

NORTHEAST COMMUNITY COLLEGE

ADMINISTRATIVE PROCEDURE NUMBER: AP-6420.0

FOR POLICY NUMBER: N/A

CONTRACTS ADMINISTRATION

1. PROCEDURE SUMMARY STATEMENT

This procedure provides an overview of the process of negotiating and executing contracts involving Northeast Community College (“Northeast”). Unless a specific example is provided below (see Process/ Procedures), all contracts involving Northeast **must** be executed in accordance with the terms of this procedure.

This revised procedure is designed to more clearly delineate the process and procedures required for the approval of contracts, as well as outlining the duties of individuals responsible for negotiating, reviewing, or approving the contract.

2. DEFINITIONS

2.1 This procedure uses the term “contract” to mean any document that creates an obligation, right, or liability for Northeast. A contract may or may not involve the payment of money. Such a document may be called a Contract, an Agreement, a Memorandum of Understanding, a Letter of Agreement, or similar terminology. This procedure applies to the initial contract and to every amendment, renewal, or extension of such a contract.

3. PROCEDURE

3.1 General

3.1.1 The office/division/department (“originator”) responsible for implementing and managing the contract must conduct a due diligence review to evaluate the contract’s benefits and risks to Northeast. The General Counsel stands ready to assist and participate in all phases of contract drafting and negotiations. Following the preliminary review by the originator, a contract must be reviewed and approved by the applicable department director, executive director, dean, associate vice president or vice president, as the case may be. Additionally, certain contracts may require review by other potentially affected offices, such as contracts with technology aspects requiring review by the Director of Security and Technology Services. Prior to final approval or execution of any contract involving Northeast, the contract must be submitted to the General Counsel for legal review and approval.

3.1.2 Northeast will only be bound by written contracts reviewed and approved in accordance with this procedure and executed by employees with written signature authority. A contract executed in conflict with this procedure may be invalid as a matter of law, and the President of Northeast may determine such a purported contract to be void from inception. Failure to follow this procedure may potentially result in individual personal liability for any person who signed the contract on behalf of Northeast.

3.2 Negotiating and Drafting the Contract

3.2.1 The originator responsible for the preliminary review of a contract should be aware that Northeast, as a state entity, is prohibited from agreeing to certain provisions, such as attorneys' fees, confidentiality, damages, indemnification, and intellectual property. See **Attachment A: Items to Consider When Drafting a Contract**. The originator responsible for conducting the necessary due diligence evaluation of a contract should also consult and be aware of the concerns and items generally considered due diligence. See **Attachment B: Due Diligence Considerations**.

3.3 Routing the Contract

3.3.1 The originator is responsible for securing the appropriate internal Northeast approvals prior to signature. The originator shall first route the contract to the Director of Purchasing ("Purchasing"). Purchasing will:

- 3.3.1.1 Review all business terms with the originator, including confirming what Northeast is buying via a completed statement of work and the price to be paid or an applicable pricing schedule.
- 3.3.1.2 Review and edit the contract to address business terms and legal issues and return the contract to the originator with suggested revisions or questions.
- 3.3.1.3 Evaluate vendor modifications and negotiate business and legal terms consistent with Northeast procedures and protocols or seek review by General Counsel to the extent a vendor makes a change outside the scope of Northeast procedures or protocols.
- 3.3.1.4 Seek the assistance of General Counsel if the vendor rejects alternative language or includes any new language that requires General Counsel review.

- 3.3.1.5 Facilitate communications with the originator, the vendor, and General Counsel, including participating in communications between vendor and General Counsel and leading negotiations on behalf of Northeast.
- 3.3.1.6 Assemble the contract with all agreed upon attachments or changes and coordinate with originator to return to the vendor to obtain the vendor's signature on the contract by an authorized signatory prior to Northeast's signature.
- 3.3.1.7 Coordinate with originator to present the Vendor signed contract to the appropriate Northeast official for execution, forward the original signed agreement to the office of the General Counsel, and return a copy to the vendor.

3.4 Signing the Contract

- 3.4.1 All contracts involving Northeast must be signed by a Northeast official with the appropriate signatory authority. The President and the Vice President of Administrative Services, or a designee, have the authority to sign all contracts for Northeast. The Executive Director of Administrative Services shall be a designee. The list of Northeast officials or departments that have been given signature authority is listed in the Delegation of Contract Authority. See **Attachment C: Delegation of Contract Authority**. An official with signatory authority may not further delegate that authority to anyone else. If the appropriate official is unavailable to sign a contract, it must be routed for signature to the President or the Vice President of Administrative Services or designee.
- 3.4.2 As with all contracts, the Northeast official who signs the contract has a duty to give due consideration to the meaning of the document, and the risk and benefits it may bring to Northeast. He or she also has a duty to disclose and manage any conflict of interest. The official who signs the contract must return an original of the signed contract to the office of the General Counsel, as the repository of Northeast's original signed contracts.

3.5 Managing the Contract

- 3.5.1 The originator of the contract is responsible for managing the contract. This includes ensuring that Northeast fulfills its obligations, that the other party fulfills its obligations, and timely arrangements are made (requisition, request for check, invoicing request to AR) to ensure that all necessary payments are sent or collected as agreed. This also includes tending to any necessary renewals or amendments to the contract. The General Counsel is available to assist with any questions or concerns that may arise in managing the contract.

3.6 Use of Preapproved Template Agreements

- 3.6.1 Certain transactions are, relatively, routine in nature and involve the use of a standardized “form” contract or template that has undergone prior review and approval by the General Counsel and has no material or substantive changes to the pre-approved form, are not required to be routed to Purchasing under this Procedure. A current list of preapproved template agreements are as follows:
- 3.6.1.1 Residence Life Academic Year Housing Agreement;
 - 3.6.1.2 Athletic Competition Contracts;
 - 3.6.1.3 Clinical Affiliation and Practicum Contracts;
 - 3.6.1.4 Speaking Engagement Contracts;
 - 3.6.1.5 Facility Rental Agreements;
 - 3.6.1.6 Workforce Training Agreements.
- 3.6.2 Determinations about whether a contract is a “form” should be made in consultation with the General Counsel. If you believe a contract should be treated as a standardized preapproved template agreement, please contact the General Counsel for assistance and review.
- 3.6.3 A template should not require additional legal review so long as the template’s terms are not modified or negotiated. Each template will contain a limited number of blanks and optional provisions, and normal use of the template will include inserting this information or making choices about alternative provisions. Any changes to the template outside of these parameters must be raised with General Counsel.
- 3.6.4 When using a template, the agreement must be routed to Purchasing under this Procedure if: a) A contracting party asks to modify or delete a term of the template; b) Another party has involved an attorney in the discussion of the template; or c) you have any other questions about the use of the template.
- 3.6.5 Always use the most recent form of template agreement as the basis for each agreement. Do not use a previously negotiated agreement as the basis for a new agreement.
- 3.6.6 Each template is specifically designed for a particular type of transaction or matter and should not be used as a general form for other types of work at the College. If you have questions about whether a template is

applicable to a particular factual situation, please seek advice from the General Counsel.

3.7 Electronic Signatures

- 3.7.1 Northeast authorizes the use of preapproved electronic signatures, such as DocuSign, on contracts utilized in conjunction with this procedure. Northeast considers an electronic signature to be an electronic or digital signature executed by an individual with the intent to be bound by, which is unique to the person using it, is capable of verification, and is under the sole control of the signatory. Under Nebraska law, an electronic signature is enforceable and is the legal equivalent of the authorized signer's manual signature.
- 3.7.2 Electronic signatures that do not incorporate security measures and which are typed, copied, pasted, drawn, or embedded as an image into a document are not considered compliant with this procedure and will not be recognized by Northeast as a legitimate, authorized digital signature.
- 3.7.3 Individuals seeking to utilize an electronic signature must sign documents using software approved by Northeast. The software must utilize signatory accounts that authenticate users by password, and produce a time stamp for the digital signatures,
- 3.7.4 The enforceability, construction, interpretation, and validity of an electronic signature will be governed by the laws of the State of Nebraska and the United States of America.
- 3.7.5 Northeast may authorize the use of less formal means of electronic signatures or electronic approvals for internal Northeast approvals, Northeast routing form approvals, or for agreements between Northeast and affiliated Northeast entities. Use of less formal means of electronic signatures or electronic approvals shall be discussed with the General Counsel and must be approved prior to implementation.

3.8 Forms and Related Documents

- 3.8.1 Attachment A: Items to Consider When Drafting a Contract
- 3.8.2 Attachment B: Due Diligence Considerations
- 3.8.3 Attachment C: Delegation of Contract Authority

4. APPLICABILITY

N/A

ISSUE DATE: 03/22/2022

EFFECTIVE DATE: 03/22/2022

REVISION DATE(S): none

PRIOR POLICY/PROCEDURE NUMBER: none

SCHEDULE FOR REVIEW: 2027

DIVISIONS/DEPARTMENT RESPONSIBLE FOR REVIEW & UPDATE: Administrative
Services

SPONSORING DIVISION/DEPARTMENT: Administrative Services

RELATED PROCEDURES/ REFERENCE: none

PROCEDURE KEY WORDS: contracts

ATTACHMENT A

ITEMS TO CONSIDER WHEN DRAFTING A CONTRACT

The following are various items that may arise in contract drafting and negotiation. To further discuss these items or other issues, please call the General Counsel's office.

1. Arbitration / Alternative Dispute Resolution

Northeast should not agree to a clause which provides that any future disputes be resolved through binding arbitration or other form of alternative dispute resolution.

2. Assignment

Northeast generally does not agree to allow the other party to assign its rights under the contract to a third party. We suggest inserting the following language: "This Agreement shall not be assigned by either party without the prior written consent of all the parties to this Agreement."

3. Attorneys' Fees / Costs

Northeast should not agree to a provision that awards attorneys' fees and costs to the prevailing party in any dispute arising out of the contract because Nebraska law provides that attorney's fees are not recoverable unless specifically provided by statute, or by a recognized and accepted uniform course of procedure under common law.

4. Complete Agreement (or Merger) Clause

The contract should contain a "complete agreement" clause, which incorporates all prior representations made during negotiations into the current contract and provides that the representations set forth in the contract are the only representations that bind the parties. We suggest inserting the following language: "This document contains the complete agreement between Northeast and [other contracting party], who stipulate that they, including persons acting on their behalf, have made no representations with respect to the subject matter of this Agreement except such representations as are specifically set forth in this Agreement and that any other representation not contained in this Agreement is not binding."

5. Confidentiality

The other contracting party may attempt to keep information that it provides to Northeast, and even the terms and condition of the contract itself, confidential. Generally, Northeast may agree to use that care which it uses to protect its own confidential information not to disclose to any third-party information provided to it by the

other contracting party. However, the contract must clearly identify certain specific instances where such an obligation of confidentiality does not apply. One of these instances involves information required to be disclosed by law, regulation, or court order, including but not limited to the Public Records Act, which controls the disclosure of information once such information becomes a state record. If confidentiality is an issue, please contact the General Counsel.

6. Damages / Limitation of Liability

Northeast's liability under a contract should be limited to the amount of monies that Northeast receives from the other contracting party. We suggest inserting the following language: "In no event shall Northeast be liable for any indirect, consequential, special or incidental damages whatsoever, for losses that may arise out of the performance of this Agreement, whether based in contract, tort (including negligence) or otherwise. Any damages arising under this Agreement for which Northeast may be liable for any purpose whatsoever shall be limited to the monies actually paid by [other contracting party] to Northeast."

7. Damages / Limitation of Other Contracting Party's Liability

It is generally unacceptable to Northeast for the other contracting party to limit its liability for breaching the contract, to restrict the remedies or relief that Northeast may seek in the event of a breach, or to disclaim express and/or implied warranties. If the other contracting party is attempting to limit its liability in these or other ways, please contact the General Counsel.

8. Delivery / Risk of Loss

If an item is to be delivered to Northeast, it is preferable that the contract provides that the item be tendered F.O.B. destination point. When so shipped, the risk of loss does not pass to Northeast until the item is delivered to the pertinent Northeast facility.

9. Effective Date of Contract

Normally, a contract becomes effective when it signed by both parties. In some instances, a contract is worded such that the effective date of the contract is a date before the parties have actually signed the contract. Although this practice should be avoided, if possible, if it is essential that the effective date of the contract be before the date that the parties have signed the contract, then the effective date should be referred to "as of" the date in question. Performance should not begin under a contract until the contract has been signed by all parties.

10. Force Majeure

If the contract involves the payment of money by Northeast, it is preferable that the contract provides that payment will be excused and Northeast will be deemed to be in breach if Northeast is unable to fulfill its obligations under the contract, “to the extent caused by reasons beyond its reasonable control, including, but not limited to, acts of God, war, insurrection, sabotage, armed conflict, terrorism, embargo, fire, flood, strike or other labor disturbance, unavailability of or interruption or delay in telecommunications or third-party services, or computer virus attacks or hackers.

11. Governing Law and Venue

The contract should state that: “This Agreement shall be governed and construed in accordance with the laws of the State of Nebraska. Venue for any action to enforce the terms and conditions of the Agreement shall be in Madison County, Nebraska.” If the other contracting party will not agree to the applicability of Nebraska law and prefers that the law of another state govern, then the Agreement should remain silent on this issue. Also, Northeast cannot agree to submit to federal court jurisdiction, regardless of where the federal court is located; doing so may constitute a waiver of the State of Nebraska’s Eleventh Amendment rights under the U.S. Constitution.

12. Indemnification / Hold Harmless / Exculpatory Clause

Northeast does not have the authority to indemnify or hold harmless parties with whom it contracts and thus cannot agree to any contractual provision that attempts to impose such an obligation or otherwise attempts to limit the liability of the other contracting party. Similarly, Northeast cannot agree to a provision that exculpates, or excuses, the other contracting party’s fault or liability. In addition, if the other contracting party attempts in any way to limit its liability, such as only to acts of “gross” negligence and “willful” misconduct, please contact the General Counsel.

13. Independent Contractor Status

When Northeast contracts with outside third parties, the contract should include language that makes clear that the parties are independent contractors. We suggest inserting the following language: “Northeast and [other contracting party] shall be deemed to be and shall be independent contractors. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither party shall be bound by the acts or conduct of the other.”

14. Insurance

For insurance purposes, Northeast is a member of the Nebraska Community College Insurance Trust. As such, Northeast cannot agree to contractual provisions that require

Northeast to purchase private insurance policies, to obtain insurance from a particular carrier or in an amount acceptable to the other party to the contract, or to name the other party to the contract as an insured beneficiary. If the other party wants to reference Northeast's insurance coverage in the contract, we suggest inserting the following language: "Northeast employees are covered by insurance administered by the Nebraska Community College Insurance Trust. This coverage has limits of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate." You may also provide the other party with a copy of the Department of Administrative Services' Certificate of Insurance. To obtain a copy of the Certificate of Insurance, please contact the General Counsel.

If appropriate, the contract should require the other party to obtain (or maintain) insurance and should specify that the other party provide written proof of insurance, satisfactory to Northeast, within ten business days of the execution of the contract.

15. Intellectual Property / Patent Rights

Northeast's claims to intellectual property and patent rights should be protected. If these items are an issue in the contract being negotiated, the General Counsel should be contacted.

16. Late Payment Fees

Northeast does not agree to pay a charge or fee for late payment. Accordingly, sections or provisions in a contract that would obligate Northeast to pay a late fee should be stricken.

17. Length of Contract

Ordinarily, Northeast does not agree to enter into a contract longer than one year in duration. Exceptions to this may exist in certain circumstances, such as if the contract does not obligate Northeast to pay money and gives Northeast an unrestricted right to cancel the contract at any time. If you believe that it is necessary to enter into a contract for a period longer than one year, please contact the General Counsel. Contracts may also be renewed. See Renewal of Contract below.

18. Northeast as Contracting Party

Northeast is a political subdivision of the State of Nebraska created by statute as the Northeast Community College Area and constitutes a separate body corporate with the authority to enter into contracts on its own behalf. Accordingly, the contract should be drafted for "Northeast Community College Area, a political subdivision of the State of Nebraska." In addition, that phrase should be included over the signature line for the appropriate Northeast official. See Signatory Authority of Northeast Officials below.

19. Non-Discrimination

Northeast prohibits illegal discrimination and favors a diversified workforce. Accordingly, we suggest inserting the following language: “Neither Northeast nor [other contracting party] shall discriminate against any person on the basis of age, disability, gender, national origin, race, religion, sexual orientation, or status as a veteran in the performance of this Agreement.”

20. Notice

The contract should contain the full name, title, address, and telephone number of a designated contact person for the other contracting party.

21. Payment

Particularly if the contract provides that the other party will pay Northeast, the contract should clearly establish the time, place, and method of payment. For Northeast obligations, Net 30 terms should be requested. Northeast does not prepay for goods or services.

22. Renewal of Contract

As noted above, contracts are ordinarily limited to a period of one year. Contracts may, however, be renewed. A contract should not automatically renew, and it should not renew without Northeast having to affirmatively indicate in writing its agreement to renew the contract. If you desire to renew a contract beyond its initial term, the following language should be inserted: “This Agreement may be renewed for additional periods of one year each if agreed upon in writing by both parties.” Contracts requiring Northeast to expend funds may not be renewed unless the necessary funds have been appropriated.

23. Severability Clause

A severability clause allows a contract to remain enforceable if one or more of its provisions are found to be invalid. We suggest inserting the following language: “If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this contract, such provision is fully severable and this Agreement must be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part of this contract. The remaining provisions of the contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or its severance from this Agreement.”

24. Signatory Authority

The President of Northeast has the authority to sign all contracts for Northeast and the President has delegated that authority in part to various Northeast officials. The Contract Signatory Authority list, which can be obtained from the General Counsel, shows which officials have been delegated authority to sign what type of contracts.

25. Tax-Exempt Status

As a political subdivision of the State of Nebraska, Northeast is ordinarily not required to pay income or sales taxes. Accordingly, any section of a contract that provides for taxes to be withheld from payments owed to Northeast or sales taxes to be added to payments owed by Northeast should be deleted.

26. Termination

If the contract allows early termination by the other contracting party, the contract should also provide that the other party shall pay all costs accrued by Northeast as of the date of the termination, including non-cancelable obligations incurred prior to the effective date of termination. In addition, the other party shall repay to Northeast any monies that it received from Northeast for any obligations that the other party has not fulfilled at the time of termination.

27. Use of Northeast Name

It is important to prevent the unauthorized use of the Northeast name. A contract should provide that: “[Other contracting party] shall not use Northeast’s name in any advertising or publicity material or make any form of representation or statement in relation to the work conducted under the terms of this Agreement that would constitute an express or implied endorsement by Northeast of any commercial product or service, and that it will not authorize others to do so, without first having obtained written approval from Northeast.”

28. Warranties

Northeast should not “warrant” or make guarantees in a contract. If this is important to the other contracting party, Northeast can agree to language that states that Northeast will use reasonable efforts to perform in accordance with the terms and conditions of the contract.

29. “Whereas” Clauses

These clauses generally appear at the beginning of a contract. They often provide background information about the parties and the reason(s) the parties are entering into the contract. Such clauses may aid in establishing the intent of the parties and in interpreting the contract should a disagreement later arise.

ATTACHMENT B**DUE DILIGENCE CONSIDERATIONS**

When Northeast enters into a contract, it enters into a relationship with another party that offers potential risks and benefits. All Northeast personnel involved with a contract should consider the implications of such a relationship before they negotiate, draft, approve, or sign the contract. Such considerations should, at a minimum, include:

- Does a contractual relationship with the other party support the mission of Northeast?
- What are the potential costs and benefits of the contract? Are such costs and benefit of a one-time or recurring nature?
- Does Northeast have the ability to fulfill what would be its obligations under the contract?
- Does the other party have the ability to fulfill what would be its obligations under the contract? Has Northeast contracted with this party before? Have other entities that have previously contracted with this party been contacted?
- Does the individual who will sign the contract on behalf of the other party have the authority to do so?
- What are the consequences for Northeast and the other party if either party fails to fulfill its respective obligations?
- Could another unit within Northeast or within a Northeast affiliated entity provide the “to be contracted for” goods or services?
- Will the contract impact other units at Northeast beyond the unit responsible for managing the contract? If so, have the appropriate personnel at those other units been notified and their views solicited?
- Will the contract impact Northeast affiliated entities (such as [list affiliated entities])? If so, have the appropriate personnel at those entities been notified and their views solicited?
- How will the contractual relationship appear to the Board of Governors, other State agencies, and the general public?
- Will the contract serve in the best interest of Northeast?

ATTACHMENT C

DELEGATION OF CONTRACT AUTHORITY

Authority to enter into contracts on behalf of Northeast shall, with certain limited exceptions, vest in the President or Vice President of Administrative Services, or their designee. By this procedure, the President of Northeast has delegated contract signing authority to the officers and departments as described below. The delegation of authority conferred by the President may be rescinded at any time by the President upon written notification. Any delegation to a person serving in a capacity described shall be automatically rescinded upon cessation of the delegee’s service in their specified capacity. The delegation conveyed may not be further delegated to any other person, or increased in any manner or amount, without prior written authorization from the President.

Any persons signing contracts or agreements on behalf of Northeast must comply with all applicable policies and procedures regarding contracting and procurement, **including routing the contract to Purchasing as set forth above in this procedure.**

Administration and Finance	
Vice President of Administrative Services	Any contracts the President can sign, and any contracts not specifically delegated as set forth below
Executive Director of Administrative Services	As designee, any contracts the Vice President of Administrative Services can sign
Director of Purchasing	General procurement contracts for the purchase of equipment, supplies and contractual services pursuant to Northeast Purchasing Protocols, up to a maximum dollar amount of \$25,000

Educational Services	
Vice President of Educational Services	Educational Affiliation agreements; clinical service and practicum agreements; speaking engagement agreements, up to a maximum dollar amount of \$25,000
Dean of Workforce Development	Workforce Training Agreements
Dean of Applied Technology	Workforce Training Agreements

Development and External Relations	
Vice President of Development & External Relations	Agreements related to services and events for alumni, fund raising and advancement activities, up to a maximum dollar amount of \$25,000.
Technology Services	
Vice President of Technology Services	Technology consulting contracts, software licensing and maintenance agreements, up to a maximum dollar amount of \$25,000.
Student Services	
Vice President of Student Services	Student housing, student activities and speaking engagement agreements, up to a maximum dollar amount of \$25,000.
Human Resources	
Assoc. Vice President of Human Resources	Speaking engagement and employee activities agreements, up to a maximum dollar amount of \$25,000.
Athletics	
Director of Athletics	Athletic Competition Contracts
Events/Facilities	
Lifelong Learning Center Coordinator	Facility Rental Agreements
Extended Campus Directors	Facility Rental Agreements