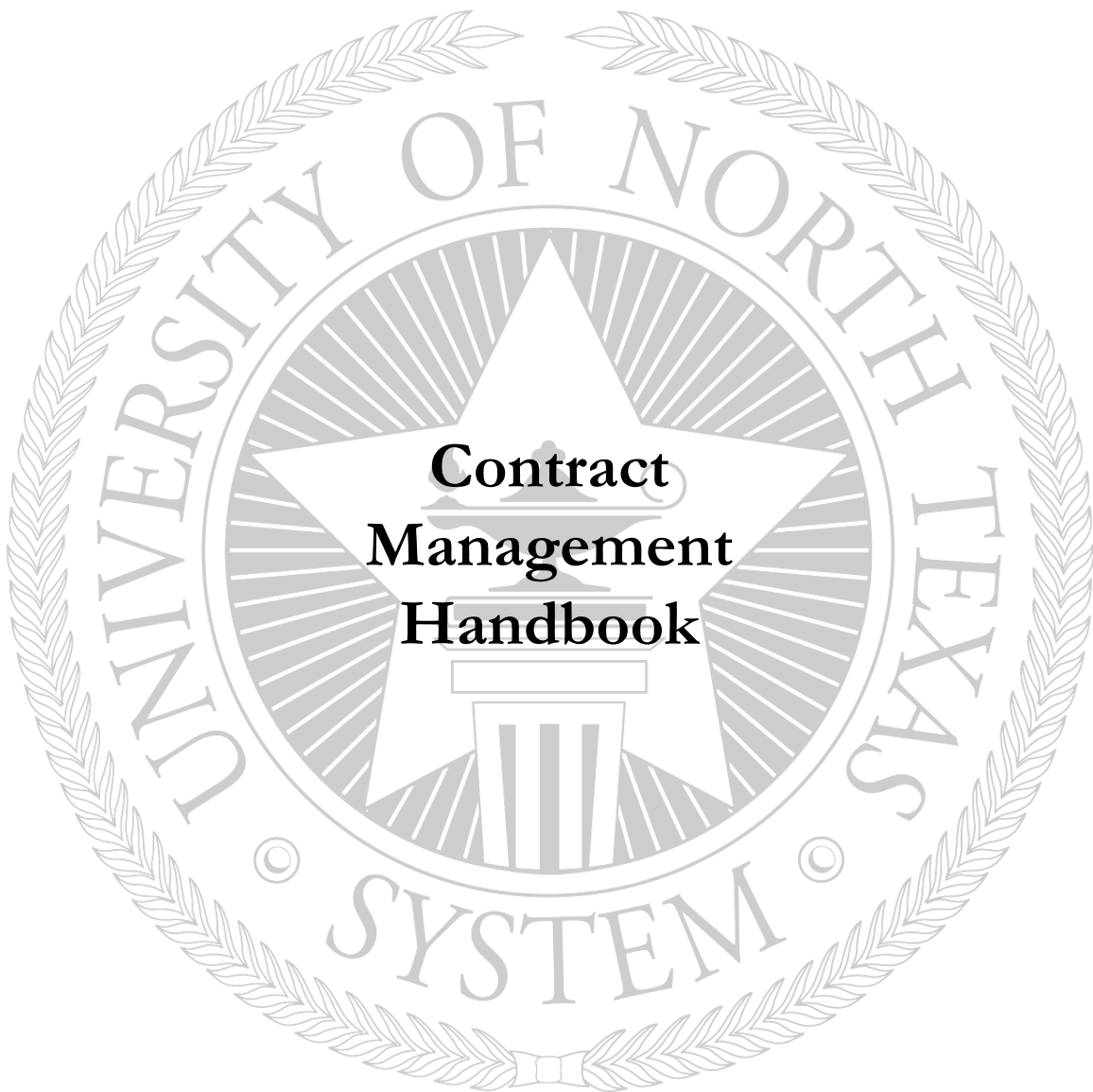


# UNT | SYSTEM™



## TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	WHAT IS A CONTRACT?.....	2
III.	MINIMUM REQUIREMENTS.....	3
IV.	BUSINESS DECISIONS RELATED TO CONTRACTS.....	4
V.	SIGNATURE AUTHORITY.....	5
VI.	CONTRACTS FOR THE PURCHASE OF GOODS OR SERVICES .....	5
(a)	CONFLICTS OF INTEREST .....	5
(b)	PROCUREMENT SOLICITATION AND CONTRACTOR SELECTION .....	6
(c)	TIPS FOR BASIC PURCHASE CONTRACTS .....	7
(d)	CONTRACT ADMINISTRATION AND OVERSIGHT .....	8
VII.	LEGAL REVIEW OF CONTRACTS AND AGREEMENTS.....	9
VIII.	CONTRACT CHECKLIST .....	9
IX.	STATE CONTRACTING REQUIREMENTS .....	16
X.	STANDARD ADDENDUM.....	18
XI.	SAMPLE TERMS AND CLAUSES .....	18
XII.	APPROVED FORM AGREEMENTS.....	20
XIII.	DEFINITIONS.....	20
XIV.	ADDITIONAL RESOURCES REGARDING PURCHASING AND CONTRACTING.....	21
XV.	APPENDIX.....	22

***For all agreements involving purchasing, this Contract Management Handbook should be read in conjunction with the [System Procurement Guide](#) published by the BSS. Please see page 20 for a list of all acronyms used in this Handbook.***

## I. INTRODUCTION

Contracts are an essential element of much of the business that takes place at the System and its Campuses. All contracts must comply with State of Texas requirements, and adhere to the requirements of the Regents Rules and the applicable policies of the System and Campuses. Key among these requirements is that all contracts must be: (a) in the name of the System or a Campus (not in the name of a department or an individual); (b) in writing; (c) reviewed for legal sufficiency by the OGC (unless otherwise exempt); and (d) signed by an individual with appropriate authority. In addition to requiring review by the OGC, contracts may also require review by the purchasing department and/or the sponsored research/grants office. This Contract Management Handbook will address each of the contract requirements and provide assistance with drafting or reviewing your contract, routing it, and administering it.

## II. WHAT IS A CONTRACT?

A contract is any form of agreement between two or more parties who intend to be legally bound. At a basic level, the terms of a contract state the parties' agreement, setting forth what the parties have agreed to exchange. Goods or services will often be purchased for payment of money. Educational institutions enter into a number of additional types of contracts, such as internship and affiliation agreements, in which money may not be paid but in which different institutions exchange obligations.

***Who is the proper party?*** Contracting parties may be an individual, business, organization, government agency, university, or any other legal entity. The System is an agency of the State of Texas, and can enter into contracts, as can UNT, UNTHSC, and UNTD. Campus colleges, departments, divisions, centers, and institutes cannot be party to a contract, as they are not individual legal entities. Instead, the System, UNT, UNTHSC, or UNTD must enter into contracts on behalf of their respective departments.

***Is this a contract?*** Generally, a contract is formed when one party agrees to do something or give something to another party in exchange for some other action or object. An agreement with a babysitter is an example of an informal contract. You ask the babysitter to come over at 7 p.m. and stay until you get home and you offer to pay the babysitter five dollars per hour. The babysitter agrees. If the babysitter comes over at 7 p.m. and stays for three hours, you are contractually obligated to pay fifteen dollars. A formal, written contract is used in business transactions to avoid confusion over terms of the agreement. For example, if you purchase a car from a dealership, all your rights and obligations will be set forth in the written contract, including the specific vehicle you are purchasing, any additional features or services you are to receive, relevant warranties, and the price you will pay.

***Can I sign?*** The Regents Rules require that all contracts entered into by the System and the Campuses must be in writing and must be signed by an individual with appropriate delegated authority. This means that any time the System or a Campus desires to enter into a contract – whether purchasing pencils, bringing a speaker to campus, or renovating a building – the agreement must be in writing. In addition, all written contracts must be approved and signed by an individual with appropriate authority to contractually bind the System or the Campus. If not appropriately signed, a contract may not be legally binding on the System or the Campus, and the individual who signed the contract without authority may be held individually responsible for the obligations created under the contract. Please see section IV on Delegated Authority for more information.

***What is a Purchase Order?*** A Purchase Order is a standard contract form used to set out the terms of agreement, including the name of the vendor, the goods or services being purchased, the quantity, and the price. Additional terms and conditions in the Purchase Order govern how much interest will be paid to the

vendor in the event that payments are not made on time and what will happen if there is a dispute over the contract.

***Do I need a formal contract?*** Consideration should always be given to the use of a formal, written contract in addition to the Purchase Order if additional terms and conditions may be desirable, including specific requirements for deliverables, termination rights, renewal options, warranties, guarantees, or limitations of liability. A written contract is usually necessary if there will be an acquisition of ongoing services from a vendor. Written contracts are beneficial to both parties, as they clearly set forth the obligations of each party, and may provide recourse in the event that the relationship does not proceed as expected. Written contracts are considered the final disposition of each party's intentions, and any terms of the agreement that are not included in the written contract will not be legally binding. Therefore, it is important to make sure that all rights and obligations expected in the deal are included in the contract.

***Do I need to address breach of contract?*** If one or both parties fail to satisfy their obligations under a contract, the contract has been breached. If the contract provides for it, the party who committed the breach may be required to compensate the other party for damage or loss resulting from the breach. If you would like to have a remedy for the other party breaching the contract — such as a right to terminate the agreement or a break on the purchase price of the goods or services — you should address breach of contract.

***Are any terms required or prohibited?*** When the System or a Campus enters into a contract the contract must comply with requirements imposed by the Texas constitution and statutes, which may require or prohibit the inclusion of certain language. Problematic terms can usually be modified to comply with state requirements or may need to be deleted altogether. Please see the Contract Checklist and the State Contracting Requirements sections in this Handbook for more information. The OGC also provides legal advice related to contract terms meeting State of Texas requirements or limitations.

### **III. MINIMUM REQUIREMENTS**

All contracts entered into by the System or a Campus shall, at a minimum:

- Be in writing;
- Comply with applicable federal and state law and regulations, the Regents Rules, and applicable System, System Administration, or Campus regulations, policies and procedures and this Handbook;
- Be properly executed by a person with appropriate authority;
- Adequately protect resources;
- Comply with state purchasing requirements;
- Support and be in accordance with the mission of the System, the System Administration, or Campus; and
- If with a foreign source with an aggregate value of \$250,000 or more be reported to the U.S. Department of Education in accordance with 20 U.S.C. §1011f on or before January 31st and July 31st of each year for all such contracts entered into in the preceding six months.

#### IV. BUSINESS DECISIONS RELATED TO CONTRACTS

When you are considering entering into any business relationship involving a contract, it is important to read the contract carefully. You are in the best position to know whether the written contract accurately reflects the business deal into which you anticipate entering. Don't be hesitant because the document is called a contract. A contract is a statement of the transaction in which you want to engage.

Your contract should contain a complete description of what you expect each party to do during the time period you will have a business relationship with the other party or parties. Make sure the language of the contract is clear and that any third party reading the agreement can understand the obligations of both parties.

There are common terms normally covered in a contract, i.e. who does what and when, and you need to evaluate these business terms when reviewing a contract. These common terms include the time period of the contract, a complete description of goods to be delivered or services to be performed, payment terms, and schedules and deadlines for payment or completion of an activity. Be sure that you are satisfied with the specifics of all of these terms.

While you are negotiating your potential contractual relationship, pay attention to the business terms below. These terms are often included in contracts and can create additional business risk:

**Intellectual Property** – Language in a contract may set forth ownership and licensing of any intellectual property that is used or created during the course of the contract activities. Be sure this language reflects your intentions as to ownership and that it complies with any applicable System or Campus policy.

**Insurance** – Third parties will often request the System or Campus to carry certain types and limits of insurance. Be sure that any required insurance is carried by the System or the Campus. Contact the applicable Campus' office of Risk Management if you have any questions about coverage.

**Confidentiality** – Contracts may contain requirements for keeping certain information confidential. Be sure that any such requirements are limited to a specified time period (e.g. three years after contract termination), require confidential information to be marked, and allow for disclosure if applicable law requires its disclosure.

**Termination** – An important part of any contract is when and how it ends. Make sure the term of the contract reflects your desired length of the business relationship. The contract may contain language regarding if and how a contract can be terminated. Termination language may include options to terminate upon notice to the other party, due to an unresolved breach of the contract, or immediately for no reason at all.

**Renewal** – A contract may contain options to renew the contract. Renewal of the contract may be done in several ways. Renewals may be automatic with no further action of the parties, upon the mutual agreement of the parties, or at the option of one party by giving notice to the other party. Make sure that any options to renew enable UNT System or Campus to extend or terminate the contract in a way that is beneficial to UNT System or the Campus.

By taking time to carefully read and review your contract, you will ensure that you get the business deal you expect. By making sure the terms and conditions of the contract reflect what you want, you will decrease risk to the System or the Campus and will make resolution of any future disputes easier for all parties.

## **V. SIGNATURE AUTHORITY**

All contracts entered into by the System or a Campus must be approved and executed by an individual with appropriate authority to bind his or her respective Campus or the System, regardless of whether the contract requires individualized legal review. The OGC does not control delegations of signature authority and cannot waive the requirement that a contract be approved and executed by an individual with appropriate authority.

In Regents Rule 03.900, the Board of Regents delegated authority to the System Chancellor to approve and execute all System contracts with a value of less than \$1,000,000 and to approve and execute contracts for the Campuses with a value between \$500,000 and \$1,000,000. The President of each Campus has been delegated authority to approve and execute contracts with a value of \$500,000 or less for their respective Campuses. The Chancellor and Presidents have authority to sub-delegate their authority, and each decides whether to delegate this authority, to whom it will be delegated, and whether it may be further sub-delegated. Any proposal or request to change current delegations should be directed to persons with delegated signature authority. As a general rule, if you do not know that you have delegated signature authority, you do not have delegated signature authority.

All signature delegations must be submitted to the OGC. It is not unusual for vendors to request copies of delegations of authority in order to ensure that agreements are legally binding on the System or the Campuses, and as such, it is critically important that the correct procedure be followed in delegating authority and in filing copies of all delegations with the OGC.

## **VI. CONTRACTS FOR THE PURCHASE OF GOODS OR SERVICES**

All purchases of goods and services (with specific exceptions) shall be made through the System's Procurement Services, a division of the BSS. The System Procurement Guide provides detailed guidance on the Procurement Services process. The following section provides a summary of key pieces of the Procurement Services process related to procurement contracts. Please refer to the System Procurement Guide for more detail on each of these areas.

### **(A) CONFLICTS OF INTEREST**

It is the responsibility of all System and Campus employees to take appropriate steps to ensure that the System does not knowingly enter into a purchase commitment that could result in a conflict of interest. A conflict of interest exists when some factor (e.g., financial or personal interest of a vendor) interferes or appears to interfere with a purchaser's ability to be completely impartial and loyal to the interests of the System. For example, purchase of materials from a company owned by a System or Campus employee may be a conflict of interest.

Under Regents Rule 05.700, the System and each Campus are prohibited from entering into a contract for the purchase of goods or services with a private vendor with whom any of the following persons have a financial interest:

- 1) The chancellor, a president, the general counsel, the chief procurement officer or a procurement director; or
- 2) Any person related to an employee described above within the second degree of affinity (marriage) or consanguinity (blood), as determined under Chapter 573 of the Texas Government Code.

A person has a "financial interest" in a private vendor if the person:

- 1) Owns or controls, directly or indirectly, an ownership interest of at least one percent in the private vendor, including the right to share in profits, proceeds, or capital gains; or
- 2) Could reasonably foresee that a contract with the private vendor could result in a financial benefit to the person.

Please consult the Regents Rules, the System Procurement Guide, and applicable System or Campus ethics policies for more on conflicts of interest.

## **(B) PROCUREMENT SOLICITATION AND CONTRACTOR SELECTION**

### 1. When a bid is required:

As a state agency, the System uses a ‘best value’ standard for the purchase of good or services. The most important considerations in determining best value for the state are the purchase price and whether the goods or services meet specifications.

The following thresholds have been established for bid requirements:

- Procurements \$5,000 and under require only one quotation;
- Procurements more than \$5,000 up to \$25,000 require three quotations, two of which should be quotations from HUB vendors (If you have difficulty finding HUB vendors, the HUB Department will be glad to assist with seeking quotes from HUB vendors for you); and
- Procurements more than \$25,000.01 require formal competitive solicitations through an Invitation for Bids (IFB) or a Request for Proposals (RFP).

Professional Services contracts are awarded based on demonstrated competence and qualifications for the type of services to be performed. Professional services include accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, professional nursing and real estate appraising. Procurement of these professional services is through a Request for Qualifications (RFQ).

### 2. Preparing a Solicitation:

It is important that your department develop a comprehensive SOW that can be communicated to potential vendors to ensure that they have a full and accurate understanding of expectations including services to be performed or products to be provided. The SOW should be as detailed as possible, and should include all required specifications and deliverables. See the System Procurement Guide for more direction on the SOW.

Departments should use the Request for Formal Solicitation form to communicate to the Procurement Services staff the essential elements of the bid or request for proposal. Solicitations must include the contracting Campus and the date the work is expected to begin and end.

### 3. Advertising a solicitation:

The System primarily advertises competitive solicitations electronically in the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/> and the BSS Website, <http://bsc.untsystem.edu/bid-listing> for a minimum of 21 days prior to due date or bid opening. Exceptions to this requirement reducing the number of days to 14 may be granted in emergency circumstances by the System Director of Procurement Services or his designee. In addition to advertising in these two locations, solicitations may be advertised in other professional journals, periodicals, or publications as the situation may warrant. If you have questions about bidding requirements, contact the BSS early in the process for guidance.

#### 4. Contractor Selection and Awarding the Contract:

The System's procurement process is designed to protect against the occurrence of fraud, abuse and waste in the contractor selection process. The informal and formal competitive solicitation process facilitates determination that the System and Campuses are being charged a reasonable rate and obtain best value.

Complying with the specified time limit for submission of written data, sample, or models, on or before bid opening time, is essential to the acceptability of a bid. In-state preferences and reciprocity are also considered before awarding a bid. Evaluation criteria may be considered as long as provisions are outlined in the solicitation when it is posted, and should specifically outline what will be considered in determining an award. For more complex solicitations, an evaluation team should be utilized including individuals with working and industry knowledge regarding the procurement.

An award is made to the vendor that meets the bid specifications and offers the best value, provided that the vendor has not previously failed to adequately perform a contract with a UNT System component institution.

Depending upon the nature of the services being performed, a System purchase order and/or a formal contract will be issued to the selected vendor. It is very important that a System purchase order and/or formal contract be in place *before* the performance of any service or delivery of any supplies or equipment so that the System is protected in the event of any misunderstanding or conflict. Based on the dollar amounts involved and the nature of the agreement, System procurement staff will coordinate with your department concerning the level of risk associated with the contract and any actions necessary to mitigate exposure. If the contract is over \$25,000, procurement staff will work with your department on reporting vendor performance through the State Comptroller's Office.

All procurement contracts are reviewed by the BSS contracts area before execution. The department initiating the contract is responsible for ensuring that the delivery schedule and financial provisions of the contract are reasonable. The department initiating the contract is responsible for reviewing the business terms of the contract, including payment and reimbursement rates, to determine if they are reasonable.

#### **(C) TIPS FOR BASIC PURCHASE CONTRACTS**

Do your homework. Get as much information about what you're trying to acquire, whether goods or services, as possible before contacting BSS procurement services staff or, if an informal bid, a vendor. Information that is particularly useful is how much the goods or services generally cost, whether they come with a warranty or any type of service plan, and whether they are widely available or sold by only a few vendors. The more widely available the product, the easier it may be to get a vendor to negotiate the price or the options available with the product.

Name it to claim it. Be able to clearly state what it is you want, how much you're willing to pay for it, and when you need it. Contact the BSS with questions regarding developing specifications for the product or service you want to procure.

Never be afraid to ask. If you need additional services or considerations outside of what the vendor generally provides, go ahead and ask, and include them in your specifications.

You have bargaining power. The System and the Campuses are large organizations serving approximately 40,000 students, faculty, and staff. Vendors want System and Campus business, and vendors want to provide good deals and service to get additional business.



Purchase Orders are contracts. A Vendor's agreement to accept a purchase order without requiring an additional contract may speed the processing of the transaction (but, remember, there are instances in which n Campus loses beneficial terms and conditions without an additional contract).

There are state contract limitations. If you're trying to negotiate State of Texas language into a contract, explain that the System is an agency of the State of Texas and its purchasing function is regulated and limited by statute. Statutes regulating purchases often benefit vendors, such as Government Code 2251, which insures that vendors will be paid within thirty days or receive interest on the overdue amount, and Government Code 2260, which provides a procedure for vendors to take action for breach of contract claims from which a state agency would otherwise be immune.

## **(D) CONTRACT ADMINISTRATION AND OVERSIGHT**

Departments are responsible for monitoring their contracts. Each contract should be monitored for vendor performance and progress toward deliverables.

### **Contract monitoring responsibilities include:**

- Monitor services provided, goods delivered, and progress to completion to ensure conformity with contract requirements.
- When an amendment to the contract is needed (for changes to scope, schedule, or payment, for example), work with the contractor and the BSS to finalize the contract amendment.
- Identify and manage disputes with the contractor, with the assistance of the OGC, as needed.
- Verify accuracy of invoices and authorize payment consistent with contract terms.
- Inspect and approve final product.
- Monitor the contract renewal and termination dates and work with the BSS to renew or terminate the contract, as needed.
- Maintain a full record of communication and relevant documentation relating to the contract. Please note that such documentation may be subject to release under the Public Information Act.

### **Some contracts require enhanced performance monitoring:**

Enhanced monitoring is an increased level of monitoring beyond the level normally used for contract administration. The following contracts require enhanced performance monitoring:

- Contracts for the purchase or license of IT and related services;
- Construction contracts, including professional engineering services;
- All contracts with a value over \$1 million;
- Contracts that receive a High Score as calculated by using the BSS Contract Risk Assessment Tool. Buyers must complete the Contract Risk Assessment Tool as part of the purchasing process.

Some or all of the following monitoring tools may be used to assess contractor progress for contracts requiring enhanced monitoring, as appropriate:

- Meetings with vendors;
- Site visits;
- Monitoring checklists;

- Documentation requirements; and
- Remedial action plans.

Significant problems that arise during the performance of any monitored contract should be brought to attention of the BSS and/or OGC immediately.

### **Posting of contracts**

The BSS shall post all contracts for the purchase of goods or services from a private vendor on its website until expired or complete.

## **VII. LEGAL REVIEW OF CONTRACTS AND AGREEMENTS**

Regents Rule 03.900 sets the rules governing legal review of contracts and agreements. All contracts must be approved as to form by OGC before execution, unless exempt. Regents Rule 03.910 exempts certain contracts from individualized legal review, and is essentially in two parts: (1) an exemption from individualized legal review for approved form agreements; and (2) an exemption from legal review for contracts and agreements that meet the Criteria for Exemption. Annual revision and publication of the Criteria for Exemption provides flexibility to the System and the Campuses by allowing modifications that may expand or reduce the scope of exemption as appropriate, without seeking additional Board of Regents approval.

To view the current Criteria for Exemption please visit the [OGC website – Contracts Page](#).

The view the full Regents Rule regarding Contracts and Agreements please visit [Regents Rule 03.900](#).

## **VIII. CONTRACT CHECKLIST**

This Contract Checklist will help you review and process contracts. Prior to submitting a contract for approval and signature – particularly if the contract is exempt from legal review – you should go through this checklist of applicable issues as explained below. Use of this checklist should enable you to identify and address general legal issues and problems that routinely arise in contracts. It will also help you comply with applicable policies and state and federal law related to contracts. If you are in doubt about how to answer a checklist question for a particular contract or you have a concern about a contract that this checklist does not address, please contact OGC for further assistance.

The Checklist references two other items included in this Handbook. The first, "State Contracting Requirements," sets forth the legal bases of several matters included in the Checklist. The second, "Standard Addendum," is a tool that can be used to ensure compliance with state contracting requirements. If a Standard Addendum is attached to an agreement and signed by both UNT System or the Campus and the vendor, the terms of the Standard Addendum will be incorporated into the contract.

Please respond to the questions below and apply the information provided to your contract. If the answer to a question is YES check the box and continue to the next question unless instructed to do otherwise. For additional guidance on any item, please contact OGC.

**Preliminary Questions**

(Basic information you should know about your contract)

<input type="checkbox"/>	<p><b>Have you read the contract in its entirety and do you understand and agree with all of its terms and conditions?</b></p> <p>You must read the contract before you route it for approval. You are in the best position to know whether the terms and conditions properly outline the arrangement you’re seeking to engage in.</p> <p><b>Will the System or Campus be able to comply with all the terms and conditions of the contract?</b></p> <p>If a contract term is confusing, irrelevant, inaccurate, or impossible, then it should be removed or revised. You can remove a term by striking through it or revise a term by inserting language and having the change initialed by all parties signing the contract. You can also include new terms in an addendum to the contract, which should be signed by all parties to the contract, or you can rewrite the contract entirely.</p>
<input type="checkbox"/>	<p><b>Is the contract complete?</b></p> <p><b>Does it include all relevant terms and conditions, including exhibits and schedules?</b></p> <p>Is the contract missing any pages? Are all exhibits or attachments properly labeled and included with the contract, and have you reviewed all documents referenced in the contract? Referenced documents become part of the contract, so they need to be reviewed in the same manner as the original contract. If a term or condition is not explicitly stated in the written contract, then it is not binding on the other party. This is true even if the other party has discussed the term or condition with you and has agreed to it orally. So, if something is important, make sure that it is clearly stated in the contract.</p>
<input type="checkbox"/>	<p><b>If the contract document is an addendum or amendment to another contract or if it is intended to replace a contract currently in effect, does the new document reference the previous contract and explain how it is to be impacted?</b></p> <p>If a new contract is intended to replace a previous contract in its entirety, then it should be clearly stated that the old contract is no longer binding. If only some terms and conditions of the old contract are being replaced, but others will continue to be in effect, then this needs to be clearly explained in an addendum or amendment. There should be no confusion as to how the terms and conditions of the old contract and those of the new addendum or amendment work together.</p>

### Approval and Routing

(The general steps you need to take to get your contract approved and signed. Be sure to follow the System Procurement Guide (see page 4) and your Campus's contract routing and approval process)

<input type="checkbox"/>	<p><b>Has appropriate notification been provided to, and approval obtained from, your department and all other relevant offices or departments?</b></p> <p>In addition to departmental approval, the appropriate research or grant office needs to approve any contract involving a research or a grant, and the BSS needs to approve any contract involving a purchase. Approval must also be obtained from any other department or office impacted by the contract or with authority over the subject matter of the contract. Examples include: (a) the use of Campus logos or marks; (b) making a commitment that the vendor will be an "exclusive provider" to the campus; (c) insurance provisions; (d) provision of computing or telecommunications services; and (e) acceptance of credit card payments.</p>
<input type="checkbox"/>	<p><b>Have you determined the appropriate office to which you should submit your contract for approval, and have you determined whether it is exempt from legal review?</b></p> <p><u>Purchasing Contracts</u>: All contracts involving a purchase or the expenditure of funds must be submitted to the BSS with a requisition. If your contract requires legal review, the BSS will forward it to OGC.</p> <p><u>Sponsored Research/Grant Funded Contracts</u>: Contracts involving sponsored research or grant funding must be submitted to your Campus's research/grant/sponsored programs office, which will review the agreement and route it appropriately.</p> <p><u>All Other Contracts</u>: Contracts that do not require the approval of the BSS or research/grant/sponsored programs office should be submitted directly to OGC unless otherwise exempt under the Criteria for Exemption or as an approved form (see the next item below and section VI of this Handbook). If you have questions regarding contract routing, please contact OGC.</p>
<input type="checkbox"/>	<p><b>Is the contract exempt from legal review because it was created using a form approved by OGC that has a current approval date and a cover memo written by OGC?</b></p> <p>If you answered yes to this question, you must include a copy of the approval memo provided to you by OGC when you submit your contract for signature. Please see the Approved Form Agreements document included in this Handbook at page 20 for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract require Board of Regents approval?</b></p> <p>See Regents Rule 03.900 for contracts requiring Board of Regents approval or exemptions from Board of Regents approval. If Board of Regents approval is required, you must submit the contract for inclusion on the agenda for the next Board of Regents meeting in accordance with Board Order submission rules. The BOR meet quarterly, every February, May, August, and November.</p>
<input type="checkbox"/>	<p><b>Does the contract involve the provision of food services, beverage services, cable services, credit card sales, affinity cards, or textbook sales and if so, have you contacted OGC to determine whether the contract conflicts with a pre-existing exclusive contract?</b></p>

**General Information**

(These questions concern language that appears in most contracts)

<input type="checkbox"/>	<p><b>Is the contract in the name of a System entity?</b></p> <p>Departments or other campus divisions cannot be listed as contracting parties; the System, UNT, UNTHSC, or UNTD enter into all contracts on behalf of their respective departments or campus divisions.</p>
<input type="checkbox"/>	<p><b>Are all references to the contracting parties accurate, complete, and consistent, including references in:</b></p> <p>(a) the first paragraph of the contract; (b) abbreviations or defined terms referring to the parties; and (c) the signature blocks?</p>
<input type="checkbox"/>	<p><b>Are all duties and obligations of the contracting parties clearly stated so anyone reading the contract would know:</b></p> <p>(a) what each party's duties and obligations are; (b) how each party's duties and obligations will be performed; and (c) when each party's duties and obligations will be performed?</p>
<input type="checkbox"/>	<p><b>Does the contract clearly establish the place, time, and method of payment?</b></p> <p>Please see the Procurement Contracts section regarding payments made by the System or a Campus.</p>
<input type="checkbox"/>	<p><b>If the contract is not for a set dollar amount does the contract clearly and accurately state the method of calculating amounts that could be owed under the contract?</b></p>
<input type="checkbox"/>	<p><b>Does the contract clearly state:</b></p> <p>(a) the beginning or effective date; and (b) the ending or expiration date?</p>
<input type="checkbox"/>	<p><b>Can the contract be renewed or extended and, if so:</b></p> <p>(a) does it renew or extend automatically; (b) does one party have an option to renew; (c) does renewal or extension require mutual agreement; and (d) are you comfortable with how it can be renewed or extended?</p>
<input type="checkbox"/>	<p><b>Does the contract contain a penalty for early termination and, if so, have you deleted the penalty clause or determined that your department is willing to accept the cost of early termination?</b></p>
<input type="checkbox"/>	<p><b>Are the warranties made by the System or a Campus limited to the following:</b></p> <p>(a) the signatory has the authority to enter and sign the contract; and/or (b) factual representations that are well-supported?</p>

### Potential Problem Terms and Conditions

(Clauses and requirements that could conflict with Texas contracting requirements unless modified or deleted.)

<input type="checkbox"/>	<p><b>Does the contract contain a clause requiring the System or Campus to indemnify another party, and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please refer to section IX.D of the State Contracting Requirements found later in this Handbook for more information.</p> <p>*Please note that if another party is indemnifying the System or Campus, this is desirable and should be left in. In certain cases you might want to request indemnification from the other party.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a clause that gives another party the right to control any investigation, defense, or settlement of any claim or lawsuit filed against the System or Campus, and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please refer to section IX.E and K of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain an arbitration clause and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?</b></p> <p>Please refer to section IX.H of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a mediation clause, and if so, is your department willing to pay the costs of mediation?</b></p> <p>Please refer to section IX.H of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract require the System or Campus to provide insurance, and if so have you attached the Standard Addendum or requested assistance from your risk management office?</b></p> <p>Please refer to section IX.F of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Is the contract governed by the laws of the State of Texas, or is it silent on applicable law?</b></p> <p>Please refer to section IX.A of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>If the contract has a venue clause, is that clause consistent with Texas Education Code § 105.151?</b></p> <p>Please refer to section IX.B of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Have you evaluated potential risks involved with the terms of the contract (e.g., high value, nature of the tasks involved, sharing of confidential information, etc.)?</b></p> <p>Contracts with higher costs or involving potentially hazardous activities or materials require special attention so as to avoid future liability. Consult with your Risk Management office; they may suggest that you add an insurance or indemnity requirement to the contract.</p>

<input type="checkbox"/>	<p><b>Does the contract contain a clause that limits the time within which the System or Campus could bring legal action or file a claim against the other party, or does it limit the liability of the other party, and if so, have you removed the clause or attached the Standard Addendum?</b></p> <p>Please refer to section IX.K of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a confidentiality, nondisclosure, or privacy provision with which the University will be expected to comply and if so, have you contacted OGC for guidance?</b></p> <p>Please refer to section IX.C of the State Contracting Requirements found later in this Handbook for more information.</p>
<input type="checkbox"/>	<p><b>Does the contract require you to provide Educational Records of students or allow a third party to access such information and if so, have you contacted the OGC for guidance?</b></p> <p>Providing certain information may implicate the Family Educational Rights and Privacy Act. Please contact the OGC for guidance.</p>
<input type="checkbox"/>	<p><b>Does the contract contain a clause that allows the other party to make representations in the name of the System or Campus, to act as an agent of the System or Campus, or to collect money on behalf of the System or Campus and if so, have you removed the clause or contacted OGC for guidance?</b></p>

### Procurement Contract Terms

(The following questions should be answered if your contract requires the expenditure of funds)

<input type="checkbox"/>	<b>Is a written contract, separate from a purchase order, necessary?</b> Please see page 1 for discussion on purchase orders versus formal contracts.
<input type="checkbox"/>	<b>Does the contract include a clause that rejects the terms and conditions of any purchase order, and if so, have you ascertained that the vendor's contract does not violate state contracting requirements, or has the vendor signed the Standard Addendum?</b>
<input type="checkbox"/>	<b>Do the payment terms comply with state requirements?</b> Please see generally the State Contracting Requirements document included in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract include a provision for breach of contract claims against the University, and if not, have you included that language manually or by attaching the Standard Addendum?</b> Please refer to section IX.H of the State Contracting Requirements found later in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract include a child support certification and, if not, have you included that language manually or by attaching the Standard Addendum?</b> Please refer to section IX.J of the State Contracting Requirements found later in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract obligate the System or Campus to make payments beyond the current appropriations term and, if so, have you included appropriations language manually or by attaching the Standard Addendum?</b> Please refer to section IX.I of the State Contracting Requirements found later in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract include language certifying that the vendor is eligible to receive payment from the State of Texas or has the Standard Addendum been attached?</b> Please refer to section IX.J of the State Contracting Requirements found later in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract include a provision regarding public information?</b> Please refer to IX.C of the State Contracting Requirements found later in this Handbook for more information.
<input type="checkbox"/>	<b>Does the contract properly outline the reimbursement method and rate?</b> Commonly used reimbursement methods are: Firm Fixed Price (ex. \$20,000 for 20 computers); Fee for Service (ex. \$100 per hour for a maximum of 10 hours of service; \$50 per flu shot provided, with a maximum 100 shots given).



## IX. STATE CONTRACTING REQUIREMENTS

The Contract Checklist and Standard Addendum are designed to assist the System and the Campuses with review of contracts and to ensure compliance with applicable state law requirements. The following is a brief explanation of some of the critical issues the Standard Addendum and Checklist, if used properly, address. Each of the items included in this list is incorporated into the Standard Addendum, which can be attached to a contract and signed by both parties in order to ensure compliance with federal and state requirements.

- A. **Governing Law.** System and Campus contracts should always be governed by the laws of the State of Texas. Texas law contains many provisions which protect the state and state institutions of higher education. If another state's law governs the contract, these protections may not apply.
- B. **Venue.** Venue refers to the geographic location of a lawsuit. Parties to a contract often agree on venue for any disputes arising out of that contract. However, venue mandated by statute may not be waived by contract. Section 105.151 of the Texas Education Code provides mandatory venue for the System and the Campuses as follows: (a) suit filed against the System or UNT shall be in Denton County; (b) suit filed against UNTHSC shall be in Tarrant County; and (c) suit filed against UNTD shall be in Dallas County. Contracts should not contain venue provisions that modify the mandatory venue provisions described above.
- C. **Confidentiality Clauses.** Chapter 552 of the Texas Government Code provides the public a right of access to information collected, assembled, maintained, owned or controlled by a governmental body unless the information fits within one of the exceptions to disclosure. The System and its component Campuses are governmental bodies subject to the Act. Therefore, any clauses in contracts which require the System or a Campus to maintain information as confidential must either be deleted or limited "to the extent permitted by the Texas Public Information Act" or similar language. Ideally, all contracts should include the following statement: "UNTS shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTS in an electronic format."
- D. **Indemnification.** Indemnity provisions are critical and must be reviewed carefully. A provision in a contract to indemnify a party is a promise to pay that party's obligations to a third party if a specified event occurs, such as negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State" and the Attorney General has opined that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or a Campus to indemnify must be deleted or limited "to the extent permitted by the Constitution and laws of the State of Texas."
- E. **Miscellaneous Clauses.** Liquidated damages, attorney's fees, waivers of a vendor's liability, and waivers of statutes of limitations clauses should also be deleted or limited "to the extent permitted by the Constitution and laws of State of Texas."
- F. **Insurance.** The System and the Campuses should carefully review any clauses in contracts which require the System or a Campus to maintain insurance, and should ensure that the clauses accurately reflect levels of coverage. Below is a brief explanation of some common insurance requirements:
  - 1. **General Liability Insurance.** It is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the course and scope of their employment. Rather, third parties must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury,

and death proximately caused by the wrongful or negligent act or omission of an employee acting within his or her scope of employment. One exception to the above stated policy authorizes agencies and state institutions of higher education to acquire commercial automobile insurance for the use and benefit of their employees who operate state owned, motorized vehicles and special equipment.

2. Worker's Compensation Insurance. Employees of the System and the Campuses are provided Worker's Compensation coverage under the provisions of the Workers' Compensation Act for Texas State employees.
3. Professional Liability Insurance. UNTHSC maintains a Professional Liability Self-Insurance Plan for its physicians and medical residents under the authority of Chapter 59 of the Texas Education Code.

Please contact the applicable Risk Management office with questions regarding insurance.

- G. **Interest on late payments.** Chapter 2251 of the Texas Government Code provides for interest on late payments to vendors. Contracts which require the System or the Campuses to pay interest on late payments should be modified so that payments and interest will be paid in accordance with Chapter 2251 of the Texas Government Code.
- H. **Breach of Contract Claims.** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts with entities of the State of Texas involving goods, services, and certain types of projects. This statute is of benefit to parties contracting with an entity of the State of Texas. This statute requires that a state entity give vendors notification of the dispute resolution process and its applicability to state contracts. Any arbitration or mediation provisions contained in contracts should be deleted and replaced with a Chapter 2260 notice. The System and the Campuses should not agree to arbitration provisions because they constitute an unconstitutional waiver of sovereign immunity.
- I. **Obligations Extending Beyond Current Appropriations Term.** If the System or a Campus is a party to a contract and the term of the contract extends beyond the expiration of the appropriations term in effect when the contract is entered into, the contract should contain a provision that specifically conditions the System's or a Campus's financial obligations under the contract on the availability of sufficient appropriations. This is necessary to avoid the creation of an unconstitutional debt.
- J. **Eligibility for Vendor to Receive Payment from State of Texas.**
1. Franchise Tax Certification. Section 2107.008 of the Texas Government Code does not permit the System or a Campus to pay a vendor that is delinquent in paying State of Texas franchise taxes. The System and the Campuses must determine whether a vendor is delinquent, and the certification in the Standard Addendum helps compliance with Section 2107.008.
  2. Payment of Debts to the State of Texas. Sections 2107.008 and 2252.903 of the Texas Government Code only require state institutions to include this clause in contracts with persons whom the state comptroller has determined are in debt to the state or delinquent in the payment of taxes. The clause in the Standard Addendum requires vendors to acknowledge that if they are in debt to the state, payments owed the vendor under the contract will first be applied to payment of the debt.

3. Child Support Certification. Section 231.006 of the Texas Family Code requires certain vendors who do business with the state to certify that they are not delinquent in the payment of child support.
  4. Certain Bids Prohibited. Section 2155.004 of the Texas Government Code states that a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.
- K. **Limitation of Time in Which to Bring Legal Action or Claim.** Section 16.070 of the Texas Civil Practice & Remedies Code states that any stipulation or agreement that attempts to establish a limitations period shorter than two years is void.

## **X. STANDARD ADDENDUM**

The OGC has created a Standard Addendum that can be attached to any contract into which the System or a Campus enters. By having all parties to a contract sign the Standard Addendum, the clauses contained within the Standard Addendum will be incorporated into the contract, ensuring compliance with State of Texas contracting requirements.

Standard Addendum forms are included in the Appendix.

## **XI. SAMPLE TERMS AND CLAUSES**

- A. Choice of Law and Venue-
- The Parties agree that any matter related to or arising out of this Agreement shall be resolved in accordance with laws of the State of Texas, without giving effect to its conflicts of law provisions. Venue for any legal proceedings shall be subject to Texas Education Code § 105.151.
- B. Confidentiality-
- Notwithstanding any provision of this Agreement, University shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to University in an electronic format.
  - FERPA. University hereby provides notice and the parties acknowledge that the Family Educational Rights and Privacy Act (“FERPA”) applies to student educational records. No disclosure or re-disclosure of personally identifiable information of any Student shall be made except as allowed by FERPA and each party will limit its use of such information obtained from the other party to what is reasonable and necessary for legitimate educational interests under the purposes of this Agreement.
  - HIPAA. The parties shall comply with all applicable federal, state, and local laws and regulations, including the Health Insurance Portability and Accountability Act (“HIPAA”) and any other applicable law regulating the privacy of patient information. The parties will maintain the confidentiality of individually identifiable health information as required by HIPAA and as required by state law.

C. Indemnification-

- Contractor agrees to indemnify and hold harmless University and its regents, officers, agents, and employees, from and against any liability, losses, or damages it may suffer as a result of claims, demands, causes of action, costs, or judgments against it arising out of Contractor's breach of any provision of this Agreement or arising out of any act or omission by Contractor in the provision of the Services.

D. Insurance-

- The parties hereby acknowledge that University, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by University shall, without further requirement, satisfy all insurance obligations of University under this Agreement.

E. Marketing/Name/Logo-

- Contractor shall not use the name or logo of University in any advertising or promotional material except with the prior review, approval, and express written permission of University. University reserves the right to review and approve all copy for news releases for the Event.
- Neither party may use the name or logo of the other party in any advertising or promotional material except with the prior review, approval, and express written permission of the other party.

F. Notice-

- Any notice required or permitted to be delivered hereunder shall be deemed to have been given when personally delivered, or if mailed, seventy-two (72) hours after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the parties hereto at the respective addresses set forth below, or at such other addresses as they shall specify by written notice delivered in accordance herewith:

G. Payment provisions-

- In accordance with Chapter 2251 of the Texas Government Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to University; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas System – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.
- The Services shall be billed at the rate of \$        per hour, not to exceed \$        over the term of this Agreement. Payments will be made according to detailed and specific invoices submitted to University on a monthly basis. University will make payments within 30 days of receipt of such invoices.

H. Term-

- Unless otherwise terminated in accordance with the provisions set forth herein or by the mutual written agreement of the parties, the initial term of this Agreement shall begin on the last date of signature by the parties hereto and shall end        .
- At the sole option of University, the term of this Agreement may be extended for up to additional term periods of twelve months each, with the same terms and conditions as set forth

herein. In the event that University elects to extend the term of this Agreement, University shall provide written notice of the extension to \_\_\_\_\_ prior to the end of the then current term period.

I. Termination for breach-

- Either party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) business days after receipt of written notice from the non-defaulting party or within such additional cure period as the non-defaulting party may authorize.

J. Termination for convenience-

- Either Party may terminate this Agreement at any time without cause, upon providing ( ) days written notice to the other Party.

## **XII. APPROVED FORM AGREEMENTS**

In addition to the contracts listed in the Criteria for Exemption, Approved Form Agreements are exempt from individualized legal review. Approved Form Agreements are contracts prepared on forms created by OGC, which have been reviewed and approved in writing by OGC for use without further legal review. The OGC will provide written authorization to use an Approved Form Agreement via an approval memo that will be provided to you with the Approved Form. You should attach a copy of the approval memo to an Approved Form when you submit it for signature. Written approval for the use of an Approved Form will expire approximately every two years, at which time you must request that the Approved Form be reviewed, revised if needed, and reapproved if appropriate.

If you have suggestions or requests for the development of new Approved Form Agreements, please contact OGC.

## **XIII. DEFINITIONS**

“Board of Regents” means the Board of Regents of the University of North Texas System

“BSS” means System Business Support Services

“Campus” means UNT, UNTD, or UNTHSC, as applicable

“Campuses” means UNT, UNTD, and UNTHSC

“Criteria for Exemption” means the criteria for exemption from individualized legal review published annually by OGC

“HUB” means Historically Underutilized Business

“IT” means Information Technology

“OGC” means the System Office of General Counsel

“Regents Rule(s)” means the Rules of the Board of Regents of the University of North Texas System

“SOW” means statement of work

“System” means the University of North Texas System

“UNT” means the University of North Texas

“UNTD” means the University of North Texas at Dallas

“UNTHSC” means the University of North Texas Health Science Center

#### **XIV. ADDITIONAL RESOURCES REGARDING PURCHASING AND CONTRACTING**

[University of North Texas System Board of Regents Rules](#)

[University of North Texas System Policies](#)

[University of North Texas System OGC](#)

OGC – [Contracts Page](#)

[UNT System Business Support Services](#)

[UNTHSC Office of Contract Administration](#)

Texas Education Code

[Chapter 105: University of North Texas System](#)

[Chapter 105.108: Contracts](#)

[Chapter 105.151: Mandatory Venue; Service of Process](#)

Texas Family Code

[Chapter 231.006: Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts](#)

Texas Government Code

[Chapter 2107: Collection of Delinquent Obligations to State](#)

[Chapter 2155: Purchasing: General Rules and Procedures](#)

[Chapter 2161: Historically Underutilized Businesses](#)

[Chapter 2251: Payment for Goods and Services](#)

[Chapter 2252: Contracts with Governmental Entity](#)

[Chapter 2254: Professional and Consulting Services](#)

[Chapter 2260: Resolution of Certain Contract Claims Against the State](#)

[Texas State Purchasing \(Texas Comptroller\)](#)

[Texas State Purchasing Contract Management Guide \(Texas Comptroller\)](#)

**XV. APPENDIX**

{STANDARD ADDENDUM FOR USE BY UNT SYSTEM, UNT, and UNTD}

**STANDARD ADDENDUM TO AGREEMENT**

Contracts with the University of North Texas, the University of North Texas at Dallas, and with the University of North Texas System ("UNTS") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Government Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNTS; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas System – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Government Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNTS is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNTS.** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTS that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for any suit filed against UNTS shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNTS' continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNTS shall issue written notice to Vendor that UNTS may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** UNTS shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTS in an electronic format.

**Insurance.** UNTS, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNTS shall, without further requirement, satisfy all insurance obligations of UNTS under the Agreement.

**Limitations.** UNTS is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNTS property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNTS, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

**VENDOR:** \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## STANDARD ADDENDUM TO AGREEMENT

Contracts with the **University of North Texas Health Science Center at Fort Worth** (“University”) are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** Payment will be made in accordance with the terms of University’s purchase order. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Government Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** University is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims against University.** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Vendor to attempt to resolve any claim for breach of contract against University that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part, in the State of Texas, and venue for any suit filed against University shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, University’s continuing

performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, University shall issue written notice to Vendor that University may terminate the Agreement without further duty or obligation.

**Travel Expenses.** In the event the Agreement required University to reimburse Vendor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** University shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to University in an electronic format.

**Insurance.** University, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by University shall, without further requirement, satisfy all general liability insurance obligations of University under the Agreement.

**HIPAA.** The parties understand and agree that this Agreement may be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative regulations and/or guidance which have issued or may in the future be issued pursuant to HIPAA, including, but not limited to, the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively,



"Privacy Laws"). Vendor agrees to comply with all Privacy Laws that are applicable to this Agreement and to negotiate in good faith to execute any amendment to this Agreement that is required for the terms of this Agreement to comply with applicable Privacy Laws. In the event the parties are unable to agree on the terms of an amendment pursuant to this paragraph within thirty (30) days of the date the amendment request is delivered by a party to the other, this Agreement may be terminated by either party upon written notice to the other party.

Debarment. Vendor certifies that neither it nor any of its Principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including but not limited to Medicare and Medicaid and Federal Health Care Programs) by any Federal department or agency. (See Executive Orders 12549 and 12689, 45 CFR part 76, 48 CFR part 9; 42 USC sect. 1320a-7). Vendor shall notify University within three (3) days

of its receipt of an initial sanction notice, notice of proposed sanction or of the commencement of a formal investigation, or the filing of any charges by any governmental regulatory or law enforcement agency that effects this certification.

**Limitations. University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will only be binding on University to the extent permitted by the Constitution and the laws of the State of Texas.**

**VENDOR**

**UNIVERSITY OF NORTH TEXAS  
HEALTH SCIENCE CENTER AT FORT  
WORTH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

HSC Contract # \_\_\_\_\_