorized University officials having authority to sign contracts for the University. All contracts involving the University must be signed by an authorized University official. These individuals can also delegate signing authority to other administrators as deemed prudent. The President has delegated signing authority to the Executive Vice President and Treasurer for all University operational contracts, and contracts that have financial, debt, or payment implications. Academic contracts and MOUs can be signed by the Provost. The delegation of signing authority is further outlined below.

Contract signing, spending limits or payment approval for periodic payments specified within a contract can be delegated with significant variation depending on the nature of the contract, subject to the guidelines included in the *Procurement Authorizations* section of this policy. Any delegation of authority must be in a writing issued before the signing of any contract by a delegatee. When these individuals delegate their approval or signatory authority, they must still exercise reasonable oversight and maintain responsibility for the contracts, and they should limit or revoke (in writing) the delegated authority whenever appropriate.

Contracts and agreements signed by other than authorized officials, or those who have received delegated authority, will be rejected and returned to the originating department. Clark University retains the authority not to recognize an agreement as binding against the University unless all signatories to the agreement have proper contract authority as of the date the contract was entered. Failure to follow University policies and procedures regarding signature authority may result in an employee's loss of liability insurance coverage, personal liability for all contractual obligations, and/or disciplinary action.

Section 5. PROCUREMENT AUTHORIZATIONS

The following summarizes employee signature authorizations. These authorizations are reviewed and may be updated annually at the beginning of each fiscal year, and, if updated, each division will receive the specific authorizations categorized by department heads and authorized approvers. Signature authority rests with the positions (or authorized approvers) named in each respective document. In general, authorizations are as follows:

- I. < \$25,000, any Department Head, Department Chair, Academic Dean, Vice Provost or an employee authorized in writing by one of these individuals*
- II. < \$100,000, any Vice President/Provost or Controller*
- III. > \$100,000, the President or any two of the following (one of whom must be the Executive Vice President and Treasurer):*
 - Vice President/Provost*
 - Controller*

Section 6. CONFLICT OF INTEREST

It is the responsibility of all University employees to ensure that the University does not knowingly enter into contracts that present conflicts of interest. If a contract directly benefits the employee forming the contract, the employee who is responsible for managing the contract, or any other employee or Trustee, or such a person's relative or personal friend, or poses other potential conflicts of interest whether real or perceived, (e.g., the contract initiator or a key department member serves as a paid consultant to the contractor), the contract must be reviewed the Executive Vice President and the division Vice President,

the contract must be reviewed by an authorized University official with signatory authority who is unconnected with the agreement), with all potential conflicts of interest disclosed to the Vice President.

Section 7. CONTRACT RETENTION

All signed contracts must be sent to, the Director of Legal Operations, Rhonda Podell at rpodell@clarku.edu where they will be stored and reviewed prior to renewal. Signed contracts should also be attached to purchase orders and/or payment requests in Smart Buy Plus. The department that initiated the contract is also responsible for maintaining copies of such agreements in its own files and for complying with the specific document retention requirements.

Related Information

History/Revision Information

Responsible Office/Division: Executive Vice President

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