



**The University of Akron
Office of General Counsel
Contracts Handbook**

September 29, 2006

The University of Akron Contracts Handbook

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I. Introduction

This Handbook is intended to assist University of Akron faculty and staff in negotiating and preparing legally binding and effective contracts. Individuals engaged in contracting on behalf of the University should be familiar with this manual as well as the University's policies and procedures related to purchasing goods or services. If there are questions about University contracts or this manual, please contact the [Office of General Counsel](#).

II. Background

The University of Akron is one of several State of Ohio higher education institutions. The University was established by the Ohio Legislature in Ohio Revised Code § 3359.01 and its power, including the power to enter into contracts, is derived from Ohio Revised Code § 3359-04. The Board of Trustees has delegated the authority to sign contracts on its behalf to various individuals by Board Rule.

III. Contract Signature Authority

Only the President of The University of Akron has the authority to sign contracts, unless the Board of Trustees has specifically delegated that authority in writing to other individuals. These delegations are limited to specific contract types and dollar amounts. Please refer to the Contract Signature Authority Table below if you have questions about the appropriate administrator to approve and sign a contract. If you do not have contract signature authority designated to you under one of these categories and you do not have a signed copy of a letter designating authority to you, then you may not enter into contractual relationships on the university's behalf. Failure to follow university policies on contracts may result in the employee's loss of insurance coverage and personal liability.

Contracts for the purchase of goods and services must be referred to the Department of Purchasing. Contracts related to a grant or sponsored project must be administered through Research Services and Sponsored Programs.

Before the university may enter into a contract, it may be necessary to go through a competitive bidding process. Examples of some contracts that are subject to competitive bidding are as follows:

- Any purchase of construction contracts in excess of \$25,000 must be by competitive bid.
- Purchases of goods or services that exceed \$150,000, with limited exceptions, must receive the prior approval of the board of trustees.

- Purchases of goods and services for amounts between \$25,000 and \$150,000 must be reported to the board of trustees.
- Any purchase of goods or services that is less than \$25,000 may be subject to competitive bidding. For more information about competitive bidding and contracts subject to competitive bidding, please contact the Department of Purchasing.

If you still have questions about contract signature authority after referring to the relevant policy, please contact the [Office of General Counsel](#).

Contract Signature Authority Table

Position	Rules Granting or Referencing Signature Authority	Types of Contracts That May Be Signed	Delegated Contract Signature Letter, if applicable
Vice President for Finance and Administration - Chief Financial Officer (CFO)	3359-03-01 (B)(7) & 33593-01 (F)(2)(a)	<ul style="list-style-type: none"> • All contracts within limits set by board rules (such as competitive bidding and the necessity of prior approval) • Acquisition of land • Negotiation of leases • Negotiation of financial matters, such as the sale of notes & bonds 	
Senior Vice President and Provost – Chief Operating Officer (COO)	3359-03-01 (B)(7) & 3359-03-01(F)(2)(a)	All contracts within limits set by board (such as competitive bidding and the necessity of prior approval)	
Vice President for Research and Director of Technology Transfer	3359-02-05 (A)(9)(a)(vi)	All contracts related to the use of university research and service centers for economic development	
Vice President for Research and Dean of the Graduate School	3359-02-10(E)	All research contracts consistent with the rules of the university, including but not limited to the requirements and restrictions in rule 2-05	
Vice President and General Counsel	3359-07-01 (A)(4)	<ul style="list-style-type: none"> • All contracts and legal documents including without limitation: 	

		<ul style="list-style-type: none"> ○ Settlement documents approved by the Ohio Attorney General ○ Routine settlements and releases pertaining to litigation or threatened litigation including: Worker's compensation, Unemployment compensation, Collection matters, Labor contracts, Intellectual property documents, Bond documents, Supporting opinions 	
Director of Purchasing	3359-03-01 (B)(7) & 3359-03-01(F)(2)(a)	All contracts within limits set by board rule (such as competitive bidding and the necessity of prior approval)	
Assistant Executive Director and Appointing Authority (Human Resources)	3359-03-05 (C)(5)	All contracts related to personnel actions	
Dean of university libraries	3359-03-01 (F)(2)(b)	All contracts for the purchase of library books and periodicals within the library's budget	
Law Librarian	3359-03-01 (F)(2)(b)	All contracts for the purchase of library books and periodicals within the law library's budget	
Managers of campus stores	3359-03-01 (F)(2)(b)	All contracts for the purchase of stock (goods) for the purpose of resale	
Director of E.J. Thomas Performing Arts Hall	3359-03-01 (F)(2)(c)	All contracts for the purchase of the services of performing artists	See attached letter

Athletic Director	3359-03-01 (F)(2)(c)	All contracts with other colleges and universities for intercollegiate athletic events	
Dean, Wayne College	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Director, Research Services and Sponsored Programs	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Associate Director, Research Services and Sponsored Programs	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Director, Hower House	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Assistant Director, Conference & Event Services, Student Union	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Director, University Galleries	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter
Associate Provost for Academic and Financial Affairs	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	
Controller	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	
Associate Vice President, Campus Life	3359-03-01 (B)(7) & 3359-11-17(B)(19)(a)	Only as authority is specifically designated in writing	See attached letter

IV. Definition of a Contract and Contracting Basics

Sometimes individuals and organizations refer to contracts in different ways. Sometimes referred to as an agreement, a license, terms and conditions, a letter agreement or a letter

of understanding, a contract is a legal document that is created when there is a mutual exchange of promises upon reasonably understandable terms and conditions. Although in other settings it is not necessary for a contract to be in writing to be enforceable, the University of Akron requires all contracts to be in writing.

Only certain individuals within the University have been granted the authority to sign contracts on behalf of the University as indicated in the section of this Handbook titled [Contract Signature Authority](#). Please refer to that section of the Handbook or contact the [Office of General Counsel](#) if you have questions about contract signature authority.

V. Basic Requirements for all University of Akron Contracts

The information provided in this section is a general overview of specific requirements for University of Akron contracts. If you have questions about contracts involving goods and services, please contact the Department of Purchasing. For other agreements, please contact the [Office of General Counsel](#).

A. Contracting Parties

In all contracts involving The University of Akron, the contracting party is “The University of Akron, a State of Ohio higher educational institution.” Reference may also be made to a specific department. For example: “The University of Akron, a State of Ohio higher educational institution, for its Audiology and Speech Pathology Center.” Typically this clause would be followed by a parenthetical, short-form of the name for use in the rest of the contract, e.g. (hereinafter “University”).

If the other party is a corporation, organization, or other legal entity, the title should include the correct, full legal name and a reference to its state of incorporation and/or its principle place of business. For example: “ABC Corporation, duly incorporated under the laws of the State of Ohio” or “ABC, Ltd., with its principle place of business at 123 S. Main St., Akron, Ohio.”

B. Basic Terms and Conditions

All contracts must contain certain basic information necessary for an individual not involved in the transaction to understand the intent and agreement of the parties. These include:

- The names of the parties to the contract;
- The dates, or term, including any renewal provisions of the agreement;
- The responsibilities and obligations of each of the parties;

- The responsibilities for costs and expenses involved in the contract;
- The terms (who, when, and how) of payment, if any;
- The procedure for termination of the agreement if such would be necessary (e.g., 90 days notice or for defined cause);
- A signature line and date for the individuals authorized to execute the agreement.

C. Prohibited Terms

1. **Indemnification/Hold Harmless.** State law, the Office of the Ohio Attorney General, and University Rules, as passed by the Board of Trustees, prohibit The University of Akron from agreeing to indemnify or “hold harmless” the other party to a contract. Every effort should be made to delete such provisions from proposed contracts. Contracts may either remain silent as to indemnification/hold harmless language or the indemnification/hold harmless language may be replaced with “The University of Akron’s liability, if any, shall be determined pursuant to Ohio Revised Code Chapter 2743.” If you are not able to exclude the indemnification/hold harmless provision, contact the Office of General Counsel.

Please note that any provision that says the University “shall be responsible for” or “will reimburse the other contract party for” certain expenses may be an indemnification clause. If you have any questions, please contact the [Office of General Counsel](#).

2. **Choice of Law/Governing Law.** As a State of Ohio institution, The University of Akron is unable to agree to any provision that calls for the application of the law of some other state. The Choice of Law/Governing Law language should be changed to the State of Ohio or be removed entirely. If this is not possible, please contact the [Office of General Counsel](#).
3. **Jurisdiction/Venue.** As a State of Ohio institution, The University of Akron also is unable to agree to any provision that calls for the University to submit to the jurisdiction of a court other than a court of competent jurisdiction located in the State of Ohio. References to jurisdiction in another state, county, or court should either be changed to “a court other than a court of competent jurisdiction located in the State of Ohio” or be removed entirely. If you are unable to exclude the provision, contact the [Office of General Counsel](#).

4. **Confidentiality.** Any provision that calls for the terms of the contract to be confidential must be deleted. As a public institution The University of Akron is subject to the Ohio Public Records Laws and, as a result, any document that is created, received or sent by the University and that documents the organization, functions, policies, decisions, procedures, operations or other activities of the University is a public record and thus cannot be kept confidential.

Some contracts may include a confidentiality or non-disclosure clause regarding certain specific information. Any non-disclosure clause must include an exception permitting disclosure “as required by law, including, but not limited to, the Ohio Public Records Act.” If you have any questions regarding the terms of a confidentiality or non-disclosure provision, please contact the [Office of General Counsel](#).

5. **Arbitration/Mediation.** Any provision that requires the parties to submit any dispute regarding the contract to a third party or to panel to settle the dispute may be an arbitration/mediation provision, regardless of whether it specifically references arbitration or mediation. The University of Akron is unable to agree to submit to either binding or non-binding arbitration or mediation. Such provisions should be deleted. If this is not possible, please contact the [Office of General Counsel](#).
6. **Insurance.** The University of Akron is limited in the coverage it maintains through the IUCIC Insurance Program. Contract provisions calling for the University to carry specific types or amounts of insurance or requiring the University to provide notice prior to any material change in its insurance may be in conflict with the University’s coverage. You must contact Matt Beaven, the University’s Contracting/Insurance Coordinator, to determine whether the University’s insurance coverage meets the contractual requirement. If not, it either must be changed or deleted as directed by the Coordinator Contracting Insurance. If the contract requires the University to name the other party as an “additional insured,” you must notify the Coordinator Contracting Insurance of this requirement and receive his approval before this provision may be included in the contract.

D. Required Terms

1. **Nondiscrimination Clause.** Each contract should include a nondiscrimination clause which states, “The parties to this

Agreement shall comply with all applicable laws regarding affirmative action and equal opportunity in fulfilling the Agreement and shall not discriminate against any person or group of persons on the basis of race, color, creed, sex, age, national origin, ancestry, religion, disability, or veteran status.”

2. **Failure of Appropriation.** If the University is expending money under the contract extending beyond a state budget biennium, the following provisions must be included:

Non-Appropriation

- a. If the University’s Board of Trustees determines that the Ohio General Assembly has failed to appropriate sufficient monies in any fiscal year for payments due under this Agreement, then a Non-Appropriation shall be deemed to have occurred.
- b. If a Non-Appropriation occurs, then the University will provide written notice of the same by its Board of Trustees immediately upon such occurrence and this Agreement shall terminate without penalty or expense to the University.

Funding Intent

The University agrees that it presently intends to continue this Agreement. The parties acknowledge that appropriation of funds is a governmental function to which the University cannot contractually commit itself in advance and this Agreement shall not constitute such a commitment.

3. **Student, Financial, or Health Records.** If the terms of the contract call for the other party to have access to the University’s computing systems, student records, financial records, financial information, or health information, you should notify the [Office of General Counsel](#) as additional provisions may need to be added to the agreement to protect such information.
4. **Insurance.** If a contract calls for activities to occur on the University’s property or the University is to conduct activities on another party’s property, a contract provision requiring the other party to provide the University with a Certificate of Insurance showing insurance coverage in amounts acceptable to the Contracting/Insurance Coordinator and naming the University as an additional insured must be included. If the activity includes the

use of motor vehicles, the certificate should include appropriate automobile insurance. For more information regarding insurance requirements, please contact Matt Beaven, the University's Coordinator Contracting Insurance.

E. Signers for the Contract

Much like the University, the other party, particularly if it is a corporation or other legal entity, may have limitations on who may sign contracts on its behalf. Therefore, you should always ask the individual representing the other party who has the legal authority to bind the organization and sign contracts on its behalf. This may or may not be the person with whom you are dealing. If it is someone other than the person with whom you have dealt, please confirm that individual's proper name and title. If you have questions about contract signature authority for the other party, please contact the [Office of General Counsel](#).

F. Declaration of Material Assistance

Prior to entering into any contract to conduct business or provide funding to a person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization that conducts any business with or receives funding in an aggregate amount greater than \$100,000 from the State of Ohio, any instrumentality of the State, or any political subdivision of the State, the University must receive a satisfactory Declaration of Material Assistance (DMA questionnaire) from that person, company, affiliated group, or organization. Ohio Revised Code §2909.33(C). A copy of the Declaration of Material Assistance for Vendors is available at http://www.homelandsecurity.ohio.gov/dma_terrorist/HLS%200038%20State%20Government%20Business%20and%20Funding%20Contracts%2002-06.pdf. Individuals and organizations who have questions about this form may obtain more information from the Ohio Department of Homeland Security at http://www.homelandsecurity.ohio.gov/general_info.asp or http://www.homelandsecurity.ohio.gov/dma_terrorist/HLS_0046_DMAbrochure.pdf.

Pursuant to state law, The University of Akron may not enter into any contract to conduct business or provide funding to a person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization that:

- Does not answer any of the questions on the DMA questionnaire;
- Answers "yes" to any of the questions on the DMA questionnaire;

- Is determined to have knowingly provided or made a false statement on the questionnaire; or
- Begins providing material assistance during the course of doing business with or receiving funding from The University or other State of Ohio entity.

VI. Contract Forms

The following forms have been developed in conjunction with and approved by the Office of General Counsel. They are provided here for your convenience and as a starting point for any contracts you may prepare without the benefit of a model format. Please keep in mind that University contracts may only be signed by University officials with delegated contract signature authority as indicated in Board rules and noted in the contract signature authority section of this manual. Further, any changes to the form contracts or to their language or format must be approved by the Office of General Counsel. Failure to ensure that the signature of someone with proper contract signature authority is obtained may result in personal liability and possible loss of insurance coverage for the employee(s) involved in the transaction.

Facilities Use – Athletic Facilities
 Facilities Use –Recreation Center
 Facilities Use – Aquatic Facilities
 Facilities Use – Student Union
 Membership Agreements – Recreation Center
 Vendor Agreements – Recreation Center
 Vendor Agreements – Student Union
 Wedding Contracts – Student Union
 Wedding Contracts – Martin Center
 Affiliation Agreement – Dietetics
 Affiliation Agreement – Speech Pathology
 Affiliation Agreement – Audiology (NOAC)
 Affiliation Agreement - (list others)
 International Programs Agreement
 Professional Services Agreement
 Lecture Agreement
 Personal Services Agreement

VII. Contract Routing and Approval Form

The Office of General Counsel has prepared a [Contract Routing and Approval Form](#). This form should be fully completed and submitted with each contract sent to the Office of General Counsel for review and/or approval.

If, after reviewing the form, you have questions, please contact the [Office of General Counsel](#).

Please note that all contracts involving the expenditure of University funds (i.e. leases, purchases, service contracts, construction contracts, etc.) must be sent to the Department of Purchasing for review prior to being sent to the Office of General Counsel. This allows the Division of Finance and Administration to ensure that the agreements conform to good business practices and to track, pursuant to Board of Trustee requirements, the total expenditure of University funds.

VIII. Contract Review and Approval Procedures

Listed below are some of the more common types of contracts involving the University and the appropriate offices to which such contracts should be routed for review and approval. If a contract involves purchase of goods/services or information technology or entertainment and travel, it should be sent to the Department of Purchasing for business review prior to sending it to the Office of General Counsel. Until the Office of General Counsel has received a written statement from the Department of Purchasing indicating that such a contract has been reviewed and that, in the best business judgment of the Department of Purchasing, the contract is in the best interest of the University, it will not process the contract for legal review and approval.

In the event of questions about the proper routing procedure, please contact either the Department of Purchasing or the Office of General Counsel.

A. Purchases of Goods/Services

1. Director of Purchasing
2. Office of General Counsel – as necessary

For more information on the purchase of goods or services, contracts involving the expenditure of University funds, or competitive bidding, please see the Department of Purchasing Procedure Manual, available online at www.uakron.edu/busfin/purchasing/docs/PURCHASINGmanual.pdf.

B. Information Technology Purchases

1. Vice President for Information Technology (CIO)
2. Director of Purchasing
3. Office of General Counsel
4. Vice President for Finance and Administration (CFO)

C. Entertainment/Travel/Miscellaneous Contracts

1. Director of Purchasing
2. Office of General Counsel

D. Construction Contracts

1. Vice President, Capital Planning & Facilities Management
(Bidding procedures handled by Purchasing)
2. Office of General Counsel
3. Board of Trustees

Questions concerning construction agreements, drawings and planning should be addressed to the Office of Capital Planning and Facilities Management.

F. Affiliation Agreements

1. Dean of the College/School
2. Office of General Counsel
3. Senior Vice President and Provost (COO)

F. Articulation Agreements

1. Dean of the College/School
2. Office of General Counsel
3. Senior Vice President and Provost (COO)

G. Athletic Contracts

1. Athletic Director
2. Office of General Counsel
3. Vice President for Finance and Administration (CFO)

H. Facilities Use Agreements (for use of University facilities)

1. Head of Appropriate Department/Division
2. Office of General Counsel
3. Vice President for Finance and Administration (CFO)

I. Facilities Use Agreements/Leases (for use of another person or entity's facility)

1. Head of Appropriate Department/Division
2. Office of General Counsel
3. Vice President for Finance and Administration (CFO)

J. Grants/Research Contracts

1. Director, Research Services and Sponsored Programs
2. Office of General Counsel

K. International Agreements

1. Director, International Programs
2. Office of General Counsel
3. Senior Vice President and Provost (COO)
4. President

L. Real Estate Contracts

1. Vice President, Capital Planning & Facilities Management
2. Office of General Counsel
3. Board of Trustees

M. Sports Recreation and Wellness Center (SRWC) Membership Agreements

1. Associate Director of Recreation and Wellness Services Operations
2. Associate Vice President, Campus Life

IX. Finalizing Contracts Information

The University traditionally asks that the other party to the contract sign first and that they sign three original copies of the agreement. This is done to ensure that the other party to the contract ultimately receives a signed original of the contract and that there is an original for the requesting department as well as the Office of General Counsel. If you believe it necessary for the University to be the first party to sign the agreement, please contact the Department of Purchasing.

When returning contracts to the Office of General Counsel after obtaining the other party's signature, please confirm the following information first:

- That all copies of the agreement were signed by the other party to the contract. Occasionally one is missed.
- That all the necessary attachments, addenda, schedules and appendices are attached to each copy of the agreement.
- That all pages of each copy of the contract are present.
- That the other party has not made any changes to the agreement. If changes have been made, please confirm that the signer for the other party to the contract has initialed each handwritten change and that the changes do not necessitate a change in the price associated with the contract. All changes to the contract should be identified in the cover memo sent to the Office of General Counsel with the agreement.

IX. Special Rules Regarding the Use of Foundation Funds

The use of University of Akron Foundation funds to pay for a contract may not affect the applicability of the State and University rules and regulations outlined in this Handbook. Any contract or transaction where the named party is The University of Akron or any college, unit or program of the University must comply with all the State and University rules and regulations, regardless of how that contract is funded.

The only exception to this may be if the contract is approved by, signed by, and in the name of the Foundation. If that is the case, the contract may need to be reviewed by the Foundation's legal counsel prior to its approval and signature by the appropriate Foundation official.

If you have any questions regarding this, please contact the [Office of General Counsel](#).

X. University of Akron Conflict of Interest Policy and Ohio Ethics Laws

Every faculty and staff member of The University of Akron is responsible for being familiar with and abiding by the University's Conflict of Interest policies and procedures as well as the Ohio Ethics Laws. Employees are responsible for recognizing potential conflicts of interest and disclosing that interest using the University's Disclosure Form.

The University's Conflict of Interest Policies and Procedures are outlined in the following Board Rules:

- [3359-11-17 – Conflict of Interest, Conflict of Commitment, Scholarly Misconduct, and Ethical Conduct – Policies and Procedures](#)
- [3359-11-17.1 – Conflict Management Requiring President's Review](#)
- [3359-11-17.2 – Spousal Hire Policy](#)
- [3359-11-18 – Conduct and Ethics Policy: Employee Financial Interests in Companies Licensed Under University Intellectual Property](#)

The [Ohio Ethics Laws](#) are available online at the [Ohio Ethics Commission website](#).

The Office of General Counsel has developed a page of resources regarding Ethics for University of Akron Employees. If, after reviewing this page and the associated resources, you still have questions about your responsibilities under either the University's Conflict of Interest policies and procedures or the Ohio Ethics Laws, please contact the [Office of General Counsel](#).

XI. Campus Contract Training Programs

Training programs related to University contracts are available upon request by a department, division, unit or college. Persons to whom signature authority is delegated must attend this training program in order to maintain their delegation. The Office of General Counsel strongly encourages other University employees who are involved in the creation, negotiation, execution, or maintenance of University contracts to participate in the training. To schedule a training, please send an e-mail to uacontracts@uakron.edu or contact the Office of General Counsel at x7830.

XII. Questions

Any questions regarding University contracts, the Contracts Handbook or any of the policies or procedures outlined in the Handbook should be directed to the [Office of General Counsel](#).