

Yale University

# **Guide to Reviewing Business Agreements and Contracts at Yale**

## **and Other Reference Information**

October 2004

# Guide to Reviewing Business Agreements and Contracts at Yale

*and Other Reference Information*

*October 2004*





# Introduction

Administrators at Yale manage a wide array of business agreements and contracts that are presented in a variety of formats. These documents establish enforceable obligations, provide valuable rights, create financial and legal exposure, and are critical to making the University run smoothly. Administrators also regularly handle other significant official documents on behalf of the University. This *Guide* and the removable *Quick Contacts* insert will serve as a ready reference for all who participate in these processes. Upon e-mail request to the Controller's Office, *Quick Contacts* will also be provided electronically, so the user can customize it to suit his or her own needs.

**Section I** of the *Guide* is its core. Organized by category of contract, Section I flags issues to consider about each of the most commonly encountered categories, and provides quick guidance on three key questions:

- Which University offices may need to review or approve the contract?
- Which office can either obtain or provide an authorized signature?
- Where can further information be found?

(Note that some of the issues listed above may be best addressed by the faculty member or a University office outside the Department.)

**Section I** is designed for use when facing an unfamiliar type of contract, or as a checklist, when desired, on handling a more routine type. It also offers guidance on handling official documents other than contracts, such as immigration forms and customs powers of attorney.

**Section II** provides reference information about institutional-level contracts that affect the entire University. Although those contracts are not generally managed by Departmental administrators, many find it useful to be familiar with them.

**Section III** of the *Guide*, printed on **blue pages** at the end of the hard copy version, contains basic information about contracts and University operations, for those who would find such information useful.

Acronyms used in the *Guide* are listed on a final page.

Considerations of space and practicality mean that the *Guide* offers information only on the most common categories of contracts, agreements, and official documents. It also does not attempt to provide a detailed guide to negotiation or present preferred positions on issues presented in every type of contract. The Offices of General Counsel, Procurement, and Grants and Contracts Administrations would be pleased to work with any administrator, Department, or School to address issues raised by an unfamiliar type of contract; to determine whether a specially tailored and drafted contract is necessary; to discuss issues raised by these contracts; and to develop templates or guides for contracts that regularly are encountered in any School or Department, among other ways. Please feel free to call.

The *Guide* is a first effort to collect this information and present it in a useful format. It will soon appear on the Yale website as well as in pamphlet form. A new version of the *Quick Contacts* will appear regularly, and new versions of the *Guide* will be made from time to time. Administrators from around the campus have provided input on early drafts, but the *Guide* will be revised further as users develop some experience with it. We welcome your feedback. Please send questions, comments, and suggestions for improvements to [controller@yale.edu](mailto:controller@yale.edu), or contact one of the Contracts Subcommittee members listed below.

**Members of the Contracts Subcommittee  
Business Standards and Practices Committee**

**Susan Carney** Deputy General Counsel  
**Penny Cook** Executive Director, Grant & Contract Administration  
**John Mayes** Director, Procurement  
**Cary Scapillato** Controller  
**Mary Varga** Director of Finance and Administration, Facilities

*October 2004*

# The Top Ten items to check *before* the contract is signed

- 1 Adequate due diligence about the vendor and product (if any) has been done and documented.
- 2 The parties are accurately identified and contact information is clear. (Note: “Yale University” should be the contracting party.)
- 3 There is an effective date and, if needed, an end date.
- 4 The document accurately reflects Yale’s understanding of the arrangement.
- 5 All Yale people with roles in the contract’s performance are aware of their obligations.
- 6 All financial provisions are clear and correct, and budgetary authorization has been obtained.
- 7 The obligations of each of the parties are adequately described.
- 8 The University is able to perform its obligations under the contract.
- 9 The appropriate signatory has been determined.
- 10 The benefits and risks of the contract have been assessed and are understood.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

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# Standard Contracts on Behalf of Schools and Departments



## PROCUREMENT

### ■ Contracts for the Purchase of Goods

Goods should generally be procured through the Procurement Office, which will help make sure the University is obtaining the highest value on best available terms. Readily available goods may be procured through a number of standard mechanisms. If a vendor-generated form contract is presented, Procurement will review and negotiate it, if necessary, and append a Yale purchase order. A separately drafted and negotiated contract may be required, however, if:

- the cost of goods is especially high
- the item is custom-designed or custom-made
- delivery is expected to occur in phases or in the future
- components are internationally manufactured and export or import licenses might be required
- other factors make the transaction one of higher than ordinary risk

If such an agreement is needed, the Department will work with Procurement and (where needed) General Counsel to develop the final document.

#### OFFICES TO CONTACT FOR INPUT, REVIEW, INFORMATION

##### **Procurement (432-9982)**

For more detailed information about procurement generally, visit the Procurement website, [www.yale.edu/purchase](http://www.yale.edu/purchase)

##### **General Counsel (432-4949)**

For unusual purchases

##### **Risk Management (432-0140)**

For insurance certificates and requirements

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

WHERE TO GO FOR REQUIRED SIGNATURES

Procurement (432-9982)

*When evaluating a vendor-generated standard contract or an individually drafted agreement, consider:*

- Is this a contract on which multiple bids must or should be solicited?
- Is an advance quote or bid process required?
- Does use of this vendor present any ethical or conflict of interest concerns?
- Is the vendor reputable and able to perform?
- Is the vendor adequately insured?
- Is the full cost of the purchase clearly stated?
- Who is responsible for any cost increases for goods during the time for manufacturing?
- Is the time for performance clear?
- Are the payment terms clear and achievable? (*E.g.*, payment within 30 days of receipt of invoice is achievable.)
- If installation is needed, who bears the cost?
- Who bears the cost of shipment?
- Is Yale's tax exemption observed?
- Who is responsible if the goods are damaged in transit or upon delivery or installation?
- Are the expected quality of goods or other specifications clearly established?
- Are there any troubling disclaimers of quality or suitability?
- What are Yale's rights if the goods do not meet expectations?
- Are there any automatic renewal clauses? (Usually not advisable.)
- Is there an adequate early termination clause, if appropriate?
- If any penalties are imposed, are they appropriate?
- If vendor equipment or materials are utilized for research, does the vendor have any claim to research results? (Try to avoid claims to research results; consult with GCA with questions. Materials often should be subject to a separate Materials Transfer Agreement; *see* following section under Grant and Contract Administration.)
- Can Yale sell or transfer the goods to a third party? Does it need this right?

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

### TIPS

Procurement will set up orders for more than \$5,000 with a special designation (“DKP” or “YKP”). The “K” indicates that end user approval is required on invoices before payment will be made.

Check the Procurement website early in the process to see if the University already has an established and active relationship with the vendor you are considering. [www.yale.edu/purchase](http://www.yale.edu/purchase)

Report problems with vendors to Procurement to help others avoid difficulties.

## ■ Contracts for the Purchase of Services

These are agreements in which Yale retains an outside vendor to perform services in support of University operations, such as: to provide office moves, event security, print design, or document storage. Such contracts can usually be processed by Procurement. Procurement must approve any variations in advance of a commitment.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Procurement (432-9982)**

**Risk Management (432-0140)**

Insurance requirements

**Human Resources (432-5703)**

Employee/independent contractor

**GCA (432-2460 FAS, 785-4689 YSM)**

For services utilized in the conduct of research

### WHERE TO GO FOR REQUIRED SIGNATURES

**Business Manager or Departmental Chair**

For purchase order engagements valued at less than \$2,000

**Procurement (432-9982)**

All others

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

*Consider:*

- Could or should these services be provided by University employees?
- Are these services available from established Yale vendors?
- Is the vendor reputable?
- Does the use of this vendor present ethical or conflict of interest issues?
- What is the term of the contract? (Should not be extensive.)
- Are the pricing terms clear?
- Are there automatic renewal clauses? (Prefer to avoid these.)
- What are the standards of performance? Is there an adequate way to determine whether they have been met?
- Do the parties each have adequate cancellation rights? (*E.g.*, if the relationship is not working well.)
- Does the vendor get access to Protected Health Information? (If so, a BAA is required.)
- Does the vendor get access to personal financial information (*e.g.*, regarding student loans)? (If so, special confidentiality terms may be required.)
- Does the vendor have adequate general liability, workmen's compensation, and/or professional insurance coverage? (Consult with Risk Management)
- If damage to Yale property is caused by vendor's representatives, is the vendor obligated to cover the related costs?

**TIP**

Procurement will set up orders for services valued at more than \$5,000 with a special designation (called "DKP" or "YKP"), which requires end user approval on invoices, to confirm before payment that the service was satisfactorily performed.

## ■ Equipment Leases

These are contracts that permit the University to install and use equipment at the University over a defined time period, and which call for the equipment to be returned to equipment owner after the use period. They may contain a buy-out option for the University. The placement of equipment from a company on Yale premises, when the company is involved in research, may involve more complex legal and contracting issues.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Procurement (432-9982)**

**OEHS (785-3550)**

For concerns about safety of the user

**Finance/Capital Systems (2-1430)**

For financial assessment of the lease/buy choice and comparative lease rates

**Risk Management (432-0140)**

For insurance protection issues

**GCA (432-2460 FAS, 785-4689 YSM)**

For equipment utilized in the conduct of research

### WHERE TO GO FOR REQUIRED SIGNATURES

**Procurement (432-9982)**

*Consider the following questions before leasing:*

- Do the advantages of leasing outweigh those of ownership? (For example, owned property will not be subject to property taxes at the University, but leased property will be. Taxes are often an add-on to stated rental amount.)
- Is the term of the contract within the typical range of 12-36 months?
- Does the lessor give adequate warranties for the equipment?
- Is there an adequate buyout option?
- When leases are placed through an independent party, does the lease cover all necessary parts of the equipment? If not, does the manufacturer agree to provide and warrant the omitted parts?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- When a lease is placed through the manufacturer, is there an option to return and upgrade equipment at the end of the lease?
- Is there an adequate early escape clause, or are there heavy early termination penalties?
- If the manufacturer is a foreign company, is the exchange rate firm for the life of the contract?
- Does the lease provide during its term for upgrading the equipment to the latest configuration?
- Is the manufacturer adequately insured?
- Is Yale responsible for insuring the equipment during the lease?

**TIP**

Procurement can help with an analysis of lease vs. buy options.

## ■ **Contracts for Equipment Maintenance by External Vendors**

These are agreements with vendors to maintain and service equipment located on campus. Such agreements are typically and preferably negotiated at the time the equipment is purchased. Service may initially be provided without separate charge during the warranty period, and then made available at pre-set rates in the years after any warranty has expired.

*OFFICE TO CONTACT FOR INPUT AND REVIEW*

**Procurement (432-9982)**

*WHERE TO GO FOR REQUIRED SIGNATURES*

**Procurement (432-9982)**

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*

*Consider:*

- Does having a maintenance contract offer significant advantages over simply arranging for maintenance/repair on an as-needed basis?
- How much turnover does the vendor have?
- Have vendor references been checked?
- Does the vendor adequately know the particular equipment?
- Does use of this vendor raise any ethical or conflict of interest concerns?
- Is the vendor properly licensed?
- Does the contract contain adequate liability and professional insurance or indemnification requirements?
- What is the basis for billing (*e.g.*, hourly, retainer, time and materials, etc.)?
- Is the labor rate set or can it increase over time?
- What is the scope of the service being purchased? (Are there any limitations?)
- Can a replacement part can be demanded, and if so, when?
- Is the response time for calls adequately quick? What remedies are available if the response is too slow?
- Is there an incentive for the vendor to get a problem fixed rapidly and well?
- What are the charges for replacement parts? How can the consumer be sure the parts are competitively priced?

## ■ Software Licenses and Related Maintenance Agreements

These are vendors' agreements to permit the use of proprietary software at Yale. A software license authorizes the use of the software for a given time period, and typically imposes certain limits on the use, for example by numbers or categories of authorized users. The price of the license will depend on several factors, including numbers of users, amount of support provided to users, and access to (or requirements to buy) upgrades of the software. Depending on the nature of the software, Yale may enter into an institution-wide license, or individual Schools or Departments may enter into individual licenses. Examples

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

include licenses for scheduling software, for software to help handle student applications and admissions, and for data management.

*OFFICE TO CONTACT FOR INPUT AND REVIEW*

**Procurement (432-9982)**

For review of license terms, and coordination with similar procurements within the University

**ITS (432-6500 FAS, 785-5204 YSM)**

For review of hardware requirements and security assessment

**Office of General Counsel (432-4949)**

For unusual terms of license and confidentiality provisions

**GCA (432-2460 FAS, 785-4689 YSM)**

For single use, research-related software

*WHERE TO GO FOR REQUIRED SIGNATURES*

**Procurement (432-9982)**

*Consider:*

- Are others within or without Yale using this software, and if so, what are their reviews of the product?
- Has the vendor been thoroughly vetted? What is its financial ability to stand behind its product? (Consult with Procurement.)
- Performance specifications and standards: Does this software really do what is needed? How much customization will be necessary?
- Charges and charging mechanisms: How much will the license cost, in total? Is the number of users limited?
- On what terms are upgrades provided?
- Is there continuing support for old versions?
- Are there any security concerns about this application or its ability to handle sensitive data in a secure way?
- Is the vendor willing to stand behind its product? (Check warranty; indemnity for infringement; maintenance availability for past versions.)
- Does the company provide for a source code escrow so that the code can be accessed if the company cannot meet the license terms?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- Is there a concurrent maintenance agreement? (Preferable.)
- Will the available hardware support the application?
- Will the software interface will be successful and easy to accomplish?
- Are there constraints specified by the vendor that cannot be met by Yale (*e.g.*, making licensed software available only to students who have bought an accompanying textbook)?
- Is the vendor adequately insured?

#### TIP

The risk associated with a software license is not reflected solely by the number of dollars that it costs to license the software: it is also found in the amount of labor that must be invested to make the software useful (through data entry, training, customization); the number of users who must be trained to use the software; the sensitivity of the data that will be used with the software and the importance of sound security systems; and the cost of program downtime if the software has significant bugs or operational issues, among other factors. A license that appears to be “worth” \$15,000 on its face, may in fact create an exposure that is far more significant.

## ■ Contracts for Outside Consultants

These are agreements in which the University retains an individual or company to consult on a particular project, perform a particular task, or provide expert advice for a limited time period. There is usually a set scope of work that is performed independently, with only general direction by the hiring component. University Policy 3210—Contracting for External Consultants and Other Professional Services—governs these contracts. [www.yale.edu/ppdev](http://www.yale.edu/ppdev)

#### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Procurement (432-9982)**

**Human Resources (432-5703)**

**Tax Office (432-5530)**

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

**GCA (432-2460 FAS; 785-4689 YSM)**

If consultant fee is to be paid from a grant or contract

**Facilities (432-6811 FAS, 785-4718 YSM)**

If design, planning or construction consultants will be retained

*WHERE TO GO FOR REQUIRED SIGNATURES*

See **Policy 3210** for signatory authority. [www.yale.edu/ppdev](http://www.yale.edu/ppdev)

*Consider:*

- Has Form 3210.1 (Standard Professional Services Agreement) been completed to determine that the individual will be a consultant and not an employee of the university?
- Has the completed form been reviewed by the University Tax Office?
- Are there clear performance standards?
- Are there milestones and remedies if performance is not satisfactory?
- Has the length of engagement been specified?
- Is there indemnification and insurance from the consultant? (GCA and Risk Management will review for adequate levels)
- What are the expenses, advances and retainer fees? Have they been benchmarked for reasonableness?
- What are the respective duties and representations of the Department and consultant?
- Is there an adequate cancellation clause?
- Is there any conflict of interest or ethical issue related to the hiring of the consultant? If so, is it disclosed and managed?
- What are the proposed consultant's qualifications for the work assignment? Are they adequate?
- Does the contract provide that the consultant's work product will be a "work for hire" and will belong to the University? (It should.)
- What happens if the contract is cancelled and someone else is hired?
- What expenses in addition to the fee will the University be billed for?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

- What happens if the primary person in the consulting firm withdraws and provides a replacement?

## ■ Motor Vehicle Leases

These are contracts for the long-term use of a vehicle not owned by the University, for University purposes. (These leases are appropriate to enter into only in limited circumstances: See the Yale Travel Policy, [www.yale.edu/ppdev/policy/3301/3301.html](http://www.yale.edu/ppdev/policy/3301/3301.html))

### OFFICES TO CONTACT FOR INPUT AND REVIEW

#### **Procurement (432-9982)**

Acts as the administrator and liaison with rental companies for all vehicle leases of over one week's duration

#### **Risk Management (432-0140)**

For coverage questions

#### **Tax Office (432-5530)**

For questions about possible tax consequences to vehicle user

### WHERE TO GO FOR REQUIRED SIGNATURES

#### **Procurement (432-9982)**

*Consider:*

- Is the length of the contract the standard 36 months?
- Does the cost of contract exceed \$25,000?
- What charge applies if the mileage cap is exceeded?
- What are the penalties for late payments?
- What are the “scratch & dent” policies?
- What are early termination penalties?
- How is insurance coverage managed?
- Are there sales and property taxes? (Note that leases generally involved property taxes, which are avoided with a University purchase.)
- Will the vehicle be utilized solely for University purposes?
- Are there possible personal income tax consequences for the employee using the vehicle?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

## HUMAN RESOURCES

### ■ Faculty and Staff Employment Contracts

The terms and conditions of employment for faculty are set forth in the Yale University Faculty Handbook. Additional terms may be set forth in a letter of appointment that should be prepared based on a template established by the Office of the Dean of the relevant School and the Provost's Office. The terms and conditions of employment for staff at Yale are set forth in the Personnel Policies & Practices Manual and any applicable collective bargaining agreement. Staff receive employment letters developed and utilized by Human Resources. Departures from these templates to include provisions tailored to a single individual should be rare. Any such departures require careful review, as described below.

#### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Human Resources (432-5703)**

For staff hiring

**Office of General Counsel (432-4949)**

For unusual terms, faculty, or staff

**Provost's Office (432-4444)**

For faculty hiring

#### WHERE TO GO FOR REQUIRED SIGNATURES

**Dean's office (of the relevant School)**

Faculty

**Human Resources (432-5703)**

Staff

#### *Consider:*

- Is the job description clear? (What will be the duties of the faculty member or employee?)
- Will the Department have any particular duties (e.g., to provide equipment or special support)?
- Are the terms and conditions of employment, including benefits, clear?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- Are there any IP concerns? (*E.g.*, will the faculty member arrive with pre-existing agreements regarding intellectual property?)
- Will there be an annual performance review process?
- Is there a sufficient termination clause? (For cause; not for cause.)
- What remedies are available if the employee does not perform as expected?
- Does the letter establish a probationary period?

## Web references

- Faculty Handbook (on Provost's website),  
[www.yale.edu/provost/faculty.htm](http://www.yale.edu/provost/faculty.htm)
- Human Resources website  
[www.yale.edu/bronline/placement/](http://www.yale.edu/bronline/placement/)

## ■ Search Firm Contracts

These are contracts to engage the services of a professional search firm to find candidates for professional positions. They are usually used only for positions that are difficult to fill using traditional recruiting methods. If you believe your search requires the use of a search firm, contact HR before doing anything else.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Human Resources (432-5703)**  
**Office of General Counsel (432-4949)**  
For unusual terms

### WHERE TO GO FOR REQUIRED SIGNATURES

**Human Resources (432-5703)**

### Consider:

- Is the scope of engagement clear?
- Is the job description for the position sought clear?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- What are the duties and responsibilities of the search firm and the Department?
- Are the general terms and conditions clear?
- Is there an exclusivity clause? How does it work?
- How does the firm charge: commissions, expenses, advances, and/or retainer fees? Are the charges reasonable (*i.e.*, not above 25-35% of the annualized salary of the successful candidate)?
- What other expenses will be billed?
- Does the firm commit explicitly not to discriminate in referring possible hirees? Does the contract require the firm to conduct background checks (*e.g.*, education, criminal, excluded persons list)? (Preferable.)
- What happens if the contract ends and someone not referred by the firm is hired, or someone earlier referred by the firm is hired?
- What happens if the person hired fails the probationary period?
- Is the search firm adequately insured?

## ■ Temporary Employment Agency Contracts

These are contracts for the services of a professional temporary employment agency to fill vacancies until a permanent hire can be made.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Procurement (432-9982)**

**Human Resources (432-5703)**

For advice and referral to temporary employment agencies

**Labor Management Relations (432-9822)**

For information about Local 34/35 contracts

### WHERE TO GO FOR REQUIRED SIGNATURES

**Procurement (432-9982)**

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

*Consider:*

- Are there clauses in the Local 34/35 contracts that limit the use of temporary employees in the applicable circumstances?
- Is the scope of engagement clear?
- What are the likely expenses and fees? Are they reasonable?
- What are the duties and responsibilities of the Department and agency?
- Does the agency commit not to discriminate in its placement? (It should.)
- Does the contract require background checks (e.g., education, criminal, excluded persons list)? (It should.)
- Who determines the wage rate?
- What is the process for payment?
- What remedies are available if the person the agency sends is unsatisfactory?
- What charges apply if the University hires the person into a permanent position?
- Is the vendor adequately insured for workers compensation and general liability?

**Tip**

Procurement has established relationships with a number of temporary agencies and can facilitate hiring efforts.

## GRANT AND CONTRACT ADMINISTRATION

### ■ Sponsored Agreements (other than Clinical Trials)

These are grants, contracts, and cooperative agreements related to research and other scholarly activity at Yale and funded by the federal government, for-profit, and not-for-profit sponsors. These agreements may support research, researcher career development and training, program projects, or research centers and facilities.

#### OFFICES TO CONTACT FOR INPUT AND REVIEW

##### **GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel, YSM Finance, GCFA, the Provost's Office, and OCR as needed

##### **Research Compliance Offices**

#### WHERE TO GO FOR REQUIRED SIGNATURES

##### **GCA (432-2460 FAS, 785-4680 YSM)**

For the Agreement

##### **Departmental Chair and Business Manager**

For the GCA transmittal form

##### **Other Departmental Chairs and Business Managers**

For the GCA transmittal form

#### *Consider:*

- Are there restrictions that might affect an investigator's eligibility to work on an awarded agreement? (*E.g.*, stage of career, U.S. citizenship.)
- Are there budgetary caps? Are they acceptable? (*E.g.*, direct costs not greater than \$500,000, indirect cost rate, faculty salary, equipment costs.)
- Is cost sharing expected (mandatory or voluntary)?
- Has the principal investigator confirmed that the amount of financial support that is awarded provides adequately for the scope of work?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- What are the financial and technical reporting requirements? Is the timetable realistic? Is it clear who will fulfill those requirements?
- Are there research compliance or export control issues? (*E.g.*, HIC, HIPAA, Biosafety, COI, or IACUC?) Have all related training requirements been met?
- Does the sponsor require royalty sharing by Yale with the Sponsor? (If so, GCA must negotiate prior to acceptance of the award.)
- Does the sponsor impose special restrictions on accepting other funding?
- Are there terms that give the sponsor other claims to IP developed at Yale? (If so, GCA must negotiate prior to award.)
- Does the sponsor provide confidential information related to the research? (If so, GCA should be advised and all key personnel on the application must be aware of the provisions.)

### Tip

All questions related to grant and contract preparation and interpretation of award documents should be addressed to the Offices of Grant and Contract Administration. Accounting and Reporting issues should be directed to the Office of Grant and Contract Financial Administration. For additional information bearing on research involving individual protected health information, please see this *Guide's* section on HIPAA-Related Agreements.

Note that research compliance and review of protocols related to a grant or research contract are not treated in this *Guide*.

## ■ Clinical Trials

These are agreements between the University and various institutions in which the University agrees to test or monitor drugs, procedures, techniques, and devices that might be used for the care of patients. These include trials that are industry-sponsored, investigator-initiated, or part of clinical networks.

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

**OFFICES TO CONTACT FOR INPUT AND REVIEW**

**GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel, YSM Finance, the Provost's Office, and OCR as needed.

**YMG Medical Billing Compliance Office (785-3868)**

For questions related to billing

**Research Compliance Offices**

**WHERE TO GO FOR REQUIRED SIGNATURES**

**GCA (432-2460 FAS, 785-4689 YSM)**

Agreement

**Departmental Chair and Business Manager**

GCA transmittal form

**Other Departmental Chairs and Business Managers**

GCA ProSum transmittal form

*Consider:*

- Is a Clinical Research Organization (CRO) involved, and if so, is its role clear?
- Is the sponsor only providing the drug, or is it establishing the protocol?
- Has an FDA Form 1572 been filed for the PI, if appropriate?
- Is an Investigational New Drug or Device application (IND) required?
- Has the PI confirmed that the awarded amount of support will adequately provide for the scope of work?
- Does the budget distinguish between research costs paid by sponsor and treatment costs payable by third party insurers? (*See p. 3 of Medical School ProSum.*)
- Does third party billing require any pre-approval?
- Are clear payment instructions provided?
- What are the reporting requirements, both for financial and research matters? Is the timetable realistic?
- Are there research compliance issues or conflicts? (*E.g., HIC, HIPAA, Biosafety, COI, Radiation Safety.*) Have all research training requirements been met? Has the protocol been submitted to the appropriate Research Compliance Offices? Has

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

a protocol-specific COI Disclosure Form generated by the HIC been filed in addition to the annual disclosure to the Provost's Office?

## ■ Startup-Sponsored Agreements

These are agreements to perform research at Yale that are financed by small, privately owned businesses (“startups”). In some cases Yale faculty may have a financial interest or board seat or the company may be based on a license of Yale IP executed through the Office of Cooperative Research. These agreements may also include SBIR or STTR research subcontracts or agreements in direct support of research at Yale.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

#### **GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel, YSM Finance, the Provost's Office, and OCR as needed

#### **COI Office (432-3233)**

For questions related to COI and Yale startups

### WHERE TO GO FOR REQUIRED SIGNATURES

#### **GCA (432-2460 FAS, 785-4689 YSM)**

Agreement

#### **Departmental Chair and Business Manager**

GCA transmittal form

#### **Other Departmental Chairs and Business Managers**

GCA transmittal form

### *Consider:*

- Have the proposed research and the faculty's related financial interests (if any) been disclosed to the COI Committee and, if so, has the proposal been approved? (The faculty member must advise on this.)
- What is the scope of work of any subcontract as a percentage of the total award? (It should not be greater than that allocated to the prime grantee.)

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

- Does the amount of financial support that is budgeted in the proposal or award provide adequately for the scope of work?
- Is it clear that Yale space and other Yale resources such as staff time, supplies, equipment, etc., will be used for Yale purposes only? (The business should not have access to Yale resources beyond the extent in the agreement).
- Will students be engaged in performing the research? (If so, this fact should be disclosed to the COI Committee. The students should be notified of the faculty member's interest.)

### Tip

For additional information, see Faculty Handbook Section X.D, and Policy on Faculty Relationship with Startups, Addendum to Yale Policy on Conflict of Interest and Conflict of Commitment [www.yale.edu/provost/html/faculty.htm](http://www.yale.edu/provost/html/faculty.htm).

## ■ Collaborative Agreements

These are agreements under which Yale scientists work with scientists from other non- or for-profit entities on defined research projects. These may involve sharing or exchange of research materials and other resources, and contemplate intellectual input from both parties. Yale may also receive funding from the entity that employs the collaborating scientists.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

#### **GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel, YSM Finance, the Provost's Office, and OCR as needed

#### **Research Compliance Offices**

### WHERE TO GO FOR REQUIRED SIGNATURES

#### **GCA (432-2460 FAS, 785-4689 YSM)**

For Agreement

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

**Departmental Chair and Business Manager**

For GCA transmittal form

*If other Department is involved:*

**Other Departmental Chair and Business Manager**

For GCA transmittal form

*Consider:*

- Is it clear who is collaborating on the research?
- Are there any confidentiality concerns? (If so, GCA should be advised and all key personnel on the application should be made aware of the confidentiality provisions.)
- Is what is being shared clearly articulated? *e.g.*, ideas, results, materials.)
- Is it clear who will own or have access to any resulting IP?
- Are there budgetary caps? (*e.g.*, indirect costs, faculty salary, equipment.)
- Is cost sharing required? (If federal: is cost sharing mandatory or voluntary?)
- Does the amount of financial support that is budgeted provide adequately for the scope of work?
- What are the financial and technical reporting requirements? (Is the timetable realistic?)
- Are there research compliance issues? (*E.g.*, HIC, HIPAA, Biosafety, COI, or IACUC?) Have all training requirements been met? When do protocols need to be submitted?
- Has the GCA transmittal form been signed by all necessary parties at Yale?
- Are there elements of the research activity that require insurance, and if so, is responsibility for obtaining coverage clear?

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

## ■ Outgoing or Incoming Research Subcontracts

These are grants or contracts in which Yale, holding a primary agreement (the “Prime”) for sponsored research, procures research services or collaborative research efforts from another institution (outgoing); or in which another institution, holding a prime agreement, contracts with Yale to provide related services or collaborative efforts (incoming).

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**GCA (432-2460 FAS, 785-4689 YSM)**

Outgoing and incoming subcontracts

**Research Compliance Offices**

### WHERE TO GO FOR REQUIRED SIGNATURES

**GCA (432-2460 FAS, 785-4689 YSM)**

Application and subcontracts

**Departmental Chair and Business Manager**

GCA transmittal form

### Consider:

- Have you obtained a copy of the Prime agreement and provided a copy to GCA?
- What are the technical reporting requirements? Is the timetable realistic?
- Which terms of the Prime, if any, flow down to the subcontract? (Be aware of this requirement and ask GCA if unclear about any terms and conditions.)
- Does the amount of financial support that is budgeted or awarded provide adequately for the scope of work?
- Have research compliance issues been identified and addressed? (*E.g.*, HIC, HIPAA, Biosafety, Radiation Safety, COI, and IACUC.) Have all research training requirements been met? Can protocols be timely submitted for review by research compliance committees?
- Which party is responsible for insuring the research components?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ Material Transfer Agreements (MTAs)

Material transfer agreements (commonly called “MTAs”) are agreements that set the terms on which proprietary materials are transferred by Yale to, or received by Yale from, another institution for use by designated persons in specified research protocols. Proprietary materials that are often transferred under an MTA include, for example, certain chemical compounds and genetically altered mice. MTAs address the scope of permitted use, publication, and the respective intellectual property rights of the transferor and recipient. The terms of these agreements vary depending upon whether the materials are “incoming” or “outgoing” and whether the other party is an academic institution or a for-profit company. Hazardous materials and materials to be used in humans may be transferred under an MTA, but special conditions will apply. Researchers generally initiate an incoming transfer by obtaining a standard form from the transferring institution. Yale’s established forms of MTA appear on the websites of the Offices of Grant and Contract Administration and the Office of Cooperative Research.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**GCA (432-2460 FAS, 785-4689 YSM)**

For standard materials

**Office of Cooperative Research (785-6209)**

**OEHS (785-3555)**

For hazardous materials

### WHERE TO GO FOR REQUIRED SIGNATURES

**GCA (432-2460 FAS, 785-4689 YSM)**

*Consider:*

- Is it clearly stated what materials will be transferred and what are their permitted uses? (Yale cannot agree to include in the definition of Materials any subject matter that has the potential to be an Invention.)
- Will confidential information be disclosed and has it been defined? (Faculty data resulting from research using the Material should not be considered the provider’s confidential

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

information. It is important for faculty investigators to review confidentiality terms in MTAs to ensure that any information, such as sequence information or the molecular structure of a compound, is to be kept confidential under the MTA will not be required for the publication of research results.)

- If payment is required, are the terms clear?
- (Incoming MTAs) Does the agreement give the transferor a right to license or own research results? (Heavily disfavored and under some conditions, not permitted.)
- Are materials under export control restrictions?

### Tip

Faculty members generally deal directly with GCA on MTAs. A faculty member who is receiving materials is often required to sign the MTA, in addition to GCA or OCR. GCA will consult with Office of Cooperative Research and/or the Office of General Counsel for assistance in negotiating MTAs that pose unusual IP questions.

## ■ Clinical Service Agreements Clinical Care and Management

These contracts establish the terms on which either (1) Yale faculty physicians provide clinical care and/or management of clinical care services to another medical group or facility, or (2) a physician other than a full-time Yale faculty physician provides professional medical care to Yale patients. In the second situation, typically a voluntary faculty appointment is granted pursuant to a faculty appointment letter from the Office of Faculty Affairs that sets forth the rights and obligations as a voluntary faculty member; in addition, YSM and the individual enter into an agreement setting forth the terms for the paid clinical services. This Subsection addresses the employment agreement, not the faculty appointment letter. In both cases, the arrangement should be reviewed by OGC for compliance with Anti-Kickback and the Stark Act safe harbors and exceptions.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

*OFFICES TO CONTACT FOR INPUT AND REVIEW*

**YMG, Senior Associate Dean for Clinical Activities and Strategic Planning (785-6808)**

**GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel, YSM Finance, the Provost's Office, and OCR as needed

*WHERE TO GO FOR REQUIRED SIGNATURES*

**GCA (432-2460 FAS, 785-4689 YSM)**

*Consider:*

For Yale faculty physicians providing clinical care/management to another group or facility—

- Does the agreement allow for Yale to select the physician assigned to the agreement, or is a particular physician identified? If a particular physician is identified in the agreement, does the agreement address what will happen if that physician is unable to perform the services throughout the term of the agreement?
- Have the malpractice and indemnity provisions been reviewed by GCA?
- Can we establish that compensation is set at fair market value?
- Does the agreement establish appropriate billing arrangements?
- Has there been a proper Medicare reassignment of billing rights?
- Does the agreement address the issue of the use of the Yale name?
- Does Yale retain rights to appropriately access medical records (*e.g.*, in connection with billing audits or litigation) during and after the term of the agreement?

For non-Yale physicians providing clinical care to Yale patients—

- Is the physician's relationship clearly defined (*e.g.*, employee or independent contractor right to employee benefits, Yale responsibility for employment related taxes)?
- Has the physician properly reassigned to Yale the right to bill?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- Does the physician have adequate malpractice insurance?
- Is the physician bound by all relevant Yale policies and procedures, including all compliance-related requirements?
- Have minimum qualifications been established (e.g., Connecticut medical license, Drug Enforcement Agency certification, hospital medical staff privileges, board certification)?
- Has the physician been credentialed by Yale Medical Group for managed care contracting purposes?
- Has the physician been checked by the Medical Billing Compliance Office for Medicare exclusion/debarment?
- Does the agreement address the issue of the use of the Yale name?
- Are the physician's duties clearly defined?
- Can Yale terminate for cause?
- Can Yale establish that compensation has been set at fair market value?

#### Tip

Many clinical care and management service agreements must be discussed by the YMG Clinical Initiatives Subcommittee for review, so allow time for this process to take place.

## ■ Clinical Service Agreements State of Connecticut

These are single- or multi-year agreements for the performance by Yale of state-funded programs or federal pass-through funded state projects that may or may not be located at Yale. These might include, for example, agreements to provide children with special health care needs, HIV services, psychiatric consultations, and also include funding from the University of Connecticut (ordinarily, research programs).

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

**OFFICES TO CONTACT FOR INPUT AND REVIEW**

**GCA (432-2460 FAS, 785-4689 YSM)**

GCA will consult with the Office of General Counsel as needed

**WHERE TO GO FOR REQUIRED SIGNATURES**

**GCA (432-2460 FAS, 785-4689 YSM)**

**Others as required by GCA ProSum transmittal (for application)**

*Consider:*

- Are the services clearly defined?
- Is the time commitment clear?
- Are there adequate provisions for malpractice coverage?
- If outcomes measures are required, are they reasonable?
- What are the financial and technical reporting requirements and can they be met?
- Will the Department be able to cover the financial penalties for late reporting?
- Does the State make claims to IP (either patents or copyrights) developed at Yale? (If so, consult with GCA.)
- Does GCA have a copy of the State agency guidelines for RFAs?
- Have you followed all formatting and other instructions?
- Has the agency contact information been forwarded to GCA?

## ■ Hospital Agreements for Medical Residents and Fellows

These are agreements that establish relationships between Yale School of Medicine and other hospitals for medical education purposes. They govern such topics as medical residency and fellowship programs conducted at or outside of Yale University. These agreements usually follow a template established by GCA and General Counsel, consisting of two parts. The first part, referred to as a master Affiliation Agreement, establishes general terms under which the hospital or

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

other facility will accommodate medical residents and fellows for training purposes. The second part, referred to as a Departmental Agreement, contains the specifics of a given Department's training program at the facility. Business Managers are likely to have the most input into the Departmental Agreements. Certain terms are controlled by a 1999 Affiliation Agreement between YSM and Yale New Haven Health System that addresses, in part, medical education agreements between YSM with other institutions.

*OFFICES TO CONTACT FOR INPUT AND REVIEW*

**GCA (432-2460 FAS, 785-4689 YSM)**

(GCA will consult the Office of General Counsel on development and revisions of templates for Master and Departmental Agreements and for any deviations from the templates)

*OFFICES TO CONTACT FOR SIGNATURES*

**GCA (432-2460 FAS, 785-4689 YSM)**

*Consider:*

- Is the scope of service adequately and accurately described?
- Does the agreement provide for the correct level of educational affiliation and use of name based on the scope of service (as established in the 1999 Affiliation Agreement)?
- Do the compensation terms reflect all aspects of compensation for services and any other educational support?
- Is the budget in each agreement based on a standard pricing grid?
- Are the correct program representatives identified?

## ■ Veterans' Administration-Related Personnel Clinical and Service Agreements

These are agreements under which the Veteran's Administration purchases the research services of YSM faculty or staff under an Interagency Personnel Agreement ("IPA") or may enter into a broad service agreement with Yale for clinical services to be provided by a YSM Department.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

**OFFICES TO CONTACT FOR INPUT AND REVIEW**

**GCA (432-2460 FAS, 785-4689 YSM)**

**YSM Dean's Office (785-4672)**

**VA (GCA can provide contact information)**

**WHERE TO GO FOR REQUIRED SIGNATURES**

**GCA (432-2460 FAS, 785-4689 YSM)**

*Consider:*

- For IPAs: Has the person in question been employed at Yale for a minimum of 3 months prior to the start of the IPA?
- For IPAs: The limit of employment under an IPA (regardless of extent of effort) is 3 years; it may sometimes be extended one year. Has the limit been exceeded?
- For IPAs: Are there any other costs that you and the VA agree will be covered in the IPA?
- For service agreements: Is the pricing based on relative value units (RVUs)? If so, does this recover the salary and fringe as required? If not, how will services be charged and verified?
- For service agreements: Do both the physician and his or her chair understand the physician's obligations while on a VA tour of duty? Can the physician's Yale obligations be managed to avoid any conflict with the VA tour of duty commitment?
- For both: Has the federal fringe rate been utilized?
- For both: How are benefits being addressed?
- For both: Does a VA "without compensation" IP agreement need to be signed?
- For both: Is Yale or the VA responsible for insuring for liability for the person's actions or does the person need his or her own liability insurance?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ Confidential Disclosure Agreements (CDAs)

CDAs (also called Non-Disclosure Agreements (NDAs)), are agreements under which one or both parties commit to keeping information disclosed to them confidential for a certain time and using it only for an agreed purpose. These are typically presented to the Office of Cooperative Research in connection with proposed licensing of University intellectual property. They may also be sent directly to a faculty member or Department, in connection with proposed consulting or research. They may be required before Yale investigators and colleagues enter into a research collaboration agreement in order to permit the parties to share proprietary research ideas on a preliminary basis.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**GCA (432-2460 FAS, 785-4689 YSM)**

**OCR (436-8096)**

**Office of General Counsel (432-4949)**

### WHERE TO GO FOR REQUIRED SIGNATURES

**OCR (436-8096)**

For outgoing Yale confidential information

**GCA or OCR (432-2460 FAS, 785-4689 YSM)**

For incoming confidential information, and when the Agreement requests institutional commitment in addition to the PI's signature

### *Consider:*

- How is the confidential information defined and identified?
- Will discussions at meetings and telephone conversations need to be reduced to writing?
- Is the IP that is subject to these obligations clearly identified?
- Must the confidential information be labeled? (This is the preferred method.)
- Does the agreement prevent a faculty member from publishing research results? (It should not.)
- How long do the obligations of confidentiality last? (Usually five years at longest; preferably three or fewer.)

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

- Are there adequate exceptions to the obligations for confidentiality (e.g., for information required to be disclosed by law, or if information is independently developed or learned)?
- Is the purpose for which the confidential information may be used clearly stated?
- Are steps being taken to make sure all those individuals who may be privy to the confidential information know what they can and cannot do with the information?

## ■ Medical Student Clerkships and Nursing Practicums/Clinical Placements

These agreements with other health care institutions (primarily hospitals) provide opportunities for educational and professional learning experiences for students enrolled at the School of Nursing and the School of Medicine.

### OFFICES TO CONTACT FOR INPUT AND REVIEW

**Office of Student Affairs (737-5495 YSM)**

**Appropriate Business Manager within the YSM or Nursing School**

**GCA (432-2460 FAS, 785-4689 YSM)**

**General Counsel's Office (432-4949)**

For YSN contracts

### WHERE TO GO FOR REQUIRED SIGNATURES

**GCA (432-2460 FAS, 785-4689 YSM)**

YSM agreements and YSN agreements

*Consider:*

- Has the length of the clerkship been established?
- On what basis can the host institution remove a student?
- Have the students' necessary qualifications been identified?
- Have the supervisory/preceptor roles of Yale and the other institution been clearly defined?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- Are the prerequisites acceptable and completed (*e.g.*, student health screening requirements or criminal background checks)?
- Have the insurance and indemnification provisions been reviewed by OGC? (GCA takes care of obtaining this review.)
- Are there any restrictions on the right to publish information related to the clinical experience?

## ■ **Inter-institutional Memoranda of Understanding**

These are agreements, usually between the University and another academic institution, that outline relationships and respective rights and responsibilities on joint academic endeavors and typically do not involve any transfer of funds. Examples are memoranda of understanding regarding human research subject compliance affiliations or the development of jointly owned intellectual property. They are generally used to clarify the parties' expectations regarding a cooperative understanding.

### *OFFICES TO CONTACT FOR INPUT AND REVIEW*

**GCA (432-2460 FAS; 785-4689 YSM)**

For research

**OCR (436-8096)**

For IP

**Office of General Counsel (432-4949)**

For highly public or unusual commitments

**Provost's Office (432-4444)**

For highly public or unusual commitments

### *WHERE TO GO FOR REQUIRED SIGNATURES*

**GCA (432-2460 FAS, 785-4689 YSM)**

For research

**OCR (432-1096)**

For joint development of IP

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

*Consider:*

- Does the agreement obligate Yale University financially or otherwise?
- Are all the involved individuals adequately identified?
- Is the program adequately described?
- Is there a voluntary termination provision? (Preferable.)

## MISCELLANEOUS AGREEMENTS

### ■ HIPAA-Related Agreements

*Note: The following Health Insurance Portability and Accountability Act (HIPAA)-related agreements apply only to designated parts of Yale, which are called the “Covered Components.” The Covered Components are Yale School of Medicine, Yale Medical Group, Yale School of Nursing, Yale University Health Services, Yale Department of Psychology clinics, and Yale University Group Health Plan and certain others, e.g., Provost’s Office and OGC which have been advised of their status as a covered component.*

#### ***Business Associate Agreements (BAA)***

Yale’s Covered Components (*see* Note, above) under HIPAA must enter into a Business Associate Agreement (“BAA”) with an entity if they wish to permit the entity to use or access Yale’s protected health information (“PHI”) on the Component’s behalf. The BAA contains assurances, required by HIPAA, that the business associate (“BA”) will safeguard the PHI. Existing contracts should be amended, if necessary, to include the business associate assurances. This requirement does not apply to relationships with another treating health care provider.

#### OFFICES TO CONTACT FOR INPUT AND REVIEW

**GCA (YSM, 785-4689)**

**Procurement (432-9982)**

**HIPAA Privacy Office (436-3650)**

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*

WHERE TO GO FOR REQUIRED SIGNATURES

**The office authorized to sign the underlying agreement that involved transfer of PHI and led to a BAA.**

*Consider:*

- Has the University contracted with another person or entity on behalf of the Department to perform activities that include the use of PHI? (*E.g.*, medical transcriptionists, billing companies, collection agencies, medical records storage companies, computer programmers, or software developers that have access to PHI.)

**Tip**

See Yale Policy 5033, Disclosure of PHI to Business Associates, for detailed information, including definitions and other relevant resources. [www.yale.edu/ppdev/](http://www.yale.edu/ppdev/)

The Procurement website also provides helpful information for processing BA agreements and explains the requirement that a BA Tracking Form be completed. See: [www.yale.edu/procurement/hipaaCompliance](http://www.yale.edu/procurement/hipaaCompliance)

## ***Data Use Agreements***

Under HIPAA, protected health information (PHI) may be disclosed for research, public health activities, or health care operations, with certain restrictions. These include a requirement that a “limited data set” (which means a set of partially de-identified health information) may be used or disclosed for these purposes if (and only if) Yale has a “data use agreement” in place with the recipient of the limited data set. A data use agreement contains restrictions on how the limited data set may be used and disclosed by the recipient. The data use agreement must conform to Yale Procedure 5039 PR.1, available at [www.yale.edu/ppdev/](http://www.yale.edu/ppdev/).

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

**OFFICES TO CONTACT FOR INPUT AND REVIEW**

**GCA (432-2460 FAS, 785-4689 YSM)**

**HIC, HSC, HSRRC (785-4688 YSM, 436-3650 FAS, 7-2420 YSN)**

**HIPAA Privacy Office (436-3650)**

**WHERE TO GO FOR REQUIRED SIGNATURES**

**GCA (432-2460 FAS, 785-4689 YSM)**

Agreement

**Departmental Chair and Business Manager**

GCA transmittal form

*Consider:*

- What data is being shared? Does the data include health information about individuals?
- Who owns the PHI that is to be used or disclosed? Is the PHI held by YSM, the School of Nursing, Yale University Health Services, a clinic of the Department of Psychology, or the University's Group Health Plan?
- How will the data be used?
- Do the terms of the data use agreement conform to the University's Data Use Agreement (available at Yale Procedure 5039 PR.1, [www.yale.edu/ppdev](http://www.yale.edu/ppdev))?

**Tip**

For extensive guidance on research-related procedures, forms and agreements (including data use agreements) related to HIPAA, refer to the Yale HIC website, [www.info.med.yale.edu/hic/hipaa](http://www.info.med.yale.edu/hic/hipaa), which contains a comprehensive Researcher's Guide to HIPAA, an Interactive Guide to HIPAA, and useful links.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ **Leases of Real Estate and Related Property Management Services**

These are leases or other agreements for the use of space on- and off-campus to serve Yale needs, and agreements with third parties to provide brokerage or property management services for such spaces. They cover arrangements where the University is the tenant in space owned by others, or where the University acts as landlord in its commercial or residential properties near campus. All such agreements are handled by the Office of University Properties. The Office of Facilities Development and Operations administers YSM leases, under the supervision of University Properties. Examples of common lease requests are: for office space to house a Department during renovations; for research space; lease of a residence for a visiting scholar.

Agreements for the use of academic facilities by outside groups are handled in a variety of ways. The use of Woolsey Hall by non-profit or governmental groups is handled by the Office of New Haven and State Affairs. For other matters, the Office of General Counsel should be consulted.

### *OFFICE TO CONTACT FOR INPUT AND REVIEW*

**Office of Facilities (632-6811 FAS, 785-4668 YSM)**

**Risk Management (432-0140)**

For tenant insurance requirements

### *WHERE TO GO FOR SIGNATURE ON A LEASE*

**Office of Facilities (632-6811 FAS, 785-4668 YSM)**

### **Tip**

A special space request form is being developed and will be available from the Office of University Properties. University Properties will only act on Department space requests after the Budget Office and/or Provost's Office has approved the request.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ **Transfer of Obsolete University Equipment**

When University equipment can no longer be used for the purpose intended or is replaced with newer equipment, it may be sold to third parties, if authorized by the Department chair. Computers, vehicles, furniture, fax machines, and copiers are often disposed of in this way.

University equipment should be sold at fair market value; sales tax must be collected on such sales; and accounting records should be updated in a timely way. Other dispositions (such as transfer within the University) may also be appropriate. If the equipment was purchased using sponsored funds or was assigned to a sponsored award, Grant and Contract Administration (GCA) should be contacted to determine the proper method of disposing of the equipment and the proper accounting for any proceeds on the sale.

The Procurement Office should be contacted to assist in determining the fair market value and, where necessary, in preparing a bill of sale. When selling University equipment, it is important that the sales be final, no warranty be extended to the buyer, and the equipment be sold “as is.” Sales of certain equipment, particularly relating to laboratory research, may also need to be reviewed and cleared by OEHS.

### *OFFICES TO CONTACT WITH QUESTIONS*

**Procurement (432-9982)**

**Controller (432-5524)**

**GCA (432-7138 FAS, 785-4689 YSM)**

**OEHS (785-3550)**

### *WHERE TO GO FOR SIGNATURE ON BILL OF SALE*

**Procurement (432-9955)**

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*

### Tip

For further information, refer to the following Yale policies:

- Disposal of Computers Policy 4202 (forthcoming)
- Equipment Policy 4209.1 and 4209.2  
[www.yale.edu/ppdev/policy/4209/4209.html](http://www.yale.edu/ppdev/policy/4209/4209.html)
- Auto Fleet Policy 1705.1  
[www.yale.edu/ppdev/policy/1705/1705.html](http://www.yale.edu/ppdev/policy/1705/1705.html)

## ■ Other Miscellaneous Contracts

Many other contracts are often developed at or presented to the University. They may have special characteristics that require review before they are signed. These include, for example, agreements on behalf of the School of Drama, engaging the services of an actor; at the museums, regarding traveling exhibitions; at the libraries; and in student services. Procurement, Human Resources, Grant and Contract Administration, Risk Management and the Office of General Counsel would be pleased to work with your Department or School to develop templates and guides for managing contracts that recur in any School, and to review contracts presented by outside vendors.

### OFFICES TO CONTACT WITH QUESTIONS

**GCA (432-7138 FAS, 785-4689 YSM)**  
**Procurement (432-9982)**  
**Office of General Counsel (432-4949)**  
**Human Resources (432-5755)**  
**Risk Management (732-0140)**

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

## CERTAIN OFFICIAL DOCUMENTS

### ■ Immigration Documents

The appointment of foreign nationals, *i.e.*, persons who do not hold either U.S. citizenship or U.S. permanent resident status, is governed both by federal regulations and institutional policy. The Office of International Students and Scholars (OISS) is the University's representative for all immigration matters to the U.S. Department of Homeland Security (DHS), which includes the successor to the former Immigration and Naturalization Service (INS) as well as other federal agencies, such as the Departments of State and Labor. The OISS Director or Associate Director, or his or her delegatee, must sign any immigration documents issued by or on behalf of the University. Any immigration document submitted to any of these agencies that bears another signature purporting to represent the University will not be valid and will be returned. Outside counsel may not be engaged in this process on behalf of the University without explicit authorization of OISS and the Office of General Counsel.

#### OFFICES TO CONTACT FOR INPUT AND REVIEW

**OISS (432-2305)**

**International Tax Coordinator (432-5530)**

For tax-related questions

#### WHERE TO GO FOR REQUIRED SIGNATURES

**OISS (432-2305)**

#### *Consider:*

- Does this individual need Yale's support to obtain authorization to work in the United States?
- Do current immigration regulations and Yale policy permit sponsorship of the individual for the desired position?
- Is there sufficient time before the proposed start date to make the necessary arrangements for the individual's immigration status and employment authorization?
- Are there any limits on the employment authorization, such as time limits, that might be of concern?

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

- Does the appointment letter include the statement, “This offer is contingent upon obtaining and retaining valid immigration status”? (It should.)
- Who will pay the filing fees required (if any) of the immigration application?
- Is the individual able to maintain valid immigration status, with continual authorization for employment, through the duration of the appointment at Yale?
- Has a Form I-9 (DHS) been completed for the newly hired employee? Has the I-9 information been entered into Oracle or BMS?
- If the individual’s permission to work is extended, has the Form I-9 been updated?

## ■ Bank Accounts

All requests for bank services must be coordinated through the Cash Manager in Treasury Services. These includes requests for, or changes to:

- Bank accounts
- ATM machines
- Credit card services
- Letters of credit
- Lockboxes
- Reporting or reconciliation services
- Foreign currency
- Any other bank service

The Cash Manager is available to advise on vendor selection and time requirements. Once the Department has reviewed the agreement to determine whether the terms are acceptable to it, the agreement should be forwarded to the Cash Manager, who will also provide a copy to the Office of General Counsel for legal review. The Cash Manager will coordinate and negotiate any needed changes to the terms of the agreement offered by the vendor, and obtain necessary signatures. Contact the Controller’s Office (432-5525) or the Cash Manager (432-4100) with any questions.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

## ■ Tax Filings

The Office of the Controller is responsible for the filing of all University tax returns and other tax documents and obtaining the authorized signatures for these filings. These filings include:

- Federal and State income tax returns
- Exempt Organization Business Income Tax Return (*i.e.*, Form 990)
- State Sales Tax Returns
- Payroll Tax Returns
- Exemption Certifications
- Tax Treaty Exemptions
- Other Federal, State and local tax filings

With the Office of General Counsel and the Vice President for Finance and Administration, the Tax Office acts as the University's representative in communications with tax authorities.

The Office of the Controller is also responsible for the filing and/or oversight of federal, state and local tax filings of certain Yale-related entities. The Controller's office determines whether for these purposes an entity is related to the University, and the appropriate amount of oversight to provide. Contact the Tax Office (432-5530) or the Controller's Office (432-5524) with any questions.

## ■ Customs Powers of Attorney

A document called a "customs power of attorney" must be executed when the University needs to appoint an agent, usually a specialized company, to act on its behalf at United States Customs offices and to assist in the importation of goods. In reviewing a customs power of attorney, the individual arranging for the shipment should consider whether the shipment is properly identified, and the time for shipment correctly shown on the document. The Office of General Counsel (432-4949) will assist in reviewing and obtaining an authorized signature on these documents, which are usually executed by the Associate Vice President for Administration.

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*



## Other Useful Information: Institutional-level Contracts



This section describes contracts typically entered into in support of the University infrastructure and for the benefit of all Schools and Departments.

### ■ Government Agreements

#### *Federal*

The University enters into various agreements with the federal government, often rooted in regulatory requirements, in which the University commits to monitor standards, provide services or establish rates of recovery for awards and services. Examples include the Medicare Provider Rate Agreement and the Universities Facilities and Administration Rate Agreement.

#### *OFFICES TO CONTACT WITH QUESTIONS*

**Yale/YSM Finance Office (432-1335)**  
Indirect Cost Rate Agreement

**Yale Medical Group (785- 2140)**  
Medicare Agreement

### ■ Government Agreements

#### *State*

Yale University and the State of Connecticut have entered into contracts under which Yale School of Medicine agrees to provide covered health care services or which establish a large research/patient care partnership. Examples include the Medicaid Agreement and Connecticut Mental Health Center (CMHC) Memorandum of Understanding.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

*OFFICES TO CONTACT WITH QUESTIONS*

**Yale Medical Group (785-2140)**

Primary Contact—Medicaid

**CMHC (785-2117)**

Primary Contact—Mental Health

## ■ Large Affiliation Agreements with Private Entities

A number of agreements establish multifaceted relationships between Yale University and other institutions. Examples include affiliation agreements with the Howard Hughes Medical Institute, Pierce Laboratories, and Hill Health Center. Agreements involving staffing must be cleared by Human Resources.

*OFFICES TO CONTACT WITH QUESTIONS*

**GCA (432-2460 FAS, 785-4689 YSM)**

**Office of General Counsel (432-4949)**

**Human Resources (432-5703)**

If staffing issues are involved

## ■ Managed Care Contracts

The University enters into managed care contracts as a provider of health care. Under these agreements, Yale faculty physicians, Yale nurse midwives, and other Yale licensed practitioners agree to provide professional health care services to members of health insurance plans in exchange for negotiated compensation from the plans.

*OFFICES TO CONTACT WITH QUESTIONS*

**Yale Medical Group (785-2140)**

**Yale School of Nursing Faculty Practice Group Business Office (737-5678)**

**Office of General Counsel (432-4949)**

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ Insurance Contracts

Insurance contracts protect the University against loss of assets due to damage to University property, or property of others, or injury to persons. The purchase and maintenance of insurance is handled by the Office of Risk Management, located in the Controller's Office. This Office handles all existing insurance, as well as any requests to purchase additional or new types of insurance, or to change coverage in any way. Any requests regarding the insurance provisions in a contract should be reviewed with the Risk Manager.

### *OFFICES TO CONTACT WITH QUESTIONS*

**Controller (432-5524)**

**Risk Manager (432-0140)**

## ■ Information Technology Agreements

These include licenses for software products and maintenance agreements for software products applications that support major administrative systems, such as Oracle; and equipment and services that support instruction, administrative systems, and communications.

### *OFFICES TO CONTACT WITH QUESTIONS*

**Procurement (432-9982)**

For equipment

**ITS (432-6500)**

For key requirements, definitions and vendor evaluation roles

**Software Librarian (432-6500)**

## ■ Construction and Facilities Agreements

These are the many contracts for work on University buildings or infrastructure, excluding telecommunications systems. The University may contract with design professionals, interior designers, for con-

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*

struction management, or property management, among other areas. An array of subcontracts may issue from the prime contracts. See Policy 3201 for additional information, [www.yale.edu/ppdev/](http://www.yale.edu/ppdev/)

*OFFICES TO CONTACT WITH QUESTIONS*

**Office of Facilities (432-6754 FAS, 785-4620 YSM)**

**Deputy Provost in charge of Department**

For general questions

**University Budget and Planning Office (432-1335)**

**GCA (432-2460 FAS, 785-4689 YSM)**

For sponsored contracts that provide funds for construction or renovation

## ■ Collective Bargaining Agreements

The University has negotiated agreements with each of Locals 34 and 35 of the Federation of University Employees; the Yale Police Benevolent Association (YPBA); and the New Haven Federation of Teachers (NHFT), establishing the terms and conditions of employment of University employees in those bargaining units. Local 34 includes clerical and technical workers; Local 35 includes service and maintenance workers; the YPBA includes police officers and detectives in the University Police Department; and Local 933 of the NHFT represents teachers working at the University's Cedarhurst School, a New Haven-based School for children with special needs.

*OFFICES TO CONTACT WITH QUESTIONS*

**Labor Management Relations (432-9822)**

**Office of General Counsel (432-4949)**

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460 (FAS) 785-6878 (YSM)**

## ■ Benefits-Related Contracts

These are contracts for employee benefits such as health and dental benefits, disability insurance, pension coverage.

### *OFFICES TO CONTACT WITH QUESTIONS*

**Human Resources (785-5839)**

## ■ Trademark Licenses

These are agreements under which the University permits others to use its name and logos, on certain terms and conditions. The Office of the Vice President and Secretary of the University must approve any use of the Yale name and marks, whether through a license agreement or otherwise. For additional information see the following web sites: [www.yale.edu/licensing](http://www.yale.edu/licensing), and [www.yale.edu/licensing/rules/tradepol.htm](http://www.yale.edu/licensing/rules/tradepol.htm).

### *OFFICES TO CONTACT WITH QUESTIONS*

**Associate Secretary or Secretary (432-7888; 432-7280)**

For use of Yale name and any University trademarks

**Office of General Counsel (432-5703)**

For use of Yale name

## ■ Patent and Copyright Licenses

Patent licenses are agreements to permit an entity to use a patented invention owned by the University, in return for the payment of a royalty. Patent licensing is conducted by the Office of Cooperative Research (OCR) and is governed by the University's Patent Policy, which is available through the OCR website, [www.yale.edu/ocr/invent\\_policies/patents.html](http://www.yale.edu/ocr/invent_policies/patents.html). Faculty typically deal directly with OCR licensing associates on patent licenses of inventions created by them. Copyrighted material developed on campus may also be licensed by

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

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*OFFICES TO CONTACT FOR FURTHER INFORMATION*

**Office of Cooperative Research (436-8096)**

**Office of General Counsel (432-4949)**

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*Questions about contracts?*

*Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)*

# Reference: Contracting Basics

## The “Blue Pages”



### ■ General Principles

#### Why have a written contract?

There are several key reasons that having a written agreement (in addition to a purchase order, for example) often makes sense:

##### *To prevent disputes*

Having a good, clean written contract can prevent disputes between the parties. It defines their expectations about all elements of the transaction. It assigns consequences for departures from expectations or failure to abide by its terms. The process of negotiation, drafting, and review that leads to a document satisfactory to both parties should ferret out areas of potential difficulty in the relationship and give both parties confidence that they know what they are getting into when their institutions sign on the dotted line.

##### *To create a cost management tool*

A good contract aids in managing expected costs. It also provides a control on costs resulting from contingencies, and it allocates risks of the unexpected between the parties. It provides a framework for planning and managing ongoing projects with a complicated or variable cost structure.

##### *To comply with legal requirements and for use in litigation*

Some contracts must be in writing to be enforceable in the courts. These include contracts for the sale of goods with a value of \$500 or more, contracts that will not be completely performed within a year, real estate contracts, and personal services contracts. Even if the law does not explicitly require one, a written contract will be the best way to show what the agreement of the parties was if one party is attempting to enforce the contract. A written contract helps exclude other extraneous evidence, such as what representations were made during negotiations.

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

*To establish the nature of the relationship for tax and other purposes*

A written contract provides evidence about the parties' intent and relationship that may be important for reasons apart from contract enforcement. These include, for example, to establish the correct tax treatment of the transaction and to determine whether a joint venture or agency relationship was intended by the parties.

## ■ Parties and Signatures

### *A letter agreement versus a "formal" agreement*

Either will be binding if properly executed (*i.e.*, signed) by both parties. Be careful to distinguish between a "letter of intent" and a letter agreement. The former, if carefully drafted, is not binding, but may still be useful in setting out the main components of a complex transaction under negotiation, or where needed for preliminary approvals, obtaining financing, etc. Inartful drafting may create binding obligations, however, in what was thought to be a letter of intent.

Note: *A signed **purchase order** delivered to a party and accepted by performance creates a contract. Yale's purchase order contains standard terms and conditions that ordinarily apply to such a contract. Many vendors attempt to substitute their own standard terms and conditions. Vendors' terms and conditions can usually be negotiated, and should be negotiated on large purchases or contracts that are otherwise important because they create significant financial, time, or other exposure.*

### *The Parties*

Institutional contracts should be in the name of the correct legal entity (*i.e.*, the correct corporate name, not the name of a Department or division). At Yale, Yale University is the correct corporate name: the individual Schools and Departments are not. The contracting party may be identified as "Yale University, on behalf of its School of \_\_\_\_\_" to identify the responsible entity within the University.

### *Signatures*

The contract should be executed by an authorized officer or agent of the contracting entity. **If the signer is not authorized to act on behalf of the entity, the contract may be void and unenforceable, and the unauthorized individual may be personally liable.** The authority of officers is typically found in governing documents of the organization or in resolutions of its governing board. At Yale, certain

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

officers are authorized to sign contracts for the University and to delegate their signature authority in certain limited ways, to, for example, the Director of Procurement or the Directors of Grant & Contract Administration. This *Guide* is intended to identify which office will obtain properly authorized signatures on contracts intended to bind the University.

#### NOTES REGARDING SIGNATURES

**“Apparent authority”:** If an unauthorized agent (or employee) represents himself or herself to act with authority and the institution knows but fails to refute the misrepresentation, it may be bound in dealings undertaken by the agent with a third party who is misled by the representation. (This could occur, for example, in actions taken by officers of student organizations, unauthorized administrative officials, faculty committee chairmen, or program directors.) Make sure that the extent of one’s authority to bind the institution, and limits on that authority, are communicated to all persons who may be in a position to deal with third parties.

**Always satisfy yourself** as to the authority of the signatory for the other party.

**Formalities of execution (signature):** An acknowledgment by a notary is required for documents to be recorded in public offices. An acknowledgment commonly also serves as a confirmation or representation of the signatory’s authority. Acknowledgment is not necessary for a contract to be effective.

## ■ Comments on Customary Contract Provisions

### *Recitals or “whereas” clauses*

These statements customarily appear on the first page of the contract. They set the stage for the transaction and are useful also for establishing the general intent of the parties in entering into the contractual obligations. They may aid in the interpretation of the contract in litigation or for other reasons (*e.g.*, for tax reasons it may be important to articulate the relationship of a transaction to the exempt purpose of the college or university – as in a research contract, to distinguish the work from providing services for a fee).

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

### *Date, term*

A contract usually states its effective date, which may be as of the date of last signature on the contract, or “as of” a prior date if retroactive effect is mutually desired and appropriate. The term of the contract should be specified, including options for extension, if any. A failure to state the duration of a contract may be construed to create a term of “reasonable” duration or an indefinite term. If the contract is to be terminable at will by either party, it should so state, including applicable notice provisions.

### *Performance*

The obligations of the parties with respect to performance should be set forth in explicit detail. The deliverables must be well-defined. Where the contract is for acquisition of a custom product or service, such as customized computer software or construction, detailed plans or specifications are imperative and should be explicitly incorporated into the contract. (Note that a Request for Proposal is not automatically part of a final contract.) Where plans are not yet complete, the institution should have a right of approval (but beware of committing the University to acting ‘reasonably’ in approving plans: this will limit its ability to reject an offering that it finds unsuitable).

In contracts for the sale of goods (governed by Article 2 of the Uniform Commercial Code), additional or modified terms in an acceptance which differ from the terms in an offer may become part of the final “contract” if not objected to. Purchase order forms have terms and conditions that are usually incorporated into the contract and should be referred to conspicuously on the face of the form (a web reference may be provided). Personnel responsible for placing purchase orders should be carefully instructed in the use of forms and should always examine acknowledgments and confirmations of orders for inconsistencies with the purchase order terms. In conflicts between a typewritten or handwritten entry and a printed form, the former will control.

Time for performance should be specified. If time is “**of the essence**”—meaning that it is critical to acceptable performance—the contract should so specify. Timing of performance may be linked to penalties or right of termination. If performance or delivery is to be in stages or installments, method of acceptance of stages should be specified, and payment should generally be made in stages that are linked to performance.

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*Questions about contracts?*

Call Procurement **432-9982** or Grants & Contracts **432-2460** (FAS) **785-6878** (YSM)

A “**force majeure**” clause may excuse or defer performance obligations upon the occurrence of specified events beyond the parties’ control—*e.g.*, “acts of God,” strikes, wars, etc. Often the list is unreasonably inclusive and should be pared down. Note whether performance is excused or merely delayed. Link the occurrence of a force majeure event to early termination rights.

Be wary of obligations that might be difficult to meet because they are not entirely within the institution’s power to control. For example, it may be difficult to comply with obligations to maintain the confidentiality of proprietary data. Insist upon “reasonable effort” standard of compliance or other form over which the University does have control.

All aspects of the required performance should be reviewed for consistency with applicable institutional policies, *e.g.*, right of publication without delay, patent policy, use of institutional name, etc.

***Payment: how much, when, to whom, and in what manner***

Payment terms should be clear. Confirm that promises to pay within a certain number of days of receipt of invoice are realistic. A payment schedule may be linked to performance or delivery in stages, with partial “holdbacks” until satisfactory completion of performance by the other party. If payment is to be received from the other party in installments, the payee institution should have the option to accelerate remaining payments in the event of default on payment of one installment. In international transactions, specify the currency and method and timing of determining the exchange rate.

Prepayment should be avoided, as should extended payment arrangements, and profit- or risk-sharing with the vendor (which may trigger negative tax treatment).

In most procurement transactions, payment should not be promised for sooner than 30 days of Yale’s receipt of invoice. In addition to other options offered by Procurement, checks are a common mode of payment by the University; on large transactions, wire transfers may be made. Payment direction is available from Procurement or GCA, and, if a vendor proposes payment terms that vary from those contained in the University’s standard purchase order, consult with Accounts Payable before proceeding with the vendor.

## **Warranties and representations**

### ***Express warranties and representations***

If you are the buyer, insist on them; if you are the seller, limit or disclaim them. A “merger” clause (often inserted by vendors) will bar a claim based on earlier oral or written representations, for example, about the quality or suitability of goods. Distinguish between representations and conditions of performance obligations: breach of representation by the vendor gives the buyer a right to sue but does not necessarily excuse payment; failure of condition gives the buyer a right to cancel. It may be advantageous to restate some warranties as conditions in order to have an “out” as an alternative to (or in addition to) an action for breach of warranty.

### ***Implied warranties***

The Uniform Commercial Code provides that there are implied warranties of “fitness for a particular purpose” in all sales of goods, and of “merchantability” in all sales by merchants. In some states, there is an implied warranty of title and against infringement. Buyers should get express warranties wherever possible and not rely on implied warranties. Be specific – refer to specifications incorporated in the contract.

### ***Disclaimers of warranties***

Warranties, both express and implied, usually can be disclaimed. Disclaimers must be conspicuous and carefully drafted or may be ineffective. A disclaimer of all warranties that is contradicted by limited express warranties will likely be invalid. Always have counsel review disclaimers, warranties, and limitations of warranties. (Disclaimers may not affect rights of third parties to whom implied warranties may be extended by statute.)

## **Remedies, Insurance, and Indemnification**

A contract may extend or limit the remedies available to parties for breach. Note carefully any attempt to limit damages (*e.g.*, to exclude liability for consequential damages or to limit liability to the contract price) or the assertion of claims (*e.g.*, provision for short time bar on bringing claims). If extreme, such provisions may be “unconscionable” and unenforceable.

### ***Arbitration and other alternative dispute resolution***

Arbitration offers a substitute to resort to the courts for dispute resolution. Consider carefully the pros and cons of arbitration and know the practice in the particular trade or field before accepting an arbitration clause. The primary advantages are likely to be cost and time savings (although arbitration is not necessarily inexpensive). Disadvantages include the nature of arbitration, as it is not bound by legal precedents, insulated from judicial review, and typically conducted in secret. An arbitration clause may be broad, subjecting any dispute relating to the contract to arbitration, or narrow—subjecting only certain types of claims to arbitration. Mandatory binding arbitration clauses are common in construction and labor contracts and in many types of sales contracts, but may not be preferred in other settings. Arbitration may be compelled under Federal Arbitration Act (transmittal involving interstate commerce) or state statutes. Other alternative dispute resolution techniques (*e.g.*, mediation) and international dispute resolution agencies may also be referred to as preferable to suit.

### ***Insurance***

Identify the risks in the transaction and consider whether they are insurable. Review carefully insurance requirements applicable to the other party; if insurance is required (for example, to support an indemnity), have the other party include Yale as an additional insured on its policy and have the party furnish a certificate of insurance prior to or upon execution of the contract. (Consult with the Office of Risk Management and provide that office with a copy of the party's certificate.) Be sure that the contract requires that the policy be continued in effect and calls for adequate notice of cancellation.

### ***Indemnification***

Indemnification clauses should be reviewed by counsel. Distinguish between indemnification against liability (requiring prior determination of liability) and indemnification against costs arising from claims. In general, indemnification clauses obligating the University should be negotiated out wherever possible. (Note that state institutions may not be permitted under state law to agree to indemnify; they may be able to agree to defend an action.) Contracts granting the use of the institution's facilities or of its real property should carry indemnification clauses in favor of the institution as well as insurance requirements. Indemnity obligations may and sometimes should be insured: check with Risk Management and counsel.

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*Questions about contracts?*

Call Procurement 432-9982 or Grants & Contracts 432-2460 (FAS) 785-6878 (YSM)

### ***Releases and caps on liability***

Vendors may attempt to limit their liability for delivered goods by advising that they will not be held liable for consequential or incidental damages caused by their products, or to obtain a release in advance for liability occasioned by them. Such clauses should be reviewed by counsel or procurement experts. They allocate risk in the transaction and should be a part of the calculus of exposure and benefit that is performed before entering into the agreement.

### ***Termination***

Rights may be granted to early termination **with or without cause**, usually upon written notice to the other party. Make sure notice is adequate. If one party has the unqualified right to terminate at any time without obligation to give notice, that party's promise to perform may be deemed "illusory" and neither party may be bound.

### ***Upon default***

It is customary to provide an opportunity to remedy a default without a given period after written notice specifying the default, before the right of termination accrues (courts are reluctant to enforce forfeitures). Default should be defined with precision; it may include breach of certain performance obligations, failure to make a payment on time, for example. If the termination right is linked to a "material" default, be certain such default is adequately defined.

### ***Audit of books and records***

Any contract calling for payment based upon a percentage of receipts or sales (*e.g.*, percentage leases, royalty agreements) or income of another party should have a clause entitling the institution to audit the financial information underlying the determination of the payment. Periodic financial reporting may be necessary in other types of agreements as well. Where financial reports are to be obtained from the other party, require that they be certified if possible by an independent auditor; if not, by an officer.

### ***Title and ownership***

If property is to be transferred, specify when title is to be transferred. In sales contracts under the UCC, title is now less important as a determinant of risk of loss, but it is nonetheless useful to be clear. Ownership of ideas and inventions and other intellectual property arising in the course of custom services should be specified. Special language is needed to ensure that a vendor assigns relevant intellectu-

al property rights to the University so that the University may use the work repeatedly and in varying circumstances.

## **Miscellaneous clauses**

### ***Use of Yale name***

Clauses restricting the use of the Yale name by the other contracting party are of great importance, although they are not ordinarily found in standard contract forms. They should prohibit any use in public documents (including client lists and the like, for advertising, publicity or any other purpose) without advance written consent. The Secretary's office is charged with deciding whether to approve a public use of the Yale name.

### ***Survival of terms***

If obligations are to survive termination of the contract (such as the obligation to maintain confidentiality), they should expressly be stated as surviving, either for a specified period following termination (often the case with warranties) or indefinitely.

### ***Assignments***

Prohibition of all assignments (*i.e.*, in which the rights and obligations under a contract are transferred from the original party to another party) may be invalid; instead, require advance written consent. In the absence of an express provision, personal service contracts and contracts involving extensions of credit are normally not assignable.

### ***“Merger” clause***

This clause states that the written contract document supersedes all prior representations and agreements, the latter being “merged” into the final contract. Make certain that all agreements and representations that are to stay in effect are restated in the body of the final contract.

### ***Amendments***

Require that all amendments be in writing and signed by both parties.

### ***Notices***

Make sure the institution's representative(s) designated to receive notices are the appropriate persons; that correct and complete contact information is clearly provided in the contract; and that the manner of

delivery is adequate (e.g., reputable national overnight mail service with a tracking capability; fax with a confirmation capability); and that days within which to perform an obligation are clearly calculated.

### *Governing law*

Parties may select the governing law, as long as it bears some relationship to the transaction. For Yale contracts, Connecticut law is preferred, but New York law may be acceptable. In international contracts, New York law may be specified. Silence on the question may be appropriate in some instances. Yale does not ordinarily agree to submit to jurisdiction (*i.e.*, to appear in court) in remote locations.

## ■ Contracting in the Yale Environment

Certain special aspects of Yale’s legal and business landscape affect its contracts. Here is information about some key issues.

### *Tax Considerations*

#### 1. Federal Tax Constraints

Yale’s exemption from federal income tax under Section 501(c)(3) of the U.S. Internal Revenue Code enables the University to provide education, conduct research, and provide clinical care free from income tax liability, if certain basic principles are observed. From its exempt activities, an exempt organization may collect tax-free revenue such as tuition, payments for conducting research, and the like. It may also derive tax-free revenues from certain “passive” activities, such as licensing intellectual property, renting real property, or investing its endowment. Generating revenue through other means, however, such as providing services to non-Yale businesses or individuals, can create liability for income tax. This is the “unrelated business income tax,” often known as “UBIT.”

An exempt organization like Yale may not confer special benefits upon individuals or for-profit organizations (“**private inurement**”). Private inurement can occur, for example, by paying above-market compensation for goods or services or by endorsing for-profit enterprises or their products. In addition, the University may not enter into relationships with taxable entities that could be construed as general partner-

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ships, in which the University could have unlimited liability for the debts of the partnership, potentially benefiting the for-profit enterprise at the expense of the University. The consequences for such prohibited activities range from imposition of significant financial penalties to loss of the University's tax exemption.

Many buildings at Yale are constructed or renovated with **tax-exempt bond financing**. Any facility that has been financed in this way may be used only for educational, research, and clinical purposes. Accordingly, faculty consulting activities, rental to outside groups, management contracts for those facilities with for-profit entities, among other uses, are all prohibited or severely limited in most buildings on campus. The tax code and the bond agency also sharply restrict the terms on which sponsored research may be conducted in those facilities.

## 2. Property Tax Constraints

Provided that the property is used for its educational, research, or clinical missions, Yale is also exempt from state and local property taxes on the real and personal property it owns. Profit-making activities in which the University is involved, such as start-up ventures, faculty consulting, and sales of goods or services to outside users, should all be conducted off campus (in taxable properties owned by the University, for instance) to avoid creating liability, both financial and political, for real property taxes on facilities housing those activities. Note that property owned by a for-profit lessor and leased to Yale is not exempt from property tax. The University typically subsidizes the tax liability, usually by paying increased rent, both with respect to leased real property and leased equipment. This provides a strong incentive for the University to purchase real and personal property, rather than lease.

## 3. Sales Tax

*Purchases* by the University in furtherance of its exempt mission are exempt from the Connecticut sales tax, and vendors should not add sales taxes directly or indirectly to any such purchases. Sometimes sales tax may not be immediately visible to the purchaser, as in the case of taxes on component materials or services purchased from a vendor. *Sales* by the University, on the other hand, are subject to sales tax to the extent that a given service or good is subject to the sales tax—not all are. Consult with the Tax Department or with the Office of General Counsel if you are not certain that your Department is getting the max-

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imum benefit of Yale's various exemptions from state (sales and state income), local (property) and federal (income and excise) taxes.

### ***Confidentiality; Personal Financial Information***

The University often requires, in some cases because of legal requirements, that data provided to vendors be treated confidentially. This is particularly important with regard to any personal financial or health data, and social security numbers, of course. Special contract provisions should be used in these circumstances. The Procurement Office and the Office of General Counsel can help craft appropriate language for inclusion in a contract that calls for the provision of such data to a vendor.

### ***Preference for Use of Yale Forms***

Using standard University terms and conditions, as embodied in various forms such as the University Purchase Order, can save time and effort. Where possible, resist vendor insistence on use of its forms of agreement. Tailoring vendor forms to Yale standards is rarely worth the effort, and may cause delays. Appropriate forms can often be found through the Procurement Office. Suggestions for the development of new forms are welcome.

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## ■ ACRONYMS

<b>BAA</b>	Business Associate Agreement (under HIPAA)
<b>CDA</b>	Confidential Disclosure Agreement
<b>COI</b>	Conflict of Interest (Committee or Office)
<b>CRO</b>	Clinical Research Organization
<b>DHS</b>	U.S. Department of Homeland Security
<b>DHHS</b>	U.S. Department of Health & Human Services
<b>FDA</b>	U.S. Food & Drug Administration
<b>FAS</b>	Faculty of Arts & Sciences
<b>GCA</b>	Grant and Contract Administration
<b>GCFA</b>	Grants and Contracts Finance Administration
<b>HIC</b>	Human Investigation Committee (IRB for YSM)
<b>HIPAA</b>	Health Insurance Portability and Accountability Act of 1996
<b>HSRRC</b>	Human Subjects Research Review Committee (IRB for YSN)
<b>HSC</b>	Human Subjects Committee (IRB for FAS)
<b>IACUC</b>	Institutional Animal Care and Use Committee
<b>IDE</b>	Investigational Drug & Device Exemption
<b>IND</b>	Investigational New Drug or Device
<b>IP</b>	Intellectual Property
<b>IPA</b>	Interagency Personnel Agreement
<b>IRB</b>	Institutional Review Board (for human subject research)
<b>LOI</b>	Letter of Intent
<b>MTA</b>	Material Transfer Agreement
<b>NDA</b>	Non-Disclosure Agreement
<b>OCR</b>	Office of Cooperative Research
<b>OEHS</b>	Office of Environmental Health and Safety
<b>OGC</b>	Office of the Vice President and General Counsel
<b>OISS</b>	Office of International Students and Scholars
<b>PHI</b>	Protected Health Information (under HIPAA)
<b>PPDEV</b>	Controller's Policy and Procedures Development project
<b>PI</b>	Principal Investigator
<b>PO</b>	Purchase Order
<b>PROSUM</b>	Proposal Summary and Transmittal Form for use at the School of Medicine GCA
<b>RFARFP</b>	Request for Application/Request for Proposal
<b>ORM</b>	Office of Risk Management
<b>RVU</b>	Relative Value Unit
<b>SBIR</b>	Small Business Innovation Research grants program
<b>STTR</b>	Small Business Technology Transfer Research grants program
<b>YMG</b>	Yale Medical Group
<b>YSM</b>	Yale School of Medicine
<b>YSN</b>	Yale School of Nursing
<b>UCC</b>	Uniform Commercial Code

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