This policy provides guidance for the development and use of written contracts, describes situations for which they are required, and identifies exceptions to those requirements. Well-executed written contracts clarify and define the agreement between the parties and protect against unnecessary risks to the College’s resources and reputation.

Contract Definition

A contract is an agreement between Barnard College and another party that is intended to have a binding obligation and be legally enforceable. Contracts contain the terms and conditions under which goods or services are furnished by either party. Effective contracts provide a common understanding and the essential terms and mutual obligations defined within the agreement that exist between the parties. In addition to formal documents commonly understood to be contracts, documents such as purchase orders, service agreements, leases, and letters or memoranda of agreement, understanding, and intent are contracts if there is a College interest at stake and something of value is exchanged.

Applicability of the Policy

This policy applies to all agreements between Barnard College and any other party, with the following general exceptions:

1. Employee contracts.
2. Contracts involving financial aid and student loans.

When Written Contracts Are Required and When Are They Not Required

Not every arrangement involving the purchase of goods or services by the College, or the use of College facilities or resources by third parties, will require a written contract, but many do. In general, if the arrangement involves any significant risk or potential liability that needs to be allocated between the parties, or involves a situation where the duties and responsibilities of the parties are not so basic and obvious that they do not need to be spelled out in writing, then a contract should be used. In the following subsections, some common types or categories of commercial or business transactions are described, and situations requiring (or not requiring) a written contract are specified. Keep in mind that contracts may be originated either by the College or by the other party to the agreement. Regardless of where they originate, they are typically modified by the other party and the revision approved by both parties.

**Purchase of goods:** Finished (or “off the shelf”) goods that are commonly purchased by check or credit card valued under $500.00 do not generally need a contract. However, if such finished goods or equipment are part of construction projects or require the vendor to deliver, install and/or service the goods on campus a contract will usually be required in order for the parties to be clear about issues such as specifications for the goods, the manner and timing of delivery, limitation of warranties, opportunity to cure defects, or payment terms. These should be purchased using the College purchase order form or other contract form which will set forth basic terms and conditions including insurance and indemnity clauses.
**Provision of services:** We require contracts in place for instances where the College is providing services, facilities or other resources to third parties. Examples include camps, conferences, persons or companies filming on campus, having other special events on campus such as receptions, seminars, etc.

**Purchase of Services:** In general, services which the College is procuring and which will be provided on campus for hire should have written contracts. This includes arrangements with independent contractors for facilities work, speakers, consultants, performers, videographers, etc.

As stated above, contracts should be used whenever the arrangement involves any significant risk or potential liability that needs to be allocated between the parties, or involves a situation where the duties and responsibilities of the parties are not so basic and obvious that they do not need to be spelled out in writing. A contract should also be used when other specific concerns need to be addressed, such as ownership of the work.

**Entertainment:** Any arrangement that commits the College to hire entertainers or provide entertainment services requires a written contract.

**Art / Exhibits:** Any agreement to borrow or lend works of art, special collections, archives or exhibits requires a written contract.

**Miscellaneous:** Any agreement with a third party that could create a condition that could result in more than a minor liability to the College (whether in favor of the contractor, its employees or others) or that could feasibly result in a dispute if the understandings and obligations of the parties are not clearly specified in advance, should be the subject of a written agreement. These arrangements should also be reviewed against these guidelines and against the contract template list to help you determine if a contract is appropriate or necessary.

Vendors may attempt to provide goods or services without a contract in order to avoid the cost and/or responsibility of negotiating and/or abiding by terms and conditions that would protect the College in a transaction. If there is any question about the need for a contract, consult the Director of Purchasing, who can assist in developing a contract and guiding it through the review and authorization process, prior to any negotiations.

**Identification of the College**

The College shall be identified as **Barnard College** in all agreements and contracts. Departments and individuals may not contract in their own name on behalf of the College, but must identify the College as the contracting party. (The department may be identified in the agreement as the office though which the contract is being made.) The official College address is **3009 Broadway, New York, NY 10027** and must be listed in all contracts and agreements.

**Contract Language**

Contract forms, templates and required language are stipulated in *Contracting Procedures* which may change from time to time. If the forms and templates provided do not seem appropriate for
the transaction or arrangement being contemplated, or if such forms or templates are a good
starting point but clearly need modification, you should consult as necessary with the Director
of Purchasing or General Counsel, as appropriate, to define the proper language for your
particular situation.

Contract Approval and Signatory Authority

Signatory Authority at Barnard College is sometimes delegated but contract approval authority
and responsibility rests ultimately with the College’s Officers and those other employees
specifically delegated by the Board of Trustees. When these Officers delegate their approval or
signatory authority, they must still exercise reasonable oversight and maintain ultimate
responsibility for the contracts, and they should limit or revoke the delegated authority
whenever appropriate. Spending limits or payment approval for periodic payments specified
within a contract can be delegated with significant variation depending on the nature of the
contract. [Delegation Language][Delegation Form]

No person who is not an authorized signatory may enter into binding contract negotiations
without permission from an authorized signatory who is also the Vice President of their Area or
their Department Head or Chair. Those signing without this authority may incur personal
liability, and/or may be subject to discipline by the College, including termination.

More specific guidance on Signature Authority is available at the following link:
http://barnard.edu/general-counsel/Contract-signing-authority

Contract Review

The office or department initiating a contract is responsible for reviewing the contract to ensure
that the contract accurately reflects the intent and mutually agreed upon terms and obligations
of the parties.

Further review of the contract shall be completed by the Director of Purchasing and the Office
of the General Counsel, as appropriate. Additional information on contract review is provided in
Contracting Procedures.

General Counsel Review

Review of a contract or agreement by the Office of the General Counsel shall be limited to those
provisions which are legal in nature, pose a substantial risk to the College or are new, non-
standardized clauses which the initiating departments’ representative is not familiar and/or
comfortable with. Additional information on contract review is provided in Contracting
Procedures.

Vice-President for Campus Services Review, Risk Manager

Review of a contract or agreement by the Vice-President for Campus Services (in his or her
capacity as Risk Manager) shall be limited to those provisions which pose a substantial risk to
the College. Additional information on contract review is provided in Procedures
Clauses not Permitted

**Automatic Renewal:** The College does not allow contracts to contain an automatic renewal clause unless there is also a clause permitting the College to terminate the contract at will.

**Exclusivity:** The College needs to be very careful when awarding contracts that promise the vendor that they will be the exclusive vendor for the goods and services to be provided under contract. Such an award may conflict with a contract that has already been entered into a different department or division, or it may conflict with other operational needs. Exclusivity agreements require an institution-wide awareness of contracts on campus, and may require fine tuning over time.

**Limitation of Liability:** The College does not allow a contracting party to limit their potential liability except in rare or specific circumstances. All rights of recovery against others are automatically transferred to Barnard College’s Property and Liability insurance carriers. Limiting this recovery could adversely impact the College’s insurance coverage.

**Single Indemnification Clauses to benefit the contracting party only:** The College does not allow single indemnification clauses that only protect the contracting party. Section 5-322.1 of the New York State Consolidated Laws states “A covenant, promise, agreement...in connection with or collateral to a contract or agreement...purporting to indemnify or hold harmless the promisee against liability for damage arising out of bodily injury to persons or damage of property contributed to, caused by or resulting from the negligence of the promisee, his agents or employees, or indemnity, whether such negligence be in whole or in part, is against public policy and is void and unenforceable...”

Exceptions for State and Federal Agencies

The Federal Government and most states will not provide insurance or indemnity in their agreements with their contracting partners. In such instances, the College normally will accept the agency’s contract without such provisions. When entering into a contract with such a governmental entity, it is recommended that the contracting party attach the College’s standard addendum and any other desired language which may act as a guideline for the parties to follow in the event of an adverse event or outcome, however such attachment is not likely to be considered binding. Contracting departments also need to be very careful in considering whether or not the other party is truly a state agent or not – many state universities or colleges do not have the same immunity protections as other state agencies (e.g., the State Police), and some quasi-public entities may not be precluded from providing insurance or indemnification to other parties they do business with. Questions regarding appropriate language for such agreements should be directed to the Office of General Counsel.

Requirement of an Arm’s Length Transaction

See the College’s [Policy on Conflict of Interest and Commitment](#) for additional information.

If a contract directly benefits the employee forming the contract or the employee who is responsible for managing the contract, or such a person’s relative or personal friend, or poses
other potential conflicts of interest whether real or perceived, (e.g., the contract initiator or a key department member serves as a paid consultant to the contractor), the contract must be reviewed by both an authorized person with signatory authority who is unconnected with the agreement and the area Vice President, with all potential conflicts of interest disclosed to the Vice President. The risks for such agreements include self-dealing, operational difficulties, financial loss to the College and damage to the reputation of the College.

Any agreement that involves revenue sharing (including commissions, fees, or other payment) with the College, department or an individual from sales by the outside party to other third parties (including students, alumnae or employees) must be reviewed by the Chief Operating Officer or his/her designee. If the agreement is being entered into by the Finance and Administration Division, it must be reviewed by another Vice President as well. Such arrangements are rare and generally discouraged, since they normally signify a commercial joint venture in which the College may assume risk of loss, and may implicate non-profit tax questions or concerns.

**Policy on Reporting Suspected Fraud and Abuse**

If a person believes that a supervisor, colleague, subordinate or any other person is acting outside the College policy on contracting, s/he should report the concerns to their area Vice President or Associate Vice President for Finance. For more information see the College’s [Policy on Reporting Suspected Fraud and Abuse](#).

**Contracting Procedures**

Barnard College [Contracting Procedures](#) are included by reference in this Policy, however it is recognized that procedures may be changed more frequently than the Policy. Contracting departments should refer to both Policy and Procedure when entering into and developing contracts and agreements.
PROCEDURES FOR CONTRACTS AND CONTRACTING

Contract Initiation and Reviewer Responsibilities

The individual initiating the contract on behalf of the College (the “contract initiator”) and subsequent reviewers are responsible for reading the entire contract and determining that its content, objectives, definitions, and terms:

1. Accurately reflect agreements made during negotiations.
2. Are consistent with the contract initiator’s or unit’s requirements.
3. Contain the standard terms and conditions preferred by the College (see Forms) to the extent applicable and to the extent that they can be obtained given the relative bargaining power of the parties.
4. Are clear and consistent throughout.
5. Do not constitute a conflict of interest for the parties affected by the contract.
6. Are in accordance with College policies.
7. Are in accordance with state and federal laws as may be applicable.
8. Do not impose obligations on the department or College that cannot be met.

In addition, contract initiators are responsible for ensuring that contracts:

9. Are routed through the appropriate College officials for review prior to signing.
10. Are appropriately filed and stored.

Finally, contract initiators are responsible for arranging for:

11. Assessments of the likely impact of the transaction on the College and the broader community.
12. Appropriate consultation with any constituencies that may be impacted by the transaction.
13. A review of the department’s budget and confirmation that all funds necessary for the contract have been allocated or are available.
14. The reservation of any facility being utilized in conjunction with the contract, using the appropriate channels.

Levels of risk exist in all contracts. A key responsibility of the contract initiator and subsequent reviewers is to assess the institutional risk of a contract. If a contract initiator is concerned about risks being assumed by the College under the terms of the contract, the contract initiator should contact the Vice President of Campus Services, in his or her capacity as Risk Manager.
Dean/Director of Department Initiating Contract Responsibilities

The Dean or Director of the Department initiating the contract is responsible for:

1. Reviewing all contracts to ensure the individual initiating the contract has conducted their review.
3. Signing the contract, if the Dean or Director of the Department has the designated Contract Signing Authority, as discussed below.

Contract Signer Responsibilities

All contracts must be signed by both parties. Execution on behalf of the College must be done in accordance with the Delegation of Signature Authority by the Board of Trustees.

In addition, those employees with contract signing authority pursuant to the policy may delegate contract signing authority to their department heads by preparing a Delegation of Signature Authority (insert link).

The contract signer (authorized by the policy or by delegation) is responsible for 1) reviewing and signing the contract, 2) ensuring that all mandatory reviews have been done, and 3) sending the signed original contract to the responsible office for storage and management.

See Managing your Contract for more details.

Director of Purchasing

The Director of Purchasing is responsible for:

1. Receiving a copy of all contracts from the contract initiator with the completed Contract Review Request and Checklist.
2. Reviewing all contracts (for goods and services) to ensure that:
   a) All purchasing policies have been followed including, appropriate bidding procedures, etc.
   b) The department has obtained the best pricing available, when applicable.
   c) Exclusive purchasing agreements with specific vendors have been adhered to.
   d) A new contract does not result in the breach of an existing contract.
   e) All required clauses are present.
   f) All prohibited clauses have been addressed.
3. Contacting the initiating department to discuss any issues which arise from his/her review of contract.
4. Determines and facilitates, if necessary, if additional review by other departments is required.
5. All such contracts should be sent electronically in Microsoft Word format (not in “pdf” format), with a copy to the College official authorized to sign the contract.

**General Counsel Responsibilities**

The Office of the General Counsel is responsible for reviewing all (i) non-form and (ii) non-standard form contracts to ensure that:

1. Proper indemnification is present.
2. An independent contractor status clause is present (when necessary).
3. All required/prohibited clauses have been addressed.
4. All provisions legal in nature are acceptable.
5. All clauses of concern to the initiating department are reviewed.

All contracts requiring the College to pay out more than $50,000 and all contracts involving unique risks and liability to the College (regardless of the monetary amount of the contract) should be reviewed and approved by the Director of Purchasing before submission to the authorized official for signature. Exceptions to this advance review requirement are purchase orders and contracts using templates previously approved by the Office of General Counsel (see below).

**Exception for Barnard Standard Form Contracts**

The College has developed many standard form contracts for particular types of transactions, particular vendors, etc. for use by College departments (insert link). The Office of General Counsel will work with departments to develop additional form contracts, as necessary. Once a form contract is approved by the Office of General Counsel, the department may use such form agreements without individual review by the Office of General Counsel, so long as it is used for the particular type of transaction and/or vendor for which its use has been approved and the form remains unchanged (except for filling-in blanks, where applicable). The Office of General Counsel will review the form contracts every several years to promote continuing conformity with legal requirements.

**VP for Campus Services (Risk Manager) Responsibilities**

1. Insurance requirements relevant to the contract are present.
2. Provisions that pose a substantial risk to the College are reviewed and negotiated until satisfactory to the College.
Flow Charts on Contracting at Barnard

Is a Contract Necessary?

First Steps in Contracting at Barnard
Finalizing & Managing Contract

- **Review/additional negotiation by GC, RM, IT, etc. completed**
- **Department receives signed contract from vendor**
- **Department creates contract file**
- **Department delivers copies of fully executed contract to Director of Purchasing and GC**
- **Department creates and monitors calendar of obligations and important dates**
- **Maintain file according to document retention policy**
- **Send contract to Director of Purchasing for review with checklist**
- **Director of Purchasing determines and facilitates, if necessary, additional review and approvals (i.e., RM, IT, GC, etc.)**
- **Negotiate document**
- **Decide what contract to use (i.e., BC Form, Vendor Form or work with GC to create new document)**
- **Decide if contract is necessary (see flowchart)**
- **Working with the Purchasing or other department (i.e., IT, RM, etc) choose vendor (using bidding process if necessary)**
- **Contract reviewed by department chair, dean, or VP**
- **Send contract to Director of Purchasing for review with checklist**

**Finalizing & Managing Contract**

- ** Authorized signatory executes contract**
- **Contract is finalized and sent back to department for signature**
- **Destroy file pursuant to document retention policy**
- **Maintain file according to document retention policy**

**Key**

- GC = General Counsel
- RM = Risk Manager
- IT = BCIT
MANAGING YOUR CONTRACT

Time Frames for Contract Development

Time frames for contract development will vary. In some instances contracts may require months to prepare, modify, and/or review, depending on their complexities. Contract development should begin as soon as the need for a contract is clear and a vendor has been selected.

If a Request for Proposal (RFP or Bidding Process) must precede the contract development or review process, or if any type of competitive bidding is anticipated, initiators and reviewers should allow a lead time of six to twelve weeks prior to the expected start date of the negotiations of the contract to complete the RFP and bidding process. Questions regarding RFPs or competitive bidding should be directed to the Director of Purchasing for assistance.

Performance during Contract Negotiations and Prior to Contract Authorization:

Except in the rarest of occasions, a definitive agreement must be signed prior to the effective date of the relationship it memorializes.

In the event that a final contract is not signed and work is scheduled to begin the initiating department must contact the Director of Purchasing immediately and prior to any work commencing.

Managing the Contract

All contracts should be assigned to a contract admin, who may or may not be the contract initiator or the contract signer. The contract admin is the member of the initiating department who is responsible for creating contract file, performing or tracking the performance of the contract and addressing any other issues that arise under the contract.

All contract files must contain:

- A copy of the final, fully-executed contract.
- All correspondence or other documents related to the contract. If there are performance problems with the contract, the problems should be documented in memos to the file or in correspondence to the vendor.
- All changes (including change orders and work orders) to the agreement should be formally executed in accordance with the terms of the contract and attached to the Agreement.
- Any extensions to the agreement should be formally executed in accordance with the terms of the agreement and attached to the Agreement.
- All certificates of insurance should be kept in the file.
- A diary or tickler “compliance” file should be established to keep all certificates of insurance up to date, verify timely performance if time is of essence to the agreement, and to allow timely renewal, if applicable, of the agreement.
At the conclusion of the term of the contract, the Contract Administrator responsible for managing the contract is also responsible for closing the contract file and ensuring that it is properly stored, as outlined below.

A copy of the fully executed contract, and any and all amendments or additions to, should be scanned and emailed to the Director of Purchasing and the General Counsel.

Completed Agreements – Storage

Barnard College does not have an official repository for executed contracts.

The department that is responsible for the contract is responsible to keep the original contract and its accompanying file for a period of four (4) to six (6) years from the end of the contract period unless the agreement was “written and under seal”, in which case the agreement must be kept for twenty (21) years from the end of the agreement period.

The department responsible for the contract should maintain a contract log documenting, for each contract, the vendor’s name, type of contract, period of contract, amount, signatory, and date signed. The contract administrator is responsible for ensuring that the department retains the file of the signed contract.

If the College is involved in a dispute with a vendor before the end of these stated periods, the contract must be retained until its destruction is approved by the Chief Operating Officer on advice of the College’s General Counsel.

Waivers

Waivers must be kept by the department initiating the event for which the waiver was issued and collected. Waivers must be kept for a period of four (4) years from the end of the event or period for which the waiver was issued. If any claim is made against the College by a person who signed a waiver for the activity, the department will be responsible to provide the waiver documentation to the office of the General Counsel.