



Contract Compliance And Administration Guide

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Introduction

This manual is written in support of [University Policy 3-04 Contract Compliance/Administration](#). It is the goal of this document to enable users to understand the process for the creation and administration of contractual agreements.

This Procedure Manual provides Academic and Administrative Financial Managers (referred to as YSU Sponsor in this document) with a standard reference guide for contracting goods and services on behalf of YSU. It is essential that standard contract management policies be established so efficient business practices are maintained within YSU and in cooperation with businesses, trade associations, governmental, and private agencies.

Oral agreements are not permitted by state law. You may discuss the terms with a contractor, but only a written, completed contract agreement is binding and can form the basis for payment to be made. YSU is defined as “Youngstown State University, a state university and public institution of higher education, pursuant to Ohio Revised Code Section 3345.011.”

The person signing the contract on behalf of YSU is guaranteeing payment. Before you enter into the agreement, it is up to the Financial Manager to make sure that the funds are available to make the payment.

When do I need a contract?

A contract is necessary anytime services are being performed on or off campus by individuals or businesses. Examples would include individuals performing services such as speakers, performers, officials, consulting, specialized services such as hearing or speech therapy, carpet cleaning, janitorial services, maintenance agreements, hazardous waste collection, etc.

Contracts are also necessary for construction/renovation projects, clinical site arrangements, lease agreements for property and machinery, purchase of property or equipment, computer hardware and software agreements, construction and renovations among other things (See appendix A for a listing of University contract types). Basically, whenever YSU may be exposed to liability a contract is needed.

A contract is prepared in addition to a purchase order when the regular terms and conditions which govern the purchase order are not sufficient to cover all of the obligations of the agreement. See - [Purchase Order Terms and Conditions](#).

What Is a Contract?

A contract is an agreement between YSU and another party to do, or to refrain from doing, a particular thing in exchange for something of value. The agreement contains an offer and an acceptance (meeting of the minds), consideration for the exchange (something of value), spells out the terms of the agreement without ambiguity, and is signed by authorized representatives of the parties with the proper capacity to enter into the agreement. The written contract is an enforceable document and will clarify all understandings and obligations between YSU and the contractor in order to prevent any misunderstandings. The terms of the agreement –who, what, where, when, and how of the agreement - define the binding promises of each party to the agreement.

Contract Compliance is the process of reviewing and managing contracts and agreements that bind YSU to commitments with outside parties and the policies that determine how these documents are

processed at YSU. Contract Compliance shall be the responsibility of the Office of Finance and Business Operations.

Contract Administration is the ongoing process of ensuring that the terms and conditions of contracts and agreements are being implemented as agreed to by the parties. Contract administration is the responsibility of Procurement Services and YSU sponsor of the contract or agreement. Contract administration includes deciding who will be responsible for administering the action once awarded and the system that will be used to monitor compliance with the provisions of the agreement.

Contract Terms – Contract Review

All YSU contracts must be in writing and signed by both parties. The other party shall be clearly named.

General Requirements

The contract must list the legal name and address of the contractor. The financial terms of the agreement must be clearly specified for instance how much is to be paid and when it will be paid. The responsibility of both parties and the description of services to be performed must be identified. The agreement must be signed by the contractor and the designated YSU representative.

Prohibited Terms

Indemnification/Hold Harmless

In general, YSU as an instrumentality of the State of Ohio cannot indemnify or “hold harmless” the other party in a contract. During negotiations every effort should be made to remove these provisions from the contract. If you are unable to remove these provisions, contact the Office of General Counsel.

Choice of Law/Governing Law/Jurisdiction/Venue

Any provision that calls for YSU to submit to any jurisdiction other than the Ohio Court of Claims must be deleted. All contracts should be governed by Ohio law. If you are unable to exclude or modify this provision, contact the Office of General Counsel.

Confidentiality

As an instrumentality of the State of Ohio, YSU is subject to Ohio Public Records laws. As such, any provision that requires the terms of the contract, or specific information obtained during the term of the contract, to be kept confidential must be removed or modified to include “to the extent permitted by Ohio law”.

Arbitration/Mediation

Any provision that requires YSU to submit to binding arbitration or mediation must be deleted.

Liquidated Damages

A liquid damages provision will generally not be approved as they require YSU to pay for goods or services not actually rendered. This must (specifically) be approved by the Vice President for Finance and Business Operations.

Required Terms:

Equal Opportunity

Pursuant to Section 125.111 of the Ohio Revised Code, contractor agrees that contractor and any person acting on behalf of contractor will not discriminate, by reason of race, creed, color, religion, sex, age, handicap, national origin, and ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this agreement. Contractor further agrees that contractor and any person acting on behalf of contractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, sex, age, handicap, national origin, Vietnam-era veteran status or ancestry. Each contract should include a nondiscrimination clause which states, "Both parties will, in the performance of this Agreement, comply with all applicable laws, rules, regulations, and orders regarding equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act and Affirmative Action."

Failure of Appropriation

If YSU is expending money under the contract over a state budget biennium, the following provisions should be included:

Non-Appropriation

(a) If YSU'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 YSU 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 YSU.

Funding Intent

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

Student or Financial Records and a Restriction on the Use of Confidential Information: If the terms of the contract call for access to YSU's computing systems, student record, financial records regarding students (or their parents), or financial information regarding University employees, the following provision must be included:

Restriction on Use of Confidential Information

Any and all information, the release of which is prohibited by state or federal law or regulation, is subject to the protections of the Family Educational Rights and Privacy Act, or protected the Gramm Leach Bliley Act and obtained by Contractor from YSU, its' students, faculty or staff in the performance of this Agreement constitutes Confidential Information. Contractor agrees to hold the Confidential Information in strictest confidence. Contractor shall not use or disclose Confidential Information received from or on behalf of Institution or any of its students, faculty, or staff except a permitted or required by this Agreement or by law or as otherwise agreed to in writing by Institution.

Contractor agrees that it will protect the Confidential Information it receives according to commercially acceptable standards and no less rigorously than it protects its own Confidential Information. Specifically, Contractor shall implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted Confidential Information.

Within 30 days of termination, cancellation, expiration, or other conclusion of this Agreement, Contractor shall return to University or if return is not feasible, destroy and not retain any copies of any and all Confidential Information that is in possession of Contractor. The obligations of this Agreement shall not apply to any information which (a) is already in the public domain through no breach of this Agreement, including but not limited to information available through University's website(s); (b) was lawfully in Contractor's possession prior to receipt from University, its faculty staff or students; or (c) is received by Contractor independently from a person or entity free to lawfully disclose such information other than University, its faculty, staff, or students.

Contractor warrants and represents that it shall, at all times, comply with the Family Educational Rights and Privacy Act (FERPA), and the Gramm Leach Bliley Act and further agrees not to disclose or re-disclose to any person or entity for any purpose whatsoever any personally identifiable student information as that term is defined by FERPA.

Contractor warrants and represents that it shall, at all times, comply with the Health Insurance Portability and Accountability Act – (HIPAA) Privacy Rule of 2003 and further agrees not to disclose or re-disclose to any person or entity for any purpose whatsoever any personally identifiable health information as that term is defined by HIPAA.

Insurance

When a contract calls for activities that will occur on University property or when YSU is conducting activities on another party's property, it is highly advisable to insert a contract provision requiring the other party to provide YSU with Certificate(s) of Insurance showing liability insurance and which names Youngstown State University as an additional insured. When the activity includes use of motor vehicles, the certificate(s) should include appropriate automobile insurance. The certificate(s) should also include 30 days notification to Youngstown State University in the event the policy is cancelled. For more information regarding insurance requirements, contact the Environmental & Occupational Health & Safety office.

SOC Reporting Requirements

Service Organizations hosting software services off campus are required to submit a Service Organization Control (SOC) Report type 2 or 3 per the [IT Security Manual](#) prior to issuance of the Purchase Order. Such audits shall be performed at least annually during the term of the contract and the report of the audit submitted to YSU. The Contractor shall agree to implement recommendations as suggested by the audits within three months of report issuance at no cost to YSU.

Software License Agreements

All software purchased or licensed by YSU must be **ADA compliant**.

Other standard terms and conditions

- Term and Termination Clause
- Insurance Requirements
- Assignment Clause
- Warranty and Representation
- Use of YSU's Name and Trademark
- Notice
- Benefits
- Taxes/Hold Harmless
- Subject To Appropriation
- Findings For Recovery (R.C. 9.24)
- Modifications Of Agreement
- Certification Of Compliance With Ohio's Ethics Laws
- Public Official
- Lobbying
- Drug Free Workplace Compliance
- Entire Agreement

How do I know which contract form to use?

There are standard contracts and non-standard contracts. Standard contracts are prepared using a template approved by General Counsel such as Standard Independent Contract Agreements (SICA) and Professional Service Agreements (PSA). To ensure compliance with state law, please encourage vendors to use the PSA.

Non-standard contracts may be agreements created for a specific purpose and/or agreements created on contractor forms. **See appendix A for a listing of University contract types and descriptions.**

Who is authorized to enter into a contract?

Typically financial managers are designated as YSU Sponsor for agreements. Other department personnel may be influential in defining agreements, but the Financial Manager is responsible for oversight.

Who is authorized to sign a contract?

Generally, only the President and the Vice President for Finance & Business Operations or their designee, have the authority to sign a contract on behalf of YSU. The Provost has authority to sign and approve Affiliation Agreements that have no direct financial consequences to YSU. No other individual has authority to enter into a contract for the purchase of goods or services or otherwise obligate YSU to pay any sum of money, unless one of the following occurs:

A resolution of authorization from the Board of Trustees; A written declaration of signature authority from the President or the Vice President for Finance & Business Operations filed with the contract; A purchase order ("PO") issued by or under the direction of the Director of Procurement Services; A PO for goods in the amount of \$50,000 or more, and services in the amount of \$50,000 or more awarded through competitive selection or through use of an approved group purchasing price agreement such as State Term Schedule or IUCPG. (See [University Policy No. 3-01](#))

[Purchasing](#).) An agreement for services provided by an independent contractor and documented on the SICA form and approved by the highest required authority as noted in the guidelines.

Failure to ensure that the appropriate authorized signature is obtained may result in personal liability for the employee(s) involved in the transaction.

Authorized Signatories – Standard and Non-Standard Contracts

Authorized signatories may be designated by the Office of the Vice President for Finance & Business Operations. Standard Agreements include SICAs and PSAs. The signature thresholds for Standard Agreements are as follows:

<u>Dollar Threshold</u>	<u>Approval Required</u>
Up to \$1,499 (SICA Only)	Associate Dean, Department Chair, or Director
\$1,500 to \$9,999	Dean, Associate Provost, or Associate Vice President
\$10,000 to \$14,999	Division/Area Officer
\$15,000 or more	Vice President for Finance & Business Operations

These approval thresholds do not apply to non-standard contracts, which must be reviewed by the YSU Office of the General Counsel to ensure appropriate legal form and content and signed by the Vice President for Finance & Business Operations. To ensure compliance with state law, please encourage vendors to use the standard PSA.

A copy of the signed agreement must be submitted to Procurement Services. Procurement Services is the repository for all non-employee contracts.

When should General Counsel review a contract?

Non-standard contracts (vendor contract form) must be reviewed and approved by General Counsel. If a non-standard contract is not approved by General Counsel and signed by an authorized signatory it may be invalid. Any contracts made using the contractor agreement forms must be reviewed by General Counsel. Also, anytime there are any questions pertaining to the agreement terms, or if the contract can potentially expose YSU to significant liability the contract should be sent to General Counsel for review. See Appendix A for a more complete list of non-standard agreements.

How do I complete the contract forms?

Determine what type of agreement you are negotiating and obtain the correct template to use ([see Contract Management Policies and Procedures](#)). Prepare the contract including any riders with collaboration from the contractor. It is the responsibility of YSU Sponsor to conduct the initial agreement negotiations with the contractor to make sure that the minimum provisions of the agreement have been agreed to between the parties.

After all of the necessary information is entered on the agreement, review to ensure that it contains all of the provisions agreed to between the parties. If it is the contractor's form, check the Standard Riders to see if there is an appropriate YSU rider to be attached.

YSU Sponsor should review each agreement to determine that the minimum components of a contract are present.

YSU Sponsor should ensure the legal name of the contractor is reflected in the agreement since many companies operate under assumed names or variations of the legal name.

Each contract should have the correct amount agreed to be paid by the parties and the means and method of payment. The exact amount should be in the agreement, the party responsible for payment, the date the payment is expected and the means of payment, if applicable, i.e. whether the payment will be made in installments or in one lump sum payment.

Every contract should outline the duties and responsibilities of each of the parties. Contracts where YSU is requiring the contractor to perform a service or complete a task or work product, should have a detailed description of the scope of work or service to be performed and time frame for completion. The Scope of Work can be part of the contract or it can be added as an attachment.

The term or length of the agreement, including start date and end date, should be clearly stated in the contract. The basis for early termination should also be clearly stated in the contract.

Obtain insurance certificate from the contractor (if applicable). It is the policy of YSU that, when applicable, evidence of insurance required by YSU pursuant to an agreement must be submitted prior to final approval and signature. Most contracts contain an insurance provision, which requires the contractor supply YSU with proof of insurance coverage relating to the services provided under the contract. Proof of insurance is generally in the form of a certificate of insurance with YSU named as "Additional Insured". A contract will not be accepted for review unless the certificate of insurance is submitted as part of the documents. Any modifications to YSU standard insurance requirements must be approved by the risk assessment and insurance representative of YSU, the Associate Director of Environmental and Occupational Health and Safety, in advance of submitting contract documents. Written confirmation of approval must be submitted as part of the contract documents.

Signatures

Obtain the contractor's signature on the contract and rider(s).

Obtain the authorized YSU Signature on the contract. It is preferable to have the other party sign the agreement first to ensure YSU receives a fully executed copy of the agreement.

What should I do with the contract once it is completed?

Submit a copy of the agreement and any other required forms such as insurance certificates to Procurement Services. All contract documentation will be maintained and monitored in Procurement Services.

Enter a requisition for the agreement in eCUBE and attach a copy of the agreement to the order or enter a note on the requisition that the agreement has been forwarded to Procurement Services. Procurement Services will then attach a copy of the agreement to the requisition.

How do I initiate an amendment to the agreement?

Any amendments to the original agreement must be initiated by the department who secured the original agreement. The amendment should flow through the same process as mentioned above.

Who should I contact if I have questions?

Contract Issues: Greg Morgione

General Counsel

Phone: 330-941-2354

Email: ggmorgione@ysu.edu

Insurance Issues: Julie Gentile

Director, Environmental and Occupational Health and Safety

Phone: 330-941-3700

Email: jagentile@ysu.edu

Contract Process: Procurement Services

Procurement Services

Phone: 330-941-3163

Email: procure@ysu.edu

Appendix A - YSU Contract Types and Descriptions

Standard Agreements

See the [Contract Management Policies and Procedures](#) website for Guides and forms for Standard Agreements.

Standard Independent Contractor Agreements (SICA)

Agreement negotiated with an individual to perform services for YSU.

Professional Service Agreement (PSA)

Agreement negotiated with a business to perform services for YSU.

Non-Standard Agreements (Vendor Agreements)

Academic Affiliation

Agreements are negotiated and administered by the Provost and the academic department initiating the student internship, clinical rotation, or other experience or training. All Academic Affiliation Agreements require the signature of the Provost, the Vice President of the Department or the Dean of the College participating in the clinical agreement. Any Academic Affiliation Agreement requiring a financial commitment of YSU shall be reviewed and signed by the Vice President for Finance & Business Operations.

Computer Hardware or Software Agreement

Negotiated by Computer Services to purchase/lease and/or maintain computer hardware or software.

Computer Maintenance Agreement

Agreement to maintain computer software services.

Construction Agreement

Agreement with a General Contractor, Construction Manager, Contracting Engineer Architect or Sub-Contractor to perform construction services. Construction Contracts are negotiated and administered by the Associate Director of Planning and Construction or the Executive Director of Facilities and the Vice President of Finance & Business Operations. All construction contracts must be reviewed by the General Counsel's Office and, when necessary, signed off on by the Ohio Attorney General's Office.

Contracts for Goods or Services and Purchase Orders

Reviewed and/or negotiated by the Director of Procurement Services and YSU sponsor.

Education Affiliation Agreement-General

Agreement with another educational entity to allow students to enroll in alternate schools. An Agreement with another college to provide a joint program, degree, etc.

Employment Contracts

Negotiated through the office of Human Resources.

Equipment Lease Agreement

Agreement to lease equipment such as large computer systems, vehicles, or other large investment items.

Equipment Maintenance Services Agreement

Agreement to provide maintenance services for equipment, to maintain office equipment, vans, elevator,

laboratory equipment or other items.

Equipment Purchase Agreement

Agreement to purchase equipment, typically of high value or customized to YSU requirements.

Event Agreement

Agreement to conduct a YSU sponsored event at an off-campus location such as conferences.

Facilities Use Agreement

Agreement to permit non-YSU entities to use YSU facilities or YSU to use off-campus facilities.

Gift Agreements

Agreement coordinated through Youngstown State University Foundation.

Information Technology Contracts

Agreement negotiated and administered by the Director of Computer Services or designee. Technology contracts include the acquisition of software and hardware, licensing agreements, as well as agreements that require outside vendors access to computerized information. All information technology contracts must be reviewed by the Office of Computer Services prior to execution.

Licensing Agreements

Agreement for either Information Technology, which are negotiated by the office of Information Technology or licensing of trademarks, which are negotiated by the Athletic Office. See section entitled "Legal Review."

Maintenance Agreement

Agreement to perform maintenance services on University owned or leased equipment.

Outside Employment (Work-Study) Agreements

Agreement with an agency to place student and pay through work-study or internship opportunities.

Real Estate Lease Agreement

Agreement for YSU to rent real estate from a contractor such as the Metro College or Youngstown Symphony or YSU renting real estate to a contractor.

Real Property Purchases

Agreement to purchase real estate.

Space Rental Agreement

Agreement to rent space on campus, or other YSU facility, to a contractor such as Arby's or Home Savings bank. Also, YSU may rent facilities off campus from a contractor.

Subcontract Agreement- Collaborating Institution

Agreement between YSU and another entity to subcontract services for a program.

Tuition Reimbursement or Subsidy Agreement

Agreement with employer or other entity to reimburse YSU for all or part of employee tuition.

Utilities Service Agreement

An agreement to provide cable, electric, gas, telephone, steam, or other utilities to YSU facilities.

Appendix B

Glossary of Definitions

Affiliation Agreement

Agreement between two or more organizations to accomplish a common purpose.

Affirmative Action

Involves taking positive steps to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded.

Amendment

Agreement to change any of the terms and conditions of the original agreement.

Arbitration

Method of dispute resolution involving one or more neutral Contractor parties who are usually agreed to by the disputing parties and whose decision is binding.

As Is

In the existing condition without modification <the customer bought the car as is>. Under UCC Section 2-316(3)(a), a seller can disclaim all implied warranties by stating that the goods are being sold “as is” or “with all faults.” Generally, a sale of property “as is” means that the property is sold in its existing condition, and use of the phrase *as is* relieves the seller from liability for defects.

Associate Director of Planning and Construction

YSU Representative responsible for the oversight of capital construction projects and the collection of documentation and reporting from contractors, Department of Administrative Services Construction Compliance unit, and other agencies.

Breach

Violation of a contractual obligation, either by failing to perform one’s own promise or by interfering with another party’s performance.

Choice of Law

The question of which jurisdiction’s laws should apply in a given case. (*Also called Governing law*)

Consequential Damages

Losses that do not flow directly and immediately from the breach, but that result indirectly from the breach.

Consideration

Something of value (such as an act, a forbearance, or a return promise) received by a promisor for a promise.

Construction Compliance Unit

A division of the State of Ohio Department of Administrative Services responsible for review and monitoring affirmative action and equal employment opportunity compliance of contractor’s with state and federal laws relative to construction projects.

Damages

Money claimed by, or ordered to be paid to, a person as compensation for loss or injury (e.g. The plaintiff seeks \$8,000 in damages from the defendant).

Document Repository

The central storage location in Procurement Services where all contracts will be maintained.

EDGE – Encouraging Diversity, Growth, and Equity

State of Ohio program to promote business with businesses that may be at a disadvantage. See the Equal Opportunity website at: [Ohio DAS MBE/EDGE Certification website](#) for more information.

Equal Opportunity

All contractors regardless of race, sex, etc. are given equal opportunity to do business with YSU.

General Counsel, Office of

Division of University administration responsible for legal review of agreements prior to execution and any legal issues which arise from the administration of the performance/provision of goods and/or services under the agreement.

General Damages

Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed.

Hold Harmless

To absolve (another party) from any responsibility for damage or other liability arising from the transaction. (See also INDEMNIFICATION).

Implied Warranty of Fitness for a Particular Purpose

A warranty – implied by law if the seller has reason to know of the buyer’s special purposes for the property – that the property is suitable for those purposes – sometimes shortened to *warranty of fitness*. (Often expressly excluded from the terms of a contract).

Indemnification

The act of compensating for loss or damage sustained.

Jurisdiction

A state’s power to exercise authority over all persons and things within its territory (Ohio’s jurisdiction).

Liquidated Damages

An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. If the parties to a contract have agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages.

MBE – Minority Business Enterprise

State of Ohio program to promote business with businesses that may be at a disadvantage. See the Equal Opportunity website at: [Ohio DAS MBE/EDGE Certification website](#) for more information.

Mediation

A method of nonbinding dispute resolution involving a neutral Contractor party who tries to help the disputing parties reach a mutually agreeable solution.

Oral/Written Agreement

Oral agreements are not enforceable and are not allowed for YSU business. All agreements must be written to be enforceable. See "Required" and "Prohibited" contract clause sections.

Performance

The successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability; EXECUTION.

Prevailing Wages

The State of Ohio Bureau of Labor and Worker Safety issues a determination of fair wages for various building trades positions such as carpenter, plumber, general laborer. Ohio Revised Code Chapter 4111 deals with wages and hours worked by employees of contractors performing construction related work on University properties. This rate is adjusted every two years. Contact Procurement Services for current rates.

Procurement Services

Division of YSU responsible for monitoring administration and compliance of the performance/provision of goods and/or services.

U.C.C. – abbr. 1)

Uniform Commercial Code. 2) A uniform set of laws governing the sales of goods.

University Sponsor

YSU employee who is promoting the contract or agreement. This is the individual who will be responsible for day to day monitoring of the contractor's performance.

Venue

The proper or possible place for the trial of a lawsuit.

Vice President of Finance & Business Operations

YSU office responsible for overall contract administration and oversight. In general the Vice President for Finance & Business Operations is responsible for final execution of contracts for YSU.

Warranty

An express or implied promise that something in furtherance of the contract is guaranteed by one of the contracting parties; esp., a seller's promise that the thing being sold is as represented or promised.