


August 30, 2012

MEMORANDUM

TO: Executive Leadership Team, Deans and Directors

FROM: Jamie Moffitt, Vice President for Finance and Administration
and CFO 

RE: Delegation of Signature Authority

Please find below a listing of those positions with authority to approve and sign legal instruments on behalf of the University of Oregon (UO). This signature authority memorandum is being distributed under the Oregon University System (OUS) rules to designate Contract Officers for UO.

Pursuant to Oregon Administrative Rules 580-061-0020, the UO Vice President for Finance and Administration may authorize certain university officers and employees to execute contracts and other written instruments on behalf of the university, and these persons are hereby designated "Contract Officers." This memorandum sets forth those officers and employees who have signature authority with respect to such contracts and instruments. The authority is delegated authority and may be revoked or modified at any time. No further delegation of signature authority is permitted except as expressly allowed in this document or unless such further delegation is subsequently authorized by a separate memorandum signed by the Vice President for Finance and Administration. People in these positions should consult and coordinate with all appropriate UO units before signing contracts.

Legal instruments include such documents as agreements, contracts, memoranda of understanding, memoranda of agreement, letters of agreement, personal services contracts, purchase orders, procurement card authorizations, and any other document legally binding on or committing the resources of the university. You are responsible for ensuring that legal instruments are signed only by those with authority. If your position is not listed on this memorandum, you are not a designated Contract Officer and you do not have signature authority, except as set forth in the following paragraph.

In addition to the designation of Contract Officers in this memorandum, the following two departments may further delegate signature authority: (i) Purchasing & Contracting Services (PCS) may further delegate signature authority for certain approved templates up to \$25,000; and (ii) Capital Construction may further delegate signature authority for facility minor repair and maintenance contracts valued at \$25,000 and less.

If you have signature authority as a designated Contract Officer, or through the delegation by PCS or Capital Construction, you must exercise due diligence in reviewing and approving any legal instrument that you sign. The person executing the legal instrument is responsible for ensuring compliance of the instrument with applicable law and policy. The attached memorandum from PCS provides guidance about due diligence. In addition, some basic questions should be asked before signing a legal instrument: (1) to the best of your knowledge does it comply with Oregon law; (2) does it comply with policies such as but not limited to those about procurement, ethics, conflict of interest, trademark and logos, and brand management; and (3) is the transaction in the best interest of the university.

The OUS rules and UO's Purchasing and Contracting policy require that all UO employees routinely involved on an ongoing basis in making, negotiating, or approving purchasing or contracting decisions must, on an annual basis, sign a statement confirming that they will comply with the OUS Code of Ethics. Also, UO employees who participate in the evaluation or selection of a contractor or vendor under a formal procurement process must also execute the OUS Procurement Evaluation Declaration. Please contact PCS for additional information about these requirements.

If you have a question about the extent of the due diligence you need to employ, please contact Purchasing & Contracting Services (contract@uoregon.edu or 6-2419).

The delegated signature authorities listed in this document apply to the particular position titles listed and may only be exercised by a person while s/he is serving in such an identified position. Thus, the names of individuals are listed for reference purposes only. The authorities conferred to a position continue in effect unless and until modified by a superseding delegation.

The term "All Agreements and Instruments" as used in this document does not include employment-related agreements.

OFFICER OR EMPLOYEE	AGREEMENT OR INSTRUMENT (DOES NOT INCLUDE EMPLOYMENT-RELATED AGREEMENTS)
President (Michael Gottfredson)	All Agreements and Instruments (authority conferred per the President's employment contract and per ORS 352.004)
Vice President, Finance & Administration (Jamie Moffitt) - Primary Approval Authority for all Agreements and Instruments	All Agreements and Instruments (authority conferred per OAR 580-061-0020)
Director, Purchasing and Contracting Services (Catherine Susman)	All Agreements and Instruments. May further delegate signature authority for Agreements & Instruments valued at \$25,000 and less
Director of Business Affairs and Controller (Kelly Wolf)	All Agreements and Instruments \$2,000,000 and less
Assistant Vice President for Administration/ Chief of Staff, Vice President for Finance & Administration Office (Brian Smith)	All Agreements and Instruments \$1,000,000 and less
Senior Contracts Manager, Purchasing and Contracting Services (Allie O'Connor)	All Agreements and Instruments \$2,000,000 and less (except construction service agreements)
Purchasing Manager, Purchasing and Contracting Services (Deanne Lahaie-Noll)	All Agreements and Instruments \$1,000,000 and less (except construction service agreements)
Contracts Manager, Purchasing and Contracting Services	All Agreements and Instruments \$500,000 and less (except construction service agreements)
Senior Vice President & Provost (Jim Bean)	Academic collaborative and consortium agreements (\$100,000 and less); Student and Faculty Exchange Agreements (\$100,000 and less); and International Programs Agreements (\$100,000 and less)
Senior Vice Provost for Academic Affairs (Doug Blandy)	Academic collaborative and consortium agreements (\$100,000 and less); Student and Faculty Exchange Agreements (\$100,000 and less); and International Programs Agreements (\$100,000 and less)
Assistant Vice President, Senior Vice President & Provost Office (Margaret Mahoney)	Academic collaborative and consortium agreements (\$100,000 and less); Student and Faculty Exchange Agreements (\$100,000 and less); and International Programs Agreements (\$100,000 and less)
Vice President, University Relations (Michael Redding)	Trademark Licenses & Merchandising Agreements; Filming Agreements; Legal instruments for \$500,000 or less that relate to public relations and communications related activities

OFFICER OR EMPLOYEE	AGREEMENT OR INSTRUMENT (DOES NOT INCLUDE EMPLOYMENT-RELATED AGREEMENTS)
Director, Marketing and Brand Management (Matthew Dyste)	Trademark Licenses and Merchandising Agreements (\$100,000 and less); Filming Agreements (\$100,000 and less); Instruments related to the University of Oregon's agreement with Disney Enterprises and the University's related sub-licenses.
Vice President, University Development (Michael Andreasen)	Endowment and gift agreements (Vice President for Finance and Administration must also sign if agreement commits UO resources in excess of \$1,000,000).
Vice President, Research Innovation & Graduate Education (Kimberly Espy)	<p>All proposals for research grants and contracts; all research grants, subgrants, subcontracts, and subawards, including modifications. This includes legal instruments governed by the FARs such as subcontracts for the performance of services by another higher education institution under a contract governed by the FARs but does not otherwise include instruments by which UO obtains, provides, or disposes of fixtures, equipment, goods or services, including professional services, even if used in the performance of a research grant, subcontract, or subaward.</p> <p>All consortium agreements for the conduct of research; all cooperative agreements for the conduct of research; all sponsored research agreements; all agreements to conduct research, provide research services, or services using UO research equipment; Technology Transfer instruments (including responses to requests for proposals): \$1,000,000 and less.</p>
Associate Vice President for Research Finance and Business Administration (Pat Jones)	All proposals for research grants and contracts; all research grants, subgrants, subcontracts, and subawards, including modifications. This includes legal instruments governed by the FARs such as subcontracts for the performance of services by another higher education institution under a contract governed by the FARs but does not otherwise include instruments by which UO obtains, provides, or disposes of fixtures, equipment, goods or services, including professional services, even if used in the performance of a

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	<p>research grant, subcontract, or subaward. All consortium agreements for the conduct of research; all cooperative agreements for the conduct of research; all sponsored research agreements; all agreements to conduct research, provide research services, or services using UO research equipment; Technology Transfer instruments (including responses to requests for proposals): \$1,000,000 and less.</p>
<p>Assistant Vice President for Research (Moira Kiltie)</p>	<p>All proposals for research grants and contracts; all research grants, subgrants, subcontracts, and subawards, including modifications. This includes legal instruments governed by the FARs such as subcontracts for the performance of services by another higher education institution under a contract governed by the FARs but does not otherwise include instruments by which UO obtains, provides, or disposes of fixtures, equipment, goods or services, including professional services, even if used in the performance of a research grant, subcontract, or subaward.</p> <p>All consortium agreements for the conduct of research; all cooperative agreements for the conduct of research; all sponsored research agreements; all agreements to conduct research, provide research services, or services using UO research equipment.</p>
<p>Senior Associate Director, Pre-Award, Sponsored Projects Services (Analinda Camacho)</p>	<p>All proposals for research grants and contracts; research; research grants, subgrants, subcontracts, and subawards, including modifications (\$500,000 and less). This includes legal instruments governed by the FARs such as subcontracts for the performance of services by another higher education institution under a contract governed by the FARs but does not otherwise include instruments by which UO obtains, provides, or disposes of fixtures, equipment, goods or services, including professional services, even if used in the performance of a research grant, subcontract, or subaward.</p>

OFFICER OR EMPLOYEE	AGREEMENT OR INSTRUMENT (DOES NOT INCLUDE EMPLOYMENT-RELATED AGREEMENTS)
	Sponsored research agreements (\$500,000 and less). All agreements whereby the UO receives income for the performance of services from a third party.
Assistant Vice President, Innovation, Technology Transfer Services (Chuck Williams)	Technology Transfer Instruments (When value not set: \$500,000 and less anticipated consideration in the first five years of the instrument. When value set: \$1,000,000 and less.) Technology Transfer Instruments include responses to requests for proposals. All data use agreements whereby the UO receives data from a third party. All non-disclosure agreements.
General Counsel (Randy Geller); Associate General Counsel (John Salmon) - Secondary (Doug Park) - Secondary	All Instruments Related to Legal Services; Settlement Instruments; Conciliation Instruments; Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the University is or may become interested
Director, Student Financial Aid (Jim Brooks); Associate Director, Student Financial Aid (Jim Gilmour); Assistant Director, Student Financial Aid/ Scholarship Coordinator (Michelle Holdway)	Financial Aid Awards; External Scholarship Agreements; Financial Aid and Scholarship Endowment Agreements; Scholarship Contracts
Director of Athletics (Rob Mullens)	Game Contracts; Athletic Facility Use Agreements/Leases (Licenses); Revenue Sponsorship Agreements. Agreements between the University and the National Collegiate Athletic Association (the Vice President for Finance and Administration must also sign if the agreement commits UO resources in excess of \$1,000,000). May further delegate this particular authority, or portions thereof, to employees of the University's Department of Athletics. If delegate this authority, must notify the Vice President for Finance and Administration contemporaneously with the delegation.

OFFICER OR EMPLOYEE	AGREEMENT OR INSTRUMENT (DOES NOT INCLUDE EMPLOYMENT-RELATED AGREEMENTS)
<p>Executive Senior Associate Athletic Director/Finance and Administration (Eric Roedl)</p> <p>Senior Associate Athletic Director/CFO (Tom Larson)</p>	<p>Game Contracts; Athletic Facility Use Agreements/Leases (Licenses); Revenue Sponsorship Agreements; Contracts for the Purchase of Goods and Services, including professional service contracts (\$5 million and less); Intergovernmental Interagency Agreements</p>
<p>Executive Senior Associate Athletic Director/Development (Jim Bartko);</p> <p>Senior Associate Athletic Director/Compliance & Academic Services (Gary Gray);</p> <p>Senior Associate Athletic Director/Marketing & Public Relations (Craig Pintens)</p> <p>Senior Associate Athletic Director/SWA (Lisa Peterson)</p>	<p>Game Contracts.</p>
<p>Executive Director, Enterprise Risk Services (Andre Le Duc)</p> <p>Interim Director, Environmental Health & Safety (Don Elting)</p>	<p>Permit required reports, application and other related documentation associated with the University of Oregon NPDES Permit #102585</p>
<p>Executive Director, Enterprise Risk Services (Andre Le Duc)</p> <p>Risk Manager (Deb Donning)</p>	<p>Hold Harmless Agreements. Insurance claims settlements and releases valued at \$5,000 and less. Authority to coordinate directly with third party insurance companies when a party damages UO property.</p>
<p>Associate Vice President, Campus Operations/Facilities Services (George Hecht)</p>	<p>Construction instruments including Capital Construction agreements* (\$250,000 and less); Capital Repair Project Instruments; EWEB Incentive Payment Instruments (\$50,000 and less); Business Energy Tax Credit Instruments (\$50,000 and less); permits required by environmental regulatory agencies</p>
<p>Director, Campus Construction, Facilities Services (Darin Dehle)</p>	<p>Construction instruments including capital construction agreements* (\$250,000 and less); Capital Repair Project Instruments; EWEB Incentive Payment Instruments (\$50,000 and less); Business Energy Tax Credit Instruments (\$50,000 and less); permits required by environmental regulatory agencies. May further delegate signature authority for facility</p>

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	minor repair and maintenance contracts valued at \$25,000 and less.
Capital Construction Manager (Tom Shepard)	Construction instruments including capital construction agreements* (\$250,000 and less); Capital Repair Project Instruments; EWEB Incentive Payment Instruments (\$50,000 and less); Business Energy Tax Credit Instruments (\$50,000 and less); permits required by environmental regulatory agencies.
Utilities and Energy Project Manager (Jeff Madsen)	EWEB Incentive Payment Instruments (\$50,000 and less); Business Energy Tax Credit Instruments (\$50,000 and less)
Associate Vice President, Campus Planning and Real Estate (Chris Ramey)	Instruments for engineering, architecture, planning, and design services (\$100,000 and less); permits required by environmental regulatory agencies

*Capital Construction is defined as any construction or facility improvement that costs \$500,000 and more and is not considered maintenance or repair.

OAR 580-061-0010(9) defines "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution's Solicitation Document and the accepted portions of a Bid or Proposal.

Research-Specific Definitions

Award: Funds that have been obligated by a funding agency for a particular project.

Consortium Agreement: A binding contract formalizing the relationship of a group of collaborative investigators or institutions.

Cooperative Agreement: An award similar to a grant, but in which the sponsor's staff may be actively involved in proposal preparation and anticipates having substantial involvement in research activities once the award has been made.

Donation: Transfer of equipment, money, goods, services, and property with or without

specifications as to its use.

Grant: A type of financial assistance awarded to an organization for the conduct of research or other program as specified in an approved proposal. A grant, as opposed to a cooperative agreement, is used whenever the awarding office anticipates no substantial programmatic involvement with the recipient during the performance of the activities. A grant is not a gift or donation.

Gift: Gifts and bequests are awards given with few or no conditions specified. Gifts may be provided to establish an endowment or to provide direct support for existing programs. Frequently, gifts are used to support developing programs for which other funding is not available. This unique flexibility, or lack of restrictions, makes gifts attractive sources of support. A gift or donation is not a grant.

Matching Grant: A grant that requires a specified portion of the cost of a supported item of equipment or project be obtained from other sources. The required match may be more or less than the amount of the grant.

Proposal: An application or request for funding that contains all information necessary to describe project plans, staff capabilities, and funds requested.

Sponsored Research: Sponsored research agreements are agreements between UO and a commercial entity in which UO receives funding or other consideration to support research in return for preferential access or rights to intellectual property deriving from the research results.

Sponsored Research Agreement: An agreement providing for sponsored research.

Subgrant, subcontract, or subaward: A legally binding agreement under the authority of, and consistent with, the terms and conditions of an award (a grant, contract, or cooperative agreement) that *transfers a portion of the research or substantive effort of the prime award* to another institution or organization. UO may provide funds or receive funds.

(3) Due Diligence Instructions

To: Authorized Signatories

From: Purchasing & Contracting Services

Date: August 30, 2012

RE: Due Diligence for Contract Review

As part of assuming delegated contracting authority, you are required to exercise due diligence in the review and approval of any agreement that you sign. Part of this due diligence is ensuring that the agreement is within the lawful authority of the University. Another part is recognizing that the University of Oregon may not agree to certain contract

provisions. Due diligence standards are derived from the Oregon Constitution, Oregon Revised Statutes (ORS), and Oregon Administrative Rules (OAR) as well as Oregon University System and University of Oregon policies. The following is a summary of the due diligence analysis that must be undertaken prior to execution of an agreement or other instrument. This is not an exhaustive list and all persons exercising signature authority are expected to exercise sound professional judgment.

1. Legal Authority to Acquire the Property or Perform the Agreement: The University has only the authority granted by Oregon law. You must ensure that the acquisition of the property or the performance of the agreement is within the scope of the University's authority.

2. Availability and Source of Funds: You must ensure that sufficient funds are currently available and that the funds may lawfully be used for the intended purpose.

3. Clear and Adequate Description of the Transaction: You are responsible for ensuring that the services to be performed or the goods to be acquired are clearly and adequately described so that the agreement may be enforced should the need arise.

4. Indemnity Clauses: The University cannot agree to unlimited indemnification obligations. The following clause must be added to any indemnification or hold harmless clause:

“Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300.”

5. Attorneys Fees: Similar to indemnity, the University's authority to pay the attorneys' fees of another party is limited by Oregon law. The following clause must be added to any clause requiring payment of another party's attorneys' fees:

“Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300.”

6. Interest Rates and Late Fees: The university is limited in its ability to agree to rates of interest and late fees charged to the university due to late payment on contracts. The maximum rate the university may agree is two-thirds of one percent (2/3 of 1%) per month but not more than eight percent per annum. The following clause must be added to any clause imposing an interest rate or late fees due to late payments on contracts:

“Subject to the limitations and conditions of OAR 580-061-0050.”

7. Governing Law: The University should only rarely subject itself to the laws of any jurisdiction other than the State of Oregon. Additionally, the University should only rarely subject itself to the jurisdiction of any courts other than the state courts of Oregon.

8. Alternative Dispute Resolution: The University may engage in alternative forms of dispute resolution only under limited circumstances. An agreement to mediate a dispute is discouraged unless participation is optional. An agreement to arbitrate a

dispute is not permitted except under limited circumstances. If you are faced with a mediation or arbitration clause that does not make participation optional at the University's discretion, you should consult with General Counsel.

9. Monetary Amount of the Contract: Agreements entered into by the University must have definite and unambiguous monetary terms. The maximum amount payable under the agreement and any renewal or extension should be clearly discernable by reference to the contract.

10. Term and Termination of the Contract: All agreements should provide for a specific and unambiguous start and term and generally should include a set end date. Additionally, the contract should clearly and unambiguously define all conditions which would constitute a termination of the contract and a mechanism for terminating the contract.

11. Control of Defense or Prosecution: The University generally should not allow another party to control the defense or prosecution of the University's legal rights in any dispute. If you are faced with such a clause, you should consult with General Counsel.

12. Insurance Requirements: Many contracts should require the other party to carry appropriate insurance coverage. A determination of the required coverages is part of a risk analysis. Any questions or concerns regarding insurance should be addressed to Risk Management.

13. Legal Review: Certain agreements and documents require legal review by attorneys in the UO Office of the General Counsel. The following attachments provide more detail about these review requirements: (1) General Counsel Memorandum dated January 17, 2012, and titled "Changes to Contracting due to SB 242;" (2) "University of Oregon Process for Making Exemptions from and Additions to OUS Policy _____._____(Jan. 1, 2012);" and (3) "Clarification of UO Legal Review, Document #1: 21 June 2012."

14. Disclosure of Information: As a public agency the University of Oregon is subject to Oregon public records law. Therefore, all non-disclosure and confidentiality agreements are subject to the requirements of Oregon public records law. Also, the university is required by law to maintain the confidentiality of student information and student records. See Oregon Administrative Rules 571-020.

15. Student Information: Any student information is subject to the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations, specifically 20 U.S.C. 1232G, 34 C.F.R. § 99.33, ORS 351.070 and OAR 571-020, with respect to any redisclosure of personally identifiable information from education records obtained from the University.

16. Records Retention: By law, all records (paper and electronic) are required to be maintained for a certain period of time according to a schedule established by the Oregon Secretary of State Archives Division. In general, all records including procurement records related to University of Oregon contracts are subject to a retention period of 6 years. However, some records may require longer or shorter retention periods. For specific retention requirements see Oregon Administrative Rules 166-475.



MEMORANDUM
January 17, 2012

TO: University Leadership and Contract Officers

FROM: Randy Geller, General Counsel *Randy Geller*

RE: Changes to Contracting due to SB 242

SB 242, which took effect on January 1, 2012, exempts the Oregon University System from ORS 291.047 (legal sufficiency review of agreements), ORS 190.430 (legal review of agreements with public agencies in other states), and ORS 190.490 (legal review of agreements with other nations or agencies of other nations). In place of these statutes, the Board of Higher Education has adopted a new policy entitled "Legal Review of Agreements and Documents," which is attached. The intent of the policy is to narrow the number and type of agreements that require legal review and to take a reasonable and relatively simple risk-conscious approach to the required legal review agreements.

Key provisions of the policy are as follows:

- When the policy is applicable, it requires only the drafting or review of an agreement by an authorized attorney. Currently, the only authorized attorneys are those in the Office of the General Counsel.
- "Approval" of an agreement by an attorney is not required and will not be provided by the drafting or reviewing attorney. Rather, attorneys are evaluating legal risk, confirming compliance with applicable law, and providing advice. "Legal sufficiency approval" will no longer be given by the Office of the General Counsel, and an attorney's review or drafting of an agreement does not constitute authorization to execute the agreement.
- Any agreement subject to legal review under the policy must include evidence of such review, such as an attorney's signature or communication from the attorney attached to the agreement. Typically, the Office of the General Counsel will provide evidence of review in the form of an email.

OFFICE OF THE GENERAL COUNSEL

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- You should refer to the policy for a complete articulation of the agreements subject to legal review. However, the policy includes a requirement of legal review for the following:
 1. Any agreement with a value in excess of \$250,000:
 - (a) which includes the development of software or acquisition of software not "off-the-shelf;" or
 - (b) which includes a foreign entity (public or private) or an Indian tribe as a party; or
 - (c) under which the University provides services; or
 - (d) under which the University provides tangible or intangible personal property or the right to use tangible or intangible personal property.
 2. Employment agreements or notices of appointments with:
 - (a) the President, Vice Presidents, Provost, Vice Provosts, Athletic Director, Head Coaches, or any other employee with an annual salary in excess of \$300,000; or
 - (b) a term of three years or longer, except for tenured faculty.
 3. Any settlement agreement or release of claims, regardless of value.
 4. Any agreement under which the University takes equity in a company to which the University provides services, tangible or intangible property, or the right to use tangible or intangible property, regardless of value.
 5. Any faculty or student exchange agreement under which the University will pay or receive money or property, regardless of the amount of money or nature of the property.
 6. Any solicitation documents for a competitive procurement that will result in a contract or agreement subject to the Board policy.
 7. Any agreement for the purchase or sale of real property or improvements to real property, or by which an easement other than a utility easement is granted or received.

8. Any agreement and any docket materials related to the agreement or other document submitted to the Board of Higher Education for approval or signature.

As you can see, there are several noteworthy changes from the legal sufficiency review rules under which OUS formerly operated:

- An agreement by which the University makes a purchase is generally exempt.
- An agreement by which the University acquires a service, whether professional or otherwise, is generally exempt.
- An agreement to lease real property is generally exempt, whether the University is the lessor or lessee.
- An agreement by which the University grants or receives the right to use real property is generally exempt.
- An agreement by which the University receives construction-related services is generally exempt.

There are a number of other issues of which you should be aware:

- The policy allows the University to develop a process by which to exempt categories of agreements from legal review or make additional agreements subject to legal review. I intend to develop a simple process immediately and make it available for review by the University leadership.
- Each institution is encouraged to develop a catch-all provision. Whether to do so should be discussed by the University leadership.
- The policy does not alter the procurement rules, any other rules or policies, or the requirement that each agreement be executed by an authorized signatory.
- Legal advice should be obtained as needed and not solely when required.
- An amendment to an agreement is subject to review if it would be covered by the policy as a stand-alone agreement.
- An agreement's predominant purpose determines its category for review purposes.

- The value of an agreement is equal to the money (in U.S. dollars) to be received or paid by the University over the term of the agreement.

I am sure that other issues will arise as we begin to implement this policy. I am committed to resolving them as quickly as possible and in a way that streamlines transactions to the extent possible. Please submit any questions to gcounsel@uoregon.edu.

Attachment

OREGON UNIVERSITY SYSTEM

SECTION: Finance and Administration
TITLE: Internal Management Directive on Legal Review of Agreements and Documents
NUMBER: XX.XX
EFFECTIVE DATE: January 1, 2012

POLICY/PURPOSE:

Senate Bill 242 (2011), among other provisions, exempts the State Board of Higher Education and the Oregon University System from specific requirements of ORS Chapter 291, as applicable, otherwise known as "legal sufficiency" review. Notwithstanding this exemption, in order to ensure, to the extent practicable, a reasonable risk-conscious approach to agreements, transactions, relationships, and materials involving the Board, the Chancellor's Office or any OUS institution, this IMD outlines when review or input from authorized legal counsel is required.

AUTHORITY/CROSS-REFERENCES:

Senate Bill 242 (2011), including ORS Chapter 351 and its amendments
OAR Chapter 580

PRINCIPLES/GUIDELINES/PROCEDURES:

(A) Legal Review

(1) The following agreements or documents are required to be drafted or reviewed by an attorney authorized to provide legal services to the Board, Chancellor's Office, or OUS institution, as applicable. Pursuant to this IMD, attorneys authorized to provide legal services to the Board, Chancellor's Office, or OUS institutions are reviewing or drafting the following agreements in order to evaluate legal risk and to confirm compliance with applicable federal or state laws, including constitutional provisions, statutes, administrative rules, or regulations.

(a) Any agreement for the purchase or sale of real property or the purchase or sale of improvements to real property;

(b) Employment agreements or notices of appointments with the Chancellor, Vice Chancellors, Presidents, Vice Presidents, Provosts, Vice Provosts, Athletic Directors, Head Coaches, or any other employee with an annual salary in excess of \$300,000;

(c) Employment agreements with other than tenured faculty for a term of three years or longer;

(d) Any agreement with a value in excess of \$250,000:

(i) which includes the development of software or acquisition of software not "off-the-shelf"; or

(ii) which includes a foreign entity, public or private, or an Indian tribe as a party; or

(iii) under which the Board, Chancellor's Office, or OUS institution provides services; or

(iv) under which the Board, Chancellor's Office, or OUS institution provides tangible or intangible property or the right to use tangible or intangible property.

- (e) Any agreement under which the Board, Chancellor's Office or OUS institution takes equity in a company in which the Board, Chancellor's Office, or institution provides services, tangible or intangible property, or the right to use tangible or intangible property;
 - (f) Any settlement agreement or release of claims;
 - (g) Any faculty or student exchange agreement under which an institution will pay or receive money or property;
 - (h) Any docket materials from an OUS institution on a matter submitted to the Office of the State Board for Board action. The OUS general counsel will review docket materials for the Chancellor's Office and the docket in its entirety for the Board Secretary and Chancellor;
 - (i) Any non-utility easement; and
 - (j) Any solicitation documents for a competitive procurement that will result in a contract or agreement subject to this IMD.
- (2) The legal review required by this IMD may be accomplished, for applicable transactions, by form or template agreements drafted by an attorney authorized to provide legal services to the Board, Chancellor's Office or OUS Institution, as applicable, and made available to the relevant department or personnel in the Chancellor's Office or OUS institution.
- (3) The Chancellor's Office or OUS institution may develop an internal process in order to exempt categories or sub-categories included in this IMD from legal review or to add categories or sub-categories to the list for legal review for the Chancellor's Office or OUS institution, as appropriate. The process should identify how legal risk, notwithstanding an exemption, will be reasonably managed. The Chancellor's Office or OUS Institution may not exempt a category or sub-category from this list until the process document is on file with the OUS Vice Chancellor for Finance and Administration or designee. Once a process document is in place and filed with the OUS Vice Chancellor for Finance and Administration or designee, the Chancellor's Office or OUS Institution will file any and all exemptions or additions to the list, applicable to the Chancellor's Office or OUS Institution, with the OUS Vice Chancellor for Finance and Administration or designee.
- (4) The Chancellor's Office and OUS institutions are encouraged, pursuant to the internal process developed to exempt or add categories or sub-categories to this list at section (A)(3) of the IMD, to consider and implement appropriate "catch-all" provisions to the list, cognizant of expertise and personnel at the Chancellor's Office or OUS institution, as applicable.
- (5) Each in-house attorney authorized to provide legal advice and services to the Board, the Chancellor's Office, or OUS Institution, as applicable, will maintain a log of each agreement or document reviewed or drafted pursuant to this IMD.
- (6) The applicable in-house legal services office, whether for the Chancellor's Office or OUS institution is responsible for compiling a log of each agreement or document reviewed or drafted by outside counsel pursuant to this IMD.
- (7) Any agreement or document subject to legal review under this IMD must include evidence of such review, such as the attorney's signature or communication from the attorney attached to the agreement or document. For instances in which the Board, Chancellor's Office, or OUS Institution

is using a form or template agreement as contemplated by Section (A)(2) of this IMD, notation or reference to the form or template drafted by the attorney is sufficient for this section.

- (8) Nothing in this IMD removes or alters other requirements for the proper execution of an agreement or document, such as signature by an authorized contracting authority or compliance with procurement rules, policies or procedures, or other Board policies and requirements.
- (9) Notwithstanding the list of agreements and documents included in this IMD, employees are encouraged to approach agreements and documents from a risk-conscious perspective and seek out legal review and advice proactively. Nothing in this IMD prevents or should discourage legal review of agreements or documents not included in Section (A)(1)(a)-(j).

(B) *Review*

This IMD will be reviewed by OUS attorneys, contracting officers, and other relevant stakeholders annually for amendment or revision, with specific care to consider how risk is managed by the inclusion, or exclusion, of particular categories or sub-categories.

(C) *Document History*

Approved by the Board's Finance and Administration Committee, Date.

University of Oregon
Process for Making Exemptions from and Additions
to OUS Policy _____. ____ (Jan. 1, 2012)

Oregon University System Policy _____. ____ (Jan. 1, 2012) now governs when an institutional agreement must be reviewed by counsel, and specifies which such agreements must be reviewed. OUS Policy _____. ____ also authorizes individual institutions to create a process for recognizing exemptions from the legal review requirements for categories or sub-categories of agreements, as well as a process to add additional categories of agreements to the list of those for which review is required. The process specified below will be used by the University of Oregon to determine when such exemptions or additions will be made.

A. Requests for Exemption

1. Request Submission

Any member of the Executive Leadership Team (ELT) may request exemption from review of a category or sub-category of agreement by submitting that request to the General Counsel, in writing. The request may be sent as an email or email attachment.

2. Request Content

Each request must contain the following information:

- a. A description of the category or sub-category of agreement for which exemption is sought;
- b. The rationale supporting the request for exemption;
- c. An explanation of how legal risk will be minimized in the absence of legal review by the General Counsel's office;
- d. A description of the personnel who will be responsible for review and approval of the agreements, including work experience, educational qualifications and applicable training; and
- e. Any other material which supports granting an exemption from legal review.

3. Evaluation of Requests for Exemption

The Office of General Counsel will evaluate each request for exemption using the criteria set forth below. Use of these criteria to evaluate the request is designed to ensure that legal risk will be reasonably managed, notwithstanding the grant of an exemption.

- a. The nature of the agreements, including: the complexity of the agreements; whether the agreements tend to be repeated and routine, or varying; and the inherent legal risk associated with that type of agreement;
- b. The expertise and experience of personnel who will be responsible for reviewing and approving the agreements;
- c. The extent to which such agreements have in the past created liability for the University;
- d. The likelihood that such agreements may create liability for the University in the future;

- e. Whether past legal reviews of similar agreements have resulted in significant changes necessary to manage legal risk;
- f. Whether the Requesting Department has agreed to consult with General Counsel as necessary;
- g. Any other fact relevant to whether exemption from legal review can occur consistent with the principle of reasonably managing legal risk.

B. Requests for Additions

1. Request Submission

A request to add a category or sub-category of agreement to the list of those for which legal review is required may be submitted by any member of ELT. The request is made by submitting it to the General Counsel, in writing. The request may be sent as an email or an email attachment.

2. Request Content

Each request must contain the following information:

- a. A description of the category or sub-category of agreement to be added;
- b. An explanation of the rationale supporting the request for addition;
- c. An explanation of how legal risk is being created by the absence of legal review;
- d. A description of the personnel responsible for review including work experience, educational qualifications and applicable training; and
- e. Any other material related to the perceived need for an addition.

3. Evaluation of Requests for Additions

The Office of General Counsel will evaluate each request for an addition using the following criteria:

- a. The nature of the agreements, including: the complexity of the agreements; whether the agreements tend to be repeated or routine or varying; and the inherent legal risk associated with that type of agreement;
- b. The expertise and experience of personnel in the Requesting Department currently responsible for entering into the agreements, including: their experience working with such agreements; any training they have received with respect to such agreements, in particular training on managing legal risk;
- c. The extent to which such agreements have in the past created liability for the University;
- d. The likelihood that such agreements may create liability for the University in the future; and
- e. Any other fact relevant to whether the addition of legal review is necessary in order to reasonably manage legal risk.

C. Approval or Disapproval of Requests

The Office of the General Counsel will provide an evaluation of the request to the Vice President for Finance and Administration for a decision. If the recommendation is approved, the Vice President

for Finance and Administration will file the exemption or addition with the OUS Vice Chancellor for Finance and Administration or designee.

Clarification of UO Legal Review

Document #1: 21 June 2012

The following contracts processed by UO Sponsored Projects Services (SPS) are exempted from legal review, as long as they provide for instruction or research, regardless of monetary value:

- **Federal Grant Agreements.** These are agreements by which federal agencies grant funds to UO so that UO may undertake research or other work that has been defined by the federal agency but in which the federal agency will not take a substantial role. This exemption applies as long as the only parties to the grant agreement are UO, a federal agency, and other universities or public entities.
- **Federal Cooperative Agreements.** These are agreements by which federal agencies provide funds to UO so that UO may undertake research or other work that has been defined by the federal agency but in which the federal agency will take a substantial role. This exemption applies as long as the only parties to the cooperative agreement are UO and a federal agency.
- **Agreements with Oregon Public Entities.** These are agreements in which all of the parties are Oregon public entities.
- **Sub-awards from Federal Grants.** These are agreements governing sub-awards made by or to UO. All other parties must be universities or public entities.
- **Data-use and Data-sharing Agreements.** These are agreements by which UO grants or acquires a right to use or share existing data that is useful in research.
- **Non-disclosure Agreements.** These are agreements by which UO or another party agrees to maintain the confidentiality of certain information.

The following contracts are not exempted from the legal review requirement and so continue to require such review:

- **Federal Contracts.** These are agreements that are subject to the Federal Acquisition Regulations or the contracting regulations of the relevant federal agency. UO tends to see relatively few of these agreements, and one created significant exposure in the past.
- **Agreements with Foreign Public or Private Entities.** These agreements may involve complex federal regulations such as the Export Administration Regulations and the International Traffic in Arms Regulations, as well as regulations governing the international transit of flora, fauna, artifacts, and other regulated materials. These agreements may also involve the transfer of large sums of money, which implicates federal treasury, banking, and money laundering regulations. The requirement of legal review applies only when the agreement has a value in excess of

\$250,000.

- Agreements with Indian Tribes. These are agreements with federally recognized Indian tribes located in the U.S. Such tribes are treated for contracting and legal purposes as a sovereign entity, and the review of these agreements often requires specialized knowledge and expertise. The requirement of legal review applies only when the agreement has a value in excess of \$250,000.
- Contracts with and awards from for-profit or non-profit companies or foundations (other than universities) for research activities. In the past, these agreements have created considerable legal issues around intellectual property. Generally, the requirement of legal review applies only when the agreement has a value in excess of \$250,000.

It is expected that Sponsored Projects Services will continue to consult with the Office of the General Counsel as appropriate.