

POLICY

# Policy on Contracts, Signatures, and Financial Authority

ISSUED ON 10/06/2010

**Purpose:** Establishes University-wide Policy on:

1. Contracting
2. Approval and Signatory Authority for Commitments and Contracts
3. Required Contract Review
4. Required Contract Terms

**Applies to:** All faculty and staff

**Covers:** All contracts between the University and others, including employees, outside vendors, non-profit and for-profit entities

**Questions:** Contact Office of Counsel (585) 273-5185.

# I. Contracting Policy

Employees may sign Contracts in the name of the University only if they have authority to sign as set forth in this Policy. Students, faculty, consultants and independent contractors do not have authority to sign Contracts that bind the University. The term “Contract” is defined, broadly, to mean any document intended to set forth an agreement or arrangement between the University and an outside party (see Section VI of this Policy for further definition). This policy does not apply to internal memoranda of understanding or similar agreements that govern internal relationships between University schools, divisions or subsidiaries.

It is the responsibility of anyone who presents a Contract for signature and who signs a Contract in the name of the University to read and understand the terms of the Contract, assure that the Contract has been reviewed and approved as set forth in this Policy and that the business terms of the Contract are fair and reasonable to the University. This policy assumes that those who present Contracts for approval and signature have followed the normal business practices and policies of the University relating to initiating a business relationship or transaction, getting approval for capital spending, and the like.

Under the Code of Conduct, (<https://www.rochester.edu/policies/policies/business-activities-conduct/>) an employee who has a conflict of interest with respect to a Contract does not have authority to sign the Contract and should not be involved in the approval process with respect to the Contract. The Code of Conduct applies whether the subject of the Contract is commercial or academic.

Signing a Contract on behalf of the University is an important responsibility and should be done only by someone with authority and an understanding of the obligation being undertaken. A person who signs a Contract on behalf of the University without authority

may be subject to disciplinary action up to and including termination. A person who signs without authority in some cases even may be liable for the obligations, debts and risks under that Contract. The individual's liability may be personal. The University will not be bound by the terms of a Contract signed by an individual without authority unless an Officer of the University subsequently agrees that the University will honor the Contract.

All University Contracts must be in writing, which may include electronic (but not email) form. No contract will bind the University unless in writing and signed according to this policy.

This Policy applies equally to amendments and terminations of Contracts.

This Policy supersedes any conflicting practice, policy, delegations or guidelines.

## **II. Contract Approval and Signature Authority**

### **A. The President**

The President of the University must be informed in advance about all Significant Commitments, before the commitment is communicated to any Counterparty. Contracts relating to Significant Commitments must be reviewed and signed by an Officer of the University and reviewed by the General Counsel of the University.

A Significant Commitment is one that meets any ONE of the following criteria:

1. Goes to the Board of Trustees or a committee thereof for action or approval (see table under Section II.G)

2. Involves international or out of state operations or establishment of a University office or corporation, joint venture or partnership in a foreign country (other than study abroad or individual, intermittent faculty research.)
3. Involves use of the University's name by another entity particularly through affiliation or endorsement (other than a license for University name or marks or appearance on a client list or the giving of credit to University as author or donor) or the naming of all or part of a University building, facility or school.
4. Has the potential to generate significant internal or external publicity or controversy.
5. Has the potential to result in unusual or significant risk or liability.
6. Involves a joint venture with another entity, profit or non-profit, including academic affiliations (except those limited to medical resident or medical/nursing student placements or routine student exchanges.)
7. Creates a subsidiary or other type of controlled entity.
8. Creates a gift or pledge of at least \$1 million or the donor is a Trustee, but not including reoccurring or smaller gifts such as donor society memberships and benefit sponsorships.
9. Involves a significant expenditure of funds or one that is otherwise unusual in terms of the relevant budget – an expenditure of \$10 million or more in the aggregate under a contract (excluding a routine contract for medical supplies or pharmaceuticals) is presumed to be significant, although lesser sums in context may also qualify as significant. For example, in a school or division with an annual budget of \$25 million, a non-recurring expenditure of \$2.5 million would be considered a significant expenditure. This example is intended as a guide, not to be a rigid 10%-of-budget rule.

## **B. University Officers**

University Officers have authority to approve and sign all Contracts except those reserved to the President. It is expected that Officers will only sign Contracts within their general areas of authority.

## **C. Deans**

Deans have authority to approve and sign Contracts that:

1. impact solely the programs and budgets they oversee;
2. involve total expenditures (including any renewal or option terms) that do not exceed \$1M;
3. do not affect central systems or budgets, or those of other divisions or units of the University; and
4. do not contain terms that could result in unusual risk or liability for the University such as and only by way of example: (a) requiring insurance in excess of normal University policies (see Appendix 4) (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf>), (b) requiring unusual indemnification (e.g. for the Counterparty's own negligence or for consequential damages like lost profits), or (c) obligating the University for more than five years in the future.

Deans, and not Department Chairs or other faculty with administrative appointments, have the sole authority to make verbal or written offers to and sign appointment letters with faculty in their schools.

## **D. Medical Center Officers**

Medical Center Officers have authority to approve and sign Contracts that:

1. impact solely the programs and budgets they oversee;
2. involve total expenditures (including any renewal or option terms) that do not exceed \$5M;
3. do not affect central systems or budgets, or those of other divisions or units of the University; and
4. do not contain terms that could result in unusual risk or liability for the University such as and only by way of example: (a) requiring insurance in excess of normal University policies (see Appendix 4) (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf>), (b) requiring unusual indemnification (e.g. for the Counterparty's own negligence or for consequential damages like lost profits), or (c) obligating the University for more than five years in the future.

A contract that impacts central systems or budgets or those of divisions or units of the University other than those that are the responsibility of the Dean or Medical Center Officer can be signed by a University Officer after consultation with those responsible for the other areas potentially impacted. A contract that exceeds \$1 million, but is not otherwise described as beyond the signature authority of the Dean or Medical Center Officer, can be

signed by an Officer of the University. If a contract contains terms that could result in unusual risk or liability for the University, the President and the Office of Counsel must be consulted before the contract can be signed.

## **E. Department Chair, Unit Head, Administrators and Individual Faculty Members**

The Department Chair or head of the Unit whose budget will bear an expense does not have authority to sign Contracts by virtue of the budgetary effect alone. Contracts can be signed only by the administrators who are named elsewhere in this policy or by administrators who have been delegated authority to sign that kind of Contract by a delegation on file with Office of Counsel. See the Office of Counsel Website for current delegations. Individual faculty members do not have authority to sign contracts that bind the University. However, if the budget of a department or unit will be charged for an expense related to a Contract, other than through allocation of central University, Medical Center, School or Division expenses, the head of the department or unit must be given an opportunity to understand the essential terms of the Contract before it is signed.

## **F. Office of Counsel**

The Office of Counsel reviews certain Contracts and parts of Contracts, as described below, but it does not sign Contracts for the University, except as specifically provided in the table in Section F.

## **G. Delegation**

Those who are authorized to approve and sign Contracts may delegate their authority to others. Delegation must be in writing and specifically limited by agreement type and dollar amount. (See Appendix 3 for Sample Delegation Document) (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix3.pdf>). A person to whom authority is delegated cannot further delegate that authority to another, without the written approval of the person who made the original delegation. The person who delegates authority retains responsibility for the actions of the person to whom authority is delegated.

A copy of all delegations, re-delegations, or revocation of delegations of authority to approve and sign Contracts must be sent to the Office of Counsel to be effective and honored by the University. Delegations currently in effect are posted on the Office of Counsel website (<https://www.rochester.edu/counsel/>) or by clicking here (<https://www.rochester.edu/counsel/documents/DelegationsofContractSigning.pdf>).

## **H. Approval, Review and Signatory Authority for Contracts**

The following table identifies who must approve and sign various types of common obligations or contracts (except in cases of unavailability, when any University Officers may sign.) Others may not sign unless they are University Officers or unless they have been delegated authority elsewhere in this Policy or in a written document on file with the Office of Counsel (<https://www.rochester.edu/counsel/>). The table also lists review and approval required before signature. If a Contract does not appear on the table, consult the Office of Counsel to determine appropriate review and signature. All of the authority below is subject to the limitations described in Section II A-G of this policy, above.



## **III. Purchases of Goods or Services**

### **A. Purchase Orders**

All Contracts that involve the provision of goods or services to the University should be on University purchase orders, except for those Contracts that are within the approval and signing authority of others besides the Director of Corporate Purchasing according to the above table. Preferably, even those Contracts should be in the form of University purchase orders if for goods or services normally acquired by a purchase order. The only exceptions are those Contracts that typically contain unique terms, such as for construction/renovation and contracts for accounting, public relations creative, legal and investment services.

### **B. Standard University Terms and Conditions and Supplier Qualification Process**

All Counterparties, before entering into a Contract with the University to provide any goods or services, whether or not in the form of a purchase order, must complete the Supplier Qualification Process. This process insures that resulting contracts with the Counterparties are governed by standard terms that the University has developed to protect its interests. Completing the Supplier Qualification Process is done by visiting the Corporate Purchasing website at [www.rochester.edu/purchasing/qualify.cfm](http://www.rochester.edu/purchasing/qualify.cfm) and providing the required information and forms to Corporate Purchasing. No Contract should be presented for signature until each Counterparty has completed the Supplier Qualification Process.

Note: The University's standard terms and conditions are not intended to serve as a Contract in its entirety. A Contract also must include the business terms, outlined in the [sample term sheet in Appendix 2 of this Policy \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf). Other unique terms may be appropriate depending on the nature of the transaction. It is the responsibility of the person presenting a Contract for signature to properly document and make part of the Contract the relevant business terms.

Some Counterparties may ask for changes to the University's standard terms or may present their own form of contract to be used along with, or instead of, the University's terms. In such cases, Corporate Purchasing will review the Counterparty's requested changes. Corporate Purchasing may negotiate changes to the standard terms that do not require review of Office of Counsel per this Policy.

## **IV. Review Process**

### **A. Review by Office of Counsel**

Unless the Contract is in a standard format previously approved by the Office of Counsel and the essential terms have not been modified, the following Contracts require Office of Counsel review before they can be signed:

1. Contracts with TERMS that do any of the following:
  - Obligate the University for \$100,000 or more (except if on a University Purchase Order, in which case legal review is needed if the aggregate committed University spending is \$1,000,000 or more);

- Commit the University for three or more years (unless Contract allows the University to terminate earlier for convenience without penalty);
- Obligate the University to defend, indemnify or hold harmless the other party(ies) or add them as additional insured's to University insurance policies;
- Limit the amount or types of liability of the other contracting party, its subcontractors, agents, or successors;
- Disclaim or limit warranties;
- Require University operation, facilities or employees outside of New York State;
- Say the Contract is governed by the laws of another country;
- Require dispute resolution anywhere outside New York State Results in creation of a subsidiary, joint venture or partnership, or any form of controlled entity;
- Are commercially unusual;
- Inhibit or prevent publication of research by faculty;
- Involve export control laws;
- Grant the University or its faculty equity interests in a venture;
- State a time within which the University must make a claim (e.g. under a warranty) or bring a lawsuit.

2. Contracts with SUBJECTS that are any of the following:

- Affiliations – academic, business or service;

- Construction (including structural renovations);
- Use of University Facilities by outsiders, except if University standard form agreements are used for (a) rental agreements for weddings, parties and other similar events at the Interfaith Chapel and Memorial Art Gallery (b) rental of ESM facilities for performances and (c) rental of meeting, housing or event space by the University's Office of Conferences and Events;
- Intellectual Property-related (e.g. technology or copyright or trademark licenses);
- Information Technology, including purchases and licenses with terms and conditions that are negotiated (single-user "click through" or shrink wrap-type licenses that cannot be negotiated do not need review);
- Physician practice acquisitions;
- Professional services – all medical, accounting, and legal, and those public relations creative or consulting that have contingent fees or other unusual terms;
- Medical services provided by URMC to another institution or physician group;
- Real estate (including leases, easements, purchase/sale, and licenses);
- Employment Contracts for non-faculty and senior administrators;
- Endowments and major gift agreements or gift agreements with unusual terms;
- Minors present on campus or in programs;
- Endorsements of products/services;
- Clinical Trials;

- Industry Sponsored Research;
- Lobbying or political events;
- Dispute Settlements;
- Use of UR site for film or television
- Financing, including bonds, loans and guarantees.

Contracts presented to counsel for review or to the appropriate signatory ideally should be accompanied either by a term sheet (See Appendix 2 for a sample) (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf>) or a memorandum describing the core business terms agreed upon with the other parties, but at a minimum should be discussed with counsel and not simply sent to the office without any detail about the arrangement. All exhibits, appendices and other documents referred to by, or incorporated into the Contract must be provided because they are part of the legally binding agreement. This can include requests for proposal and responses, statements of work or services, policies and procedures, insurance requirements and certificates of insurance, and property or equipment descriptions.

In general, Office of Counsel review is limited to legal terms and not business terms, for which the signatories remain ultimately responsible. In particular, where the Office of Counsel reviews a contract because it contains one or more of terms on the above list, the Office of Counsel is not therefore responsible for review of the business terms in the agreement or for the decision to enter into it. Other offices, including Corporate Purchasing and/or the department initiating or implementing the Contract, have the primary responsibility to negotiate and review the overall agreement to make sure that it is in the best business interests of the University and consistent with University policy generally.

Contracts can include terms that may seem innocuous or insignificant to administrators, but may be legally important. All personnel are encouraged to consult with the Office of Counsel if they have any question about the meaning of language in a Contract.

## **B. Early Review by Senior Leadership and Counsel of Significant Commitments**

Anyone that initiates or becomes involved in a potential Significant Transaction on behalf of the University should report this fact to senior leadership and the Office of Counsel even before a memorandum of understanding, letter of intent or a Contract is prepared. A potential Significant Transaction is one that (1) involves expenditure of funds that are significant in relation to the budget of the department, unit or school that will be the source of funding, or (2) is likely to generate significant positive or negative publicity or controversy, (3) could result in unusual or significant liability or (4) involves international or out of state operation. See further the definition in Section IIA of Significant Commitments that require review by the President, Senior Leadership and the General Counsel.

## **C. Review of Insurance Terms**

1. **Contracts Requiring Proof of University Insurance:** Contracts often require the University to maintain and show proof of certain types and amounts of insurance coverage. Some Contracts also require the other party to be named as “additional insured” under University insurance policies. [Appendix 4 \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf) describes the assurances and representations that can be made in a Contract about the University’s insurance coverage, without further review by the Office of Counsel. Contracts that call for the University to provide insurance of different types or in greater amounts than in Appendix 4 must be

reviewed by the Office of Counsel and may require senior leadership approval.

- 2. Contracts Requiring Proof of Other Party Insurance:** The University has standard insurance requirements that generally apply to other entities doing business with the University (see Appendix 4) (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf>). If the Counterparty cannot or will not meet University insurance requirements, consideration should be given to selecting an alternate business partner. Waivers of or changes to these required coverages must be approved by the office authorized to sign the particular Contract, with input from the Office of Counsel.

## **D. International Agreements**

Because of the unusual compliance and risk issues associated with transactions involving other countries, any University transaction or arrangement that involves permanent University operations, presence or offices in a state outside NYS or a country outside the U.S., or the transfer of material or technology outside the U.S., must be reviewed with the Office of Counsel and the President. Such an agreement must be signed on behalf of the University by the President. The only exception to the above concerns study abroad arrangements or individual, intermittent faculty research. Review is particularly critical if an office will be maintained by the University or employees or agents paid in a foreign country.

## V. Records

The Official Repository (as identified by the Policy on Retention of University Records (<https://www.rochester.edu/policies/policies/records-retention/>)) should keep the original, signed Contract for the period indicated in that policy. A copy of the signed final Contract (if reviewed by the Office of Counsel) should be sent to the Office of Counsel (to the attention of the attorney who reviewed it).

## VI. Definitions

“University” includes all of its constituent divisions, departments and units. Appendix 1 (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix1.pdf>) lists the divisions that are legally part of the University of Rochester, to which this policy applies.

“Officer” means Officer of the University. It includes (1) the Chair of the Board of Trustees, (2) the President, (3) the Provost, (4) the Treasurer, (5) the Secretary, and (6) the full Vice Presidents of the University (which include the Dean of the Faculty of Arts, Sciences and Engineering and the Dean of the School of Medicine and Dentistry). Officers of the University do not include Deans (other than noted above), vice provosts, assistant or associate vice presidents, or Medical Center Officers (who are not also University Vice Presidents.)

“Medical Center Officer” for purpose of this policy only means: (1) CEO of Strong Memorial Hospital, and (2) the Chief Financial Officer of the Medical Center.



“Deans” means the Deans of (1) the School of Arts and Sciences, (2) the Hajim School of Engineering and Applied Sciences, (3) the College, (4) the Eastman School of Music, (4) the School of Nursing, (5) the Warner School of Education, (6) the Simon School of Business, and (7) the River Campus Libraries as well as (8) the Directors of the Eastman Institute for Oral Health, the Memorial Art Gallery and the Laboratory for Laser Energetics. The term “Deans” does not include deans other than those listed above, Center directors, or assistant or associate deans.

“Vice President” includes titles that imply a higher level of authority, such as “Senior” or “Executive,” but does not include those that imply a lower level of authority, such as “Associate” or “Assistant.”

“Contract” means any document intended to set forth an agreement or arrangement between the University and an outside party. A document need not be labeled “contract” to be covered by this policy. A document labeled “agreement,” “memorandum of understanding,” (or MOU) “lease,” “license,” “letter of intent,” and even a letter, or any other similar written item indicating or implying a legally enforceable document, is a Contract under this policy if it describes an obligation of the University, either to do or not do something or to pay money. A purchase order is a Contract, although an internal requisition is not, because it is purely internal and does not document an agreement with an outside party. A Contract can be in electronic form. This policy does not apply to internal memoranda of understanding or similar agreements that govern internal relationships between University schools, divisions or subsidiaries. Any question whether a document is a Contract should be referred to the Office of Counsel.

“Counterparty” means any person or entity that is a party to a Contract with the University. A “Joint Venture” is an undertaking or arrangement between the University and a Counterparty whereby the two work toward a common purpose and in which the University and the Counterparty have equal control over operations or governance and both share in the profits or losses.

“Significant Commitment” is defined in Section IIA and in Section III C.

## VII. Responsible Office-Where to Go for Help

The responsible office for the Policy on Contracts, Signatures and Financial Authority is the Office of Counsel. Questions about this Policy can be addressed to the Office of Counsel. (<https://www.rochester.edu/counsel/>)

## VIII. Other Policies

The following policies relate to this policy and should be consulted:

Capital Spending Policy

Business Code of Conduct (<https://www.rochester.edu/policies/policies/business-activities-conduct/>)

Policy on Retention of University Records (<https://www.rochester.edu/policies/policies/records-retention/>)

Policy on Transactions and Ventures with For-Profit Businesses (<https://www.rochester.edu/policies/policies/for-profit-ventures/>)

## Appendices and Tables

- Table 1: Contract Type and University Officer That Should Sign and/or Others Who May Sign (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Table1.pdf>)
- Appendix 1: Parts of the University of Rochester to which this Policy Applies (<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy->

[Appendix1.pdf](#))

- [Appendix 2: Term Sheet Sample \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf)
- [Appendix 3: Sample Delegation Document \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix3.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix3.pdf)
- [Appendix 4: Insurance Coverage \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf)

## **ABOUT THIS POLICY**

### **Policy Applies To**

Faculty, Staff

### **Issuing Authority**

Administration & Finance

### **Responsible Officer**

Elizabeth Milavec

### **Contact Information**

[emilavec@finance.rochester.edu](mailto:emilavec@finance.rochester.edu) (mailto: [emilavec@finance.rochester.edu](mailto:emilavec@finance.rochester.edu))

## **ADDITIONAL RESOURCES**

**[Delegations of Contract Signing \(https://www.rochester.edu/counsel/documents/DelegationsofContractSigning.pdf\)](https://www.rochester.edu/counsel/documents/DelegationsofContractSigning.pdf)**

**[Table 1: Contract Type and University Officer That Should Sign and/or Others Who May Sign \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Table1.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Table1.pdf)**

**[Appendix 1: Parts of the University of Rochester to which this Policy Applies](#)**

**<https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix1.pdf>**

**[Appendix 2: Term Sheet Sample \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix2.pdf)**

**[Appendix 3: Sample Delegation Document \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix3.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Contract-Policy-Appendix3.pdf)**

**[Appendix 4: Insurance Coverage \(https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf\)](https://www.rochester.edu/policies/wp-content/uploads/2020/12/Policy-on-Contracts-Signatures-and-Financial-Authority-100610-Appendix-4-1.pdf)**

#### RELATED POLICIES

**[Retention of University Records Policy \(https://www.rochester.edu/policies/policy/records-retention/\)](https://www.rochester.edu/policies/policy/records-retention/)**

#### POLICY KEYWORDS

**[Contractors \(https://www.rochester.edu/policies/all/?filter%5Btopics%5D=366\)](https://www.rochester.edu/policies/all/?filter%5Btopics%5D=366)**

**[Contracts \(https://www.rochester.edu/policies/all/?filter%5Btopics%5D=106\)](https://www.rochester.edu/policies/all/?filter%5Btopics%5D=106)**

**[Finances \(https://www.rochester.edu/policies/all/?filter%5Btopics%5D=416\)](https://www.rochester.edu/policies/all/?filter%5Btopics%5D=416)**

**[Purchasing \(https://www.rochester.edu/policies/all/?filter%5Btopics%5D=116\)](https://www.rochester.edu/policies/all/?filter%5Btopics%5D=116)**

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