

### BACKGROUND

This Provostial Guideline provides direction for academic divisions implementing the University of Toronto Governing Council [Policy on Approval and Execution of Contracts and Documents](#) (“Policy”). According to the *Policy*, the Governing Council of the University of Toronto has authorized certain officers to sign specified categories of agreements on behalf of the University. These officers are responsible for the consultations and negotiations leading to the approval and execution of contracts.

Notwithstanding any delegated authority described in the *Policy* or in this document, the *Policy* requires that:

*[T]he President and other administrative officers shall bring to the attention of the appropriate Board or Committee of the Governing Council any contract or other agreement, prior to approval and execution, that involves an unusually high level of risk to the University or that might have a negative effect on the reputation of the University.*

This Guideline outlines the process to be followed for categories of contracts and agreements arising from or involving academic units (e.g., Faculties, Schools, Departments, Centres, Institutes, etc.) for which there is no existing pathway or delegation of approval and signing authority under existing University policies. Contracts are not always documents that are signed or under seal; divisions should be aware that a contract or agreement can be in place through an exchange of emails, payment of an invoice, purchase orders, signing of a Memorandum of Understanding, etc. In addition, divisions should consider whether a contract or agreement is required for activities that do not currently have one in place.

### EXISTING PATHWAYS

Academic divisions must follow specific pathways that exist under various University policies for the approval and signing of the following categories of contracts arising within academic divisions:

- [Capital projects](#)
- Donation and gift agreements
- Educational placements for U of T students
- [Memoranda of Understanding \(MOUs\)](#) or Memoranda of Agreement (MoAs) with international universities
- Offers of employment and employment contracts
- [Purchase of goods or services](#)
- [Research grants and contracts](#)
- [Student exchange agreements](#) with international universities
- Written settlements of legal claims, grievances and complaints

### PRINCIPLES AND PROCESS FOR REVIEW AND APPROVALS OF CONTRACTS

1. All contracts signed on behalf of the University must be in line with the University's academic mission, and in accordance with established University policies, including the University's commitment to academic freedom.
2. Before entering into any agreement, consideration must be given to what consultation, review and level of approval and/or signing is needed for the agreement. Please note there is a distinction between approval and signing authority, depending on the factors outlined in this Guideline. Regardless of what is required under Policy, it is best practice to have one-up FYI notification of all significant contracts being processed within a unit.
3. Each academic division must adopt its own divisional guideline on approval and signing authority for contracts, which must be agreed upon with the Provost. Each divisional guideline must include:
  - a. what levels of consultation, review and approval are required for different types of agreements,
  - b. an outline of what categories of contracts can be approved and signed as within the "Normal Course of Business" (described in Appendix) within that division,
  - c. what elements of a potential contract would classify it as being within the Normal Course of Business,
  - d. what would remove a contract from being within the Normal Course of Business for that division, and
  - e. a description of approval and signing authority for that division's various administrators.
4. Academic administrators must be sure that the individual who signs an agreement has the authority to assume responsibility, on behalf of the University, for the full range of activities and risks associated with the agreement.
5. The divisional guidelines will set out the activities and risks for which it is reasonable to take responsibility in the Normal Course of Business based on role (e.g., Chair, Dean, Vice-Provost) and unit (e.g., local expertise, budget size, etc.). Thus, a contract that is determined to be "not in the Normal Course of Business" for a Chair of a small department to approve and/or sign may well be "in the Normal Course of Business" for a Dean to approve and/or sign.
6. Potential contracts that are outside the Normal Course of Business for a division will require the approval and/or signing of the Provost (or in certain cases, other University-level officers). Contracts that are not in the Normal Course of Business for any senior officer of the University to sign will be referred or recommended to the appropriate board or committee of Governing Council for approval.

7. Regardless of the division's definition of Normal Course of Business, contracts involving the sale of services (including consulting, technical services, and continuing/professional/executive education) must be signed by an *academic* administrator at the level of Chair or above.
8. To support streamlined negotiation, review and approval of contracts by the Provost's Office, a standard Provostial cover sheet / checklist should be used to assist in addressing common issues of concern. Divisions may wish to adapt this cover sheet / checklist for contracts handled internally.
9. All agreements involving categories of activity not explicitly covered by this Guideline or by a Provostially-approved divisional guideline should be brought forward to the Provost's Office, via the Assistant Provost.
10. Records management:
  - a. Officers who delegate signing authority in line with the *Policy* should keep a written record of such delegation.
  - b. Divisions should keep on file their own divisional guidelines on contracts, including their "Normal Course of Business" statements.
  - c. Each division should establish its own registries of all contracts signed within that division, regardless of the approval pathway, and including follow-up mechanisms and timelines for reporting, expiry, review and renewal where applicable.
  - d. Under the *Policy*, the following *minimum* record-keeping standards apply:
    - i. Signed copies of agreements in the Normal Course of Business should be retained in the office responsible for their approval;
    - ii. Signed copies of agreements *not* in the Normal Course of Business for the University (i.e., those that are recommended to the Provost or Governing Council for approval) are retained in the Provost's Office (or other office responsible for recommending the document to Governing Council for approval); and
    - iii. Agreements concerning property matters or with insurance/liability implications should be copied to the attention of the Director of Risk Management and Insurance.

### APPENDIX

#### NORMAL COURSE OF BUSINESS ASSESSMENT

“Normal Course of Business” requires a holistic assessment to ensure that an administrator who signs an agreement has the authority to assume responsibility, on behalf of the University, for the full range of activities and risks associated with the agreement.

Divisions have authority to approve and sign contracts that are in the normal course of business and in accordance with University policy and procedures in the following general categories:

- Educational placements of students that are in a form of agreement approved by the Provost
- Purchase of goods and services<sup>1</sup>
- Sale of goods or services<sup>2</sup>
- Some employment offers as established in University policies and procedures

Even in these categories, some potential agreements will fall outside the normal course of business for approval at any level within a division. Prior approval of those potential agreements must be obtained from the Provost or other University level officer identified as having the approval and signing authority.

To illustrate, a potential contract could be *within* the normal course of business for a division if it has all of the following characteristics:

- a. Involves activities that are consistent with the academic priorities of the division,
- b. Is consistent with that division’s own contracts guideline,
- c. Falls under a monetary threshold established by the division and agreed to by the Provost,
- d. Is in line with existing University agreements, policies and procedures (e.g., incorporates indirect costs of research as per the *Research Administration Policy*; is consistent with the terms of collective agreements, etc.),
- e. Is governed by Ontario law and in the English language, AND
- f. Appropriately addresses the intellectual property of faculty or students.

<sup>1</sup> For more information, please visit Procurement Services at <http://www.procurement.utoronto.ca/>

<sup>2</sup> ‘Sale of services’ includes activities such as continuing education, fee-for-service activity, and consulting services. For more information, please visit <http://www.research.utoronto.ca/forms/service-contracts-and-agreements/>

## PROVOSTIAL GUIDELINE FOR ACADEMIC DIVISIONS ON CONTRACTS

On the other hand, a potential contract would fall *outside* of the normal course of business for a division and therefore require Provostial review and approval if it has one or more of the following characteristics:

- a. Involves international partners or activities
- b. Does not specify a termination date or has a mandatory automatic renewal clause
- c. Involves a high level of risk (e.g., financial, health and safety, academic freedom, etc.)
- d. Contains unusual insurance or indemnity provisions
- e. Could have a negative effect on the reputation of the University
- f. Could have an impact on other divisions in the University
- g. Contains publication restrictions or unusual provisions on intellectual property, privacy or confidentiality
- h. Contains academic components beyond the authority of the division to approve (e.g., the granting of degrees, diplomas or certificates<sup>3</sup>, faculty appointments, student coursework or credit in some circumstances)
- i. Is an educational placement that is not in line with a form of agreement (i.e., template) previously approved by the Provost and/or makes material changes to an approved form of agreement
- j. Involves the use of or access to a University or new IT system, such that an Information Risk Audit might be required
- k. Involves research on human subjects—should go to the Research Ethics Board

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<sup>3</sup> Other than diplomas and certificates that fall under divisional authority according to existing University policies.