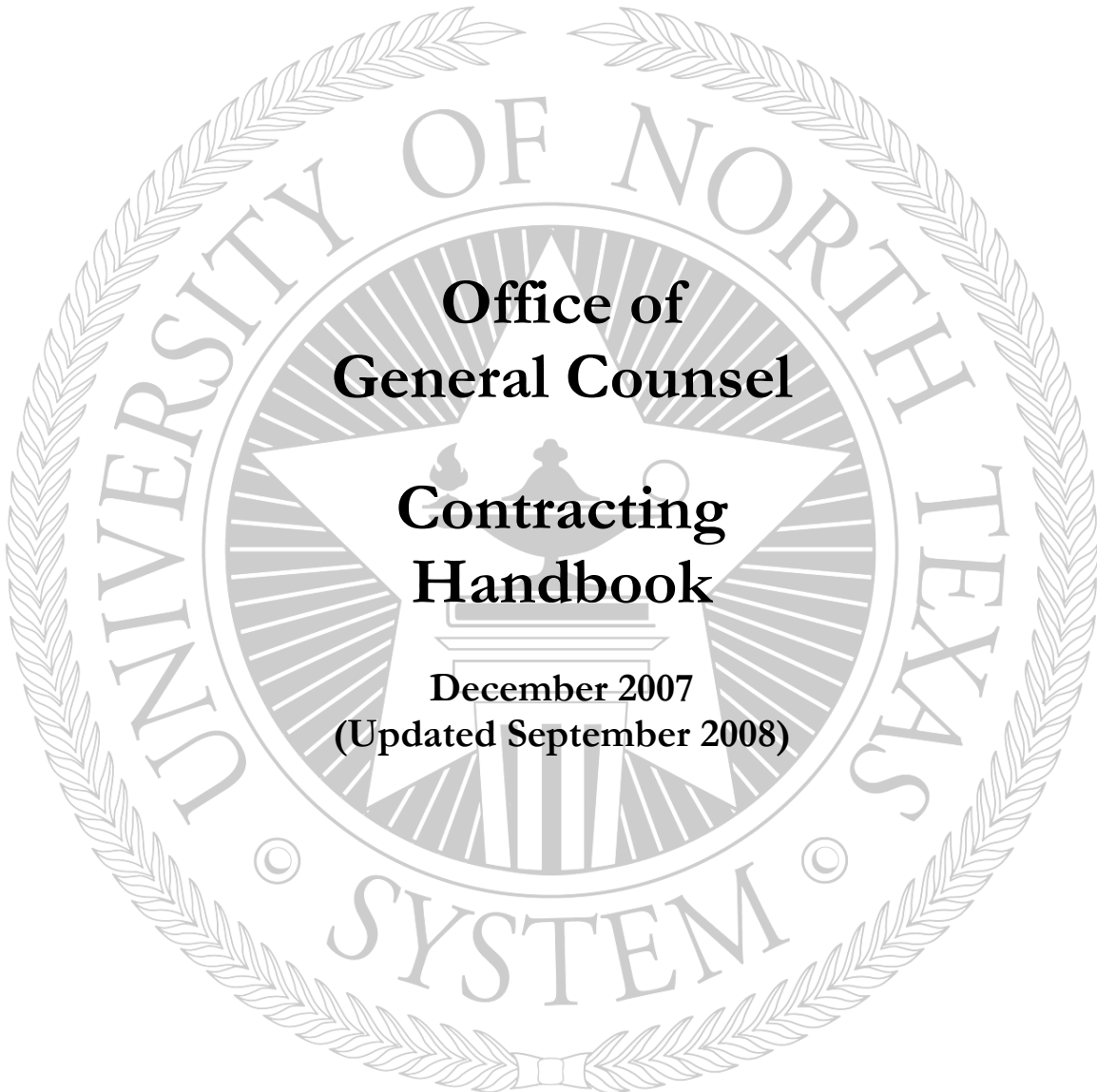


UNIVERSITY OF  
**NORTH★TEXAS™**  
SYSTEM



**Office of  
General Counsel**

**Contracting  
Handbook**

**December 2007  
(Updated September 2008)**

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## INTRODUCTION

The University of North Texas System Office of General Counsel is pleased to provide this Contracting Handbook to assist you in the negotiation and review of the contracts and agreements that are essential to the successful operation of your department. We hope that the forms, checklists, and tips contained in this Handbook will acquaint you with basic legal terms and concepts and assist you in striking the best possible agreements – those that are of good value and are legally sound.

I would like to acknowledge the hard work of Jon McGough, Erin Stewart, Alan Stucky, and Michelle Williams in putting this Handbook together. They are your contracting experts and you should feel free to call on them and the rest of our outstanding staff at any time with your questions.

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## WHAT IS A CONTRACT?

A contract is an agreement between two or more parties who intend to be legally bound. At a basic level, the terms of a contract will state what the parties have agreed to, which usually means that it sets forth what the parties have agreed to exchange. Goods or services will often be exchanged for money. Educational institutions enter into a number of additional types of contracts, such as internship agreements and affiliation agreements, where money may not change hands, but with which the institution must still comply.

Contracting parties can be individual people, a business, an organization, a government agency, a university, or any other legal entity. The System is an agency of the State of Texas, and can enter contracts, as can the University of North Texas and the University of North Texas Health Science Center. At this time, the University of North Texas Dallas Campus is not a separate entity that is capable of contracting on its own, and the System will enter into agreements on its behalf. University departments, centers, colleges, or divisions cannot be party to a contract, as they are not individual legal entities. Instead, the System, the University of North Texas, or the University of North Texas Health Science Center must enter into contracts on behalf of their respective divisions or departments. In order for a contract to be properly entered into by the System or an Institution, it must be signed by an individual with appropriate authority. Please see the section on Delegated Authority located at page 20 of this Handbook for more information.

Generally, a contract is formed when one party agrees to do something or give something to another party in exchange for some other action or object. Contracts can be based on intentional actions, be entirely verbal, or be written, either using formal or informal terms. An informal, verbal contract arises, for example, when you engage a babysitter. You tell the babysitter to come over at 7pm and to stay until you get home. In exchange, you will pay the babysitter five dollars per hour. The babysitter agrees. If the babysitter comes over at 7pm and stays for three hours, you are contractually obligated to pay fifteen dollars. A formal, written contract arises when you purchase a car from a dealership, and all your obligations are set forth in that contract, as well as what you're getting in exchange, including what type of car, any features it may have, and relevant warranties.

It is critical to note that all contracts involving the System or an Institution must be in writing and approved and signed by an individual with appropriate authority. The University of North Texas System Board of Regents has adopted a Regents Rule regarding Delegated Authority for contracts that mandates that all contracts entered into by the System or an Institution must be in writing. This means that any time a System entity will be contractually obligated to do anything, from purchasing a certain number of pencils to renovating a building, to engaging the services of a speaker or consultant, the agreement must be in writing. In addition, all written contracts must be approved and signed by an individual with appropriate authority to bind his or her respective Institution or the System. If not appropriately signed, a contract may not be legally binding on a System entity, and the individual who signed the contract without having the authority to do so may be individually responsible for fulfilling the obligations created under the contract.

In order to simplify the contracting process for making purchases, while still complying with the policy that all contracts must be in writing, almost all purchases made by the System and the Institutions are made using Purchase Orders. A Purchase Order is a standard contract used by a purchasing department to clearly set out the terms of an agreement with a vendor. The relevant terms include the vendor, the product names, how many of each product is being purchased, and at what price. In addition, there are terms and conditions set forth in the Purchase Order that govern the contract, such as how much interest will be paid to the vendor in the event that payments are not made on time, and what will happen if there is a dispute over the contract. It may be beneficial to enter a written contract in addition to a Purchase Order, as a written contract will include terms and conditions in addition to those set forth in the Purchase Order, such as warranties, guarantees, or limitations of liability.

If a contract does not involve a purchase, for example, affiliation agreements, facility use agreements, or other types of revenue agreements, a written contract is always required. Written contracts are beneficial to both parties, as they clearly set forth the obligations of each party, and may provide recourse in the event that the relationship does not proceed as expected. Written contracts are considered the final disposition of each party's intentions, and any terms of the agreement that are not included in the written contract will not be legally binding. Therefore, it is important to make sure that all important items are included in a contract.

If one or both parties fail to satisfy their obligations under a contract, the contract has been "breached." The party who has committed the breach is called the "breaching party" and may be required to compensate the other party for any damages arising out of the breach. It is important to clearly set forth in a contract what each party is obligated to do, so that there will be no question about whether the parties have fulfilled their obligations.

If the System or an Institution enters into a contract, regardless of whether the contract involves a purchase, the contract must comply with requirements imposed by the Texas constitution and statutes, which may require or prohibit the inclusion of certain language. Problematic terms can usually be modified to comply with state requirements, or they may need to be deleted altogether. Please see the Contract Checklist and the State Contracting Requirements respectively located at pages 7 and 14 of this Handbook for more information.

## **TIPS FOR BASIC PURCHASE CONTRACTS**

1. Follow your Institution's purchasing procedure. Be sure to follow your Institution's purchasing policies and procedures. Always keep in mind your Institution's bid limits and contact your purchasing department early in the process for guidance.
2. Do your homework. Get as much information about what you're trying to acquire, whether goods or services, as possible before contacting a vendor. Information that is particularly useful is how much the goods or services generally cost, whether they come with a warranty or any type of service plan, and whether they are widely available or only sold by a few vendors. The more widely available the product, the easier it may be to get a vendor to negotiate the price or the options available with the product.
3. Name it to claim it. Be able to clearly state what it is you want, how much you're willing to pay for it, and when you need it. Contact your purchasing department with questions regarding developing specifications for the product or service you want to procure.
4. Never be afraid to ask. If you need additional services or considerations outside of what the vendor generally provides, go ahead and ask for them, and include them in your specifications.
5. Shop around. For purchases which only require verbal or informal bids pursuant to your Institution's purchasing policies, ensure you or your purchasing department, depending on your Institution's policy, obtain the requisite number and types of bids or quotes. Also, you may want to ask your purchasing department whether a state contract (e.g. TXMAS or DIR contract) exists under which you could make your purchase; often, purchases made under group ordering agreements negotiated on behalf of the state of Texas, like these are, yield the best value to the Institution.

## **TALKING POINTS FOR DISCUSSIONS WITH VENDORS**

1. The System is a large organization serving approximately 40,000 students, faculty, and staff. If a vendor provides a good deal or service, it is possible they could get repeat System business.
2. Accepting a purchase order issued by an Institution without requiring an additional contract may speed the processing of the transaction (there are instances where an Institution may find it desirable to enter an additional contract).
3. If you're trying to negotiate to include state of Texas language in a contract, explain that the System is an agency of the state of Texas and its purchasing function is regulated and limited by statute. The statutes regulating purchases often benefit vendors, such as Government Code 2251, which insures that vendors will be paid within thirty days, or they will receive interest on the overdue amount, and Government Code 2260, which provides a means by which vendors can take action for breach of contract claims, from which a state agency would otherwise be immune.

## LEGAL REVIEW OF CONTRACTS AND AGREEMENTS

The University of North Texas System Rules of the Board of Regents (“Regents Rules”) set forth the System-wide policy regarding legal review of contracts and agreements. Regents Rule 03.906 exempts certain contracts from individualized legal review, and is essentially in two parts: (1) an exemption from individualized legal review for approved standard form agreements, and (2) an exemption from legal review for contracts and agreements that meet criteria published annually by the Office of General Counsel (“Criteria for Exemption”). Annual revision and publication of the Criteria for Exemption will provide flexibility to the Institutions and to the System by allowing modifications that may expand or retract the scope of the Criteria for Exemption as appropriate, without seeking additional Board of Regents approval. The Board of Regents and the Chancellor, as well as the Presidents and their administrations, will be provided an opportunity to review and consider the Criteria for Exemption annually prior to its publication and implementation.

- 03.905      Legal and Administrative Review. All contracts must be approved as to form by the Office of General Counsel before execution, unless exempt under this Regents Rule.
- 03.906      Exemption from Legal Review. In his or her sole discretion, the Vice Chancellor and General Counsel may exempt from individualized legal review:
1.      contracts prepared on forms developed by the Office of General Counsel and approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$100,000;
  2.      contracts prepared on forms not developed by the Office of General Counsel, but that are approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$100,000; and
  3.      other contracts as stated in the Criteria for Exemption issued in writing by the Office of General Counsel.

To view the current list of contracts that are exempt from individualized legal review please visit the OGC website at: <http://untsystem.unt.edu/generalcounsel/contracts/contract-home.htm>

The complete Regents Rule regarding Contracts and Agreements is included in this Handbook as Appendix A.

## **CONTRACT CHECKLIST**

The purpose of this Contract Checklist is to help you review and process contracts, especially those contracts that will now be exempt from legal review. Prior to submitting a contract for signature, you should go through this checklist and address applicable issues as explained below. Use of this checklist should enable you to identify and address general legal issues and problems that routinely arise in contracts. It will also help you to comply with applicable policies and state and federal law related to contracts. If you are in doubt about how to answer a checklist question for a particular contract or you have a concern about a contract that this checklist does not address, please contact the Office of General Counsel for further assistance.

The Checklist references two other documents that are included in this Handbook. The first document is entitled “State Contracting Requirements” and sets forth the legal bases of several of the items included in the Checklist. The second document is called the “Standard Addendum to Agreement” and is a tool that can be used to ensure compliance with state contracting requirements. If attached to an agreement, and signed by both the System or an Institution and the vendor, the terms of the Standard Addendum are accepted and incorporated into the contract.

Please respond to the questions below and apply the information provided to your contract. If the answer to a question is YES check the box and continue to the next question unless instructed to do otherwise. For additional guidance on any item, please contact the Office of General Counsel.

The University of North Texas System, the University of North Texas, and the University of North Texas Health Science Center will be referred to individually and collectively throughout this Checklist as “the University.”

**Preliminary Questions**

(Basic information you should know about your contract.)

<input type="checkbox"/>	<p><b>Have you read the contract in its entirety and do you understand and agree with all of its terms and conditions? Will the University be able to comply with all of the terms of the contract?</b></p> <p>If a contract term is confusing, irrelevant, inaccurate, or impossible, then it should be removed or replaced. You can remove a term by striking through it and having the change initialed by all of the parties signing the contract. You can also include new terms in an addendum to the contract, which should be signed by all the parties to the contract, or you could rewrite the contract entirely.</p>
<input type="checkbox"/>	<p><b>Is the contract complete? Does it include all relevant terms and conditions, including exhibits and schedules?</b></p> <p>Is the contract missing any pages? Are all exhibits or attachments properly labeled and included with the contract, and have you reviewed all documents referenced in the contract? Referenced documents become part of the contract, so they need to be reviewed in the same manner as the original contract. If a term or condition is not explicitly stated in the written contract, then it is not binding on the other party. This is true even if the other party has discussed the term or condition with you and has agreed to it verbally. So, if something is important, make sure that it is clearly stated in the contract.</p>
<input type="checkbox"/>	<p><b>If the contract document is an addendum or amendment to another contract or if it is intended to replace a contract currently in effect, does the new document reference the previous contract and explain how it is to be impacted?</b></p> <p>If a new contract is intended to replace a previous contract in its entirety, then it should be clearly stated that the old contract is no longer binding. If only some terms and conditions of the old contract are being replaced, but others will continue to be in effect, then this needs to be clearly explained in an addendum or amendment. There should not be any confusion as to how the terms and conditions of the old contract and those of the new addendum or amendment work together.</p>

### Approval and Routing

(The general steps you will need to take to get your contract approved and signed. Be sure to follow your Institution's contract routing and approval process.)

**Has appropriate notification been provided to, and approval obtained from, your department and all other relevant offices or departments?**

In addition to departmental approval, the appropriate research or grant office needs to approve any contract involving a research or a grant, and the purchasing department needs to approve any contract involving a purchase. Approval must also be obtained from any other department or office impacted by the contract or with authority over the subject matter of the contract. Examples include: (a) the use of the University logos or marks; (b) making a commitment that the vendor will be an "exclusive provider" of their product or service to the campus; (c) insurance provisions; (d) provision of computing or telecommunications services; (e) acceptance of credit card payments.

**Have you determined the appropriate office to which you should submit your contract for approval, and have you determined whether it is exempt from legal review under the Criteria for Exemption published by the Office of General Counsel?**

Purchasing Contracts: All contracts involving a purchase or the expenditure of funds must be submitted to your Institution's purchasing department with a requisition. If your contract requires legal review, the purchasing department will forward it to the Office of General Counsel.

Sponsored Research/Grant Funded Contracts: Contracts involving sponsored research or grant funding should be submitted to your Institution's research/grant/sponsored programs office, which will review the agreement and route it appropriately.

All Other Contracts: Contracts that do not require the approval of a purchasing department or research/grant/sponsored programs office should be submitted directly to the Office of General Counsel, unless otherwise exempt as a Standard Contract (see the next item below and the Standard and Model Agreements document included in this Handbook at page 19). If you have questions regarding contract routing, please contact the Office of General Counsel.

**Is the contract exempt from legal review because it was created using a Standard Contract approved for use by the Office of General Counsel and exempted from further review in a memo written by the Office of General Counsel?**

If you answered yes to this question, you must attach the memo provided to you by the Office of General Counsel exempting your Standard Contract when you submit your contract for signature. Please see the Standard and Model Contracts document included in this Handbook at page 19 for more information.

**Does the contract involve the provision of food services, beverage services, cable services, credit card sales, affinity cards, or textbook sales and if so, have you contacted the Office of General Counsel to determine whether the contract conflicts with a pre-existing exclusive contract?**

**General Information**

(These questions concern language that appears in most contracts.)

<input type="checkbox"/>	<p><b>Is the contract in the name of a System entity?</b></p> <p>Departments or other campus divisions cannot be listed as contracting parties; the System, UNT, or UNTHSC enter all contracts on behalf of their respective departments or campus divisions; individuals who sign contracts on behalf of the System or an Institution must have signature authority to bind his/her Institution.</p>
<input type="checkbox"/>	<p><b>Are all references to the parties accurate, complete and consistent, including references in:</b></p> <p>(a) the first paragraph of the contract, (b) the abbreviations or defined terms referring to the parties, and (c) the signature blocks?</p>
<input type="checkbox"/>	<p><b>Are the duties and obligations of all the parties to the contract clearly stated so they all know:</b></p> <p>(a) what each party's duties and obligations are, (b) how each party's duties and obligations will be performed, and (c) when each party's duties and obligations will be performed?</p>
<input type="checkbox"/>	<p><b>Does the contract clearly establish the place, time, and method of payment?</b></p> <p>Please see the Procurement Contracts section regarding payments made by the University.</p>
<input type="checkbox"/>	<p><b>If the contract is not for a set amount, does the contract clearly and accurately state the maximum amount that could be owed under the contract?</b></p>
<input type="checkbox"/>	<p><b>Does the contract clearly state:</b></p> <p>(a) the beginning or effective date, and (b) the ending or expiration date?</p>
<input type="checkbox"/>	<p><b>Can the contract be renewed or extended, if so, does it renew or extend automatically, and are you comfortable with how it can be renewed or extended?</b></p>
<input type="checkbox"/>	<p><b>Does the contract contain a penalty for early termination and if so have you deleted the penalty clause or determined that your department is willing to accept the cost of early termination?</b></p>
<input type="checkbox"/>	<p><b>Are the warranties made by the University limited to the following:</b></p> <p>(a) the signatory has the authority to enter and sign the contract, and/or</p> <p>(b) factual representations that are well-supported?</p>

**Potential Problem Terms and Conditions**

(Clauses and requirements that could conflict with Texas contracting requirements unless modified or deleted.)

<input type="checkbox"/>	<p><b>Does the contract contain a clause requiring the University to indemnify another party, and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p> <p>*Please note that if another party is indemnifying the University, this is desirable and should be left in. In certain cases you might want to request indemnification from the other party.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a clause that gives another party the right to control any investigation, defense, or settlement of any claim or lawsuit filed against the University, and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain an arbitration clause and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a mediation clause, and if so, is your department willing to pay the costs of mediation?</b></p>
<input type="checkbox"/>	<p><b>Does the contract require the University to provide insurance, and if so have you attached the Standard Addendum or requested assistance from your risk management office?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>Is the contract governed by the laws of the State of Texas, or is it silent on applicable law?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>If the contract has a venue clause, is that clause consistent with Texas Education Code § 105.151?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>

<input type="checkbox"/>	<p><b>Does the contract contain a clause that limits the time within which the University could bring legal action or file a claim against the other party, or does it limit the liability of the other party, and if so, have you removed the clause or attached the Standard Addendum?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a confidentiality, nondisclosure, or privacy provision with which the University will be expected to comply and if so, have you contacted the Office of General Counsel for guidance?</b></p> <p>Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract require you to provide Educational Records of University students or allow a third party to access such information and if so, have you contacted the Office of General Counsel for guidance?</b></p> <p>Providing certain information may implicate the Family Educational Rights and Privacy Act. Please contact the Office of General Counsel for guidance.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a clause that allows the other party to make representations in the name of the University, to act as an agent of the University, or to collect money on behalf of the University and if so, have you removed the clause or contacted the Office of General Counsel for guidance?</b></p>

**Procurement Contract Terms**

(The following questions should be answered if your contract requires the expenditure of funds.)

<input type="checkbox"/>	<b>Is a written contract, separate from a purchase order, necessary?</b>
<input type="checkbox"/>	<b>Does the contract include a clause that rejects the terms and conditions of any purchase order, and if so, have you ascertained that the vendor's contract does not violate state contracting requirements, or has the Vendor signed the Standard Addendum?</b>
<input type="checkbox"/>	<b>Do the payment terms comply with state requirements?</b> Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.
<input type="checkbox"/>	<b>Does the contract include a provision for breach of contract claims against the University, and if not, have you included that language manually or by attaching the Standard Addendum?</b> Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.
<input type="checkbox"/>	<b>Does the contract include a child support certification and if not, have you included that language manually or by attaching the Standard Addendum?</b> Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.
<input type="checkbox"/>	<b>Does the contract obligate the University to make payments beyond the current appropriations term and if so, have you included appropriations language manually or by attaching the Standard Addendum?</b> Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.
<input type="checkbox"/>	<b>Does the contract include language certifying that the vendor is eligible to receive payment from the State of Texas, or has the Standard Addendum been attached?</b> Please see the State Contracting Requirements document included in this Handbook at page 14 for more information.

## STATE CONTRACTING REQUIREMENTS

The Contract Checklist and Standard Addendum are designed to assist the System and the Institutions with their review of contracts and to ensure compliance with applicable state law requirements. The following is a brief explanation of some of the critical issues the Standard Addendum and Checklist, if used properly, address. Each of the items included in this list is incorporated into the Standard Addendum, which can be signed by both parties to a contract in order to ensure compliance with state requirements.

**Governing law:** System and Institution contracts should always be governed by the laws of the state of Texas. Texas law contains many provisions which protect the state and state institutions of higher education. If another state's law governs the contract, these protections may not apply.

**Venue:** Venue refers to the geographic location of a lawsuit. Parties to a contract can agree on the venue for any disputes arising out of that contract and include that agreement as one of the terms of the contract. Section 105.151 of the Texas Education Code provides mandatory venues for the System and Institutions as follows: (a) Venue for a suit filed against the System or the University of North Texas is in Denton County; (b) Venue for a suit filed against the Health Science Center is in Tarrant County; and (c) Venue for a suit filed against the University of North Texas at Dallas is in Dallas County. Contracts should not contain venue provisions that modify the mandatory venue provisions described above.

**Confidentiality clauses:** The System and the Institutions are subject to the Texas Public Information Act. Chapter 552 of the Texas Government Code. The System and the Institutions cannot keep information confidential if it is subject to disclosure under the Texas Public Information Act. Therefore, any clauses in contracts which require the System or the Institutions to maintain information as confidential must either be deleted or qualified with "to the extent permitted by the Texas Public Information Act" or similar language.

**Indemnification:** Indemnity and hold harmless provisions are very important and must be reviewed carefully. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State . . . ." The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or the Institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

**Insurance:** The System and the Institutions should carefully review any clauses in their contracts which require the System or an Institution to maintain insurance and ensure that the clauses accurately reflect levels of coverage. Below is a brief explanation of some common insurance requirements.

**General Liability Insurance:** It is the stated policy of the state of Texas not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, third parties must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. One exception to the above stated policy of the state authorizes agencies and state institutions of higher education to acquire commercial automobile insurance for the use and benefit of their employees who operate state owned, motorized vehicles and special equipment.

**Worker's Compensation Insurance:** Employees of the System and the Institutions are provided Worker's Compensation coverage under the provisions of the Workers' Compensation Act for Texas State employees.

**Professional Liability Insurance:** The University of North Texas Health Science Center maintains a Professional Liability Self Insurance Plan for its physicians and medical students under the authority of Chapter 59 of the Texas Education Code.

Please contact the Office of General Counsel or applicable risk management office with questions regarding insurance.

**Interest on late payments:** Chapter 2251 of the Texas Government Code provides for interest on late payments to vendors. Contracts which require the System or the Institutions to pay interest on late payments should be modified so that any interest payment will be in accordance with Chapter 2251 of the Texas Government Code.

**Breach of Contract Claims:** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts with entities of the state of Texas involving goods, services and certain types of projects. This statute was intended to be of benefit to parties contracting with an entity of the state of Texas. This statute requires that a state entity must give vendors notification of the dispute resolution process and its applicability to state contracts. Any arbitration or mediation provisions contained in contracts should be deleted and replaced with the dispute resolution clause contained in the Standard Addendum. The System and the Institutions should not enter into contracts which contain an arbitration provision as it could waive protections provided by state law.

**Obligations Extending Beyond Current Appropriations Term:** If the System or an Institution is a party to a contract and the term of the contract extends beyond the expiration of the current appropriations term that is in effect when the contract is entered into, the contract must contain a provision that specifically conditions the System's or an Institution's financial obligations under the contract on the availability of sufficient appropriations. This is necessary to avoid the creation of an unconstitutional debt.

## **Eligibility for Vendor to Receive Payment from State of Texas:**

**Franchise Tax Certification:** Section 2107.008 of the Texas Government Code does not permit the System or the Institutions to pay a vendor who is delinquent in paying state of Texas franchise taxes. The System and the Institutions must determine whether a vendor is delinquent, and the certification in the standard addendum helps with compliance with Section 2107.008.

**Payment of Debts to State of Texas:** Sections 2107.008 and 2252.903 of the Texas Government Code only require state institutions to include this clause in contracts with persons whom the state comptroller has determined are in debt to the state or delinquent in the payment of taxes. The clause in the standard addendum requires vendors to acknowledge that if they are in debt to the state, payments they are owed under the contract will first be applied to pay off their debt.

**Child Support Certification:** Section 231.006 of the Texas Family Code requires certain vendors who do business with the state to certify that they are not delinquent in the payment of child support.

**Certain Bids Prohibited:** Section 2155.004 of the Texas Government Code states that a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.

**Limitation of Time in Which to Bring Legal Action or Claim:** Section 16.070 of the Texas Civil Practice & Remedies Code states that any stipulation or agreement that attempts establish a limitations period shorter than two years is void.

## **STANDARD ADDENDUM**

The Office of General Counsel has created a Standard Addendum that can be attached to any contract between third parties and the System or an Institution. By having both parties to a contract sign the Standard Addendum, the clauses contained within the Standard Addendum will be incorporated into the contract, ensuring compliance with state of Texas contracting requirements. Please see the section on State Contracting Requirements at page 14 of this Handbook for more information.

**STANDARD ADDENDUM**

Contracts with \_\_\_\_\_ (“the University”) are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. Payment will be made in accordance with the terms of the University’s purchase order.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Government Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Vendor also certifies that it is in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas.

Tax Exempt. the University is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against the University. Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Vendor to attempt to resolve any claim for breach of contract against the University that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part, in the State of Texas, and venue for any suit filed against the University shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, the University’s continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, the University shall issue written notice to Vendor that the University may terminate the Agreement without further duty or obligation.

Travel Expenses. In the event the Agreement required the University to reimburse Vendor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery shall be FOB Destination.

Insurance. the University, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by the University shall, without further requirement, satisfy all general liability insurance obligations of the University under the Agreement.

**Limitations. the University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on the University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney’s fees; dispute resolution; indemnities; and confidential information. Terms and conditions relating to these limitations will only be binding on the University to the extent permitted by the Constitution and the laws of the State of Texas.**

VENDOR: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

UNIVERSITY  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## STANDARD AND MODEL CONTRACTS

In addition to the contracts listed in the Criteria for Exemption (located at page 5 of this Handbook), Standard Contracts are exempt from individualized legal review. Standard Contracts are contracts prepared on forms created by the Office of General Counsel<sup>1</sup>, which have been reviewed and approved in writing by the Office of General Counsel for use without individualized legal review. The Office of General Counsel will provide written authorization to use a Standard Contract without additional legal review via a memo that will be provided to you with the Standard Contract. You should attach a copy of this memo to a Standard Contract when you submit it for signature. Written approval for the use of a Standard Contract will expire every two years, at which time the Standard Contract will be reviewed, revised if needed, and reapproved if appropriate.

The Office of General Counsel has already identified several contracts that could be used effectively in this manner, and will continue to expand this list with System-wide input, projecting that approximately 50 Standard Contracts will be drafted and approved for use during Fiscal Year 2008.

Examples of Standard Contracts are the Murchison Facilities Use Agreement (UNT), the International Studies International Memorandum of Agreement (UNT), and the Medical Student Affiliation Agreement (UNTHSC).

The Office of General Counsel will also produce several Model Contracts to serve as templates for the creation of contracts and agreements that will not be exempt from individualized legal review due to risks inherent in their subject matter and/or administrative requirements. Legal review of contracts and agreements that are based on these templates will be expedited.

Examples of model agreements are the Head Coach Employment Agreement (UNT) and the Medical Director Agreement (UNTHSC).

If you have suggestions or requests for the development of new Standard and Model Agreements, please contact the Office of General Counsel.

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<sup>1</sup> In rare cases, the Office of General Counsel may approve contracts created by other parties as Standard Forms, if they do a high volume of business with a System entity and approval as a Standard Form would promote efficiency.

## **DELEGATED AUTHORITY**

All contracts entered into by the System or an Institution must be approved and executed by an individual with appropriate authority to bind his or her respective Institution or the System, regardless of whether the contract requires individualized legal review. The Office of General Counsel does not create or control delegations of signature authority and cannot waive the requirement that the contract be approved and executed by an individual with appropriate authority.

The Board of Regents has delegated authority to the Chancellor of the UNT System to approve and execute all System contracts with a value of less than \$1,000,000 and to approve and execute contracts for the Institutions with a value of more than \$500,000. The Presidents of each Institution have been delegated authority to approve and execute contracts with a value of \$500,000 or less for their respective Institution. The Chancellor and the Presidents have the authority to subdelegate the authority they have been delegated by the Board of Regents. The Chancellor and the Presidents alone decide whether to delegate this authority and to whom it will be delegated, and any proposed changes to current delegations should be directed to them exclusively.

The Office of General Counsel provides a model delegation form for use by administrators to effect delegations of authority, and the Office of General Counsel retains a copy of all delegations and subdelegations in its files. It is not unusual for vendors to request copies of delegations of authority in order to ensure that their agreements are legally binding on the System or the Institutions, and as such, it is critically important that the correct procedure be followed in delegating authority and in filing copies of all delegations with the Office of General Counsel.

## APPENDIX A

### The University of North Texas System Board of Regents Rules

### Chapter 03 – Board Governance

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#### 03.900 Delegation of Authority for Contracts and Agreements

03.901 Purpose and Scope. This Regents Rule establishes the authority for the System, the System Administration, and the Institutions to approve and execute contracts. The term “contract” shall mean any written agreement that creates a binding obligation, financial or otherwise, for the System, the System Administration, or an Institution. Contracts include but are not limited to affiliation agreements, cooperative agreements, easements, grants, intellectual property agreements, interagency contracts, internship agreements, leases, letter agreements, letters of intent, licenses, loans, memoranda of understanding, nondisclosure agreements, professional services agreements, and purchase orders.

03.902 Authority of the Board. Pursuant to Texas Education Code § 105.108, the Board has authority to contract on behalf of the System, the System Administration, and the Institutions, and may delegate to an employee of the System Administration or an Institution the authority to negotiate, execute, and approve contracts. No person has the authority to bind the System, the System Administration, or an Institution contractually except in accordance with this Regents Rule. A contract that is not approved in accordance with this Regents Rule is void.

#### 03.903 Board Approval.

1. Board approval is required for contracts that have a cost or monetary value to the System, the System Administration, or an Institution of \$1,000,000 or more in cash or other consideration, except the following shall not require approval by the Board, regardless of the contract amount:
  - a. contracts or grant proposals for sponsored research, including Institutional support grants, and licenses or other conveyances of intellectual property owned or controlled by an Institution;
  - b. contracts for the purchase of replacement equipment or licensing of replacement software;

- c. contracts for the purchase of routinely purchased supplies;
  - d. purchases made under a group purchasing program;
  - e. purchases of new equipment or licensing of new software identified specifically in the Institutional budget approved by the Board;
  - f. contracts for the purchase or license of library books and library materials;
  - g. contracts for athletic competitions;
  - h. contracts for or related to legal services; and
  - i. contracts related to bequests or gifts to the System, the System Administration, or an Institution.
2. Board approval is required for contracts that involve the sale, acquisition, or encumbrance of real property, including mineral interests, except as expressly provided for in Regents Rule 03.904(1)(c).
  3. Board approval is required for contracts that involve the lease of real property for more than five years. Leases that may be terminated after the fifth year upon no more than 120 days notice without cause and without cost or penalty to the System, the System Administration, or an Institution are exempt from this provision. Leases of mineral rights with a cost or monetary value of \$250,000 or less are exempt from this provision as expressly provided for in Regents Rule 03.904(1)(c).
  4. Board approval is required for employment agreements with a chancellor, president, athletic director, or head coach whose base salary during the term of the agreement totals \$500,000 or more.
  5. Board approval is required for contracts that involve athletic conference membership.

03.904 Delegation of Authority.

1. Delegations to the Chancellor.

- a. The Board delegates to the Chancellor the authority to execute all contracts for the System, the System Administration, and Institutions that are approved by the Board in accordance with Regents Rule 03.903, unless otherwise specified by the Board. Prior to executing an employment contract with a person who will have significant administrative duties and who is to be paid in whole or part with appropriated funds, the Chancellor shall comply with the requirements of Texas Education Code § 51.948.
- b. Subject to the requirements and limitations of this Rule, the Board delegates to the Chancellor the authority to approve and execute contracts for the System and the System Administration without regard to the cost or monetary value of the contract and to approve and execute contracts for the Institutions that have a cost or monetary value to the Institution of more than \$500,000.
- c. The Board delegates to the Chancellor the authority to approve and execute contracts related to the sale, acquisition, or encumbrance of, or lease of a mineral interest in, real property that has a cost or monetary value to the System, System Administration, or an Institution of \$250,000 or less.
- d. The Board delegates to the Chancellor the authority to approve and execute on behalf of the System or the System Administration contracts or agreements with the Institutions for resources or services. Any such contract or agreement shall provide for the recovery of the cost of services and resources furnished.

2. Delegations to the Presidents.

- a. Subject to the requirements and limitations of this Rule, the Board delegates to the Presidents the authority to approve and execute contracts for their

respective Institutions that have a cost or monetary value to the Institutions of \$500,000 or less. Prior to executing an employment contract with a person who will have significant administrative duties and who is to be paid in whole or part with appropriated funds, a President shall comply with the requirements of Texas Education Code § 51.948.

b. The Board delegates to the Presidents the authority to approve and execute on behalf of their respective Institutions contracts or agreements with the System, the System Administration, or other Institutions for resources or services. Any such contract or agreement shall provide for the recovery of the cost of services and resources furnished.

3. Delegations to the Vice Chancellor and General Counsel. The Board delegates to the Vice Chancellor and General Counsel authority to approve and execute contracts with the concurrence of the Chancellor or the Chairman for or related to providing legal services for the Board, the System, the System Administration, and/or the Institutions, after obtaining approvals required by state law.

4. Further Delegation. The authority delegated to the Chancellor and the Presidents under Regents Rules 03.904(1) and (2) may be further delegated. Delegations must be in writing, clearly state the extent of the authority delegated, and state if and to what extent the authority may be further delegated. A delegation must be retained by the delegee, and a copy must be provided to the Office of General Counsel.

5. Revocation of Delegation. Delegations of authority may be revoked at any time. Revocations must be in writing, and a copy must be provided to the Office of General Counsel. Notice of revocation must be provided to the delegee.

03.905 Legal and Administrative Review. All contracts must be approved as to form by the Office of General Counsel before execution, unless exempt under this Regents Rule.

03.906 Exemption from Legal Review. In his or her sole discretion, the Vice Chancellor and General Counsel may exempt from individualized legal review:

1. contracts prepared on forms developed by the Office of General Counsel and approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$100,000;
2. contracts prepared on forms not developed by the Office of General Counsel, but that are approved in writing by the Office of General Counsel for use without individualized legal review that have a total value of less than \$100,000; and
3. other contracts as stated in the Criteria for Exemption issued in writing by the Office of General Counsel.

03.907 Contract Policies. The System Administration and the Institutions shall adopt policies and procedures for administrative processing of contracts. Such policies and procedures shall provide that:

1. all contracts are in writing;
2. contracts comply with applicable federal and state law and regulations, these Regents Rules, and applicable System, System Administration, or Institution policies and procedures;
3. contracts are properly executed by a person with appropriate authority;
4. resources are adequately protected;
5. on behalf of the System and the System Administration, the Vice Chancellor for Finance, and on behalf of the Institutions, the respective chief financial officer, approves policies and procedures to comply with state purchasing requirements; and
6. contracts are in accordance with and support the mission of the System, the System Administration, or Institution.

03.908 Prior Contracts. Contracts approved and signed in accordance with policies in effect prior to the effective date of Regents Rule 03.900 shall remain in full force and effect, but modifications or extensions to such contracts must be approved and signed in accordance with Regents Rule 03.900.

## APPENDIX B

### ADDITIONAL RESOURCES REGARDING PURCHASING AND CONTRACTING

#### **Purchasing and Payment Services Department at UNT**

<http://pps.unt.edu>

#### **Purchasing & Central Services at UNT Health Science Center**

<http://www.hsc.unt.edu/departments/purchasing/>

#### **University of North Texas Policies**

[www.unt.edu/policy](http://www.unt.edu/policy)

#### **University of North Texas Health Science Center Policies**

<http://www.hsc.unt.edu/policies/default.cfm>

#### **University of North Texas System Administration Policies**

[http://untsystem.unt.edu/system\\_policies.htm](http://untsystem.unt.edu/system_policies.htm)

#### **Texas Education Code**

<http://tlo2.tlc.state.tx.us/statutes/ed.toc.htm>

<b>Chapter 105:</b>	<b>University of North Texas System</b>
<b>Chapter 105.108:</b>	<b>Contracts</b>
<b>Chapter 105.151:</b>	<b>Mandatory Venue; Service of Process</b>
<b>Chapter 105.404:</b>	<b>Agreements with Other Entities</b>

#### **Texas Family Code**

<http://tlo2.tlc.state.tx.us/statutes/fa.toc.htm>

<b>Chapter 231:</b>	<b>Title IV-D Services</b>
<b>Chapter 231.006:</b>	<b>Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts</b>

#### **Texas Government Code**

<http://tlo2.tlc.state.tx.us/statutes/gv.toc.htm>

<b>Chapter 2107:</b>	<b>Collection of Delinquent Obligations to State</b>
<b>Chapter 2155:</b>	<b>Purchasing: General Rules and Procedures</b>
<b>Chapter 2161:</b>	<b>Historically Underutilized Businesses</b>
<b>Chapter 2251:</b>	<b>Payment for Goods and Services</b>
<b>Chapter 2252:</b>	<b>Contracts with Governmental Entity</b>
<b>Chapter 2254:</b>	<b>Professional and Consulting Services</b>
<b>Chapter 2260:</b>	<b>Resolution of Certain Contract Claims Against the State</b>

#### **Texas Procurement and Support Services**

<http://www.window.state.tx.us/procurement/prog/cmb1/>

#### **Texas Procurement and Support Services Contract Management Guide**

<http://www.window.state.tx.us/procurement/pub/contractguide/>