

## **Three Important Things to know about Contracts at the University**

Whether you work with contracts regularly or are less experienced with contracts, this newsletter is designed to inform you of some general, high-level ideas to consider when entering into agreements on behalf of the University of Alberta. Being aware of the three topics discussed below will hopefully result in a more efficient process that better protects the interests of the University.

### ***There is only one U***

The University is a corporation created by Provincial statute. The University is made up of its faculties and administrative units. What this means is that as a University we are all part of one legal entity – the corporation. Faculties and administrative units do not have legal standing to enter into contracts; only the corporation does. The legal name of the corporation is “The Governors of the University of Alberta,” and all contracts should be in that name. Given that all faculties and units are part of the same entity, there is no legal force or effect to contracts between faculties or units within the University. Informal written arrangements may be made between faculties and units, but they are not legal contracts. If it is important that a specific faculty or administrative unit is named in a contract with a third party, the faculty/unit may be referenced in the text of the contract, or the University’s legal name may appear with “...as represented by the Faculty of Arts” after it (as an example). Ensuring University contracts are in the proper legal name is a small but important part of establishing good contracts.

### ***Contract Review and Signing Authority***

The University’s Contract Review and Signing Authority Policy ([found here](#)) together with its related procedures, provide guidance as to responsibilities and processes for contract review and approval. Schedule “A” to the Contract Review and Signing Authority Policy ([found here](#)) contains important information about which departments are responsible for managing which types of contracts, as well as who the signing authority is for those contracts. The responsible department must ensure that a contract undergoes appropriate review. The Office of General Counsel and Insurance and Risk Assessment must review 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. This review should take place in accordance with the University’s Contract Review Procedure ([found here](#)). Departments such as Supply Management Services, Research Services Office and University of Alberta International may oversee their own contracts.

The signatories designated in Schedule “A” to the Contract Review and Signing Authority Policy are generally Deans or Vice-Presidents (as well as some Associate Vice-Presidents). Note that there is also a procedure (the Sub-Delegation of Contract Signing Authority Procedure - [found here](#)) that stipulates how a signatory can delegate their signing authority. In many instances, the signing authority may not be aware of all of the details of a contract. The responsible department should ensure the signatory is aware of the relevant risks and benefits of signing the contract so that the signatory may make an informed decision prior to executing the contract. Part of informing the signatory is providing them with the “Cover Sheet and Signing Page” that can be found linked at the bottom of the Contract Review Procedure, [here](#). The Cover Sheet will notify the signatory as to who has reviewed the contract, as well as any concerns

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that were raised. Having the proper signatory “sign-off” on contracts will help ensure that the University’s risks are properly considered.

### ***Do I Need a Contract or a Memorandum of Understanding (MOU)?***

Whether you need a contract or a memorandum of understanding (“MOU”) depends on the purpose for which the agreement is needed and the extent to which the parties to the agreement intend to create legally binding rights and responsibilities. In general, contracts are meant to be legally binding agreements, whereas MOUs are normally intended to be non-binding. That being said, the content of the document will be determinative of whether it is legally binding or non-binding, rather than the name given to it (i.e. contract vs MOU).

To create an enforceable contract, the parties must agree on certain key terms – that is, it must be clear and certain what the key terms are. Key terms are dependent on the subject matter of the contract, but they normally include things such as cost, the services/goods to be provided, timing, etc. To be binding, there must also be something of benefit for each party (e.g. money in exchange for goods).

Generally, MOUs are meant to deal with forming high-level relationships, statement of intentions and overarching themes. If your MOU is non-binding, beware that the MOU cannot compel the other party to perform any actions set out in it. MOUs have their place, but should not be relied upon if the University is expecting obligations to be fulfilled by the other party. Giving thought to the purpose of the agreement and whether binding obligations are required will help determine the most appropriate form of agreement to be used in the circumstance.

### ***Summary***

If you ensure that your contract is in the correct name, has been reviewed and signed appropriately and creates the type of relationship that you intend, then you are more likely to form a functional and enforceable agreement.

We invite you to contact the Office of General Counsel for assistance with University contracts or if you require legal assistance with other University matters. You can reach the Office of General Counsel reception by phone (780-492-8995) or email ([kimberly.marchuk@ualberta.ca](mailto:kimberly.marchuk@ualberta.ca)) or visit our website ([found here](#)) for further information and contact details.

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