



James E. Shepard, Founder

TO: NCCU Faculty and Staff

FROM: Hope Murphy Tyehimba
General Counsel

DATE: July 31, 2019

RE: Process and Timeframe for Legal Review of Non-Standard Contracts

1. **General.** The purpose of this memorandum is to inform the NCCU campus community of a new process that should be followed for the legal review of non-standard procurement contracts, construction contracts and affiliation agreements. This memorandum will also provide a general reminder about the timeframe for legal review.

2. **Legal Review of Non-Standard Contracts.**

- a. *Legal Review Required.* When a division or department desires to enter into a contract wherein a vendor's forms, terms and conditions will be used to govern the contract, the contract must be reviewed by an attorney in the Office of Legal Affairs ("OLA"). The vendor's contract is considered a "non-standard contract." The only exception to the requirement for legal review of non-standard contracts rule is when the value of a contract for the procurement of goods or services is less than \$1000; these contracts do not require legal review.

Divisions and departments are encouraged to use standard contracts when possible. Standard contracts include the [NCCU Professional Services Agreement](#), [NCCU Personal Services Contract](#), [NCCU Guest Speaker Agreement](#) and [NCCU Performer Engagement Agreement](#). All standard contracts and instructions for completing standard contracts are included on the [OLA website](#).

- b. *Prohibited or Risky Contract Clauses.* North Carolina Central University is an entity of the State of North Carolina. Because of this status, University personnel may not enter into contracts that contain prohibited or risky contract clauses. A prohibited contract clause is a clause that state entities are not permitted to agree to (such as entering into a contract that will be governed by the laws of a state other than North Carolina). A risky contract clause is a clause that is not in the best interests of the University (such as a clause which limits the vendor's liability in the event of a contractual breach). For these reasons, prior to entering into a contract with a prohibited clause, the prohibited clause must be deleted. Prior to entering into a contract with a risky clause, the risky clause must be modified.

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- c. *Vendor Review of Prohibited or Risky Contract Clauses Checklist.* **Effective immediately**, when a division or department desires to enter into a non-standard contract, the [OLA Prohibited or Risky Contract Clauses Checklist](#) should be provided to the vendor prior to submitting the agreement to the OLA or the Department of Purchasing (“Purchasing”) for review. The vendor should modify its non-standard contract to eliminate prohibited or risky clauses as set forth in the checklist.

If the vendor is unwilling to modify its non-standard contract, the vendor should provide an explanation to the division or department that sets forth the reasons for its decision. The modified agreement and/or the explanation from the vendor should be submitted by divisions and departments to the Purchasing¹ (for procurement contracts) or to the OLA (for construction contracts or affiliation agreements) for review. Individuals submitting contracts for review should clearly indicate in their email correspondence to Purchasing or to the OLA whether or not the Prohibited or Risky Contract Clauses Checklist has been presented to the vendor. Contracts that are presented to the OLA without first providing the Prohibited or Risky Contract Clauses Checklist to the vendor **will be returned** to the division or department for compliance with this requirement prior to being reviewed.

- d. *Time for Review.* The amount of time required for the OLA to review a non-standard contract is *at least* **two weeks**. Though the OLA generally provides feedback to campus constituents in less than two weeks, please note that two weeks is the standard time for the legal review of a non-standard contract. **Please keep this review period in mind and plan accordingly when making a decision to procure a good or service.**
3. **Questions/Additional Comments.** I greatly appreciate your time and attention to the information included in this memorandum. Please feel free to contact me if you have any follow up questions regarding the information included herein at (919) 530-6105 or legalreview@ncsu.edu. Thank you.

¹ When a division or department desires to procure a good or service, regardless of the source of funding, the division/department must first send the contract to the Department of Purchasing for review.