

Signing & Reviewing Contracts



February 2023

Format: FAQ with a focus on the following two questions

How do I get a contract approved and signed?

*Excluded from today's discussion
are employment contracts*

How do I review a contract?

Is navigating the review and signature of a contract confusing?

Yes—it can be confusing! Figuring out:

- ✓ what kind of contract is in front of you;
- ✓ who needs to review it;
- ✓ who needs to approve it;
- ✓ and who actually signs it

Is an art more than a science!

What does it mean to have signing authority?

You sign, you bind.

- ✓ Anyone who signs a contract on behalf of the University binds the University as a legal entity to the terms of the agreement and **all risks** that come with it.
- ✓ While signatories are not personally liable for the contracts that they sign, they are assuming risks on behalf of the University.
- ✓ It is essential that authorized signatories understand the risks of not only the contract terms but of the activity described in the contract.

*Who is **not** authorized to sign a contract on behalf of the University?*

- ✘ Faculty, Librarians, and staff do **not** have the authority to bind the University as a legal entity;
- ✘ This includes Non-Disclosure Agreements (NDAs) and Material Transfer Agreements (MTAs);
- ✘ EDU:C and EDU:D though EDU:A and EDU:B Directors have limited signing authority.

Are there policies or guidelines that apply to contracts?

Yes.

Signing authority and consultation pathways for certain types of contracts are mapped out as follows...

Policy on Approval and Execution of Contracts (2004)

- Applies to all contracts – central **and** academic divisions
- Divided into two categories – **normal course of business** and **not in the normal course of business**
- The general idea: there are certain types of contracts that **must be reviewed/administered/signed via a central pathway** (ie: capital projects, research).

Provostial Guideline for Academic Divisions on Contracts (2016)

- Applies only to contracts arising out of **academic divisions** for which there is no existing pathway or delegation of approval and signing authority under the Policy
- The general idea: contracts with certain characteristics tend to be higher risk and therefore, if present, require **Provost review** and/or **approval** (and **possible signature**)

Divisional Contracts Guideline

- The Provostial Guideline requires that each academic division adopt its own Divisional Contracts Guideline on approval and signing authority for contracts
- Divisional Contracts Guidelines vary but align with the Provostial Guideline
- Ask your Dean/CAO's Office for a copy of the **Divisional Contracts Guideline**

What do I do when I receive a contract?



1. Does the contract align with the University's mission?

- If **Yes**; move on to #2 or #3 [teaching, research, and activities that support the mission]
- If **No** or you are **unsure—do not sign!**



2. Does the contract fall within the division's normal course of business?

- If **Yes**; consult your Divisional Contracts Guideline to determine appropriate divisional consultation, review requirements, and divisional signatory.
- If **No**; consult with your CAO/Dean's office to see if a central division has primary jurisdiction over the contract and follow the pathway for central review.

What is "normal" for one division may not be "normal" for another.



3. Does the Provost need to be consulted because the terms of the contract or the activity have certain characteristics that require additional consultation?

- If **No**; consult your Divisional Contracts Guideline to determine appropriate divisional consultation, review requirements, and divisional signatory.
- If **Yes** or you aren't sure; consult with your CAO/Dean's office to discuss overall risk. If the CAO/Dean's Office is keen on the agreement but would like legal review, agreement can be sent to Rachael.Ferenbok@utoronto.ca.

When should I consult with a central division for review, approval, and/or to sign a contract?

Contracts in these areas follow established central consultation pathways

CONTRACT TYPE	EXISTING PATHWAY
CAPITAL PROJECT CONTRACTS	Operations & Real Estate Partnerships University Planning, Design, and Construction
EDUCATIONAL PLACEMENT CONTRACTS	Provost Office of the Vice-Provost, Students
RESEARCH GRANTS/ CONTRACTS	Research, Innovation & Strategic Initiatives Research Services
PURCHASE OF GOODS AND SERVICES	Financial Services Procurement Services (100k+)
DONATION/ GIFT CONTRACTS	Division of University Advancement
STUDENT EXCHANGE/ MOBILITY CONTRACTS	Provost Office of the Vice-Provost, Students
INTERNATIONAL MEMORANDUMS OF UNDERSTANDING	International
OFFERS OF EMPLOYMENT*	People Strategy, Equity & Culture

What are examples of contracts that cannot be signed by a Chair or Dean?

- ⊗ **Research contracts**
(except research service contracts)
- ⊗ **Lease contracts**
- ⊗ **Construction contracts**
- ⊗ **International student exchange contracts**
- ⊗ **Dual degree program contracts**

How will I know if a contract is in the “Normal Course of Business” and can be signed within a division by a Chair or Dean?

“Normal Course of Business” requires a holistic assessment and will vary, but consider these features:

- ✓ **Involves activities that are consistent with the academic priorities of the division; and**
- ✓ **Consistent with that division’s Contracts Guideline;**
- ✓ **Under a monetary threshold established by the division and agreed to by the Provost;**
- ✓ **Adheres to existing University agreements, policies and procedures** (ie. incorporates indirect costs of research as per the Research Administration Policy; is consistent with the terms of collective agreements, etc.);
- ✓ **Is governed by Ontario law and in the English language;**
- ✓ **Appropriately addresses the intellectual property of faculty or students.**

How will I know when a contract might be outside the Normal Course of Business?

Look for these **characteristics**:

- **International partners or activities**
- **No termination date or has a mandatory renewal clause**
- **Generally has a high level of risk**
- **Unusual insurance terms**
- **Negative impact on the University's reputation**
- **Potential to impact other University divisions**
- **Contains unusual publication, privacy, or confidentiality provisions**
- **Contains components beyond the division's authority to approve**
- **Educational placement that does not conform to the template**
- **Involves use or access to University or new IT system**

CHARACTERISTIC UNDER PROVOSTIAL GUIDELINE

EXAMPLES AND REASONING

**legal can often re-negotiate these terms with the third party so that the contract does not require further approval.*

International partners or activities

U of T Global needs to be alerted to international activity and particularly, international partnerships. Why? Minimize duplication of the same contracts with the same international partner; to ensure there is no risk to U of T's reputation by association with an international partner; and of course, to celebrate!

No termination date or has a mandatory renewal clause*

Do not want to enter contracts without an exit strategy; as leadership changes, incumbents may not wish to be bound by legacy contracts.

Generally has a high level of risk

Certain activities that could result in injury, death, property damage need broader assessment and consultation (ie. legal, risk management).

Unusual insurance terms*

Occasionally, a third party requests unusual terms that we do not carry. Example: a third party requiring sexual assault insurance for a placement of our students within schools

Negative impact on the University's reputation

Some activities pose reputational risk and consultation with central and/or divisional offices such as University of Toronto Communications, U of T Global, Research & Innovation, etc need to be consulted to either mitigate risk or to know how to respond to an media requests.

Potential to impact other University divisions

One academic division cannot commit another academic division's resource. Contracts that have tri-campus impact should not be signed by a single academic division and need to be signed centrally, depending on the type of contract.

Contains unusual publication, privacy or confidentiality provisions*

The University's mission is to disseminate information and therefore publication terms that do not conform with the Publication Policy need to be amended.

Contains academic components beyond the division's authority to approve

There are established processes and quality assurance thresholds that have been developed for many academic activities. For example, there is a stringent central process to enter into an agreement with another institution to offer a joint degree program.

Educational placement that amends the template*

Modifications to our template must be reviewed and approved to ensure that our students are protected from unreasonable risks.

Involves use or access to university or new IT system

Divisional purchases of IT tools from third parties may introduce new risks to privacy and/or susceptibility to threat, all of which warrant an Information Risk Assessment and/or Audit by Information Security and Enterprise Applications & Solutions Integration

Is there a contract checklist?



Contract Considerations & Checklist




Checklist


September 1, 2022


First, some preliminary
questions:





Contracts : Content & Review


-  **What type of contracts can Corporate Services assist me with?**

-  **I need legal help to review a contract. Whom do I contact?**

-  **What are key elements of a contract that I should consider before signing or seeking legal advice?**

-  **What is the purpose of legal review of a contract and what will Corporate Services need from me to facilitate the review process?**

-  **Do I only need a contract where there is money involved?**

-  **Won't getting legal counsel involved overly complicate things?**

Are there templates that the University uses?

Depends on the contract.

Within Existing Pathways, there are a number of template agreements for certain activities, including:

- ✓ **Visiting Scientist**
- ✓ **Lease**
- ✓ **Student Placement**
- ✓ **Student Exchange**
- ✓ **Sponsored Research**
- ✓ **Non-Disclosure Agreements**
- ✓ **International MOUs**
- ✓ **Purchase of Goods and Services**

There are no standard terms applicable to all contracts; though, for purchase of goods and services terms, [Procurement Services](#) is a helpful starting place.

Service Contracts

Purchasing

- ✓ **Start date, end date, description of services, payment terms, termination provisions required**
- ✓ **Verify whether service provider is already Vendor of Record for University**
- ✓ **Follow Divisional Contracts Guidelines re: review and signature** (ie: Dean may sign but requires CAO approval first)
- ✓ **Follow procurement process if over \$100K**
- ✓ **If under \$100K, ensure you have quotes**

Selling or Providing

- ✓ **Conflict of Interest** (are we selling to a faculty member's own company, for example)
- ✓ **If selling research services, can go through IPO** (will receive legal review)
- ✓ **Must be signed by Chair or above**

Do all contracts require legal review before they are signed?

No. There is no rule or policy that requires all contracts to undergo legal review.

However, the Office of University Counsel is happy to review contracts to ensure they align with policies and mitigate risk overall.

Office of University Counsel

legal.utoronto.ca

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