

## PROCEDURE DOCUMENT

Subject: <b>OFFICE OF GENERAL COUNSEL'S ROLE IN CONTRACT REVIEW, APPROVAL, AND EXECUTION</b>			
Section <b>General Counsel</b>	Effective Date <b>01/22/20</b>	Last Reviewed	Revision Date

### I. DEFINITIONS

- A. **Authorized University Official:** An individual, delegated in writing, with the authority to sign a Contract (as defined below) in compliance with the University's policy on Contract Review, Approval, and Execution and the Board of Regents of the University System of Georgia ("BOR") policies.
- B. **Contract:** Any contract, agreement, memorandum of understanding, memorandum of agreement, letter of intent, waiver, material transfer agreement, or other written or electronic document, or renewal of or amendment to such document, that commits the funds, personnel, facilities, equipment, property, or other resources of the University.
- C. **Responsible University Office:** The school, division, department or office from which a desired transaction or Contract originates. This office typically is responsible for the business terms of the Contract and has the ongoing obligation to monitor the terms of the Contract after it has been executed.

### II. PROCEDURE(S)

#### A. CONTRACT INITIATION AND DRAFTING

University Contracts and transactions may be initiated in a variety of ways, but generally there are three (3) different Contract initiation areas in the University.

1. Procedures for the purchase of goods and services are managed by the [Purchasing Department](#).
2. University offices and their areas of expertise in specialized transactions include:

Office of Grants & Contracts Administration	Sponsored projects / research
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University Office may obtain that review before or simultaneously with the Office of General Counsel review as further described below.

The processes for the departmental review, supplemental review(s), and legal review are further described below.

## 1. Review by the Department

This review should focus on the business implications of the terms and conditions of the Contract. The initiating department must determine what it can or cannot agree to and what needs to be negotiated with the other party. Things a Responsible University Office should consider when reviewing the Contract include:

- Is it in the best interest of the University to enter into the Contract?
- Does the Contract meet the unit's mission and programmatic goals?
- Does the Contract make business sense?
- Has the Dean/Vice President/head of office reviewed the Contract and/or its purpose and approved the commitment?
- If the Contract involves the purchase or the renewal of software, is the Dean/Vice President aware of or have they explored the possibility that there might be similar software being used in other areas of the University that could be used or could be modified to serve the department's needs. The Data Governance Oversight committee is working to minimize the number of software duplications where possible.
- Are the business and monetary terms correct?
- Is the description of services (if any) correct?
- Are the obligations of the University under the terms of the Contract understood, and are they correct?
- Are the obligations of the other party set forth correctly?
- Does the term (start and end date; duration) make sense? (New vendors may only be extended a one year contract, whereas a vendor with a proven track record may be afforded a one year contract, with up to four renewals.)
- Are the Contract terms and conditions, including duties of the parties, clear, consistent, and acceptable to the University, and does the responsible department have in place the ability to meet its obligations under the Contract?
- Does the division, college, department, or unit have the necessary funds and resources for this Contract?
- Does the Contract include the entire understanding between the parties without additional oral explanations or promises that are not included in the Contract?
- Does the Contract commit or impact another unit on campus?

## 2. Supplemental Review

	Office should forward the Contract to Purchasing for review.
Personnel matters (including settlement agreements with employees, consulting agreements, and personal service agreements)	Office of Human Resources

### 3. Legal Review

- a. The Office of General Counsel reviews a Contract for:
  - The presence of essential elements to a legally valid contract;
  - The absence of prohibited terms (contractual terms that are legally prohibited);
  - Potential conflicts and ethics issues;
  - Compliance concerns; and
  - Whether the business terms accurately reflect the agreement or intent of the Responsible University Office.
- b. After review, the Office of General Counsel will return the proposed Contract to the requesting department and indicate that legal review has been completed.
- c. It is important to know that the legal review determines the legal validity of a Contract, as opposed to whether the Contract is appropriate from a business and administrative perspective. The final decision to enter into a Contract is the responsibility of the department initiating the Contract and should take place only after all applicable University approvals have been obtained.
- d. Contract reviews normally take up to ten (10) business days. In those cases where the Contract requires complex negotiations over terms and conditions, you are encouraged to include the Office of General Counsel in the process as early as possible. You must plan appropriately for the review process. The legal review process cannot be compromised due to time constraints.
- e. Please note that additional, supplemental reviews (see Section II.B.2. above) may still be required before execution of the Contract.
- f. Submission for legal review by Responsible University Office

When the Contract is being submitted to the Office of General Counsel for legal review by the Responsible University Office or by other departments pursuant to Sections II.A.2. and II.B.2. above, the submission must include

approval and signature, those providing their approval will only need to verify that the Contract being routed is the one they have already reviewed.

The process for execution is as follows:

1. Submit the agreed upon clean copy of the Contract for execution to the Office of General Council.
2. The Office of General Counsel will submit the Contract and a Contract Routing and Approval Form to one of the Authorized University Officials for execution.

#### **E. CONTRACT RETENTION AND MONITORING**

1. The Office of General Counsel will retain fully executed contracts (other than those handled by the Purchasing Department) for the University in a database. Copies will be provided to the Responsible University Office.
2. Unless otherwise provided by University policy, the Responsible University Office has the obligation to oversee the performance of the Contract and monitor the University's compliance with the terms of the Contract. Failure to monitor the Contract requirements may expose the unit or University to financial loss, legal actions, and claims of breach of Contract or default. Any questions about these matters or this policy should be brought to the attention of the Office of General Counsel.

#### **III. POLICY REFERENCE**

The procedures above are part of the operational implementation of the University's Contract Review, Approval, and Execution Policy, and are in compliance with that policy.


#### **IV. REVIEW AND RESPONSIBILITY**

Responsible Party: Office of General Counsel

Review: Every three years (or more frequently if needed)

#### **V. APPROVAL**

  
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Reggie Lampkin, General Counsel

  
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Date

#### **REVISION/REVIEW LOG**

<b>Revision Number</b>	<b>Approved Date</b>	<b>Description of Changes</b>
1	12/2/2021	Added clarifications and included updates to comply with data governance and IT-related requirements