*Department Process – Health Affairs Swim Lanes*

Below is an outline of the relative responsibilities of the parties in an ordinary agreement request. For Health Affairs there is a substantial variety in the types of agreements that we manage, so there may be variations on the themes for unusual projects. If something doesn’t seem right, please reach out to Contracts to discuss alternatives. However, in most cases, the process below will minimize delays and ensure that the project and the agreement move through the process smoothly.

We broke it up into what we call “swim lanes” – swim lanes are the responsibilities of each department and reflect each department’s authority and practical knowledge and ability to keep the project moving. As noted above, there is some flexibility for a swim lane, and room for collaboration, but deviating from your lane will almost always result in delays and complexity.

**Swim Lane: Originating Department (OD) – This department that will engage in the work and, typically, makes the agreement request, but may defer the request to an IR department, defined below.**

**The OD is responsible for:**

1. Establishing the final Scope of Work (SOW) and Budget/Fee Schedule (BFS)

By both policy and practicality, establishing the SOW and the BFS is the department’s responsibility. Contracts has no way of knowing the interest, intent, capacity, costs, expertise, etc. that are needed even to effectively negotiate these items with the second party. Moreover, in order to even start an agreement negotiation, these documents must be complete and final.. By submitting a contract request through c360, the OD is certifying that all documents and the responses in c360 are correct and final with respect to the project. Contracts will assume that these documents are final and approved by relevant parties once submitted and if there are substantial changes to either of these documents after submission, the OD may be asked to resubmit the request in c360 so that leadership is reviewing and approving the appropriate final project. Note that elements of a SOW and/or the BFS may be incorporated into the body of the contract, but that doesn’t mean that it is now a contracts issue. The OD is responsible for ensuring that any description of the services or financial provisions are correct whether it is in a separate exhibit or inserted into the agreement. Contracts may have questions, may identify errors or policy violations, and may direct the project to other reviewers (such as Finance) if issues are identified, but Contracts won’t second guess the SOW/BFS generally.

1. Ensuring appropriate cost recovery/expenses for proposed work

This is a key factor and Contracts assumes that the OD has fully negotiated the payment terms and budget, complete with any required approvals. It is critical not just to recover costs, but to make sure that UC is not providing items of value without compensation to a second party, as we are a public entity. For example, use of UC’s name is a valuable commodity, but it may be covered by general fees, it may be part of a broader collaboration that absorbs the cost, it may be necessary to serve UC needs, etc. so Contracts can’t independently evaluate if costs are covered. The OD must ensure such transactions are in line with cost accounting policies. Most financial problems or conflicts should be discussed with or reviewed by the appropriate Finance or Accounting office prior to submitting to Contracts with a final BFS.

1. Establishing high level approvals (Compliance, IT, Privacy, Leadership, Finance, Legal counsel, etc.) as needed to determine if the Scope/Budget is feasible

The OD is primarily responsible for clearing the SOW with any approvers needed if there are questions about whether or not the project can or should be done as written in the SOW, or if the SOW or BFS must be handled differently, prior to submitting a contract request. Contracts will do a secondary check on this if we notice anything out of compliance and will work with approvers with respect to the contract language (below), but the OD should secure approval in advance of submission to Contracts if they are unsure about the permissibility of performing the SOW. This means checking with IT if the project involves software access, checking with Privacy if there is a risk to patient information, checking with Public Affairs if another party will use UC’s name as part of the agreement, etc. Any such high-level approvals should be put in writing in some form and attached as an ancillary document when submitting the Contract request.

1. Contract Request (typically).

Typically, the OD submits the contract request through c360 by completing the BAR (although, in some cases, another department may submit, see Intermediary Requestor below). The c360 request is required both as a certification by the OD to the University and to provide all needed information to begin a contract negotiation. As noted above, the SOW and BFS should be in a final state so that the leadership reviewers, which is the initial approval step in c360, can understand the final project and approve. Along with the SOW and BFS, any ancillary documents, including a proposed agreement from the second party, if available, should be attached to the c360 request. The OD is NOT obligated to manipulate or make changes to the proposed agreement, whether it is a UC template or a second party document, and no changes should be made to the agreement unless tracked changes is turned on and all edits by the OD can be identified. It is also helpful to know if the OD has already discussed alternate language with the second party or if the OD is proposing new language. It’s very important with respect to the legal terms of the contract that Contracts can determine when changes have been made, by whom and why.

1. Contract Maintenance.

The OD is responsible for ensuring that the SOW remains an accurate reflection of the work being done, the BFS covers all costs and is consistent with market rates and that any changes to the project that may impact the contract is communicated to Contracts (or the IR, if applicable, see below). If the OD is the contract requestor, they are responsible for promptly responding to any messages or alerts from Contracts (including the c360 system), and for alerting Contracts to any changes in staffing related to management of the contracts (particularly the requestor or department approvers). For any project, even multi-year contracts that do not require annual amendments, UCDH requires that a review of the SOW and BFS will occur at least annually for each project. C360 will send out reminders of this for certain projects, but this is an OD obligation, regardless of whether any reminders are sent by c360, Contracts or an IR. In addition to the maintenance of the contract, the OD is also responsible for updating and maintaining information with Contracts as it changes. Particularly, the OD is responsible for ensuring the second party contact information remains up to date.

**Swim Lane: Intermediary Requestor (IR) – This department will manage the administrative and tracking elements of a project on behalf of an OD or multiple ODs. This is typically necessary when more than one department will participate in a project (i.e. for Shriners agreements), where one department has administrative oversight of a type of work (i.e. Medical Education oversight of medical student educational affiliations) or where a department has practical oversight over certain key projects at UCDH (i.e. Affiliate Network management of Cancer Care Network agreements).**

**The IR is responsible for:**

1. Ensuring full support of the Scope and BFS by any and all ODs.

This is a critical step. The IR must confirm with each department that they have accepted the SOW and BFS before confirming that fact with Contracts. Contracts must be able to assume that the IR has full support from the OD(s) when submitting on their behalf. The OD(s) will be doing the work and incurring the costs, the IR is their representative and will either ask the OD(s) to directly certify their approval of the work or certify on behalf of the OD(s) so that Contracts does not execute an agreement for work that an OD is not willing to do or at a cost that the OD did not approve. It is good practice to separately discuss or loop in the OD(s) if Contracts or the second party has any questions or concerns relating to the Scope of Work or BFS or any unusual legal obligations required by the second party so that the OD can approve any variations in the work that arise during the negotiation process. It is an ongoing IR responsibility to ensure that the ODs are on board with the current SOW and BFS).

1. Submitting a Contract request on behalf of the OD.

While it isn’t a mandatory function, an IR could manage a project submitted to Contracts by an OD, it is extremely burdensome for the IR to perform its role if it is not the Contracts requestor in c360. Generally, the requestor will be the entity that will receive notices, have access to agreements, work with Contracts on amendments, etc. It is important to remember that submission in c360 is a legal certification of the accuracy of the submission that will be reviewed and approved by leadership and will drive the contract terms and conditions. Every question should be answered fully and as accurately as possible and any doubts about a response should be worked out with the OD and/or the Contracts office before submission.

1. Confirming high level approvals have been secured.

The IR, OD and Contracts have parallel, but different, responsibilities to ensure that all required approvals and reviews are completed for the project being performed. Ideally, these approvals should be secured as early as possible. The OD will primarily be responsible for ensuring that the final SOW and BFS can move forward as written and that any unusual aspects of the projects are approved. Similarly, the IR should ensure that the OD has completed these project level “can we do this?” approvals and either request that the OD get any missing approvals or secure the approvals directly. Additionally, the IR may have other approvals, such as ensuring compliance with accreditation body requirements or ensuring consistency with leadership directives, that they may need to secure in addition to the OD approvals. Ideally, the IR would request confirmation emails or other documentation from the OD of any approvals they received so that they can pass them on to Contracts to avoid duplication of work.

1. Contract Maintenance.

The IR, assuming it is the contract requestor, will maintain the agreement and be the primary contact for c360 and continue to be the liaison with applicable ODs. The IR will determine the department approvers in c360, which may be either the OD approvers or IR approvers. The IR is responsible for ensuring full OD support for the project regardless of the approvers selected in c360, as noted above, so it will be a business decision by the IR in consultation with the OD to determine which approvers are appropriate for each agreement. Continued assurance that there are no necessary changes to the agreement, including the SOW and BFS, should be attained from each OD on at least an annual basis. As with a new request, the IR will act on behalf of the OD for requesting amendments, confirming continuation of the contract and will be responsible for notifying Contracts of any change in personnel at the IR or OD that are responsible for the contract management. Contracts will assume that any statement by the IR that the contract should continue, end or be changed will have been confirmed directly by the OD(s). Any modifications or terminations to the contract should not be made without concurrence from the affected OD(s). Either directly or through the OD, the IR is also responsible for ensuring that information submitted to contracts remains up to date, particularly the second party contacts.

**Swim Lane: Contracts – Contracts will manage the legal contract terms negotiation to ensure consistency with the law, UC policy and the stated objectives of the contract requestor and will manage and provide access and support for the agreement throughout its life cycle. Contracts will sign the agreement, within its delegated signature authority, and will be the office of record for the agreement.**

**Contracts is responsible for:**

1. Ensuring required documents and initial approvals from leadership are completed through c360.

Contracts typically does a cursory review, but will generally **not** do a deep dive, on the SOW, BFS or non-legal activities in the submitted materials. Contracts does review these documents to ensure that the project is clear enough for leadership to sign off on the project at the outset and to ensure that the proper approvals (i.e. CMO review) are completed. Contracts will ask for clarity and confirmation with respect to the SOW/BFS as needed, but Contracts doesn’t direct or second guess the nature of the project itself. If Contracts sees something that may be an error in those documents or an issue that may conflict with policy, Contracts will identify it and ask the OD/IR for clarity and (if needed) refer it to the appropriate reviewing body. This applies even to provisions in the body of the agreement that are not legal obligations. Contracts won’t agree to changes by the second party of SOW/BFS terms (whether in the body of the agreement or in an exhibit) without approval from the contract requestor.

1. Determining the proper type of agreement and applicable legal terms.

Contracts manages dozens of different types of agreements, all of which have different and sometimes conflicting provisions (a transfer agreement has entirely different terms than a service agreement, for example). More than that, Contracts has established agreement templates and formats with different types of entities even for the same type of agreement (i.e. a state agreement for services is entirely different from a county agreement for services). In some cases, there is no template for the type of agreement that is requested and Contracts will generate an agreement from scratch or work backwards from a second party paper. There are many factors that go into this decision and it is very project specific. Contracts appreciates input provided by the OD/IR with respect to the intent of the relationship, but Contracts can’t always ascribe an agreement template (or even be confident that our office has authority to sign the agreement) without receipt of the full SOW/BFS and responses to any follow-up questions. It is sometimes a very complex determination.

1. Contracts process.

Once initiated, Contracts will manage the agreement document and the negotiation. Contracts is particularly skilled at finding language that can meet the needs of the parties but remains within the bounds of UC policy and applicable law. It is important to note that Contracts is very accommodating to the second party UNLESS there is a direct conflict with the policy, as our office is tasked with papering an agreement to allow the work to move forward. For most income and no cost agreements, Contracts has to assume that UC doesn’t have much leverage, so we don’t play ‘hardball’ with an agreement for work that the department is eager to engage in. However, either the OD or the IR (with support from the OD) can always direct us differently (as can a directive from an approver such as Risk Management, Compliance, Legal counsel, etc.). For example, for GMP services UC has a unique service and certain intellectual property that the department wants to protect, so Contracts has their okay to initially take a ‘no changes’ approach and, in some cases, a ‘take it or leave it’ approach. Additionally, it is very important that any changes made to a document during a negotiation be tracked in Microsoft Word, whether the changes are made by the second party or the department. As noted above, Contracts strongly recommends that any changes to the body of the contract by the OD/IR be added using the comments tool (such as the notes on the side here) or by clearly marking any changes to the document text. This will avoid confusion and errors and missed changes like this can easily derail a negotiation.

1. Contracts approvals.

As noted above, Contracts must ensure that the language in the contract is consistent with policy and the law in addition to the project proposed by the department. In most cases, Contracts can negotiate language that will keep the terms within the scope of UC policy, but Contracts may need to request approvals from other entities (i.e. Risk Management, Compliance, Legal Counsel, Real Estate Services, etc.) in order to agree to the language provided. Contracts has discretion as to when negotiation options have been exhausted and the threshold for when Contracts requests an exception varies project to project. As noted above, the OD and the IR should be requesting general project approvals, often by the same entities, which in some cases will suffice as an exception that contracts can use to move the agreement forward. However, it is important to note, that these project level approvals are generally approved in the form of ‘can we do this’ and frequently don’t specifically address the contract language or any changes that occur during the negotiation. So Contracts may need to go back, even to the same entity, to approve specific language or confirm that negotiated language is within policy. Any policy exceptions that would affect the work should be communicated to the OD/IR by the Contracts Analyst or posted in c360. Other exceptions, such as an exception to approve a variant insurance limit, would not be so communicated, as it wouldn’t have a bearing on the performance of the work. In connection with some agreements, particularly with government entities, the department may be asked to sign letters of support or certifications or payment confirmations – while these are not contracts and typically may be signed by the department, they often look like agreements. If there is any doubt, it is a good practice to contact Contracts to ensure that a document that looks like a contract is not in fact a contract before the department signs it. If Contracts sends such a document for the requesting department to sign, or it is part of an exhibit to the contract, it should be clear to sign off on the certification. If the OD/IR has any concerns about signing any kind of document, legal counsel can assist.

1. Contracts maintenance.

After the agreement is executed, Contracts continues (as the office of record for the agreement) to maintain digital files for the agreement, to manage amendment requests or other agreement changes over time, reporting, monitoring, termination and closeout for the agreement. As with the contract request itself, any amendment to an agreement must be requested and approved by the IR/OD that requested the agreement. While reminders are sent out by the c360 system, this is a courtesy. It is the OD and IR’s responsibility to ensure that the project is regularly reviewed, the agreement is regularly updated and extended, that the current rates and services are correct, and that the agreement is being performed in accordance with the terms of the contract. Contracts has no oversight of the actual performance of the project and no way to determine actual receipt or expenditures of funds. C360 gives a number of notices to the contract requestor prior to expiration of an agreement and if Contracts does not receive a response after the process completes, we will close out the agreement in c360, although we can hold it open if we receive a communication from the requestor or the second party. It is important to note that, legally speaking, a contract is ended once it expires or is terminated, regardless of its status in c360. When Contracts closes out an agreement in c360 we are just changing its status in the system after the document has been legally ended some time prior.