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Memorandum to: Executive Committee

From: Louis R. Charpentier

Date: April 5, 2004

**Subject: Policy on Approval and Execution of Contracts and Documents:
Proposed Revision**

Background

This proposal to update the *Policy on Approval and Execution of Contracts and Documents* is intended primarily to address the need, in an institution as large and complex as the tri-campus University of Toronto, for certain types of contracts to be approved and executed in the divisions and departments and to provide for the mechanisms necessary to ensure appropriate controls over contracts. Attached for your review is a copy of the proposed, revised *Policy*. I have also included a copy of the original *Policy*.

A part of the impetus for the current proposal was the University's risk-assessment profile, prepared by the Vice-President, Business Affairs in consultation with senior administrative colleagues and presented annually to the Audit Committee. The risk-assessment profile identified contracting risk as an area requiring attention. The risk assessment stated in part that "the University engages in a wide variety of contractual negotiations and contract execution activities. Due to our decentralized nature, these activities occur throughout the faculties and divisions. Some recent difficulties with contractual matters have indicated to us that further education and standardization of these activities needs to occur."

The *Policy* has been amended in its detail from time to time since its approval very early in the history of the Governing Council. In addition, the Council has approved a significant number of individual resolutions delegating signing authority to divisional officers, for example officers of the Faculties of Medicine, Nursing, Pharmacy and Social Work to sign student clinical experience agreements with various institutions providing sites for training University of Toronto students; to the Dean or Assistant Dean of the Faculty of Music to sign standard contracts for the rental of facilities in the Edward Johnson Building, etc. The proposed revision would delegate to the faculties and other divisions more general authority to approve and sign certain classes of contracts and to provide appropriate oversight and safeguards along with that delegation. It is proposed that the revised policy take effect on October 15, 2004, to enable time for the communication and training necessary to accompany the delegation of authority.

The proposed policy revision is the outcome of a careful review undertaken in cooperation with the Acting Chief Financial Officer and the Director of Internal Audit. An early draft was reviewed with senior administrative officers in three academic divisions, all of whom have also had experience in central administrative positions. They were Ken Burke (OISE/UT), David Keeling (Faculty of Medicine), and Kim McLean (UTSC). A revised draft was then reviewed by the President and Vice-Presidents and considered at a meeting of the Principals and Deans. The outcome of those reviews was significant improvement and is reflected in the attached document.

Summary of Changes

The following points outline the substantial changes proposed to the current policy.

- **Preamble** Other parties to major contracts from time to time request copies of the Governing Council *Policy on Approval and Execution of Contracts and Documents* and also of the authority of the Governing Council to approve that *Policy* and therefore the signatories to bind the University. The preamble cites the *University of Toronto Act* as the basis of the authority of the Governing Council and Council's *By-Law Number 2* as the basis of the authority of Council to approve the proposed delegation of signing authority. The preamble was inserted into the draft policy for the sake of completeness to show the derivation of the authority of the Governing Council and the legitimacy of the policy.
- **Additional conditions for the approval of contracts.** The current section on approval of contracts summarized the basis for the distinction between contracts "not in the normal course of business", where the contract or the underlying transaction must be approved by the Governing Council or one of its Boards, and "other contracts" which may be approved by senior officers. The drafting of that section has been clarified. More significantly, two substantive conditions have been added to senior officers' authority to approve contracts. First, "only contracts that are consistent with approved policies, and that have been arrived at in accordance with sound business practices, may be approved." Second, "officers shall bring to the attention of the appropriate Board or Committee of Governing Council any contract or other agreement, prior to approval and execution, that involves a unusually high level of risk to the University or that might have a negative effect on the reputation of the University."
- **Execution of contracts not in the normal course of business.** Among the officers currently permitted to sign contracts not requiring execution under seal are: the Chief Capital Projects Officer; the Director, Capital Projects; the Director, Utilities; the Controller; or the Director of Procurement Services. Their signing authority has been limited to "matters within their areas of responsibility," reflecting their actual use of their authority and adding an appropriate limit.
- **Approval and execution of contracts in the normal course of business.** This is the new section that gives formal delegation of authority to approve and execute certain contracts in the normal course of business according to strict conditions, which provide controls to safeguard the University's interest.
 - The delegation is limited to specific classes of contracts, albeit classes of contracts that take in most contracts that could be regarded as in the normal course of business: the purchase of goods or services, offers of employment (which, when accepted, are employment contracts), the sale of goods or services, agreements for educational placements, and research contracts. This limitation makes it clear that other contracts are not in the normal course of business and require approval and execution in the usual manner – involving senior officers and perhaps the Governing Council.
 - It is stipulated that these agreements must be consistent with University policies and procedures.
 - Delegated signing authority is limited to the Principal, Dean, Vice-Dean, Associate Dean, Chair or other head of a budget unit or to their designate, given written authority.
 - Signing authority for offers of employment is specified.
 - For the sale of goods or services, or for the establishment of educational placements: the activity must be approved by the appropriate Vice-President or other central officer; the form of agreement must be approved by the appropriate Vice-President or other central officer acting upon legal or other advice (as deemed necessary); and a record of the approval of the activity, the form of agreement and the authorized signing officers is to be maintained centrally in the Office of the Governing Council to facilitate control and auditing.
 - Signing authority for written settlements of legal claims, grievances and complaints is specified.

Summary of Changes (cont'd)

- Corporate seal. *By-Law Number 2* stipulates that the corporate seal shall be in the custody of the Secretary of the Governing Council or other such person as the Council may designate. The proposed policy reflects the fact that Council has not acted to designate another custodian and the seal is in the custody of the Secretary.

Action Sought:

THAT the following resolution be recommended to the Governing Council:

THAT the proposed revised *Policy on Approval and Execution of Contracts and Documents*, dated March 31, 2004, be approved, effective October 15, 2004, replacing the policy approved by the Governing Council on June 26, 2003.

Enclosures.

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University of Toronto

POLICY ON APPROVAL AND EXECUTION OF CONTRACTS AND DOCUMENTS

A. PREAMBLE

The Governing Council of the University of Toronto is a corporation continued by an Act of the Legislative Assembly of Ontario: the *University of Toronto Act, 1971*, as amended by 1978, chapter 88.

Section 3(b) of *By-law Number 2* of the Governing Council provides that:

The Council may from time to time by resolution appoint any officer or officers or any person or persons on behalf of the Council either to sign contracts, documents or instruments in writing generally or to sign specific classes of contracts, documents or instruments in writing or to sign specific contracts, documents or instruments in writing.

Pursuant to this By-law provision, the Governing Council has established this Policy on Approval and Execution of Contracts and Documents.

B. APPROVAL

Contracts not in the normal course of business will be referred to the appropriate board or committee of the Governing Council for approval on behalf of the Governing Council or for recommendation to the Governing Council for approval. Other contracts may be approved by the senior officer(s), as specified below, who are responsible for the consultations and negotiations leading to their completion.

The Governing Council has set financial limits or other conditions which establish the level of authority to give final approval to contracts and documents. It has done so by approval of the Board and Committee terms of reference, the Banking and Borrowing resolutions, and specific policy documents. A record of such limits and conditions is maintained in the Governing Council Secretariat. Only contracts that are consistent with approved policies.

Notwithstanding the delegation of authority to administrative officers to approve contracts contained in the Board and Committee terms of reference, the Banking and Borrowing resolutions or specific policy documents, the 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 a unusually high level of risk to the University or that might have a negative effect on the reputation of the University.

C. EXECUTION OF CONTRACTS AND OTHER AGREEMENTS NOT IN THE NORMAL COURSE OF BUSINESS

- (1) Contracts and documents under seal may be signed by:
- (a) any two of the President, the Chairman of the Governing Council, the Vice-Chairman or Acting Chairman of the Governing Council, a Vice-President, an Assistant Vice-President, the Chief Financial Officer, the Deputy Provost or a Vice-Provost, the Chief Capital Projects Officer, or a member of the Governing Council specifically designated, or
 - (b) any one in (a) above, when countersigned by one of the following:
the Secretary, the Deputy Secretary or an Assistant Secretary of the Governing Council, the Director, Capital Projects, the Director, Utilities or the Controller.

Normally the Secretary, Deputy Secretary or an Assistant Secretary of the Governing Council shall sign all documents together with one signing from (a) above.

- (2) Contracts and documents not requiring signature under seal may be signed by any one of the President, a Vice-President, an Assistant Vice-President, the Chief Financial Officer, the Deputy Provost or a Vice-Provost or as specified in section D.

For matters within their areas of responsibility, contracts and documents not requiring signature under seal may be signed by any one of: the Chief Capital Projects Officer; the Director, Capital Projects; the Director, Utilities; the Controller; or the Director of Procurement Services.

D. APPROVAL AND EXECUTION OF SPECIFIC CLASSES OF CONTRACTS AND DOCUMENTS IN THE NORMAL COURSE OF BUSINESS

- (1) Specific classes of contracts and documents in the normal course of business and consistent with university policies and procedures not requiring signature under seal may also be approved and signed as follows:
- (a) Agreements in the normal course of business for the purchase of goods or services for a budget unit, using that unit's funds, and conforming to the requirements of the University's Purchasing Policy and other relevant policies, may be approved and signed by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit or by their designate given written authority to make such purchases by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit. All capital leases (i.e. those with purchase commitments) are reviewed by the Procurement Services Department, which retains executed copies of the documents.
 - (b) Offers of employment to University faculty or staff that are accepted constitute employment contracts. Offers of employment that conform to relevant University policies and procedures may be approved and signed by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit or by their designate given written authority to authorize such offers by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit.
 - (c) Agreements in the normal course of business for the sale of goods or services by a budget unit that conform to relevant University policies may be approved and

signed by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit or by their designate given written authority to authorize such sales by the Principal, Dean, Vice-Dean, Associate Dean, Director, Chair or other head of the budget unit, provided: (i) that the general class of such sales has been approved by the Vice-President, Assistant Vice-President, Deputy Provost or Vice-Provost responsible for the budget unit, and (ii) that the form of the agreement has been approved by the Vice-President, Assistant Vice-President, Deputy Provost or Vice-Provost responsible for the budget unit.

The Vice-President, Assistant Vice-President, Deputy Provost or Vice-Provost responsible for the budget unit will notify the Secretary of the Governing Council, of all classes of sales approved under this clause, the general form of the agreement to be used and the position titles of the officers who have received signing authority.

- (d) Agreements in the normal course of business for educational placements for students off a University campus, pursuant to approved academic programs, may be approved and signed by the Principal, Dean Director, Chair or other head of the academic unit, or by the program supervisor duly appointed by the Principal, Dean, Director, Chair or other head of the academic unit, provided that that the form of the agreement has been approved by the Vice-President and Provost, Deputy Provost or Vice-Provost responsible for the academic unit.

The Vice-President and Provost, Deputy Provost or Vice-Provost responsible for the academic unit will notify the Secretary of the Governing Council of the types of education placements where approval has been given under this clause, the general form of the agreement to be used and the position titles of the officers who have received signing authority.

- (e) Research contracts (as defined under the Policy on Research Contracts and the Recovery of Indirect Costs of Research) conforming to relevant University policies, may be approved and signed by the President, Vice-President, Research and Associate Provost or the Assistant Vice-President, Technology Transfer or another designate of the Vice-President, Research and Associate Provost.
 - (f) Written settlements of legal claims, grievances and complaints, of whatever kind, may be signed by any one of the President, a Vice-President, an Assistant Vice-President, the Chief Financial Officer, the Deputy Provost or a Vice-Provost, or someone designated by one of the foregoing, in writing.
- (2) From time to time the Governing Council or its appropriate Board may approve, pursuant to By-law number 2, Section 3(b), that individuals other than those named above be authorized to sign specific classes of contracts, documents or instruments in writing. A record of such approvals shall be maintained in the Governing Council Secretariat.

E. CORPORATE SEAL

Pursuant to By-law number 2, Section 3(a), the corporate seal is in the custody of the Secretary of the Governing Council. A record of its use is kept in the Governing Council Secretariat.

F. RECORDS

Executed copies of documents are retained in the office that has been responsible for their approval or for the recommendation to Governing Council for their approval. In addition, copies of executed documents concerning property matters or with insurance or liability implications shall be sent to the Office of the Vice-President, Business Affairs for the attention of the Director of Risk Management and Insurance.

G. NON-SUBSTANTIVE UPDATES TO THIS RESOLUTION

The President and the Secretary of the Governing Council may make non-substantive changes to this resolution to reflect: (a) changes to the titles of positions included in this resolution, (b) the deletion of positions included in this resolution and (c) the addition of positions directly comparable to those included in this resolution. Such revisions made under this provision shall be reported for information to the Executive Committee of the Governing Council at its next regular meeting.

Governing Council Secretariat
March 31, 2004



University of Toronto

POLICY ON APPROVAL AND EXECUTION OF CONTRACTS AND DOCUMENTS

APPROVAL

Major contracts not in the normal course of business will be referred to the appropriate committee for approval on behalf of the Governing Council. Other contracts may be approved by the senior officer(s) responsible for the consultations and negotiations leading to their completion. From time to time, Governing Council may set financial or other limits (e.g. in banking resolutions, committee terms of reference, or specific policy documents) which affect administrative authority to give final approval to contracts and documents. A record of such conditions shall be maintained in the Governing Council Secretariat.

EXECUTION

- (1) Contracts and documents under seal may be signed by:
 - A. any two of the President, the Chairman of the Governing Council, the Vice-Chairman or Acting Chairman of the Governing Council, a Vice-President, an Assistant Vice-President, the Chief Financial Officer, the Deputy Provost or a Vice-Provost, the Chief Capital Projects Officer, or a member of the Governing Council specifically designated
 - B. any one of the following when countersigned by one in “A” above:

the Secretary, the Deputy Secretary or an Assistant Secretary of the Governing Council, the Director, Capital Projects, the Director, Utilities or the Controller.

Normally the Secretary, Deputy Secretary or an Assistant Secretary of the Governing Council shall sign all documents together with one signing from “A” above.

- (2) Contracts and documents not requiring signature under seal may be signed by any one of the President, a Vice-President, an Assistant Vice-President, the Chief Financial Officer, the Deputy Provost or a Vice-Provost, the Chief Capital Projects Officer, the Director, Capital Projects, the Director, Utilities, the Controller, or the Director of Procurement Services.
- (3) From time to time approval may be given pursuant to By-law number 2, Section 3(b), for individuals other than those named above to sign contracts, documents or instruments in writing generally or to sign specific classes or specific instances of such. A record of such approvals shall be maintained in the Governing Council Secretariat.

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Governing Council Secretariat
June 2003