



FOR INFORMATION

PUBLIC

OPEN SESSION

TO: Business Board

SPONSOR: Cheryl Regehr, Vice-President & Provost
CONTACT INFO: (416) 978-2122, provost@utoronto.ca

PRESENTER: As above
CONTACT INFO:

DATE: June 16, 2016

AGENDA ITEM: 5

ITEM IDENTIFICATION:

Provostial Guideline for Academic Divisions on Contracts

JURISDICTIONAL INFORMATION:

The Terms of Reference for Business Board grant the Board responsibility over policy on the organization of business functions as well as financial policy and transactions. Section 5.1(c) states that the administration has authority over the “approval of guidelines, programs and transactions in the normal course of business to implement approved policies”. Section 6.4 notes that for-information reports and other items may be presented to the Board from time to time.

The Provostial Guideline for Academic Divisions on Contracts (the ‘Guideline’) is intended to supplement and provide further guidance on the *Policy on Approval and Execution of Contracts and Documents* (the ‘Policy’) which authorizes certain officers to fulfill the business function of signing specified categories of agreements on behalf of the University of Toronto. This Guideline outlines the process to be followed for categories of contracts and agreements arising from academic units for which there is no existing pathway or delegation of approval and signing authority under existing University policies.

GOVERNANCE PATH:

- 1. Business Board [for information] (June 16, 2016)**

PREVIOUS ACTION TAKEN:

A Working Group on Contractual Matters at the University held regular meetings from 2008 through 2011. Consultations undertaken by that Working Group revealed a desire to provide further guidance to academic divisions on aspects of the Policy. In particular, there was an identified need to assist divisions and units in defining what matters and types of contracts or

agreements are to be considered as within the ‘normal course of business’ for that division. The Vice-President & Provost undertook to consult further with academic divisions to refine the resources appended to the Policy and consider the development of a more detailed guideline. Accordingly, representatives from the Office of the Vice-President & Provost, led by the Assistant Provost, undertook a first round of consultations with representatives from divisions across the University in 2012-13, asking the representatives what types of guidance they would find most useful in a guideline.

Following the preparation of a Draft Guideline, a team from the Provost’s Office undertook a second round of divisional consultations in 2013-14 to obtain feedback on the Draft Guideline, following which further revisions were made. Presentations on the Draft Guideline were also made at meetings of CAOs, divisional finance officers and departmental business officers from across the University; at a meeting of Principals and Deans; and at a workshop for Chairs and other academic administrators. Consultations were also held with the Director, Internal Audit; Director, Risk Management and Insurance; Chief Financial Officer; and Senior Legal Counsel. Valuable feedback from all parties has been incorporated into the Guideline.

HIGHLIGHTS:

The Guideline seeks primarily to reduce the risk associated with contracts and agreements entered into by academic divisions and units on behalf of the University. The Guideline asks divisions, first, to assess what types of contracts and agreements they are entering into within their division; and second, to determine what types of contracts and agreement might be signed by the divisional head or delegate “in the normal course of business.” Divisions are encouraged to think of the “normal course of business” assessment in terms of acceptable levels of risk, rather than only the frequency with which such contracts are signed within the division.

Divisions are then asked to create their own divisional guidelines on the signing and approval of contracts. Taking into account the division’s “normal course of business” assessment, the divisional guidelines should grant the divisional head or delegate the authority to sign agreements that are both entered into in the normal course of business in the division, and for which there is no existing pathway under existing University policies. Divisions should also outline their records retention policy in the Guideline.

The Provost will discuss all divisional guidelines with the Dean or Principal prior to formal approval of those divisional guidelines.

Examples of two completed and approved divisional guidelines are included/attached.

FINANCIAL IMPLICATIONS:

None.

RECOMMENDATION:

For Information.

DOCUMENTATION PROVIDED:

Provostial Guideline for Academic Divisions on Contracts

Rotman School of Management Divisional Guideline

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 services¹
- Sale of goods or services²
- 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.

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

² ‘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 certificates³, 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

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



Rotman School of Management Divisional Guideline on Contracts

BACKGROUND

This Guideline provides direction for implementing the University of Toronto Governing Council [Policy on Approval and Execution of Contracts and Documents](#) (“Policy”) and is supported by *Provostial Guideline for Academic Divisions on Contracts*. 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, centres or business entities within the Rotman School of Management (RSM) 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; employees of RSM should be aware that a contract or agreement can be in place through an exchange of emails, payment of an invoice, signing of a Memorandum of Understanding, etc. In addition, employees of RSM should consider whether a contract or agreement is required for activities that do not currently have one in place.

RSM is committed to ensuring best practices and compliance in the creation and execution of contracts and agreements. Any questions about these guidelines, clarification on activities requiring contracts or agreements, and requests for risk and/or privacy assessments, should be directed to the CAO Office, c/o Mary Lyne (mary.lyne@rotman.utoronto.ca or 416-978-7333).

EXISTING PATHWAYS

RSM 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 RSM must be in line with the School's academic and research 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. The categories of contracts that can be approved and signed at RSM, as being within our "Normal Course of Business" generally include:
 - a. Purchase of goods and services (see <http://www.procurement.utoronto.ca>);
 - b. Sale of goods or services; and
 - c. Some employment offers as established in University policies and procedures (ie instructional services, subject matter experts, curriculum development).
4. The following are common elements of contracts that classify as being within RSM's Normal Course of Business:
 - a. Involves activities consistent with the academic priorities of RSM;
 - b. Consistent with RSM's Divisional Guideline on Contracts (ie. this document);
 - c. Contract value is under \$250,000 in value; \$250,000 and above requires CAO/Dean consultation;

- d. Abides by existing University agreements, policies and procedures;
 - e. Preferably governed by Ontario law and in the English language, AND
 - f. Appropriately respects the intellectual property of faculty or students;
 - g. Does not contain any exceptional elements outside of the Normal Course of Business, examples of which are outlined below.
5. Contracts characterized by the following elements do not have existing pathways and would fall outside the Normal Course of Business; such contracts require Provostial approval regardless of monetary value of the contract (always referred to CAO/Dean's office for consultation):
- a. Involves international partners or activities;
 - b. Creates ongoing relationships with an external organization or entity (i.e. contract has no termination date or allows for automatic renewal of the contract upon expiry);
 - 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 or RSM;
 - f. Could have an impact on other divisions in the University;
 - g. Contains publication restrictions or unusual provision on intellectual property, privacy or confidentiality;
 - h. Contains academic components beyond the authority of the division to approve;
 - 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. Envisions any activity that involves human subject engagement (always referred to Research Services for consultation).
6. Contracts characterized by the following elements are not necessarily outside the Normal Course of Business for RSM but do require referral to the CAO and Dean's Office, regardless of monetary value of the contract; such contracts may require the Dean's and/or Provost's approval:
- a. Contains any restrictions on academic freedom or publication rights;
 - b. Could have an impact on student progress to degree completion;
 - c. Involves partnership or implied partnership with domestic institutions;
 - d. Could have a negative impact on RSM or its programs;
 - e. Allows for use or co-branding of the RSM trademark by other parties;
 - f. Involves amendment to approved RSM template agreements.
7. Approval and Signing Authority at the RSM: For contracts within the Normal Course of Business for RSM per paragraph 3 above and not characterized by paragraphs 5 and 6 above, signing authority is as follows:
- a. All contractual employment agreements require review and approval by HR:
 - i. Faculty HR contracts: Signing by any of the Associate Dean, Faculty; Vice Dean, Faculty & Research; or the Dean;

- ii. Staff HR contracts: Signing by the hiring manager at the level of Managing Director or above.
 - b. Contracts/agreements up to \$25,000:
 - i. One-up review, Approval & Signing by Budget Manager with delegated signing authority.
 - c. Contracts/agreements between \$25,000 and \$100,000:
 - i. Review by Budget Manager;
 - ii. Approval & Signing by the member of the Executive Leadership Team with responsibility for the relevant budget portfolio.
 - d. Contracts/agreements between \$100,000 and \$250,000:
 - i. Review by Budget Manager;
 - ii. Approval by the member of the Executive Leadership Team with responsibility for the relevant budget portfolio.
 - iii. Signing by Vice Dean Faculty & Research.
 - e. Contracts/agreements over \$250,000:
 - i. Referral to CAO and Dean's Office for consultation.
 - f. Sole Source provisions on purchases over \$25,000:
 - i. Referred to Procurement Services office for consultation;
 - ii. Approval & Signing by CAO.
- 8. Regardless of RSM'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 Vice-Dean or above, regardless of the monetary value of the contract.
- 9. Approval and Signing of contracts within the Normal Course of Business at RSM are done by individuals who have delegated approval and/or signing authority on the basis of:
 - a. Active working involvement with the work being conducted;
 - b. A working knowledge of RSM's budgeting process;
 - c. Knowledge of the policies, rules, laws, regulations, and other restrictions on the use of funds sufficient either to ascertain compliance or to seek additional assistance when required; and
 - d. Authority to disallow a transaction without being countermanded or subject to disciplinary action.
- 10. Delegation of Signing Authority at RSM: Signing may only be delegated to faculty and/or staff at RSM that are continuing status employees (i.e. no delegation of signing authority to Adjunct faculty, casual staff, cross-appointed faculty whose primary appointment is not at RSM). See Appendix A for Delegation Guidelines and Form.
- 11. Potential contracts that are outside the Normal Course of Business for RSM 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.

APPENDIX A

Guidelines for Delegation of Authority at the Rotman School of Management

Introduction:

These guidelines are to be followed in connection with delegating signature authority, in both paper and electronic processing environments, to someone other than the budget manager.

Delegations of authority are made by department heads to authorize specified individuals in their departments to initiate process and approve business transactions. A paper authorization is required (see Delegation of Authority Form).

The following qualifications are recommended for individuals who are delegated signature authority:

1. Active involvement with the work being conducted
2. A working knowledge of the school's budgeting process
3. The technical skills required to use the administrative application of systems involved conducting the activity
4. Knowledge of the policies, rules, laws, regulations, and other restrictions on the use of funds sufficient either to ascertain compliance or to seek additional assistance when required
5. Authority to disallow a transaction without being countermanded or subject to disciplinary action

Procedures:

In general, approved annual budgets are distributed in April. Each budget manager/or delegate is responsible for managing their financial resources. As specified, individuals authorized to expend funds from a budget must comply with all the applicable policies, regulatory requirements, laws, regulations, and special restrictions on the use of those funds.

Signature Authorization Documentation:

Before budgeted funds can be expended, a record of the signatures of those granted authorization from budget managers, to originate and approve specified business transactions must be provided to the CAO for approval.

Such delegations must be kept on file by the Financial Services Office, reviewed annually, and cancelled when no longer required.

Responsibilities:

Budget Managers are responsible for providing the CAO with the signature documentation, of all individuals who are authorized to conduct business transactions for the department.

Budget managers are also responsible for the prompt cancellation of signature authorizations of individuals who have been terminated or whose authorization to conduct business transactions has been discontinued.

It is the budget manager's responsibility to ensure that the expenditures incurred on behalf of department are made in accordance with the requirements of the University of Toronto.

Financial Services Office is responsible for ensuring that valid documentation are maintained on file, and that requisitions, orders, and payments for goods and services are properly authorized in accordance with University Guidelines.

Delegation of Authority Form

PART A

I, *(name/title)* confirm that *(designate name/title)*, has signing authority for the XXXX/XXXX budget year for budget XXX, _____.

Approval: _____

Date: _____

PART B

I, *(designate)* have read the guidelines and procedures for the delegation of authority and I understand that in authorizing expenditures and subsequently approving invoices for payment my signature means all of the following:

- a) I am taking full responsibility for having authorized the expenditure.
- b) The expense is for any item currently committed in my approved expense budget or one for which I have received special approval by the Dean in advance of authorizing the expenditure.
- c) I have reviewed all of the financial documentation relating to the transaction for accuracy.
- d) The transaction does not contravene any University or School policy.

Signature: _____

Date: _____

Please return this statement directly to Rosemary Pierre, Controller & Director, RSM Financial Services.