

## PROCEDURES RE: UNIVERSITY CONTRACTS

**Purpose:** These procedures are intended to clarify the responsibilities of persons involved in negotiating, reviewing and signing contracts in order to ensure that contracts entered into by and on behalf of the University of Waterloo receive appropriate input and review prior to signing, and are signed only by authorized persons consistent with the signing procedures approved by the university's Board of Governors.

Making contracts without proper review and input to ensure that they reflect the agreed-upon business terms, the policies<sup>1</sup> and procedures of the university, and an appropriate allocation of risk may expose the university to undue liability and/or other adverse financial consequences. Employees who do not abide by university policies and procedures when entering into contracts will be held accountable for any risk to which the university has been exposed as a result.

**Scope:** These procedures apply to all contracts to which the university or a university employee, acting within the scope of his/her employment, is a party.

These procedures do not apply to standard purchase orders and invoices or to contracts between a university employee and a third party pursuant to which the university employee provides services to the third party as an independent contractor or consultant<sup>2</sup>.

**Definition:** For the purposes of these procedures, a contract includes any agreement made by or on behalf of the university in which legally binding or non-binding commitments are made by and / or to the university. Other terms that are sometimes used in place of "contract" include lease; guarantee; letter of intent or understanding; terms and conditions; memorandum of agreement, understanding or settlement; waiver; release. Contracts can take the form of a one page letter agreement, as well as lengthier contracts which govern multiple transactions taking place over time. Money does not have to be exchanged in order for parties to create an enforceable contract.

Some common types of contract include:

- Contracts for purchase or sale of goods or services
- Contracts with government agencies, other educational institutions, and private partners for the accomplishment of particular purposes
- Research grants and contracts
- Leases of movable property, such as tools, equipment, vehicles
- Leases, deeds, mortgages, and other contracts related to interests in real property
- Employment contracts

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<sup>1</sup> Please see Appendix A for policies which impact university contracts.

<sup>2</sup> The language of contracts between university employees and third parties should make it clear to the third party that the university employee in no way represents the University of Waterloo. University employees are encouraged to seek independent legal and other professional advice before entering into such contracts.

- Debt instruments
- Licence agreements for software and other intellectual property
- Non-disclosure agreements
- Waivers and other contracts designed to limit liability
- Student placement and internship agreements

### **Roles and Responsibilities:**

- 1. Contract Administrator:** a person in the contracting department who is responsible for ensuring that all obligations under the contract are being fulfilled, including that milestones, timelines and service levels are being met. This person is also responsible for ensuring all approvals have been obtained prior to contract execution; monitoring and taking/triggering action in response to key dates in the contract, such as renewal dates, review dates and termination dates; communicating with the counterparty/ies throughout the life of the contract; monitoring progress towards the end result; ensuring financial obligations are met; and tracking and managing deviations from the contract.
- 2. Counterparty:** the person or persons with whom the university is contracting.
- 3. Department Manager:** the senior manager of the contracting department. This person is responsible for reviewing and approving the terms of the project/transaction covered by the contract (in conjunction with department managers of other contracting departments, as applicable), and for appointing and supervising the contract administrator.
- 4. Contracting Department:** this is a department that initiates the contract, receives goods or services pursuant to the contract, and/or performs obligations under the contract. There may be more than one contracting department for a contract, in which case, the contracting departments will determine among themselves who will be responsible for administering which parts of the contract.
- 5. Reviewer:** this is a person or unit responsible for reviewing or providing advice with respect to the contract or an aspect of the contract, as identified under the heading “Contract Negotiation, Review and Approval Streams” or in Appendix B.
- 6. Signatory:** this is the person identified in the [signing procedures](#) as the authorized signatory for a contract given the subject matter, dollar value and other characteristics of the contract. The signatory is responsible for satisfying him/herself that the contract has been negotiated and reviewed in accordance with the policies, procedures and guidelines of the university and is in the best interests of the university. If the signing of the contract is governed by Procedure 1 and the value of the contract is under \$200,000, then the signatory is also responsible for ensuring that the contract reflects the agreed business terms.

## **General Guidelines for Contracts:**

The following are general guidelines applicable to all contracts.

**1. Approvals.** These procedures assume that the necessary university officials have approved the project covered by the contract. The contracting department is responsible for obtaining necessary approvals before any firm contractual commitment is made. This will ensure that the contract is in line with the university's mission and plans, and that the requisite funds and other resources needed to complete the contract are available. If an approval cannot be obtained until after the contract is signed (e.g., approval of an academic program), then the contract should state that the contract and obligations in the contract are subject to receiving necessary approvals. Please see Appendix B for recommended and required input and approvals.

**2. Contracting entity.** Only the University of Waterloo is to be the contracting entity. Individual departments, schools, centres and similar bodies, unless separately incorporated under federal or provincial legislation, are not persons at law and do not have the capacity to contract in their own name.

**3. Effective date.** Although the effective date of a contract may pre-date execution by the parties, each contract should contain wording to the effect that it will not be binding on the university until all parties have signed the contract.

**4. Signing.** All contracts must be signed in accordance with the university's signing procedures. In the absence of specific written delegation in the [signing procedures](#) authorized by resolution of the Board of Governors, employees do not have authority to execute contracts on behalf of the university. Note that for contracts where payment is not a lump sum, the total of anticipated payments over a 5 year period should be used to determine the threshold for signing authority.

**5. No oral contracts.** All contracts must be in written form, drafted and reviewed in accordance with these procedures, and signed in accordance with the signing procedures. Contracts not made in accordance with the foregoing, including oral contracts or commitments, are not properly authorized and the employee may be held personally accountable if the university suffers damages as a result. Employees should be very careful not to make what could be construed as an oral contract; contracts do not need to be in writing to be enforceable.

**6. Inter-provincial and international contracts.** All contracts entered into by the university should be governed by the laws of Ontario, Canada. This includes both the governing law clause and any dispute resolution clauses (e.g., arbitration) in the contract. If the governing law clause or dispute resolution clauses reference a location other than Ontario and the counterparty is unwilling to change the location to Ontario, please contact the Secretariat.

**7. Use of external counsel for legal review.** Legal counsel should not be engaged on behalf of the university except with the prior approval of the Secretariat.

**8. Changes / renewals.** Amendments, changes, extensions or renewals to contracts are processed in the same manner as the original contract and require authorized signatures in accordance with the signing procedures. Where possible, the signatories should be the same persons, or persons holding the same positions, as the signatories on the original contract.

**9. Records management.** Original contracts are to be retained in accordance with the university's approved retention schedules and any contractual requirements regarding retention.

### **Contract Negotiation, Review and Approval Streams:**

Procedures for negotiation, review and approval vary by type of contract:

**1. Procurement contracts** related to the purchase of supplies, equipment, goods, and services are primarily negotiated and managed by Procurement & Contract Services in cooperation with the contracting department(s). See Appendix C for procedures applicable to procurement contracts.

**2. Research contracts** pertaining to sponsored projects, programs, activities for research and/or intellectual property (i.e., contracts signed under procedure 1A) are coordinated through the procedures established by the Office of Research.

**3. Employment contracts**, including secondment agreements, are managed through the university's hiring policies and procedures.

**4. Donation/gift/endowment contracts**, are negotiated and managed by the Office of Development and Alumni Affairs (ODAA) with input from the Secretariat in the event the donor wishes to deviate from the templates or the contract meets the criteria in paragraph 8 below.

**5. Financial, investment and insurance contracts** relating to banking, borrowing, university investments, and insurance are managed by Finance.

**6. Real property contracts** involving the purchase, sale or leasing of land and/or buildings, creation of easements or other rights in land, and rental agreements are managed by the office of the Vice-president, Administration and Finance or delegate. Design, maintenance and trade services for facility construction are handled by Plant Operations.

**7. Secretariat approved templates/standard form contracts:** Contracts which use an unaltered standard form or a template which has been reviewed and/or approved by the Secretariat or legal counsel engaged by the University may be executed consistent with university's signing procedures without further review. Contracting departments that create many similar contracts but do not have an approved template/standard contract should contact the Secretariat. Contracting departments using standard forms or templates that have not been approved by the Secretariat, must submit these to the Secretariat for review and approval. Any contract where the

contracting department wishes to alter the Secretariat-approved standard terms and conditions needs review by the Secretariat.

**8. Contracts not covered by 1. through 7.** must be reviewed by the Secretariat or external counsel engaged by the University before execution. Some judgment will need to be exercised regarding which contracts require Secretariat/external counsel review but in general all contracts of strategic importance, regardless of value, or where there is potential for significant or uncertain liability, and specifically:

- All contracts requiring signature of the president, a vice-president, associate vice-president, associate provost, or board member;
- All contracts dealing with potential for injury to persons, property, or the environment;
- All contracts involving intellectual property (material subject to copyright, trade secrets, trademark, or patent protection) that do not fall under the mandate of the Associate Provost, IST or Office of Research;
- All contracts that bring the activities of the university under public scrutiny or that involve any controversial matter;
- All contracts establishing unique or significant partnering relationships with external entities; and
- All contracts involving multiple internal departments, faculties and/or units.

Please see Appendix D for procedures applicable to Secretariat contracts.

## Appendix A: Policies, Procedures and Guidelines Impacting University Contracts

The following documents should be taken into account when drafting and negotiating contracts. This is not an exhaustive list, and may be amended from time to time as policies are added, deleted or amended.

Document	Name	Description
Policy 7	Approaches for Donations and Gifts-in-Kind	Governs solicitation, coordination, documentation and acceptance of donations. The policy also governs issuance of charitable tax receipts.
Policy 9	Exchange of Teaching Resources and Arrangements for Transferring Teaching Services from or to Affiliated and Federated Colleges, or Other Universities and Colleges	Governs exchange of teaching resources between UW and other institutions (including the FUAC <sup>3</sup> ) for periods longer than one academic term.
Policy 10	Naming Opportunities	Governs naming of university facilities, space, chairs, professorships, scholarships, faculties, departments and other units in recognition of distinguished service or a gift to the university, or in honour of a person or organization.
Policy 15	Bookings – Use and Reservation of University Facilities for Activities Not Regularly Timetabled	Governs use of university facilities – space bookings and commercial activities on campus.
Policy 17	Quotations and Tenders	Governs the acquisition of goods and services.
Policy 21	Alcohol Use and Education	Governs serving, advertising and education re: alcohol off campus at university events and on campus.
Policy 22	Regulations Governing the Installation of Equipment in University Buildings	Governs consultations which need to take place prior to issuing a purchase requisition for equipment which requires installation.
Policy 26	Provision for University Overhead in Sponsored Research Contracts	Governs cost recovery for university resources used/consumed in the course of conducting sponsored research projects.
Policy 27	Use of Physical Recreation Facilities	Governs scheduling, leasing, payment for use and admission, concessions and services, and subcontracting.
Policy 41	Contract Research at the University of Waterloo	Governs contract research, use of departmental resources in, guidelines re: publication rights, and participation of students in.

<sup>3</sup> FUAC means the federated university and affiliated university colleges, i.e. St. Jerome's, Renison, St. Paul's and Conrad Grebel.

Policy 49	Extra-University Activity (Faculty Members)	Governs extra-university activity undertaken by faculty members.
Policy 52	Private Corporations	Governs contracts between the university and private corporations incorporated by a faculty or staff member, where such person is entitled to receive compensation outside of basic salary/administrative stipend.
Policy 69	Conflict of Interest	Governs conflict of interest involving members of the university community.
Policy 73	Intellectual Property	Governs ownership and transfer of intellectual property by university personnel and graduate students.
Policy 76	Faculty Appointments	Governs different types of faculty appointments.
Provostial Statement on Donation Guidelines/Role of Advisory Bodies/Naming Principles & Procedures		Sets forth principles governing solicitation, acceptance and use of gifts; role of donors or their representatives on advisory bodies; and principles governing naming of faculties, schools, chairs etc.
Procedures 1, 1A, 6, 8, 9, 10, 25, 26	Various Signing Procedures	Sets out who is authorized to sign contracts and other documentation and give instructions to third parties on various matters (e.g., investments).
Electronic Business Statement	Same	Sets out guidelines for web-based university business processes.

## Appendix B: Recommended and Required Approvals/Input

The following approvals/input should be sought depending on the nature and terms of the contract. This is not an exhaustive list, and may be amended from time to time.

Circumstance/Contractual Term	Input/Approval	Authority
Donations	<ul style="list-style-type: none"> <li>- Cash donations – obtain approval of VP, External Relations, who is responsible for seeking input from appropriate university officers</li> <li>- Gifts - in - kind – contracts to be based on a proposal which has been approved by VP, External Relations and one or more of the President/Provost/Faculty Dean(s)</li> <li>- If donation to be used for research purposes, consult VP, University Research</li> <li>- Obtain input and approval of both donor and head(s) of unit/faculty receiving funds for the use of funds at the outset of discussions</li> <li>- Where UW is required to provide any matching (money or in-kind), complete matching schedule to ODAA template and obtain appropriate signatures</li> </ul>	<ul style="list-style-type: none"> <li>- Policy 7</li> <li>- Policy 10</li> <li>- Provostial Statement on Donation Guidelines/Role of Advisory Bodies/Naming Principles &amp; Procedures</li> </ul>
Invoice and payment terms	Procurement & Contract Services	
Insurance terms (except WSIB)	Finance	
Indemnity, limitation of liability, release/waiver of liability	Finance and Secretariat	Procedure 25 (only applicable to contracts of zero or unspecified dollar amount)
WSIB terms	Safety Office	
UW to provide space, parking spots, other goods or services to a third party	<ul style="list-style-type: none"> <li>- Obtain input and agreement of unit/faculty responsible for providing goods or services.</li> <li>- For parking spots, contact UW Parking Services</li> <li>- If an arrangement involving booking</li> </ul>	Policy 15

<b>Circumstance/Contractual Term</b>	<b>Input/Approval</b>	<b>Authority</b>
	of space on campus, contact Bookings Office	
UW to permit a third party to engage in commercial activity on campus	If no exception under Policy 15, then contact Director of University Business Operations	Policy 15
Third party indirectly or directly given use of networks or computing facilities, e.g., UW hosting and administering an online course for third party	Information Systems and Technology (IST), including Director, IT Security	
Procurement of hardware, software or other products or services which have the potential of impacting UW's IT infrastructure	Procurement & Contract Services and AP, IST	Procedure 1
E-business or e-commerce	<ul style="list-style-type: none"> <li>- E-commerce committee for review</li> <li>- Financial Systems Management Committee for approval</li> </ul>	E-commerce Standards and Procedures
Procurement of outsourced IT, software as a service, cloud computing	Procurement & Contract Services; IST; Director, IT Security; FOIP <sup>4</sup> Coordinator; University Records Manager	
UW physical records to be stored offsite or accessed by third parties	University Records Manager and FOIP Coordinator (if personal information contained in records)	
Privacy; Freedom of Information Terms	FOIP Coordinator	
Naming	<ul style="list-style-type: none"> <li>- ODAA –for available opportunities and initial approval</li> <li>- President for approval if within the President's naming matrix</li> <li>- Board of Governors for approval if outside President's naming matrix</li> </ul>	Policy 10
Recovery of overhead costs related to sponsored/contract research	Office of Research	Policy 26
Use of departmental resources for contract research	<ul style="list-style-type: none"> <li>- Chair</li> <li>- Escalate to Dean, if necessary</li> </ul>	Policy 41

<sup>4</sup> Freedom of Information and Privacy. The FOIP Coordinator is a member of the Secretariat.

<b>Circumstance/Contractual Term</b>	<b>Input/Approval</b>	<b>Authority</b>
	- Appeal to SGRC <sup>5</sup> , if necessary	
New Faculty Appointments	- Chair - Dean - Provost - If tenured, Board of Governors - Senate, for information	Policy 76
Establishment of Centres/Institutes	- VP, Research / Associate Dean, Research in relevant Faculty - SGRC - Senate	Guidelines for the Establishment of Centres/Institutes
IP transfer by faculty members	Inform VP, Research	Policy 73
IP transfer by graduate students	Approval of AP, Graduate Studies	Policy 73
UW to deal exclusively with one partner, supplier or sponsor	Approval of Procurement & Contract Services	Policy 17
Trademarks	- Creation of new trademarks – Office of VP, External for approval, Secretariat for legal work - Use of UW trademarks by third parties – Office of VP, External Relations	
Web-linking by third party to UW pages	Office of VP, External Relations	
Governing law/dispute resolution clauses that reference a jurisdiction other than Ontario, Canada	Secretariat	
Federation/Affiliation	- FUAC with another institution – Board of Governors - UW with new institution – UW Board and each FUAC governing body	<i>University of Waterloo Act 1972</i>
Use of University Name and Arms	Board of Governors	Board By-law 1

<sup>5</sup> Senate Graduate and Research Council

## **Appendix C: Procurement & Contract Services Procedures**

The department of Procurement & Contract Services (P&CS) oversees the acquisition of goods and services on behalf of the university. Early involvement in the process ensures university departments meet applicable university policies and procedures, sponsor's terms and conditions as well as all applicable federal and provincial legislation and regulations governing the acquisition of goods and services.

- Contracts related to the purchase of supplies, equipment, goods, and services and consulting must be reviewed by P&CS.
- Any contract that includes the purchase of equipment or services with potential to impact the university's information technology infrastructure must have prior approval of the Associate Provost, IST (Procedure 1).
- P&CS is responsible for meeting government reporting requirements for procurement contracts.
- An executed original contract must be returned to P&CS.

1. The contracting department(s) must designate contract administrator(s).

2. The contracting department should prepare a contract cover sheet and supporting documentation (e.g., quotation, draft supplier contract, business case), which should be forwarded to P&CS. The contracting department must leave sufficient time for discussion, review, and negotiation.

Business terms and conditions must be clearly defined and in the best interests of the university:

- The contract must reflect the legal name of the counterparty.
- Scope of work should be detailed enough that all expectations are clearly set out;
- Date(s) that services are to be performed or concluded should be clearly stated;
- Financial terms, if any, should be clearly specified, including the party responsible for payment, date and means of payment, and whether payment is in instalments or a lump sum;
- Should include a start date, an end date and a termination/rescheduling provision if appropriate;
- Should consider additional terms and conditions such as indemnification, insurance, and renewal; and
- Exclusivity should be avoided.

All terms should be consistent with university policies, including academic freedom and intellectual property.

3. P&CS reviews draft contract, negotiates terms and conditions, and forwards the draft to any other necessary reviewers or subject experts as required by the particular contract (specifically

checks for indemnification, confidentiality, exclusivity, intellectual property, use of names and trademarks, insurance, renewal, tax implications, and payment terms).

4. An electronic working copy of the contract will be made available to the contract administrator and other authorized users.

## **Appendix D: Secretariat Procedures**

1. The contracting department(s) must designate contract administrator(s).
2. The contracting department should prepare a contract cover sheet and supporting documentation (e.g., approved business case, draft contract), which should be forwarded to the Secretariat. Review is not a rubber stamp: the contracting department must leave sufficient time for discussion, review, and redrafting.

Business terms and conditions must be clearly defined and in the best interests of the university:

- The contract must reflect the legal name of the counterparty.
- Scope of work should be detailed enough that all expectations are clearly set out;
- Date(s) that services are to be performed or concluded should be clearly stated;
- Financial terms, if any, should be clearly specified, including the party responsible for payment, date and means of payment, and whether payment is in instalments or a lump sum;
- Should include a start date, an end date and a termination/rescheduling provision if appropriate;
- Should consider additional terms and conditions such as indemnification, insurance, and renewal; and
- Exclusivity should be avoided.

All terms should be consistent with university policies, including academic freedom and intellectual property.

3. The Secretariat reviews draft contract as to legal content and forwards draft to any other necessary reviewers or subject experts as required by the particular contract (specifically checks for indemnification, confidentiality, exclusivity, intellectual property, use of names and trademarks, insurance, renewal, tax implications, and payment terms). The Secretariat does not generally negotiate agreements on behalf of a contracting department, but will provide support to the negotiators by reviewing revisions to the contract and providing alternate language, as necessary.
4. An executed original must be returned to the Secretariat.
5. An electronic working copy of the contract will be made available to the contract administrator and other authorized users.