University Policy 6030

University Contracts

Effective Date

July 1978

Last Revision Date

February 2017

Responsible Party

Vice President and Chief Financial Officer, (208) 426-1200
Office of the General Counsel, (208) 426-1203

Scope and Audience

This policy applies to all University Contracts.

1. Policy Purpose

   To define the general parameters through which a University Contract may be created, defines
   the general requirements for review and approval of a University Contract, and clarifies who in
   the University is authorized to sign Contracts.

2. Policy Statement

   All University Contracts must comply with this policy, whether the Contract is an expense
   Contract (the University is paying money), revenue Contract (the University is receiving money)
   or a zero dollar Contract (no money is exchanged but there are other obligations).

   a. An agreement may be binding on the University even if it is not in writing, if the University
      is receiving something of value for no charge (zero dollar Contract) or if another party is
paying the University for something (revenue Contract), if the University is agreeing to perform some action or obligation or make a payment, or when the University is agreeing to refrain from doing something it is legally permitted to do.

b. A document is a University Contract regardless of the title of the document. For example, a University Contract may be titled a memorandum of understanding, license, affiliation agreement, quote, purchase order, scope of work, “click” agreement, end user agreement, lease, purchase agreement, letter of understanding, even “terms and conditions” referenced in a purchase order or quote, among other things.

c. A University official entering into any kind of agreement or other document placing obligations on the University or any of its Units should presume they are negotiating a University Contract and this Policy applies.

3. Definitions

3.1 CFO

The office of the Vice President and Chief Financial Officer of Boise State University.

3.2 Contract

Any legally enforceable agreement between two or more parties, whether written or oral, that imposes an obligation on the University. The term “Contract” is further defined in Section 2.b.

3.3 External Sponsor

An external entity that provides funding for a Sponsored Project.

3.4 OGC

Boise State University Office of the General Counsel.

3.5 SBOE

The Idaho State Board of Education.

3.6 Sponsored Project

A grant, contract, cooperative agreement, sub grant, subcontract, consortium agreement, purchase order, or memorandum of understanding (hereafter collectively referred to as a “sponsored project”) that formalizes the transfer of money or property from a sponsor in
exchange for specified activities (e.g., research and development, instruction, public services etc.), and may require specific deliverables such as detailed financial and/or technical reporting by the recipient. Performance is usually to be accomplished within a specified time frame, with payment subject to revocation. It may include provisions related to intellectual property and publication rights. The University’s Office of Sponsored Programs in the Division of Research and Economic and Development is responsible for accepting and administering sponsored projects.

3.7 Unit

A department, office, division, college or other component of the University.

3.8 University

Boise State University, or any of its Units.

3.9 University Contract

Contract between two or more parties, one of which is the University (or any of its Units), which obligates the University in any manner or is otherwise intended to have a legal effect. This excludes internal Contracts between one or more Units of the University that do not involve any external entity.

4. Responsibilities and Procedures

4.1 University Contract Protocols

a. All University Contracts, whether or not routed for legal review, must be consistent with the overall mission of the University and any Units of the University that may be implicated, and must comply with all applicable University policies and state and federal laws.

b. If a University Contract is exempt from legal review, it is the signer’s obligation to ensure compliance.

c. Only a University official with delegated signature authority may execute a University Contract. See Section V., “Delegation of Authority.” Signing a Contract without authority may render the entire agreement void, may subject the signer to personal liability for any obligations to the other party(ies), and may result in disciplinary action, up to and including termination.

d. Sponsored Programs
(i.) The Office of Sponsored Programs (OSP) is the University office responsible for reviewing, negotiating and institutionally accepting Contracts received from External Sponsors (Sponsored Projects).

(ii.) All Contracts received for Sponsored Projects shall be routed directly to OSP. OSP will be the party responsible for administering such Contracts and fulfilling applicable requirements of this Policy.

(iii.) OSP will consult with Principal Investigators, Project Directors, Office of the General Counsel and other Departments, as necessary and as required by this Policy. See Policy # 5030, Office of Sponsored Programs, for more information.

4.2 Legal Review of University Contracts

Unless exempt in accordance with Section 4.2.2., all University Contracts must be submitted for review by OGC in accordance with Section 4.3., “Contract Routing.” In addition, all special procedure Contracts (defined below) are subject to the additional procedures identified in Section 4.2.3.

4.2.1 Mandatory Legal Review

a. All University Contracts not subject to exemption under Section 4.2.2.

b. Affiliation agreements, collaborative agreements, community and institutional partnerships, internship agreements, and clinical placements.

c. Contracts involving intellectual property rights of the University. See University Policy 1090 (Intellectual Property) for more information, including Contracts involving publication.

d. Contracts for banking services, financial services, student debit cards, and collection agencies.

e. Contracts with terms or provisions regarding tuition waivers (See SBOE Policy V.T. Fee Waivers), discounts, or involving admission, matriculations of students, international programs, scholarships, or financial aid.

f. Air charter Contracts.
g. Athletic Contracts, including sponsorship agreements not reserved for third parties (i.e. Bronco Sports Properties) and broadcast rights agreements, but excluding game or “contest” agreements.

h. Contracts involving research/testing on human or animal subjects, or the purchase or use of controlled substances or any Contracts involving the purchase or use of genetic material.

i. Any Contract involving unusually high risk or exposure for the University, contemplating a unique obligation on the part of the University, or involving important health or safety issues.

4.2.2 University Contracts Not Requiring Legal Review

4.2.2A Contracts under $10,000 ($9,999.99 or less)

a. With approval from the CFO, a Unit may review and process Contracts with a dollar value below $10,000 (except for Special Procedure Contracts or University Contracts subject to mandatory legal review per Section 4.2 above) without legal review and approval.

b. Training is available through the OGC upon request for those with signature authority and a limited number of designated officials that may act as an appointed “Contract administrator” on behalf of the signer.

c. Signers and designated officials must attend a mandatory training and secure approval from the CFO and OGC prior to negotiating Contracts without legal review.

d. In all cases, Contracts may only be signed by an individual with delegated signature authority and the signer is ultimately responsible for ensuring the Contract complies with this policy, any other applicable University policies, state and federal laws and any applicable external funding entity requirements (e.g., Sponsored Projects).

4.2.2B Contracts Using University-Approved Forms

The following University-Approved forms do not require legal review if (a) no changes have been made to the form other than filling in blanks such as dollar amounts, term, and details regarding the business arrangement of the parties and (b) the Contract amount is within a Unit’s signature authority.

- Contract for Services, available through the OGC website.
• Local Engagement Agreement, available through the OGC website.

• Templates drafted by OGC and approved for a Unit’s use in particular circumstances (e.g., Affiliation Agreements, Facility Use Agreements).

4.2.2C Additional Unit-level Exemptions from Legal Review

On request by a Unit, OGC may grant additional exceptions from legal review (for example, hotel Contracts or bus charter Contracts). Such exemptions will be granted at the discretion of OGC on a case-by-case basis, subject to approval of the CFO.

4.2.3 Other University Processes

The following types of University Contracts are subject to other University processes regardless of dollar value. These University Contracts must be submitted to the following Units for review and approval prior to signature. The Units listed will coordinate with OGC as necessary for legal review and approval.

4.2.3A Department of Purchasing

Contact Purchasing, in accordance with University Purchasing Policy #6130 for any University Contract with a value of $10,000 and over.

4.2.3B Office of Sponsored Programs (OSP)/Sponsored Programs

a. As noted in the Contract Policy, all Contracts for Sponsored Projects, regardless of funding amount, must be routed directly to OSP. See Policy 5030, Office of Sponsored Programs, for more information

b. For University Contracts involving expenditures under Sponsored Projects, the Unit is responsible for ensuring all requirements of the External Sponsor agreement are met.

   (i.) Unit is responsible for ensuring all Sponsored Project procurement requirements are met, securing multiple bids/quotes, if required, and ensuring a suspension, debarment and exclusion search in the System for Award Management (SAM) is conducted, and appropriate records are retained.

   (ii.) Contact Purchasing for assistance with bids/quotes and suspension, debarment and exclusion inquiries.
(iii.) Contact OSP for questions regarding terms and conditions of the associated Sponsored Project.

4.2.3C Office of Information Technology (OIT)

a. Contracts for the purchase of software must be submitted to the Software Review Request Committee (SRRC) for approval. Renewals for purchases previously reviewed and approved by SRRC do not need to be submitted again.

b. Software Contracts involving transfer or storage of personally identifiable information, education records, health records, data that may be subject to export control or other sensitive data must be submitted to the University’s information security officer for review and approval.

(i.) Software Contracts involving the above may be sent by OIT for legal review.

(ii.) Renewals for purchases previously reviewed and approved by SRRC do not need to be submitted again.

4.2.3D Office of Risk Management and Insurance

Contact the Office of Risk Management for assistance with any of the following:

a. University Contracts with clauses that require non-standard University insurance (for example, Contracts that require the University to have coverage limits above $500,000).

b. Contracts with vendors that do not satisfy the University’s standard insurance requirements.

c. For information about standard insurance requirements, please see Office of Risk Management and Insurance website.

4.2.3E Trademark Licensing and Enforcement

The following University Contracts must be submitted to the Office of Trademark Licensing and Enforcement for approval:

a. University Contracts involving commercial filming or photography on campus.
b. University Contracts involving the use of University branding, including the University’s name, trademarks, logos, or trade dress (including on web sites, in customer lists or other promotional materials).

c. University Contracts with proposed trade-outs or sponsorships of the University by third parties.

d. Advertising or promotional agreements under which advertising or promotion will be placed on campus or commercial activity will take place on campus, either separate from or alongside University branding.

4.2.3F Treasury and Real Estate Services

Contact Treasury and Real Estate Services for assistance with any of the following:

a. Contracts for lease, license, or use of real property by the University, including any leases where University will be a tenant or landlord, including lease, license, or use of storage Units. A copy of all executed leases should also be provided to the University’s Department of Public Safety.

b. Purchase or conveyance of an interest in real property, including sale, leasehold interest, easements and/or mineral interests, rights of way or any form of encumbrance.

c. Similarly, agreements involving the use of any University-owned or controlled facility shall be reviewed and approved by the appropriate Department for the space of facility.

d. For Facilities Use Agreements involving use of University’s lab or lab or research equipment, contact the Office of Technology Transfer.

e. For any disposition of property purchased all or partially with funding from External Sponsors, please contact OSP.

4.2.3G Campus Planning and Facilities (CPF)

All University Contracts for construction or architectural/engineering design services must be submitted for approval through CPF.
4.2.3H Global Learning Opportunities (GLO)

Contact the GLO for University Contracts involving partnerships or exchanges with foreign universities or countries and/or admission of foreign students which are subject to special procedures, or University Contracts involving student international travel or faculty taking students abroad. Consult OSP if the Contract involves research.

4.2.3I Human Resource Services (HRS)

All employment Contracts should be directed to HRS.

4.2.3J Accounts Payable

When engaging an independent Contractor, all University representatives must abide by procedures outlined in University Policy #6150, Independent Contractors.

4.2.3K Office of Technology Transfer (OTT)

The following University Contracts must be submitted to OTT for review and approval:


b. University Contracts for licensing technology arising from University inventions and other creations, including agreements with terms governing patent and copyright registration, the generation and dissemination of royalties or confidentiality and non-disclosure provisions.

c. University Contracts for rental of lab or research equipment or space.

4.2.3L Tax Reporting

Contact Tax Reporting for any University Contract with a foreign vendor, speaker, performer, or contractor, including Contracts made with US companies who represent foreign individuals or entities.

4.2.3M Office of Institutional Compliance and Ethics (OIC)

For University Contracts where a foreign vendor is involved in research, or where there are non-standard export control provisions or export control implications, please contact OIC for an export control review.
4.2.3N Office of Research Compliance (ORC)

Any University Contracts involving the use of human or animal subjects or the purchase or shipment of controlled substances must be submitted to ORC for approval.

4.2.3O Department of Public Safety

The following University Contracts must be reported to the Department of Public Safety:

a. Any University Contract involving the use of security officers, the leasing or purchase of real property, or requiring provisions of security services for any purpose. A copy of the executed Contract should be sent to the Department of Public Safety once the Contract is executed.

b. Any University Contract, or any student-related travel involving hotel lodging, must be reported to the Department of Public Safety for Clery Act reporting purposes.

4.2.4 Preferred and Prohibited Provisions of University Contracts

There are certain State of Idaho provisions that are prohibited by State law (“Prohibited Provisions”). Entering into any Contract with Prohibited Provisions may render the Contract void, may subject the signer to personal civil and/or criminal liability, and may result in disciplinary action, up to and including termination. Some terms or conditions are not prohibited, but are not preferred, and can subject the University to unforeseen costs and risks (“Non-preferred Provisions”). In addition, there are certain State of Idaho and University provisions that, with very few exceptions, should be included in every Contract the University enters into (“Preferred Provisions”). Please refer to the OGC Contract Handbook or the OGC Website for more information.

4.2.4A Prohibited Provisions

a. Indemnification. The University cannot agree to “indemnify” or “hold harmless” the other party to a Contract. Every effort should be made to delete such provisions from proposed Contracts. If it is not possible to remove these provisions, the “Indemnification Limitation” clause in the Boise State University Supplemental Terms and Conditions may be used to void the provision by incorporating it into the Contract.

b. University Insurance. The University is generally limited to coverage provided through the State of Idaho, which is generally limited to $500,000. For information about the University’s insurance coverage and sample insurance language, please refer to the OGC Contracts
Handbook or the OGC website. The University cannot agree to provide insurance it does not possess.

c. Confidentiality. The University is subject to Idaho Public Records laws, which require disclosure of certain writings maintained by the University, with some limited exceptions. The University cannot agree to a confidentiality requirement that does not provide an exception for circumstances where disclosure is required by law.

4.2.4B Non-preferred Provisions

a. Choice of Laws. Any provision that calls for the application of another state’s or country’s laws or requires the University to submit to the jurisdiction of another state’s or country’s court should be modified to reflect Idaho law and venue.

b. Choice of Forum/Venue. Any provision that requires the University to assert its rights or defend itself in a location other than the “State District Court, Ada County, State of Idaho,” the “Federal District Court for the District of Idaho”, or “a court of competent jurisdiction in Idaho” should be modified to reflect these courts.

c. Arbitration. The University typically does not agree to arbitrate disputes; mediation is a preferred method of seeking to resolve disputes without suit.

4.2.4C Preferred Provisions

There are certain provisions that should be included in every University Contract. These provisions may be included directly into the agreement or may be incorporated by reference by attaching a copy of the Boise State University Supplemental Terms and Conditions to the Contract and adding a paragraph that reads “The Boise State University Supplemental Terms and Conditions attached hereto are incorporated herein by this reference.” Please refer to the OGC Contracts Handbook or the OGC website for more information on Preferred Provisions.

4.3 Contract Routing and Review by OGC

This Section governs the submission of Contracts to the OGC for legal review. Prior to submission, the Unit should review the University Contract to make sure the Contract is consistent with the business deal the Unit has agreed to (e.g., payment terms are as agreed, performance metrics, timing of performance, scope of work is accurate, etc.).
4.3.1 Contract Routing Form

a. All Contracts that are required to be reviewed by OGC must be submitted using the Contract Routing Form (the “Routing Form”). The Routing Form is available from OGC and can be submitted online from the OGC website at http://generalcounsel.boisestate.edu/. The Routing Form provides contact information, next steps in routing process, and assures the proper and timely routing of University Contracts through the signature approval process. The Routing Form must be completed in full and signed by a Unit level manager (e.g., Dean, Associate Dean, Director, Assistant Director, Associate Director, Business Manager, Manager, Associate Manager, Assistant Manager, Senior Manager, VP, or Associate VP). Instructions for completing the Routing Form are available on the OGC website.

b. All University Contracts submitted to OGC must comply with the following:

(i.) The requesting Unit shall review the OGC checklist located on the OGC website prior to submitting the Contract for review.

(ii.) The requesting Unit must complete the Routing Form and include the proposed agreement and any attachments or explanations to assist in the legal review.

(iii.) Each Unit shall designate a primary contact for initiation, negotiation, and administration of the University Contract.

c. The Unit is ultimately responsible for tracking and performing the University Contract. Before submitting a University Contract for legal review, the Unit should: (a) read the Contract in its entirety; (b) determine that the terms of the proposed Contract conform to the Unit’s expectations and are satisfactory and (c) confirm that funds are available for payment, if applicable. If the terms of the Contract are not satisfactory, the Unit should inform OGC of its concerns so that OGC can assist the Unit in negotiating the applicable terms.

4.3.2 Execution of University Contracts

Upon completion of legal review, OGC will notify the Unit and provide additional guidance regarding execution of the Contract. The approved University Contract and Routing Form will be returned to the requesting Unit or forwarded for signature to the CFO or the appropriate University official for additional approval. The Unit is ultimately responsible for carrying out the terms of the Contract and monitoring compliance with the University Contract after execution.
4.3.2A Contract Value

a. For purposes of this policy, Contract Value is determined based on the cumulative total dollar value of the Contract over the entire term (including optional renewal terms). For example, assume the University hires Ms. Smith to consult on a project. The University agrees to pay Ms. Smith $7,500 annually for certain consulting services and the Contract term starts August 1, 2016 and terminates July 31, 2019. The total value of the Contract would be $7,500 times three (three years), or $22,500.

b. Revenue Contracts and expense Contracts are treated the same for purposes of this policy. Similarly, the Contract provided for a one-year term with two optional one-year renewals, the Contract Value would be $22,500, counting all three years at the outset. Although the University strongly disfavors Contracts that auto-renew indefinitely, in the event a University Contract renews indefinitely, such Contracts are treated as having an “indeterminate” value and must in all cases be routed through OGC and signed by the CFO.

4.3.2B Execution by Unit

If the Contract Value is within a Unit’s signature authority, the individual(s) within the Unit with the appropriate level of designated signature authority may execute the Contract. It is the responsibility of the Unit to ensure the original documents (or counterparts that contain facsimile signatures or scanned PDF copies of original signatures) have been executed by all parties and that a record of the final, executed copy is retained for the University’s records, in accordance with the University Policy #1020.

4.3.2C Execution by CFO or Applicable University Official

If the Contract Value is above a Department’s signature authority, the Contract will be signed by the CFO, or in the CFO’s absence, by her/his formal designee. Contracts with an indeterminate or variable amount can only be signed by the CFO her/his formal designee. This includes Contracts that cannot be calculated based on the information provided in the Contract and may be based on a percentage or variable amount. For example, if the University paid Ms. Smith $150 per hour for the term of her Contract, that would be considered indeterminate because the final Contract Value is unknown.

4.3.2D Approval by Idaho State Board of Education

If the Contract Value is between $500,000 and $1,000,000, approval of the State Board of Education Executive Director is required prior to signature. If the Contract Value is $1,000,000 or more, approval by the State Board of Education is required prior to signature. Notwithstanding the foregoing, certain Department of Research and Economic Development
personnel can sign Contracts for Sponsored Projects for unlimited amounts. Approval will be requested by the CFO.

4.4 Delegation of Authority

4.4.1 Overview

This section defines the proper delegation of authority of University officials to execute University Contracts. The proper delegation of authority to execute University Contracts is required to minimize and/or mitigate financial, legal and related risks and to ensure that appropriate fiscal and management controls are in place for the benefit of the entire University.

4.4.2 SBOE Assignment of Authority

The University has a centralized system of signature authority. Under SBOE Governing Policies and Procedures Section V Subsection D, authority to enter into revenue or non-revenue Contracts is assigned to the Bursar (CFO). The Bursar is responsible for appropriate reporting of Contracts to the President and the SBOE.

4.4.3 CFO Delegation

University Officials cannot enter into Contracts, regardless of monetary value, without the express written approval of the CFO. The CFO may authorize limited delegation of signature authority to University officials (e.g., Deans, Provost, Vice Presidents, Executive Directors, and Directors) deemed to have the requisite knowledge, judgment and operational need to exercise such authority. Authority may be revoked at any time for any reason, in the sole discretion of the CFO.

a. Any delegation of authority by the CFO must be expressly made in writing, and is not automatic.

b. Sub-Delegation: Further, the CFO may, in his/her discretion, grant limited authority for the further delegation (sub-delegation) by Deans, Provost, Vice Presidents, Executive Directors, and Directors to positions no lower than Department Chair and Business Manager up to the amount for which such delegator has the authority to sign. All sub-delegation requests must be made to the Office of the CFO in writing. Approval of such requests is at the sole discretion of the CFO.

4.4.4 Authority to Positions

All delegations shall be based on an individual’s position within the University at the time of the delegation. The authority associated with an appointment may not be exercised by an individual
prior or subsequent to the effective dates of employment and/or appointment. When there is turnover in a position, the new individual holding the position must seek authority to be granted signature authority through the CFO in writing.

4.4.5 Delegate Responsibility

a. The person to whom authority is delegated has the responsibility to ensure commitment and adherence to SBOE and University policies, as well as programmatic and/or University objectives or requirements; verify the availability of funds for anticipated budgetary commitments; obtain legal and/or risk management review where required; monitor the Contract development process to facilitate prompt Contract resolution; secure all necessary signatures; and oversee proper performance of all Contract commitments.

b. All University representatives with signature authority are required to comply with the purchasing procedures outlined in University Policy #6130, Purchasing, when reviewing, approving, or submitting Contracts for approval.

c. When creating a Contract to hire an independent Contractor, all University representatives with signature authority are required to comply with procedures outlined in University Policy 6150 (Independent Contractors).

4.4.6 Unclear Delegations

In cases where the authority to bind the University or delegate authority may be unclear, an individual should seek specific guidance from his/her immediate supervisor and/or OGC prior to executing any Contract.

4.4.7 Unauthorized Commitments or Agreements

a. University officials may not obligate Unit facilities, programs, or services over which they do not have authority.

b. Individuals do not have the authority to enter into negotiations or approve or sign Contracts with external entities on behalf of the University unless there is a valid delegation or sub-delegation of authority from the Office of the CFO in writing. Any Contract executed without properly delegated authority is null and void when signed. If you are associated with the University and sign a Contract without authority, you may be held personally responsible for the Contract; you may face legal actions against you individually; and, you may be subject to the full range of disciplinary actions by the University, up to and including termination of employment.
c. Oral agreements are not authorized regardless of whether there is a monetary exchange.

4.4.8 Procedure for Proper Delegation of Authority

a. All delegations of signatory authority must be in writing on the letterhead of the Office of the CFO and annually reviewed. See Instructions for obtaining signature authority.

b. Delegations relate to positions, not to individuals. The authority associated with an appointment may not be exercised by an individual prior or subsequent to the effective dates of employment and/or appointment.

c. The delegation must include the Contract or types of Contracts the delegate is authorized to sign and may also include any applicable limitations on the scope of the delegated authority. A delegating individual may revoke or modify the authority of the delegate following consultation with his/her supervisor, OGC and/or the CFO.

d. Required Training

(i.) Anyone for whom signature authority has been requested must complete signature authority training through OGC. Signature authority is not deemed effective until the training session has been completed.

(ii.) Anyone who has been delegated signature authority must complete “refresher” training every three years in order to maintain signature authority delegate status.

e. A copy of the new or renewed official delegation must be transmitted by the CFO Office within three (3) business days to OGC and University Financial Services.

f. All delegations of authority governed by this policy are deemed to be valid for a period of no more than ten (10) years unless otherwise specified; or delegation is terminated due to position turnover or disciplinary action; or delegation is terminated by the delegator (in consultation with his/her supervisor, OGC and/or CFO Office, as appropriate). Upon the ordinary expiration of this authority, the appropriate individual must seek continued or additional authority in writing.
g. As a matter of sound governance, any senior administrative leadership change (to include an interim/acting leadership appointment) should precipitate a review by new leadership of all existing delegations of authority under its Unit to determine whether existing delegations of authority should continue in force under the new leadership.

Revision History

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