

Contracts

Drake University

Policies and Procedures for
Effective Contracting Practices

Goals

- Streamline the contracting process
- Create appropriate accountabilities for contracts; and
- Enhance our ability to effectively negotiate favorable contract terms.

Today's Agenda

- Authority to sign contracts
- Contract review process
- Common issues in contract review

Authority to Sign Contracts

Board of Trustees must approve:

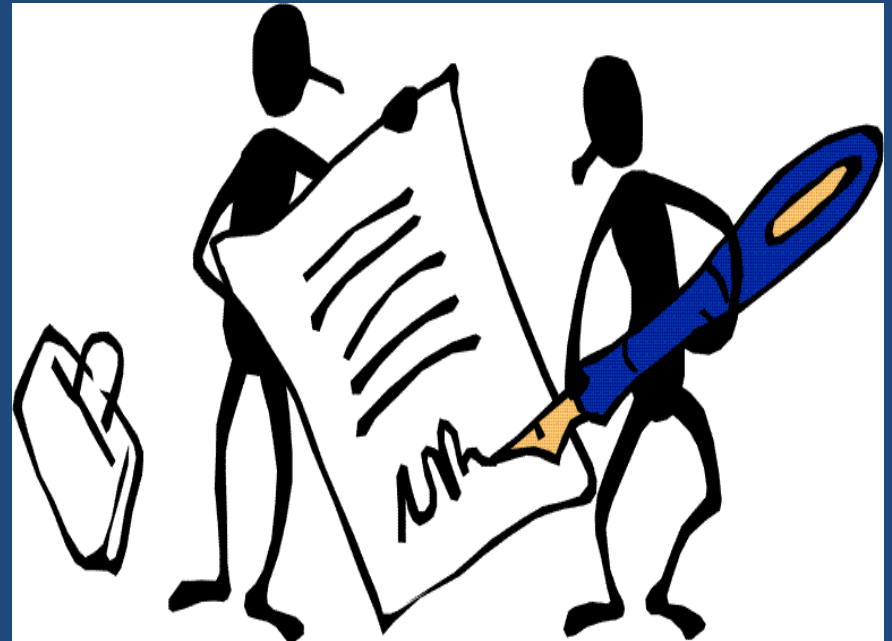
- All real estate purchases and sales, security interests, and permanent easements over \$100,000
- All land leases
- Acceptance of gifts of real estate
- Construction or capital improvement projects the total cost of which is projected to be \$1 million or more. This includes any architectural, engineering, construction management and other design professional and consulting service contracts on such projects
- All long-term debt transactions
- Legal settlements in excess of \$100,000
- Retention of audit services (internal or external)
- Retention of investment consultants for the endowment

Authority to Sign

\$250,001+	President & Chief Financial Officer
\$250,000 or less	Level I Authority VP/President's Council Level
\$25,000 or less	Level II Authority Director level leaders with responsibility for a stand alone budget
Letters of Appointment – Faculty	Provost
Letters of Appointment – Staff	Director, Human Resources

Key Take Away #1

Only those with authority as set forth in Board approved policy are authorized to enter into contracts on behalf of the university



Contract Process

- Negotiate contract terms
 - Expected part of the process
 - Secure most favorable terms possible
- Use Drake template, if applicable
- If no template, use contract checklist to review terms
- Negotiate to the checklist – seek assistance as needed
- Secure signature and send for retention (if applicable, to ducontracts@drake.edu)

Key Take Away

#2

Those with signing authority are responsible for contract terms.

Negotiating price and terms is an expected part of the contracting process.



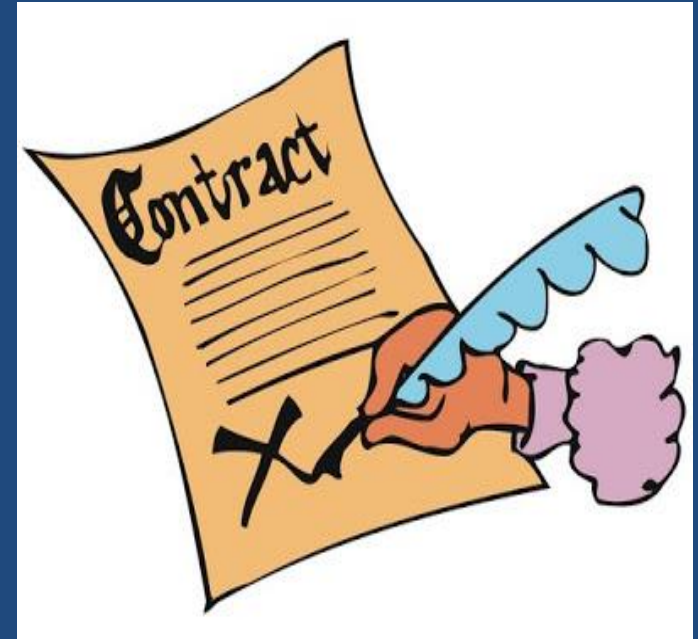
Drake Templates

- Drake approved templates
 - Independent contractor agreement
 - Service agreements (including transportation)
 - Rental agreements
 - Small construction or on-campus services/work
 - MOU for international partnerships
- If you have a type of agreement used frequently, we can develop a template for your use

Key Take Away

#3

Use Drake templates when available. If a high frequency type of agreement and a template does not currently exist, we may want to consider developing one for future use.



The Checklist

- If not an approved template, compare the agreement to the Drake University contract review checklist.
- If high risk, complex or long-term agreement, submit to ducontracts@drake.edu for review by legal counsel.

Internal Review

Technology Services or Purchases (including hardware and software)	CITO
Employment Temp or Placement Agency/Search Firm	Director, Human Resources
Any educational consortium or memorandum of understanding. Any academic or clinical affiliation agreement .	Provost
Any contract allowing use of Drake name, logo or other identifiable mark or image outside Drake's usage guidelines.	University Communications
Grant or sponsored program agreement.	Director, Sponsored Programs
Contract for any services or activity performed on campus. Contract for any experiential learning (including service learning) program, including domestic and study abroad.	Director, Risk and Insurance

Risk and Insurance

- We have insurance requirements depending on type of activity
- We may require that the service provider name Drake as an additional insured
- The other party may ask to see our proof of insurance
- We may require students or employees to complete waivers
- Donna Blunck at x3116 or send to ducontracts@drake.edu with “insurance” in the subject line

Key Take Away

#4

A contract may require internal or external review prior to signature. Contracts for certain services or involving activity on Drake property should be reviewed by the Director, Risk and Insurance to ensure sufficient insurance coverage and requirements.



Key checklist issue #1 - Termination

- Always check the termination provision.
Can we terminate with notice at any time for any reason?
- Alternatives may be acceptable depending on the length of the contract.
 - Bottom line: We do not want to be bound for an unreasonable amount of time for any service or product.

Key Contract Issue #2 – Indemnification/Hold Harmless

- An indemnification clause obligates a party (or both parties) to compensate the other party for losses or damages set out in the provision.

Case Study

- University A contracts with Contractor A for the purchase and installation of signs in its new wellness facility. During installation a drill bit flies off the drill used by Contractor A during installation and strikes a student in the eye. The student should not have been in the building during installation, but a University employee forgot to lock the doors and place construction signs properly. A subsequent suit is brought by the student against the University and Contractor A.

Case Study: Contract Language

- Contractor A agrees to indemnify and hold harmless University A against all claims, damages, liabilities, losses, costs and expenses, including reasonable attorneys fees, arising out of the services performed under this agreement.

Case Study Discussion

- What would have been the outcome if the University agreed to indemnify Contractor A for all activity arising out of the contract?
- If the clauses had been “mutual” calling for indemnification due to the other’s negligence?
 - Note: while often something we do – not a risk shifting measure.

Key Take Away

#5

If you are unable to negotiate a clear indemnification provision that protects Drake, contact ducontracts@drake.edu for assistance.

EMAIL US

Checklist Process

- The individual with signing authority is responsible for ensuring compliance with the checklist
- Others can be involved in the checklist review process, but the individual with signing authority is responsible for compliance and contract terms

Signature

- Only the individual with signing authority should sign the agreement. No other signatures should appear on the document.
- If you have reviewed and are forwarding to a higher level authority to sign, include a completed checklist.

Retention

- Unless exception applies, send to ducontracts@drake.edu for retention
 - For exceptions, keep a copy on file for 3 years;
 - Keep any correspondence in file in the event of a dispute
- Department is responsible for tracking expiration and renewal dates

Departmental Retention

Don't have to send certain signed agreements to ducontracts@drake.edu

- Independent Contractor Agreements
- Agreements for transportation, hotels, entertainment or room rentals for one-time events at non-Drake locations.



REMEMBER –
the department must retain these contracts in departmental files. Electronic copies are acceptable.

Contract Payments

- The department must ensure contract payments are consistent with contract terms;
- Individuals authorizing invoices must be familiar with pricing provisions contained in the agreements;
- Payments to third parties should be based on a contract or agreement.

Independent Contractors

- Human Resources supports determination process
 - On-line Qualtrics questionnaire PRIOR to engagement
- Individuals with whom we expect to contract for \$600 or less in any calendar year will not require a written agreement

Annual Contracting Audits

- Self-Audit
 - January of each year
 - Looking for signature and checklist compliance
 - You will be notified if not compliant – may lose signature authority if noncompliant
- Third Party Audit

QUESTIONS?

THANK YOU!