


MEMORANDUM

TO: Academic Deans and Directors

FROM: Christine W. Curtis 
Provost and Executive Vice President for Academic Affairs

SUBJECT: Approval Process for Contracts and Submission Guidelines

DATE: January 19, 2018

In an effort to streamline and speed up the review and approval of contracts and other agreements through the Office of Counsel (OOC), we have worked with OOC and Procurement Services to develop the processes below. We request that all units within Academic Affairs follow the procedures outlined below. If you would like to suggest a better way to handle the process, please make suggestions to Joy Porter and me.

Submission Guidelines

- Send ALL contracts (except professional services contracts duly authorized by Deans or Department heads) directly to Joy Porter in the Provost's Office who will catalogue the documents and give them to Dr. Curtis for her conceptual approval, *including those on which Procurement Services will be assisting you.*
 - Include a memorandum showing the initiator of the contract (with all contact information) and proper submission to and approval by Dean or Department Chair.
- The initiator's name will be given to OOC so that they can contact you regarding any questions they may have. Please address all emails concerning contracts to OOC to the reviewing attorney and to Patti Weldon (pweldon@uasystem.ua.edu or patti.weldon@uah.edu), either "to" or as a "cc".
- Please use a meaningful, unique email subject line and include the name of the company with which the University is contracting – not just the program or service they will provide. EXAMPLES:
 - XYZ Corporation – R0000567 – Software License Agreement – Quote Expires 12/20/2017 – NEW CONTRACT
 - XYZ Corporation – R0000567 – Software License Agreement – Quote Expires 12/20/2017 – REQUEST FOR STATUS UPDATE
 - XYZ Corporation – R0000567 – Software License Agreement – Quote Expires 12/20/2017 – ADDENDUM SIGNED BY VENDOR
- Please DO NOT use subject lines such as "contract for review" or "here is another one!"
- Please reference and attach documents for only one contract/program/service per email.

- Remember to attach to your email copies of all documents referenced: terms and conditions, quotes, agreements, etc.
- If the contract is a renewal, please attach the original agreement that is being renewed and clearly indicate the differences between the old and new versions.
- Please do not attach an unnamed document (i.e., Scan04793804730987). Always rename the document and refer to it by the name on the document.
- Please ask the vendor for agreements, terms and conditions, etc., in MS Word editable format. If possible, have terms and conditions revised by the vendor to eliminate provisions (see Appendices) obligating UAH to
 - indemnify and hold the vendor harmless
 - submit to the jurisdiction of a court
 - agree to binding arbitration
 - agree that the law of some state other than Alabama will govern the agreement.
- Please bring automatic renewal provisions to the attention of the Provost's Office and OOC.
- Be aware that it is against UAH policy to pay deposits or to pay upon signing the agreement, as both violate the policy against paying before receipt of goods or services.
- As contract initiator or facilitator, please include your office phone number (and cell number, if applicable) in the text of your email or in your email signature block.
- Include the contact information of the person(s) with whom you are negotiating the contract.

While none of these practices will guarantee immediate turn-around of your contract, they will help toward that goal tremendously.

Please be aware that once OOC has reviewed a contract and submitted an addendum or proposed changes to documents for consideration by the vendor, you and/or Procurement Services are responsible for following up with the vendor to prompt their acceptance or other reply.

Approval Process by Contract Type

- **Clinical Experience Agreements and Nursing Affiliation Agreements**
 - From: College of Nursing
 - Process: These Clinical Experience Agreements and Nursing Affiliation Agreements originate in the College of Nursing, where they are approved by the Dean. Instead of being sent through Purchasing, they will now be sent straight to OOC for review. The agreements will then be routed to the Provost's Office for signature and then back to the College.
- **CPCS Instructor Agreements**
 - From: College of Professional and Continuing Studies
 - Process: These instructor agreements signed by the dean are now submitted directly to Joy Porter. After they are reviewed and signed by Dr. Curtis, the instructor agreements are routed back to CPCS.
- **Lease Agreements**
 - From: SBDC, AMSTI, etc.

- Process: These lease agreements should first go to Joy Porter in the Provost's Office who will catalogue them and give them to Dr. Curtis for her approval in concept. Lease agreements have a standard review process in place to route all leases for approval by designated persons on campus. Lease agreements must be signed by the President or the VPFA.
- **Professional Services Contracts**
 - From: Business Services to OOC
 - Process: Professional Services Contracts are submitted to Business Services, who route them to OOC. If under \$1,000, initiator (not staff assistant) must sign approval or attach a memo with approval signature. If over \$1,000, initiator signs approval as well as Dean or Director (or other person in administrative chain at least one level of authority higher than initiator). If contracts lack appropriate signatures, OOC will forward to the Provost's Office, who will contact the unit for correction. When the unit submits the correction to the Provost's Office, the contract will then be routed back to OOC for approval, then back to Provost for signature, and finally back to Business Services for processing.
- **Other Agreements**
 - **Equipment and Maintenance Agreements**
 - **Event Contracts (Facilities/Lodging/Catering)**
 - **International Affiliation/Recruitment Agreements**
 - **Library Subscription Agreements**
 - **Performance/Speakers**
 - **Software License Agreements**
 - i. From: Procurement Services; various colleges/departments
 - ii. Process: These agreements are submitted directly to Joy Porter in the Provost's Office, who will catalogue the requests and give them to Dr. Curtis for approval in concept. If approved, the agreement will be forwarded to OOC for official review. Afterwards, the agreement will be sent back to the Provost's Office for signature and then routed as directed.
- **Any Contract Requiring a Requisition**
 - From: Colleges/Departments/Library/Academic Support Unit
 - Process: The college, department, library, or academic support unit first submits a requisition request to Procurement Services. When the requisition number is acquired, send the following via email to Joy Porter (joy.porter@uah.edu) in the Provost's Office:
 - i. requisition number,
 - ii. name of procurement services contact,
 - iii. all paperwork (quotes, terms and conditions, etc.) in editable Word format, and
 - iv. an approval memorandum.

When Dr. Curtis approves in concept, she forwards the package to OOC for legal review. If the reviewing attorney makes proposed changes directly to documents, or proposes an addendum, these will be emailed to Procurement

Services, who will contact the unit and the vendor. When the parties have come to an agreement on all terms and conditions, OOC will send the documents to the Provost's Office for signature. The Provost's Office will then forward the documents to Procurement Services for final processing.

Cc: John Cates
Patti Weldon
Joy Porter
Peggy Bower
Brent Wren

Appendix A

Problematic Provision Samples

13.3. Your Indemnity Obligations. You shall, at your own expense, indemnify, defend and hold Company and its affiliates, and together their respective employees, contractors, agents, or assigns (“Company Indemnitee”) harmless against any losses, damages or expenses (including, without limitation, reasonable attorneys’ fees and costs) arising from any claim, suit or proceeding brought by a third party against a Company Indemnitee arising out of a Customer Matter (any of the foregoing indemnifiable matters, each a “**Company Claim**”).

15.2. Conflict Resolution. In the event of any controversy or claim arising out of or relating to this Agreement, or a breach thereof, the parties will consult and negotiate with each other and attempt to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by any party to the other), any such controversy or claim will be referred to binding arbitration for full and final settlement by a panel of three arbitrators (or fewer if agreed by the Parties) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ICC Rules”). All arbitration proceedings will be conducted in the English language and will be conducted pursuant to ICC Rules. Any award issued pursuant to ICC Rules may be enforced by any court of competent jurisdiction. The allocation of the cost of the arbitrators and administration of conducting the arbitration will be borne equally by the Parties. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

The applicable governing Law and place of the arbitration will be as follows: (a) if you acquired these Products and Services in North America or South America, the governing Law is the State of New York and the place of arbitration is Washington, D.C.; (b) if you acquired these Products and Services in Europe, the Middle East, or Africa, the governing Law is England and Wales and the place of arbitration is London, England; (c) if you acquired these Products and Services in Australia or New Zealand, the governing Law is South Australia and the place of arbitration is Adelaide, South Australia; and (d) if you acquired these Products and Services in a region not otherwise mentioned above, the governing Law is Singapore and the place of arbitration is Singapore.

Appendix B

Suggested Replacements for Problematic Provisions

Few contracts have identical language, so no response will fit each and every scenario. However, certain general principles do apply to the provisions noted below due to the sovereign immunity conferred on the University under Alabama law. While the information contained herein may be used for preliminary negotiations, the contracting partner should be informed that the Office of Counsel will review the contract prior to execution and may need to make additional changes.

1. Indemnification

With respect to provisions that require the University to indemnify and defend the contracting partner, first request that the contracting partner delete this language. If the contracting partner will not agree to this, propose to add the following language to the beginning of the indemnification provision: “To the extent permitted by Alabama law,” and, thereafter, “Notwithstanding anything to the contrary in this Agreement, the University is not waiving its sovereign immunity or any other immunity or defense to which it is entitled.”

2. Conflict Resolution

As with indemnification, request that the contracting partner remove any language that requires that disputes be submitted to any dispute resolution process that is binding, such as arbitration. If the contracting partner will not agree to remove the provision, the Office of Counsel will need to determine the appropriate language to propose to the contracting partner.

3. Choice of Law

Alabama law must govern all contracts that the University enters into. If the agreement identifies Alabama law as governing, or is silent as to governing law and the contract is to be performed within Alabama, no change is needed. However, if the agreement contains a governing law other than the state of Alabama, propose that the provision be deleted or changed to identify Alabama law as governing. If the contracting partner refuses to amend the agreement, propose to add the following language to the governing law section: “Notwithstanding anything to the contrary in this Agreement, the University is not waiving its sovereign immunity or any other immunity or defense to which it is entitled.”