



## COLLEGE OF THE NORTH ATLANTIC

### OPERATIONAL PROCEDURE

#### TOPIC: CONTRACTS

<b>Procedure No.</b>	FA-305-PR	<b>Division</b>	Finance & Administration
<b>Supersedes</b>	n/a	<b>Board Policy Ref.</b>	BP-FA-309B
<b>Related Policies</b>	FA-305 & PO-003	<b>Effective Date:</b>	January 24, 2008 (R1)

## PROCEDURE

### 1.0 Agreements

All Agreements which impose binding obligations on the College will be in writing and signed by the President or his or her designate. All agreements must be reviewed by the General Counsel prior to signing. The original of each agreement will be logged into the General Counsel's office and kept at the General Counsel's office.

The College must ensure that its obligation to the public and the due diligence process as entrusted to the Board are respected and that its mandate and responsibilities as enshrined in the *College Act*, 1996 are fully honoured.

### 2.0 Agreements - Contract Training Agreements

The President or his or her designate will sign all contract training agreements. However, Campus Administrators, the Chair of Community, Corporate and International Training and the Chair of DLS and Learning Technologies will be designated by the President as the official signing officers for contract training agreements providing that the agreements meet all criteria outlined below:

- (1) The value of the contract is equal to or less than \$15,000.00; and
- (2) The contract is less than three months in duration; and
- (3) The contract follows the standardized contract form developed by General Counsel and is unmodified.

Contract training agreements which meet the criteria outlined above do not have to be reviewed by the General Counsel's office prior to being signed. The original of all contract training agreements signed by Campus Administrators will be sent to the General Counsel's office. The campus may retain a copy of the contract training agreement.

### **3.0 Partnership Agreements**

The following are the principles guiding the decision whether to engage in a partnership agreement with an external organization:

#### **3.1 Compatibility of Goals and Values**

Only those organizations which share compatible goals and values with the College will be considered for partnership opportunities. The strategic plan of the College will be considered a primary factor.

##### Value Added Dimension

The College will enter into partnership agreements where it can be demonstrated that such agreements add value to the College as it attempts to meet its mandate. Criteria that may normally be considered include:

- Impact on College Guiding Principles;
- Impact on other campuses and/or districts;
- Increased awareness of the College;
- Enhancement of the College's image;
- Long-term relationships;
- Opportunity for spin offs;
- Community goals and expectations;
- Donations;
- Diversified and long-term revenue potential;
- Operational costs benefit;
- Student project/training opportunities;
- Student employment opportunities;
- Exchange and research opportunities for faculty, staff and students;
- Technology transfer;
- Economic development opportunities;
- Royalties;
- Copyright

### 3.2 Roles

It is recognized that individual partnerships will generally be initiated on a one-on-one basis, and the campus administration team should in the initial stages provide a forum for discussion at the time the preliminary contact is made with the potential partner. The campus administration team shall inform the President and General Counsel's offices as soon as practically possible after initial discussion and prior to the commencement of any formal negotiations.

On an individual basis, the President, in discussion with the General Counsel, the appropriate Campus Administrator and other personnel as appropriate, will establish the parameters and terms of the agreement as well as the appropriate representation for the College during the negotiation process.

## 4.0 Format of Agreements

To ensure consistency in the preparation of actual contract documents, each contract will contain, where applicable, clauses specifying intentions, constraints, responsibilities, etc. in the following matters:

### Nature and Scope:

A contract should describe in as much detail as possible the nature and scope of the project including adherence to any professional standards or codes. Reference should be made to the date and nature of any interim reports or periodic progress to be attained. The "Terms of Reference" may be referred to and attached as a Schedule to the Agreement if appropriate, and, in this case, it should be stated that the Agreement shall predominate in case of a conflict between the Agreement and Terms of Reference.

### Financial Implications:

A contract should identify, but not limit itself to:

- 1) Total contract price and other pertinent pricing information in both words and numbers, including progress, interim or advance payments;
- 2) Billing and payment arrangements;
- 3) Expenses, for example, travel, accommodations, postage, etc.; and
- 4) Adherence to professional fee schedule.

### Time Frame of Contract:

The department should stipulate:

- 1) The period of time for which the contract is in effect; or
- 2) The delivery of the product which brings the contract to conclusion.

Termination of Contract:

Both parties should fully understand the conditions under which the contract is terminated: completion of work, non-performance by both party, lapse of specific time frame, etc; and the type and time of any notice requirement.

Reference should be made to:

- 1) Is compensation limited to payment for satisfactory work done to the date of termination at the rates provided in the contract with no compensation for consequential loss? and
- 2) Commitments made which, at the time of termination, cannot be revoked, for example, advance payments, retainers and leasing of equipment.

Delays:

The Parties should agree upon their responsibility, if any, in the event of delays caused by mechanical breakdowns, slow performance, strikes, lockouts, acts of God, etc.

Definitions:

The contract should provide explicit definitions of important terms or trade usage expressions so as to avoid misunderstandings.

Ownership of Acquired or Prepared Materials:

If a work project is of the nature whereby materials of any kind are acquired or prepared, the contract should specify physical ownership and ownership of any intellectual property rights, whether copies may be retained, and acknowledge credits to be included in any publications.

Confidentiality of Information:

Both parties to the contract must be aware of the sensitivity of the subject matter and of contractual constraints regarding the disclosure of any information, materials, etc. collected or prepared during the course of a project.

Record Keeping Requirements:

If the College (as a contractor) wishes to audit the working or financial records of a consultant, or to inspect, supervise or direct any aspect of the project, the contract should stipulate the conditions, for example, access method, type of records, retention period, etc. necessary to satisfy Government's right.

Indemnification:

The College will ensure that the College is not held liable for injuries or damages caused by or to contracting parties, or held responsible for other pertinent liabilities except as stated in the contract.

Re-assignment of Work:

Sub-contracting of the work in total or in part must be approved in advance by the College.

Employment Status:

For the sake of clarity, it should be noted that any individuals engaged in a consultant capacity are not considered to be College employees.

Address of Parties:

Both parties should designate an address to which correspondence can be delivered and considered legally accepted by the other party.

Scope of the Contract:

Both parties to the contract must specify the documents which comprise the total agreement and make specific reference to pertinent documents external to the contract (include as schedules where possible).

Adherence to Legalities:

It is implied in any contract that a contracting party shall not break, or cause to be broken, any laws in the performance of his/her contractual obligations.

Applicable Courts:

The contract should state any preferred procedure for resolving disputes arising from the contract, such as a procedure for arbitration and if the contracting party is external to the Province, the contract must stipulate whether the provincial laws and courts of Newfoundland shall apply or those of a different jurisdiction.

Non-Performance:

A contract should stipulate a legal position should an act of God, for example, fire or flood, make it impossible for one or both parties to perform.

Holdbacks:

The College may withhold all or a portion of a contracting party's fee until such time as it is satisfied that the work has been properly completed and is judged acceptable.

Participation:

The contract should specify the process for participation by partners in strategic and operational decisions.

Termination: Specifications for dissolving the entire Agreement or parts thereof are articulated.

**5.0 Finalizing the Agreement**

Signing Authority -- All agreements will be signed by the President. Signing authority may be delegated by the President in accordance with Policy FA-304 and this policy.

Contracts – Domestic Training/Services	Vice-President Development/College Advancement
Contracts – International Training/Services	Vice-President Development/College Advancement
Contracts – Educational Partnerships MOUs	Vice-President, Academic and Learner Services
Contracts – Corporate MOUs	Vice-President Development/College Advancement
Contracts – International MOUs	Vice-President Development/College Advancement
Contracts – International Agent Agreements	Vice-President Development/College Advancement
Contracts – Domestic License	Vice-President Development/College Advancement
Contracts – International License	Vice-President Development/College Advancement
Contracts – Articulation & Transfer	Vice-President, Academic and Learner Services
Contracts – Federal (e.g. HRSD, ACOA)	Vice-President, Academic and Learner Services & Associate Director of Administration (Finance)
Contracts – Confidentiality/Non-Disclosure	General Counsel, Vice-President, Academic and Learner Services & Vice-President Development/College Advancement

- If required the official agreement will be stamped with the College seal in accordance with the procedures outlined in Policy PO-003.
- The original agreement will be filed in the General Counsel's office.
- Contracts should be signed by both parties before any work is performed.
- Without exception, contracts must be signed before any payments can be authorized.
- Changes to initial contractual agreements must be in writing and signed by both parties.

**6.0 Ratification by Board of Governors**

As per Board Policy BP-FA-309B, any legal contract which has a total value of more than \$250,000 will require ratification by the Board of Governors.

Approval History	
Approved by President	March 6, 1998
Revision 1	January 24, 2008
Next Review	January 2012