

Introduction

In its most basic form, a contract is merely a written record of an understanding between two or more people to do or not do a particular thing or particular things in the future.

Legal review is only one dimension to contract management. As the contract signatory, you aren't undertaking a legal review of a contract; your role is to determine whether a proper process has brought the contract to your desk and whether the underlying commitments are appropriate. One component of this consideration is whether the contract represents sufficient risk to warrant legal review.

This guide provides a list of things to look out for when exercising delegations to sign documents on behalf of the University. In particular, it should help you identify when a contract should go to Legal Services for review, if it hasn't already.

1 Am I actually authorised to sign this?

If you've been asked to sign the document on behalf of the University, you need to make sure you're actually authorised to sign the contract. The University's [Delegations Framework](#) provides the structure for the allocation, exercise and management of delegations of authority with the Delegations Register setting out who may authorise and sign documents on behalf of the University.

2 Has someone taken ownership of the contract?

A contract embodies a plan for and a commitment to future activities. If there isn't someone clearly responsible for managing the contract and its underlying subject matter, then there is a problem. If paths of responsibility aren't clear to you, ask for clarification about who actually owns the contract. If nobody is prepared to own the contract, then serious doubt should be cast on whether it should be signed. By signing, you also run the risk that you'll become the sole owner of the responsibilities that arise from the contract.

3 Has everyone had their say?

Contracts often involve a range of internal stakeholders who need to be consulted before commitments are made. For example, there's no point dedicating a University lawn space to host a science fair if facilities management have organised for it to be dug up for electrical works on that day. Have a think about who will be involved in implementing the contract obligations and don't be shy about asking for verification that those who ought to have been consulted are on board and ready to go. Are you confident that all stakeholders have been consulted and approved their commitment to the proposed activities?

4 Does it make sense?

Are you comfortable that what is proposed actually stacks up as sensible, achievable and aligned with the purposes of the University? Is it feasible that the University can actually comply with the ongoing terms of the contract and are there funds available to meet financial commitments? Are you satisfied

that someone has actually read the document carefully and critically and that all of the blanks have been filled? If you aren't comfortable, ask questions of the contract owner rather than sign.

5 Has the contract been approved by Legal Services or is it on a standard Legal Services template?

It may be the case that the contract you are being asked to sign has already been reviewed by Legal Services or has been prepared by filling in the blank fields in a template document that was originally drafted by Legal Services. If you are unsure about this, you should ask and specifically enquire about:

- Has a template been used or not? Have any changes been made to the standard template?
- Has Legal Services reviewed the contract?
- Have any significant risks been identified and what are those risks? What controls have been put in place to mitigate those risks?

6 Consider asking for legal review of the contract if there hasn't been one

A legal contract is a serious document. Even if you are satisfied that the contract has been carefully considered before it has come to you, you should still give the contract a quick once over bearing in mind the considerations listed below. Consider bumping the contract back to the contract owner for them to take further action, provide further clarification or organise a legal review:

- *Are the parties correctly identified?* From the University's point of view, the contracting party should always be Griffith University; individual elements, units or institutes within Griffith University are not each themselves legal entities. Is there anything odd about the way the other party is identified? If so, send the contract back to the contract owner to be corrected.
- *Does the other party represent a high risk?* Much of the University's contract activity is with other universities or government organisations and these present a very low level of underlying risk. For example, are we seriously going to sue another university or a Queensland Government department? Contracts with the private sector and particularly small (Pty Ltd) companies are much more likely to lead to litigation. This of itself probably isn't sufficient reason to send a contract for legal review but it's a consideration to be taken into account if something else is of concern too.
- *Risk allocation:* Does the contract seem to cast all of the risk onto the University, even if it isn't in a position to manage that risk? If this seems to be happening, a legal review is recommended.
- *Obligations and responsibilities:* As the signatory, you may have limited understanding of the underlying project. Can you say that the contract makes it clear what the responsibilities and obligations of each party are? If the answer is no, perhaps you should ask the contract owner to take another look at the contract so it can be redrafted to clearly reflect who is doing what, when, where and how.
- *Hold harmless and indemnification provisions:* Lawyers love to pepper contracts with indemnity provisions, whether or not they are actually warranted. When you agree to hold someone harmless you are agreeing they are not responsible for liability that may arise out of the transaction. When you indemnify someone, you are agreeing to protect them from liability or loss that may arise out of the transaction. If the contract contains these types of provisions, you should look at them closely and if they seem unreasonable, then a legal review is recommended.
- *Ownerships of intellectual property:* If IP is being produced, make sure that the contract clearly deals with ownership of those rights.
- *Payments:* References about payments need to address GST.
- *Exclusions of trade:* Does the contract contain clauses which require the University to only deal

with the other party (so that, for example, all research about a particular topic needs to be conducted with them)? If so, then a legal review is recommended.

- *External handling of personal information and data:* If the contract contains clauses which require the University to provide bulk personal information that identifies, for example, students, employees or research subjects then a legal review and a privacy impact assessment are recommended.
- *Automatic renewals:* Be wary of automatic renewals and ask the contract owner what steps have been taken to ensure that the underlying exit opportunity will be given due and timely consideration.

If you decide that a legal review is required, ask the contract owner to organise it and provide instructions to Legal Services. This makes sure that lines of responsibility don't get blurred. A legal request can be raised through the Legal Services website.

7 After the contract has been signed

All signed contracts should be uploaded to the [ConvergePoint Contract Register](#). If you are unfamiliar with the use of ConvergePoint, further information, support and training can be accessed on the [ConvergePoint User Group SharePoint site](#).

8 If you're unsure

If you have any questions or queries, please give us a buzz on: x55586 or send an email to: legalservices@griffith.edu.au .