

The Contracting Process:

What You Need To Know To Get Started



This procedure outlines the process for signing agreements that are binding on the University.

Contracts include any written agreement, contract, subcontract, binding letters of intent, memoranda of understanding, memorandum of agreement, lease, deed, transfer, instrument, assignment, obligation, certificate or other document, the provisions of which may be binding upon the University when signed by a person authorized by the Arizona Board of Regents to execute agreements on behalf of the University of Arizona.

Step 1: Selecting a Contract

What is a Contract?

A "contract" is an agreement between two or more parties that creates obligations that are enforceable or otherwise recognized by law. This includes, but is not limited to any document that has terms and conditions, leases, letters of agreement, memoranda of understanding, letters of intent and interagency or intra-system agreements. The contracting agency can be a private industry, a government agency, or a non-profit entity.

Which Contract Should I Use?

It is important to select the appropriate agreement that is suitable for the transaction.

It is always preferable that the sponsor or vendor use one of the University's standard agreements. Agreement templates and other University agreement forms serve as a starting point for negotiations and are particularly useful if the funding agency does not have a draft agreement. Agreement templates can be found at the following links:

- Standard Incoming, Confidential Disclosure, Material Transfer, and Other Agreement Templates: http://www.orca.arizona.edu/std_agreements.html
- Clinical Trial Agreement Templates: <http://www.orca.arizona.edu/ctas.html>
- Procurement and Contracting Services Agreement Templates: http://www.pacs.arizona.edu/contracting_faqs#forms

Standard agreements adequately protect the University's interests, are written in clear language, include Arizona Board of Regents and state law requirements, expedite the contracting process, and are intended to be fair to all parties. Contractual transactions entered into using a standard agreement do not require additional University review and approval. However, if a substantive change is made to the agreement, the [Office of Research and Contract Analysis \(ORCA\)](#) or [Procurement and Contracting Services \(PACS\)](#) must review and approve the contract before it can be signed.

Do not use any prior versions of the templates or forms. Templates are updated regularly so, you should always use only the current version available on the [Office of Research and Contract Analysis](#) or [Procurement and Contracting Services](#) websites

Step 2: Collecting the Necessary Information

It is important not to engage in any work without a formal, written agreement signed by a person authorized to sign on behalf of the University of Arizona. To avoid delays with contracts and agreements, contact [Sponsored Project Services \(SPS\)](#), the [Office of Research and Contract Analysis \(ORCA\)](#), and/or [Procurement and Contracting Services \(PACS\)](#) in the early stages of the process.

What documents are needed to complete the contracting package?

The complete contracting package will include:

- Fully-signed [Proposal Routing Sheet](#)
Please note: Proposal Routing Sheets are not required for contracts reviewed by Procurement and Contracting Services
- Budget
- Payment Schedule
- Statement/Scope of work
- Word version of the contract with all relevant exhibits and attachments
- Additional supporting documents

Step 3: Choosing a Negotiator

Who negotiates an agreement?

The [Office of Research and Contract Analysis \(ORCA\)](#), and/or [Procurement and Contracting Services \(PACS\)](#) are responsible for developing and reviewing agreements between the University and external parties. All parties work to ensure accountability, appropriate internal consultations, compliance with relevant regulations, legislation and University policies, and protection of University interests and resources.

No person who is not an authorized signatory may enter into binding contract negotiations, or approve or execute a contract on behalf of the University without authorization. Only those individuals specifically authorized by the Arizona Board of Regents may legally sign agreements for the Board, acting for and on behalf of The University of Arizona

Agreements **TO PAY** an individual, corporation, or other entity, with the exception of sub-agreements, are routed to [Procurement and Contracting Services \(PACS\)](#)

The Contracting Office, as part of Procurement and Contracting Services reviews, processes, supports, and oversees all University contracts not associated with Sponsored Projects Services, or the Office of Research and Contract Analysis, in a diligent and professional manner to ensure that they are in the University's best interest, conform to current Arizona Board of Regents and University policies, and comply with Arizona State law while maintaining a successful working relationship with outside vendors, their legal counsel, and University departments.

The Contracting Office professionals in Procurement and Contracting Services have delegated authority to draft, negotiate, and sign contracts on behalf of the Arizona Board of Regents for the University of Arizona. This delegation comes from the Director of Procurement and Contracting Services through the President of the University. **Unless specifically granted by the President or a designee, no other University of Arizona department, faculty, or staff has this authority.**

Procurement contracts are defined in general terms as formal agreements with a business entity to secure specific goods and/or services that are subject to compliance with procurement policies (e.g. technology, hotels & resorts, marketing, maintenance services, temporary personnel, leases, and auxiliary contracts such as bookstore services, vending machines, or food service agreements)

- Procurement for services
- Vendor agreements
- Equipment maintenance agreements
- Leases of movable property, such as tools, equipment, vehicles, etc.;
- Leases, deeds, and other conveyances affecting interests in real property;
- Debt instruments and related documents;
- Maintenance agreements;
- Software license agreements; and
- Promissory notes and other instruments for the payment of money;

Agreement **TO RECEIVE PAYMENT FROM** sponsor, individual, corporation, or other entity, and to pay a sub-agreement to another entity are routed to **Sponsored Projects Services (SPS)** and the **Office of Research and Contract Analysis (ORCA)**

The Office of Research and Contract Analysis has two University signatories who are responsible for accepting all types of awards, including grants, contracts, and other agreements, and for all campus units, on behalf of the Arizona Board of Regents.

The Office of Research and Contract Analysis facilitates and supports the University of Arizona sponsored projects and research enterprise by drafting, negotiating, and executing a variety of contracts and agreements, including the following:

- Research agreements
- Confidential Disclosure Agreements (CDA),
- Material Transfer Agreements (MTA) a.k.a. Universal Biological Material Transfer Agreement (UBMTA) for incoming materials (OTT handles MTAs for outgoing University materials)
- Clinical Trial Agreements (CTA)
- Cooperative Research and Development Agreements (CRADAs)
- Government and non-profit grants and contracts
- Subcontracts: incoming and outgoing
- Sales and service agreements

- Memoranda of Agreement (MOA)
- Memoranda of Understanding (MOU)
- Non-Disclosure agreements
- Affiliation agreements
- Preceptor Agreements
- Medical Training Agreements

Awards are reviewed and, if necessary, negotiated by the appropriate Institution official to ensure the terms and conditions are acceptable to the University. As needed, Sponsored Projects Services and/or the Office of Research and Contract Analysis will consult with the Principal Investigator (PI), department/college/center administrators, and other administrative offices, such as the [Office of Technology Transfer](#) and/or the [Office of the General Counsel](#). The negotiation process ranges from a few days to several months or more depending on the complexity of the agreement.

Step 4: The Contract Review Process

Who should I contact to get an agreement reviewed?

Failure to follow the below stated guidance will delay the review and execution of your agreement

Standard routing path for agreements **TO PAY** an individual, corporation, or other entity, with the exception of sub-agreements

Forward copy of agreement and referenced attachments and exhibits to [Procurement and Contracting Services \(PACS\)](#)

If related to a Requisition, Purchase Order, or Request for Bid/Proposal, send via campus mail to:

Procurement and Contracting Services (PACS)
Purchasing Office
USA Building
Campus 210300

If the transaction involves the issuance of a Requisition, the contract should be forwarded to Purchasing as an attachment referencing the Requisition number.

OR

If the agreement is for a Purchasing Card or Disbursement Voucher (DV) transaction or there is no money involved, send via campus mail to:

Procurement and Contracting Services (PACS)
Contracting Office
USA Building
Campus 210300

If a Certificate of Insurance is required, please include the certificate when the agreement is submitted to the Contracting Office for review. The amounts indicated in the document must match the certificate and the Additional Insured Endorsement must also be included on the certificate. If the Certificate of Insurance is missing or does not contain the written requirements, please contact the vendor and request the correct and appropriate insurance. Any reduced limits or waivers need to have prior written approval of [Risk Management](#).

Agreement processing time is three to four weeks. Expedited processing is available with a processing time of one to two weeks. All processing times are dependent on the complexity of the agreement

- Send only *original* agreements -- faxed, scanned, or copied signatures will not be accepted
- Include all terms & conditions, either on the back of the document or as an attachment
- Include all referenced exhibits, attachments or addendums
- Contracting reviews agreements for **LEGAL CONTENT ONLY** and may not be aware of any special terms and conditions. Read the agreement to ascertain the following:
 - all blanks are filled in correctly
 - freight charges, if any, are reflected correctly
 - dollar amounts match
 - taxes, if any, are included
 - payment terms are acceptable
 - equipment installation terms, if any, are accurate
 - pick up and return of equipment, if applicable, is acceptable
 - warranty is acceptable
 - maintenance, if needed, is included
 - term of the agreement is correct
 - any renewal options, if necessary, are included; is automatic renewal desired?

Standard routing path for agreements **TO RECEIVE PAYMENT FROM** a sponsor, individual, corporation, or other entity, and to pay a sub-agreement to another entity, with the exception of subcontracts (please see subcontract guidance – <http://www.orca.arizona.edu/subcontracts.html>)

Forward copy of agreement and referenced attachments and exhibits to [Sponsored Projects Services \(SPS\)](#)

If sent via campus, mail to:
Sponsored Projects Services
University Services Building, Room 510
Campus 210158

If sent via email, send to:
sponsor@email.arizona.edu

The [Office of Research and Contract Analysis \(ORCA\)](#) has a close, daily working relationship with Sponsored Projects Services to ensure that university, sponsor, and government rules and regulations are followed. The Office of Research and Contract Analysis negotiates and/or signs the agreements that Sponsored Projects administers.

Get the Office of Research and Contract Analysis into the loop as early as possible so terms can be pre-negotiated. Investigators are encouraged to forward draft agreements, especially those with non-standard terms, to the Office of Research and Contract Analysis at the earliest possible stage. Draft agreements may be forwarded directly to orca@email.arizona.edu, independent of the proposal routing process.

Please send only modifiable Word versions of agreements for review. Do not send PDFs, locked documents, or hard copies as ORCA will not review these and this will add to the time it takes to negotiate and sign an agreement.

If you send the draft agreement to Sponsored Project Services, attached to the Proposal Routing Sheet, clearly indicate that the draft agreement should be forwarded to the Office of Research and Contract Analysis. Otherwise, the draft agreement will be filed with the proposal.

Once the agreement is received by Sponsored Projects Services it is matched to the appropriate proposal file. A negotiation log record is created in the UAccess Research database to track the status of the award document.

If no proposal has been routed through Sponsored Projects Services, then the faculty or staff member will be contacted to route the appropriate proposal documents through Sponsored Projects Services. A contract or agreement for sponsored project activity will not be negotiated until the proper paperwork has been routed.

If the award instrument requires University signature, or if specific terms or conditions are involved (e.g., contracts, clinical trials, some purchase orders), Sponsored Project Services will first send a copy of the agreement to the principal investigator for review and approval of terms, particularly budget, scope of work, effective dates, and reporting requirements. After Sponsored Project Services receives written acceptance from the

principal investigator ([SP-226](#)), Sponsored Projects will forward the package to the Office of Research and Contract Analysis for review.

Only those individuals specifically authorized by the Arizona Board of Regents may legally sign agreements for the Board, acting for and on behalf of The University of Arizona

If non-standard terms are involved, the Office of Research and Contract Analysis may involve the [Office of Technology Transfer](#) and/or the [Office of the General Counsel](#) for review, approval, and negotiation with the sponsor, if appropriate. The Office of Technology Transfer or the Office of Research and Contract Analysis will notify the principal investigator immediately if the agreement contains terms that the University cannot accept. Depending on the nature of the agreement, [Risk Management](#) and/or other Compliance Units in the [Office for the Responsible Conduct of Research](#) may become involved.

Prohibited or Problematic Provisions

Some awards may include troublesome and unacceptable clauses. The Office of Research and Contract Analysis negotiates with the sponsor to remove the problematic clause or substitute alternative language that is acceptable to the University of Arizona and the sponsor.

The following contract areas can be difficult to negotiate and can be problematic because a sponsor may request terms that either conflict with state or federal law or Arizona Board of Regents policy.

- **Indemnification:** this is an obligation to pay another party's damages and/or attorneys' fees suffered as a result of the claims of third parties.
The University cannot warrant, indemnify or hold harmless per this Arizona Revised Statute: <http://www.azleg.state.az.us/ars/35/00154.htm>
- **Intellectual Property:** In general, the University cannot assign, or grant a license to, intellectual property, developed by University employees, to another entity without receiving compensation for these rights.
Please refer to this link: <http://azregents.asu.edu/rrc/Policy%20Manual/6-908-Intellectual%20Property%20Policy.pdf>.
- **Publication:** As an academic institution which may be including students in its projects who need to publish in order to graduate, the University generally cannot agree to publication restrictions in its agreements. The University provides sponsors with a thirty day right to review manuscripts prior to publication. During this review, the sponsor may request that the University remove any sponsor confidential information contained in a manuscript. Additional time may be accorded to the sponsor in order to secure patent protection for intellectual property, prior to publication.

- **Confidential Information and the Arizona Public Records Laws:** Once fully executed, a University contract cannot be considered confidential information. Also, the University may have an obligation to disclose information in its possession in response to a public records request. Please see the following links:
<http://www.azleg.state.az.us/ars/39/00121.htm>
<http://www.azleg.state.az.us/ars/15/01640.htm>
- **Governing law:** The University cannot agree to the governing law or venue of another jurisdiction. The University can either specify the governing law of the state of Arizona in its agreements, or simply remain silent of the issue of governing law.
- **Four State required clauses:** In its funded agreements, the University must include four state required clauses concerning arbitration, conflicts of interest, equal opportunity and immigration, and termination due to reduction or elimination of annual appropriations.

Step 5: Contract Signing

No person has the authority to bind the University contractually except in the accordance with Arizona Board of Regent, and University of Arizona policies.

The University of Arizona's Board of Regents established The Office of Research and Contract Analysis and Procurement and Contracting Services departments as the organizations legally authorized to accept awards and agreements for the University on behalf of the University of Arizona and University of Arizona researchers. Any document requiring an official signature must be signed by an authorized representative of the Institution. Principal Investigators are not authorized to sign agreements on behalf of the university

The procedures differ slightly depending on where the agreement needs to be negotiated and/or signed.

For Purchasing:

If the Vendor's signature is present on the agreement, and if there are no changes or additions to the agreement, PACS will sign for the University, forwarding one original, fully-executed agreement to the vendor and keeping one on file at PACS. If changes or additions are required, PACS will edit the agreement, initial the changes, sign the agreement and send it to the vendor for countersignature. If the department requires a copy of the fully executed agreement, they should contact the appropriate Buyer to obtain it.

If the Vendor's signature is not present on the agreement, and if there are no changes or additions to the agreement, PACS will sign for the University and return the original documents to the vendor for signature. If changes or additions are required, PACS will edit the agreement, initial the changes, sign the agreement and send it to the vendor for

countersignature. If the department requires a copy of the fully executed agreement, contact the appropriate Procurement and Contracting Services personnel (Buyer or Contracting Office) to obtain it.

For Contracting:

The process is the same as for Purchasing but Contracting works directly with the department and will send the signed agreements back to the department who forwards the contract to the Vendor for countersignature.

For the Office of Research and Contract Analysis:

If the sponsor's signature is present on the agreement, and if there are no changes to the agreement, the Office of Research and Contract Analysis will sign for the University, forwarding one original, fully-executed agreement to Sponsored Project Services, and an original, fully-executed agreement to the sponsor, with a copy to the principal investigator and business office.

If changes to the contract are required, the Office of Research and Contract Analysis will return the contract to the sponsor/vendor for approval to initial the changes before signing the contract.

If the sponsor/vendor's signature is not present on the agreement, and if there are no changes to the agreement, the Office of Research and Contracts Analysis will sign for the University and return the original documents to the sponsor or vendor for signature.

When the sponsor returns the fully-executed agreement to the University, Sponsored Projects Services will forward a copy of the fully-executed agreement to the principal investigator and department business office.

For all types of contracts, the negotiator may need to consult on the nuances of certain legal terms, and some sponsors do not respond promptly to the University's requests. The bottom line is that there are certain required terms and conditions in our agreements, particularly required by State and Federal law and University policy, many of which can take time to negotiate.

Processing times are dependent on the complexity of the agreement, and the particular sponsor involved. The processing time for standard agreements is at least four weeks. Clinical Trial Agreements vary; Sponsor initiated Clinical Trial Agreements are processed within one to four months, Principal Investigator initiated Clinical Trial Agreements can take up to one year. Master Agreements can take one to two years to negotiate.

Negotiations can take time and are dependent upon the complexity of the agreement being negotiated. Some Agreements may go back and forth multiple times between the sponsor and the University before being finalized

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