



**UNIVERSITY OF
ALBERTA**

**CONTRACT REVIEW &
SIGNING AUTHORITY
Policy & Procedures**

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1. History
2. Purpose
3. Structure
4. Practice

History

- Post-Secondary Learning Act – establishes one legal entity – The Governors of the University of Alberta
- Lack of central, Board of Governors' approved, controls
- Contracts being signed at all levels of the institution

History (cont'd)

- Auditor's comments
- Need identified across campus
- Inconsistency in review processes being followed
- Office of General Counsel created in 2004

Purpose

- Create a policy framework for the review and execution of all contracts
- Balance control with flexibility and practicality
- Create internal control system and audit record

Structure

Contract Review and Signing Authority Policy

Appointment
of Faculty
Procedure

Contract
Review
Procedure

Sub-Delegation
of Contract
Signing
Authority
Procedure

Retention
of External
Legal
Counsel
Procedure

Structure

- Applies to all contracts
- Contract – “any document with a third party that creates a legally binding commitment, and includes letters of intent and memoranda of agreement”.

Structure (cont'd)

- Policy – tasks the Responsible Department with oversight of the review and execution of a contract
- Policy also identifies a signing authority for each type of contract – as delegated by the Board of Governors

Structure (cont'd)

- Signing Authority has the responsibility to ensure that all appropriate reviews and approvals are in place before they sign the contract

Structure (cont'd)

- Schedule 'A' - Identifies types of contracts, responsible departments and signing authority

D. Academic Programs

Agreements for the pursuit or termination of any academically related activity, including the establishment or management of an arrangement, program or organization, within or outside the University premises, between the University and another party or the creation or dissolution of a centre or institute of the University of Alberta.

In all cases, appropriate governance reviews and approvals must be followed.

Document Description	Dept Responsible	Signing Authority
Academic Affiliation and other, similar, Agreements	Provost and V-P (Academic)	Provost and V-P (Academic)
Reciprocal student exchange agreements within Canada	University of Alberta International/Education Abroad Program	Provost and V-P (Academic)
<ul style="list-style-type: none"> • Student Field Experience • Field placements • Project placements • Independent studies • Clinical Placement Agreements 	Relevant Faculty	Dean of the relevant Faculty
Agreements for the creation or dissolution of centres or institutes	Relevant Faculty/Office of V-P	Provost and V-P (Academic)
Confidentiality Agreements relating to academic/course information	Provost and V-P (Academic)	Provost and V-P (Academic)
Academic Conference or Workshop Agreements	Provost and V-P (Academic)	Dean of the relevant Faculty and Provost and V-P (Academic)
Post-Doctoral Fellows Appointment Letters	V-P (Research)	Supervising Faculty Member (if any) and Dean/Chair/Director of Institute
Academic Funding Agreements (Faculty Specific)	Relevant Faculty	Provost and V-P (Academic) and Dean of the relevant Faculty
Academic Funding Agreements (Institutional with more than one Faculty)	Provost and V-P (Academic)	Provost and V-P (Academic)
Agreement with Post Doctoral Fellows Association	Provost and V-P (Academic)	Provost and V-P (Academic) and V-P Research
Graduate Student Funding/Scholarship Agreements	Faculty of Graduate Studies and Research	Dean, Faculty of Graduate Studies and Research
Other Academic Agreements not dealt with elsewhere in this document	Provost and V-P (Academic)	Provost and V-P (Academic)

Structure (cont'd)

Schedule “A”

- Review the introductory notes
 - Dollar values are over entire term of contract
 - Responsible Department is the Office, not the person

Structure (cont'd)

Schedule “A”

- Contracts are divided into categories
- Categories then sub-divided; sometimes by dollar value
- “Other” category

Structure (cont'd)

Schedule “A” – Recent Changes

- New types of contracts
 - Ex. Various site access agreements, sponsorship agreements
- Establishes role of Information & Privacy Office in contract reviews when personal information is involved

Structure (cont'd)

General Rule:

- A contract cannot be signed unless it has been reviewed and approved in accordance with the Policy and Procedures and the individual signing the contract has authority in accordance with the Policy & Procedures.

Structure (cont'd)

Miscellaneous:

- Governance reviews and approvals still required
- Vice-President must bring 'high risk' contracts to the attention of the Board
- All contracts are to be in the name of *The Governors of the University of Alberta*

Structure (cont'd)

- Sub-Delegation in accordance with the Procedure
- Request for changes to the signing authorities to the Office of General Counsel
 - Board Audit would approve

Contract Review Procedure

- Sets out the process by which contracts are reviewed prior to their execution
- “All contracts of sufficient importance, regardless of value, and all contracts where there is potential for significant or uncertain liability to flow to the University.”

Contract Review Procedure (cont'd)

- General Counsel, Risk Management and Information & Privacy Offices are key reviewers in most circumstances
- Discretionary – use best judgment – consult when uncertain
- Also consider the need for review by other offices – Financial Services, Trademarks, etc.

Contract Review Procedure (cont'd)

- Certain contracts must be brought to VP's attention:
 - a) Unusually high risk factor
 - b) Brings activities of University under public scrutiny
 - c) Involves controversial matters

Contract Review Procedure (cont'd)

Examples of when review procedures must be followed:

- Annual financial value over \$500,000
- Acquisition or disposition of land
- Foreign jurisdiction

Contract Review Procedure (cont'd)

Examples of when review procedures must be followed:

- Potential for injury to persons, property, or environment
- Faculty appointment/special procedure

Contract Review Procedure (cont'd)

- Responsible Department provides draft of agreement to Office of General Counsel, Risk Management and Information & Privacy Office (if personal information involved)

*Involve our offices as early in the process as possible.

Contract Review Procedure (cont'd)

- Do not have your Dean/Vice-President, etc. sign and then send for review
- Cover sheet and signature page – includes sign-off by Responsible Department as to “business” terms

Contract Review Procedure (cont'd)

- Responsible Department must maintain the original agreement and a copy of the cover sheet

Contract Review Procedure (cont'd)

Exceptions – when Contract Review Procedure does not have to be followed:

- RSO
- SMS
- UAI
- Utilities
- Previously approved templates

Contract Review Procedure (cont'd)

- Each of these offices must maintain a system for contract reviews that meets the spirit of the Procedure

- **Risk Management generally reviews specific types of clauses contained in most contracts: *Indemnification, Limitation of Liability and Insurance Clauses***
- **Basics of Insurance and Indemnity Clauses**
- **Other Insurance – Contract Issues**

There is always a risk within Contracts:

- A Party may not fulfill / deliver upon their Promise
- A Party may “injure” another party while completing their Promise



Two ways to transfer risk by contract:

1. Contractual language (Responsibilities, Warranties, Indemnity)
2. Insurance provision

Belt and Suspenders



- **Allocate responsibility for damage**
 - **Regardless of financial viability**
 - **Regardless of whether insurance will respond**
- **Indemnitor - Party agreeing to indemnify the other**
- **Indemnitee - Party being indemnified**
- **As an “exclusion” they are strictly interpreted as they limit and shift liability to another**

Of no value if the Indemnitor has insufficient assets to back-up the Indemnity; thus the Insurance requirement.

Typical Insurance Clause

“Company X” shall, at its own cost and expense, maintain in full force and effect the following insurance policies and acknowledgements for:

Property Insurance to insure all owned and/or leased property that may be used in the performance of this Agreement against perils of all risks of direct physical loss or damage in amounts adequate to cover the replacement value of such property.

Commercial General Liability Insurance covering legal liability for bodily injury (including death), property damage and personal injury in an amount not less than five million dollars (\$5,000,000) per occurrence. Coverage is to include **contractual liability**, tortious liability, and **completed operations liability** , and contain a **cross liability and severability of interest clause**.

Automobile and Non-Owned Automobile Insurance in an amount not less than three million dollars (\$3,000,000) per occurrence.

Worker’s Compensation and/or employer’s liability insurance as may be required by the provisions of law or otherwise deemed reasonably necessary, in an amount sufficient to provide indemnification against any and all claims.

Retention of External Legal Counsel Procedure

- External legal counsel can only be retained through the Office of General Counsel
- List of positions created – only those positions can request external legal counsel, through the General Counsel's office [ex. Dean, Vice-Dean, Associate and Assistant Deans]

Retention of External Legal Counsel Procedure (cont'd)

- Manage legal services
- Control costs
- Budget/Issue summary in advance

Sub-Delegation of Contract Signing Authority Procedure

- Delegation vs. Sub-Delegation
- Sub-Delegation to position not person
- No further Sub-Delegation

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Temporary – specific start and end date
- Permanent – continues until revoked or until the sub-delegated employee leaves his/her position

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Must be an employee
- Must be in writing in the form attached
- Delegation authority's office must maintain a record of the sub-delegation
- Individual in acting position has same signing authority – no need to sub-delegate

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Sets out requirements of person signing the contract, for example:
 - University can meet its obligations under the contract
 - Intellectual property issues have been addressed
 - Vice-President (Finance & Administration) has been advised if expenditure under contract is >\$1 million

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Ultimate responsibility rests with Board delegate

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Memorandum of Sub-Delegation
 - Name of delegating person
 - Position(s) being delegated authority
 - Permanent or temporary
 - Type(s) of contract
 - Value of contract

Sub-Delegation of Contract Signing Authority Procedure (cont'd)

- Signed and dated by person delegating authority

Schedule B

MEMORANDUM OF SUB-DELEGATION OF CONTRACT SIGNING AUTHORITY

To Whom it May Concern:

By means of this letter, I, [name and title], hereby delegate the signing authority for the types of contracts identified below [or attached hereto] to the [position title], on the following terms and conditions:

[Set out types of contracts or include in attachment]

1. The [position title] may execute, on my behalf, the above described contracts in an amount not to exceed [dollar limit].
2. The effective date of this delegation is [specify] and shall run [indicate time limit if any; if none, indicate that it shall run until revoked by assignor or his/her successor].
3. This delegation is made pursuant to the University's Contract Review and Signing Authority Policy and Procedures and is subject thereto;

[signature]

Name and Title [Assignor]

Date:

Example 1

Faculty X wants to enter into a contract with a third party to allow the third party to use our laboratory facilities for a fee

Example 1 (cont'd)

- Responsible Department – VP (Research), Faculty, VP (Facilities & Operations)?
- Signing Authority is likely the AVP (Facilities & Operations) if a lease or license is being granted – interest in land [Section A – if fee is less than \$100,000]

Example 1 (cont'd)

- Contract Review Procedure applies – interest in land and risk to property, person & environment
- Legal and Risk Management review needed – likely no IPO review

Example 2

Contract with a University in China for collaboration on research and academic matters

Example 2 (cont'd)

- Responsible Department is UAI given international nature
- Signing Authority is the Provost and VP (Academic) and probably VP (Research)
- Does Contract Review Procedure apply?
- No – UAI is exempt

Questions?