

# Dixie State University Policy

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## 141 Contract Policy and Procedure



- I. Purpose
- II. Scope
- III. Definitions
- IV. Policy
- V. References
- VI. Procedures
- VII. Addenda

### I. Purpose

- 1.1 To more clearly delineate the process and procedures required for the approval of University contracts, and to outline the duties of University employees responsible for oversight, negotiations, review, and approval of such contracts.

### II. Scope

- 2.1 This policy applies to all personnel involved in negotiating, executing, and administering University contracts and to all University contracts.

### III. Definitions

- 3.1 ***Authorized Alternate:*** An individual designated in writing by a University Official with Signature Authority to act on the University Official's behalf in one or more matters requiring a signature on an Official Document. An Authorized Alternate may:
  - 3.1.1 Exercise such authority in the planned or occasional absence of a University Official with Signature Authority as a "proxy" for a specific period of time.
  - 3.1.2 Receive a more permanent delegation of authority for one or more particular types of an Official Document or for a category of Official Documents.
- 3.2 ***Originator:*** The person, office, division or department responsible for implementing and managing a University Contract.
- 3.3 ***University Contract:*** Any writing, document, agreement or understanding between two or more parties that is intended to create or memorialize an

obligation or liability on the part of the University or any of its departments, employees (faculty or staff), agents, foundations, or other units. A contract may or may not involve the payment of money.

- 3.3.1 A University Contract includes, but is not limited to, any document called a Contract, an Agreement, a Memorandum of Understanding, a Letter of Agreement, or similar terminology.
- 3.3.2 Examples of University Contracts subject to this policy include, but are not limited to: affiliation agreements, athletic sponsorship agreements, business associate agreements, clinical service agreements, coaching contracts, collaborative agreements, community and institutional partnerships, consulting agreements, continuing education agreements, financial services agreements, leases, intellectual property rights agreements, internship agreements, licensing agreements, material transfer agreements, purchasing agreements, user agreements, research agreements (sponsored and non-sponsored), services agreements, “terms and conditions” referenced in a purchase order or quote, and waivers of liability.
- 3.3.3 A University Contract includes the initial University Contract and every amendment to, and any renewal or extension of such University Contract.
- 3.4 ***University Contract Workflow:*** The work-flow review and approval process implemented and managed by the Office of General Counsel.
- 3.5 ***University Official with Signature Authority:*** The University President and any individual holding an executive-level position at the University as a member of the President’s Cabinet with authority to sign Official Documents pertaining to the individual’s area of authority, as outlined in University Policy 149: Signature Authority and 149a: Signature Authority for Official University Documents.

#### IV. Policy

- 4.1 The University is only bound by a University Contract that has been approved in accordance with this policy and which has been executed by the proper University Official with Signature Authority or Authorized Alternate.
  - 4.1.1 This policy applies regardless of financial commitment – whether a University 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

the University is required to perform).

- 4.1.2 Oral contracts and informal agreements via e-mail, verbal, or other means are prohibited. Although a contract may be formed and binding on the University even if not in a formal executed writing, all University Contracts should be reduced to writing and must conform to this policy.
- 4.2 Every University Contract must be submitted to the University Contract Workflow and, following approval by the Office of General Counsel, be executed by a University Official with Signature Authority or Authorized Alternate.
  - 4.2.1 Exemptions
    - 4.2.1.1 A University Contract may be approved and executed outside the University Contract Workflow if:
      - 4.2.1.1.1 The University Contract is a standard purchase agreement under \$5,000 that requires no performance by the University other than payment;
        - 4.2.1.1.1.1 The value of a University Contract is determined based on the cumulative total dollar value over the entire term. For example, if the University agrees to pay \$2,000 annually for a three-year term, the value of the University Contract is \$6,000;
      - 4.2.1.1.2 The University Contract does not contain any special terms obligating the University beyond what is required of any other purchaser; and
      - 4.2.1.1.3 The Originators and University Official with Signature Authority have attended a mandatory training and secured approval from the Office of General Counsel prior to executing any University Contracts without legal approval.
    - 4.2.2 A University Contract created by using an Office of General Counsel-approved University form (template) agreement does not require submission to the University Contract Workflow for legal review and approval if (a) no changes are made to the Office of General Counsel-approved form (template) other than filling in blanks (such as dollar amounts, term and details of the specific business transaction), **and** (b) the value of the University Contract is within the signature authority of the University Official with Signature Authority or Authorized

Alternate. If an Office of General Counsel-approved form (template) is available, the approved form should be used instead of a vendor or third-party form.

- 4.2.3 Other exemptions may be granted on a case-by-case basis at the discretion of the Office of General Counsel.
  - 4.2.4 Although the University strongly disfavors University Contracts that auto-renew indefinitely, in the event a University Contract may renew indefinitely, such University Contract is treated as having an “indeterminate” value and must in all cases be routed through the University Contract Workflow and be approved by the Office of General Counsel.
- 4.3 All University Contracts must be in furtherance of an authorized public purpose and cannot be used to promote private or personal interests of an individual. Any University funds expended or committed in a University Contract must serve a public purpose and the University must receive adequate consideration. A University Contract may not primarily subsidize or benefit a private entity or private individual.
- 4.3.1 Any potential conflict of interest involving a University Contract must be disclosed, and if feasible, managed pursuant to the University’s Conflict of Interest policy, Policy 157.
- 4.4 The Originator is responsible for:
- 4.4.1 Conducting a due diligence review of a proposed University Contract, prior to submission to the University Contract Workflow, by: (a) reading the proposed University Contract in its entirety to determine that the terms of the proposed University Contract conform to the Originator’s expectations and are satisfactory; (b) confirming that funds are available for payment, if applicable; (c) confirming the University’s ability to comply with the proposed University Contract’s terms; (d) ensuring all terms and conditions meet the University’s business needs; and (e) satisfactorily answering or resolving all of the due diligence questions outlined in Addendum A (See Policy 141a: Contract Due Diligence Considerations):
    - 4.4.1.1 If the terms of the proposed University Contract are not satisfactory, the Originator should work with the Office of General Counsel to resolve any concerns.
  - 4.4.2 Ensuring a University Contract is properly submitted to the University

Contract Workflow and signed by the appropriate University Official with Signature Authority or Authorized Alternate.

- 4.4.3 The Originator is ultimately responsible for tracking and ensuring the University's performance of the University Contract.
- 4.5 The Office of General Counsel is available to assist with drafting, negotiating, reviewing, and navigating the University Contract Workflow.

## **V. References**

- 5.1 DSU Policy 141a: Contract Due Diligence Considerations
- 5.2 DSU Policy 149: Signature Authority
- 5.3 DSU Policy 149a: Signature Authority for Official University Documents
- 5.4 DSU Policy 157: Conflict of Interest

## **VI. Procedures**

- 6.1 The Originator is responsible for conducting due diligence and a preliminary review of a University Contract and for ensuring compliance with Subsection 4.4 of this policy and Addendum A (See Policy 141a: Contract Due Diligence Considerations).
- 6.2 The Originator is responsible for fully submitting a University Contract to the University Contract Workflow.
- 6.3 The Office of General Counsel shall review a proposed University Contract and determine whether to approve as submitted, or will otherwise work with Originator on any needed revisions.
- 6.4 Once approved by the Office of General Counsel, a University Contract may be submitted by the Originator to the appropriate University Official with Signature Authority or Authorized Alternate for signature.

## **VII. Addenda**

- 7.1 Addendum A: 141a: Due Diligence Considerations

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Policy Owner: General Counsel  
Policy Steward: Assistant General Counsel

History: New Fall 2021  
Approved 11/12/21

Revised 0/0/00