



## CONTRACT POLICY

<b>Responsible Department:</b>	Office of General Counsel
<b>Responsible Administrator:</b>	General Counsel
<b>Effective Date:</b>	May 2014
<b>Reviewed/Updated Date:</b>	March 2018
<b>Date of Scheduled Review:</b>	March 2022

### I. PURPOSE

This policy describes the general guidelines for the review, approval, and execution of all contracts to which the university is a party and outlines the contract signature authority delegated by the President to various university officers.

### II. SCOPE

This policy applies to all university employees. This Policy does not limit in any way the powers or previous resolutions of the Board of Trustees of the university related to signature authority, nor does it limit university units from establishing procedures relating to the review and approval of contracts within their area.

### III. DEFINITIONS

When used in this Policy, the following terms have the meaning provided here.

**A. Contract** – a written agreement that creates a legally binding obligation between the university (acting in its own name or by and through any operating unit) and one or more outside parties. Oral contracts are not authorized. Contracts include, among other documents:

- agreements to buy or sell good or provide or obtain services;
- facilities use agreements;
- memoranda of understanding;
- promissory notes and other instruments for the payment of money;
- affiliation agreements;
- leases for tools, equipment, vehicles, etc.;
- leases, deeds and other conveyances affecting interests in real property;
- employment agreements or letters;
- debt instruments and related documents; and
- software license agreements.
- Note: Documents regarding grants awarded by government agencies and private organizations are generally not within the scope of this Policy but are subject to the review process managed by the Office of Research and Sponsored Programs.

**B. Signature Authority** - the power, delegated by the President pursuant to this Policy, to execute contracts and thereby legally bind the university.

**C. Contract Amount** - the projected or known expenditures or revenues of the university contemplated under a contract over the entire contract or project term. A

project should not be unnecessarily disaggregated into multiple contracts as to lower the respective contract amounts.

- D. Term** - the duration of the obligations of the university under a contract, excluding any provisions that may survive the termination, such as confidentiality or indemnity obligations. For purposes of this policy, a gift agreement constitutes a single event and not a continued obligation. Note that many contracts contain automatic renewal provisions and require advance notice of non-renewal. Contract Originators should exercise care in setting reminders or taking other necessary steps to ensure that their department or unit reviews contract terms and makes decisions about renewal/nonrenewal within the appropriate notice window.
- E. University Form Contracts** – contract forms that have been pre-approved by the Office of General Counsel for use by the university, specific units or departments without modification.
- F. Tier One Contracts** – Either 1) an unedited [University Form Contract](#); or 2) any other contract that meets the following criteria: (a) contract amount does not exceed \$25,000; (b) term of one year or less; and (c) does not present a [conflict of interest](#), involve high reputational risks, or contain indemnity, hold harmless, and/or waiver clauses, which are all more fully described in the [Checklist for Departmental Review](#).
- G. Tier Two Contract** – any contract that does not qualify under Tier One or Three.
- H. Tier Three Contract** – any contract with projected or known expenditures of at least \$500,000, revenues of at least \$1,000,000, or related to borrowing money or obtaining credit.
- I. Contract Originator** – the employee most directly responsible for the university's responsibilities under the contract. This places the Originator in the role of initiating the contracting process.

#### IV. SIGNATURE AUTHORITY

Unless the President delegates signature authority through this Policy as outlined below, no employee is authorized to execute a contract on the university's behalf or bind the university, or any operating unit or department, under the terms of a contract.

- A. Tier One Contracts** – In addition to the President, the following officers and administrators have authority to sign Tier One Contracts: Academic Deans; Chief Officers; Athletic Director; Vice Presidents; Provost; Board Chair; and Vice Chairs.
- B. Tier Two Contracts** – In addition to the President, the following officers and administrators have authority to sign Tier Two Contracts: Senior Vice President for Operations; Vice President and Chief Business Officer; Provost; Board Chair; and Vice Chairs.
- C. Tier Three Contracts** – Two of the following must sign Tier Three Contracts: Senior Vice President for Operations; Vice President and Chief Business Officer; Provost; President; Board Chair; and Vice Chairs.

Authorized signers are responsible and accountable for ensuring that they meet all training requirements established by the Office of General Counsel. Moreover, before signing a contract, they are responsible for ensuring that Contract Originators have met their obligations under this policy.

## V. CONTRACT SIGNATURE PROCESS

- A. Departmental or Office Requirements** - The Originator must first comply with any applicable requirements of the appropriate administrator of the department or office responsible for the contract (the “Responsible Administrator”) and ensure that the Responsible Administrator approves the transaction contemplated in the contract.
- B. Sufficient Resources** - It is the responsibility of the Originator, on behalf of his or her department, unit, or division to ensure that the commitment of all necessary resources (funding, personnel, facilities and space) is met. If resources are not available, the Originator must ensure through the Responsible Administrator that adequate resources will be made available.
- C. Prepare and Review Contract** – The Originator should prepare the contract using a [University Contract Form](#) or review an existing contract using the [Checklist for Departmental Review](#).
- D. Insurance** - If the contract requires the other party to provide insurance, a certificate of insurance must be submitted to and approved by the Office of Risk Management (risk@acu.edu). If a contract requires ACU to provide proof of insurance, the Office of Risk Management should review those provisions before execution and obtain any necessary certificates of insurance. For detailed information regarding insurance see both the [Checklist for Departmental Review](#) and [Insurance Procedures and Requirements](#).

### E. Legal Review and Signature

1. Tier One Contracts – Authorized signers can sign Tier One Contracts without review by the Office of General Counsel. Therefore, the Contract Originator should coordinate execution of the contract with an authorized signer in his or her unit or division. If legal review is desired, use the process set out below.
2. Tier Two and Three Contracts
  - a. *Review by Office of General Counsel*– Tier Two and Three Contracts must undergo review by the Office of General Counsel before execution. Contract Originators should, therefore, complete the [Contract Submission Form](#) and submit the contract to the Office of General Counsel by email to [ogc@acu.edu](mailto:ogc@acu.edu) (preferred) or in hard copy to Room 111 of the Hardin Administration building or Box 29125.

Once received, the Office of General Counsel reviews contracts for legal content and other specific concerns raised by the Originator and not for business terms and conditions. From time to time, the Office of General Counsel will respond to the Originator with questions and recommended

changes on the contract. Based on the volume of contracts received by the Office of General Counsel and the need for the General Counsel to avoid any direct contact with outside parties who may also be represented by counsel, the Originator is responsible for discussing any necessary changes with the outside party.

- b. Execution and Return to Originator* - After completing its legal review and after all necessary changes have been incorporated into the contract, the Office of General Counsel will have the contract signed electronically by an authorized signer using Adobe eSign, which will automatically send a PDF copy of the signed contract back to the Originator by email. (If the other party requires a handwritten signature, Originators should so indicate on the contract submission form). It is the responsibility of the Originator to have the contract signed by the outside party.

- F. Contract Administration** - Unless otherwise provided by university policy, the Originator and/or generating department of a given contract is responsible for properly carrying out and/or monitoring the university's duties and obligations under the terms of the contract. Each Originator and/or department should maintain a log documenting vendor, subject matter, period (term) of contract, economic terms, and effective date of the contract. The Originator/generating department should maintain a signed version of all contracts. Unless otherwise stated in the university's records retention schedule, the Originator should retain the contract for four (4) years after the contract performance is complete or after it is otherwise terminated.

## **VI. COMPLIANCE**

Failure to follow this policy could result in increased risk for the university and/or employee discipline. Moreover, an unauthorized signer could be held personally liable.