

# DEPAUL UNIVERSITY

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## Contract Requirements and Procedures

**Category:** Operations

**Responsible Department:** General Counsel

**Responsible Officer:** Vice President and General Counsel

**Effective Date:** 7/1/2017

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### Policy Summary

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This policy sets forth the protocol for entering into contracts on behalf of DePaul University. The policy details, among other things, when a written contract is required; which individuals have the authority to sign and negotiate contracts on behalf of DePaul; when a contract must be reviewed by the Office of General Counsel (OGC); and the procedures for obtaining OGC approval.

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### Scope

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This policy affects the following groups of the University:

- Executive Offices
- Assoc. / Assist Vice Presidents
- Budget Managers
- Vice Presidents
- Deans
- Directors/Department Chairs

Anyone who reviews, negotiates, or signs a contract on behalf of DePaul

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### Policy

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1. **Written Contract.** All contracts entered into on behalf of DePaul must be in writing. Oral agreements are not authorized regardless of whether there is an exchange of money.

The word "contract" means any document or agreement that legally binds DePaul or the party with whom DePaul is dealing. The phrase "on behalf of DePaul" means that a person, authorized to act pursuant to this or other university policies or articles of governance, acts as an agent of the university, thereby binding DePaul and potentially creating liability. The following types of documents are contracts and thus are subject to this policy: agreements to buy or sell goods, agreements to provide or obtain services, memorandums of understanding, affiliation agreements, leases or deeds affecting real estate, leases or deeds affecting movable property, software licenses, grant agreements, letters of intent, master service agreements, promissory notes, letters of appointment or

employment, waivers and releases, debt instruments, "click to agree" website contracts, and any other document or agreement that could bind DePaul.

A formal written contract, i.e., a document with agreed-on terms, signed by both parties, must be in place for **all** non-goods contracts (e.g., contracts for services, consulting, construction, licensing, etc.), unless the contract value is less than \$1,000, and all Special Risk contracts (defined in No. 7 below), unless authorized otherwise by OGC. A formal written contract is **not** required for transactions only involving the purchase of goods, provided that (a) Procurement Services' policies and procedures are followed, and (b) the transaction does not involve any issues of Special Risk.

This policy should be applied to extensions and renewals of existing contracts as if such arrangements were being negotiated and signed for the first time.

In the event that the Board of Trustees has, pursuant to a resolution or otherwise, provided specific authority to an Officer or Officers of DePaul to negotiate or execute certain contracts, such specific authority shall supersede the provisions of this policy regarding authority to negotiate or execute contracts. In furtherance of the authority given to the Executive Vice President and the Treasurer in Article VIII of the university's By-laws, the Executive Vice President and the Treasurer shall each have the authority to execute contracts and agreements related to the funds, securities and investments of the university, without restriction on the value thereof but within any limitations and pursuant to any requirements established by the Board of Trustees from time to time.

2. **Signing Party.** All DePaul contracts should be signed on behalf of "DePaul University," not in the name of a specific college, department, center, institute, or other entity.
3. **Authority to Negotiate and Sign.** Executive Officers, Academic Officers, and Administrative Officers of DePaul University ("Officers") generally may delegate authority to negotiate contracts to any employee within the Officer's area of responsibility. Officers and a limited number of their Specific Designees (normally not more than three per each operational area by Vice President or per each college/school by Dean) generally are authorized to sign contracts within their respective areas of competence and responsibility. Officers must exercise oversight of, and will be held accountable for, the contracts negotiated and signed by their departments, including contracts executed in violation of this policy. Officers and their Specific Designees may sign contracts in accordance with the following chart:

Value of Contract		Authority to Sign
Greater than or equal to	But less than	
\$ 0	\$250,000	Executive Officers Academic Officers Administrative Officers Specific Designees
\$ 250,000	and above	Executive Officers

The authority to negotiate and sign Purchase Orders shall be determined by Procurement Services.

4. **Executive Officer Signature.** The following contracts may be approved and signed *only* by an Executive Officer:
  - a. Contracts that govern activities in more than one Academic Officer's or Administrative Officer's area of competence and responsibility;
  - b. Contracts that are for a duration of more than 5 years;
  - c. Contracts that establish a relationship with a provider of goods and services to the exclusion of all other providers of similar goods or services; and
  - d. Contracts that include a provision that will renew the contract or agreement automatically.
5. **Leases for Real Property.** The OGC will forward all leases for real property to the Office of University Real Estate for review. Agreements for the lease of real property exceeding \$25,000, longer than one year in duration, or containing an option to extend must be approved and signed by an Executive Officer or the Treasurer.
6. **Legal Review of Contracts.** The legal terms of all contracts with an actual or estimated value of \$50,000 or more or with Special Risk (as defined in No. 8 below) must be reviewed by the OGC before execution. Included in this mandatory review are contracts (such as master service agreements) that might incur an aggregate of \$50,000 or more of charges or expenses during the term of the contract, as well as contracts for the purchase of goods with a value of \$50,000 or more.
7. **Legal Review of Purchase Orders.** For goods or services that require a Purchase Order, Procurement Services will determine if the OGC's review of legal terms is necessary and will facilitate the review process with the submitting department and the OGC. Procurement Services may initiate a review by the OGC if the purchase falls into a Special Risk category (as defined in No. 8), if the value of the purchase exceeds \$250,000, or if Procurement Services otherwise feels the OGC's review of legal terms is warranted. See [Purchasing & Bidding Requirements](#) policy.
8. **Special-Risk Contracts.** The following "Special-Risk" contracts require a formal written contract (unless OGC authorizes otherwise) and, regardless of the dollar value, the legal terms must be reviewed by the OGC:
  - a. Contracts that involve a third party's use of DePaul's intellectual property (such as university logos, marks, artwork, symbols, or copyrighted materials);
  - b. Contracts involving the lease or purchase of real estate;
  - c. Contracts that require the university to indemnify or insure an outside party;
  - d. Contracts involving off-campus educational programs or activities (such as international affiliation agreements, international programs (e.g. study abroad) contracts, and student internship/service-learning contracts). (This Special Risk category excludes (1) domestic hotel/lodging, catering, restaurant, meeting space, and individual car rental contracts, regardless of whether such contracts fall into another Special Risk category; and, (2) certain contracts related to international programs (including in-bound programs) managed by Global Engagement in accordance with procedures developed by Financial Affairs, in consultation with Academic Affairs and the OGC. Please consult with the OGC regarding any

questions about whether a contract related to an international program requires a written contract or review.);

- e. Contracts that will give any provider of goods or services access to private or confidential information (such as information protected by FERPA, HIPAA, or the Gramm-Leach-Bliley Act);
  - f. Contracts that may expose DePaul to significant risk or liability; and
  - g. Contracts that involve the authority to open or maintain banking accounts for the university. See the [DePaul University Bank Accounts](#) policy.
9. **Mandatory Terms.** For certain contracts that the OGC designates as "high-risk" because of either dollar value or subject matter, the OGC may insist upon certain specific legal terms. Certain types of these contracts and the accompanying mandatory terms are listed below. Only Executive Officers, in consultation with the OGC, may approve revised mandatory terms or approve proceeding with a contract without mandatory terms.

Contract Type	Mandatory Terms
Independent contractor or consultant agreements over \$50,000	Indemnity provision "Consultant's capacity" provisions ( <i>i.e.</i> not a DePaul employee, DePaul not responsible for taxes or benefits) Employment authorization provision ( <i>i.e.</i> Consultant will not employ workers who are not authorized to work in the United States)
Construction agreements	Indemnity provision Insurance provision
Real estate purchase agreements and lease agreements where DePaul is the lessor	Indemnity provision Insurance provision
Intellectual property license agreements	Warranty of ownership in the intellectual property Indemnity against infringement claims
Technology agreements	Warranty of ownership in the intellectual property Indemnity against infringement claims
International agreements	Tax provision relating to foreign service providers ( <i>i.e.</i> no tax presence nor services performed in the United States) Provision relating to citizenship of employees of foreign service providers ( <i>i.e.</i> screening of employees for tax purposes)

10. **Multiple Departments.** If a contract governs activities in more than one Officer's area of responsibility or department, the Officer must consult with the other affected areas prior to execution of the contract.

11. **Scope of Authority.** No person has the authority to bind DePaul contractually except in accordance with this policy. Contracts signed by individuals acting beyond the scope of their authority may be void and can result in personal liability.
12. **Pre-Approved Standard Contracts.** The OGC may create, make available and approve the use of standard contracts that may be used without additional review and approval by OGC, provided that no alterations are made to the standard contract. The standard contracts shall be made available on the OGC's website ([DePaul Pre-Approved Standard Contracts](#)).
13. **Contract Required Before Start of Services or Purchase of Goods.** Departments shall not begin or accept any contractual services unless a contract has been signed by all parties. Likewise, a department shall not purchase any goods unless the seller has accepted a Purchase Order issued by Procurement Services or the purchase complies otherwise with Procurement Services' policies and procedures. OGC or Procurement Services may, in limited extenuating circumstances, authorize a department to proceed without a written finalized agreement.
14. **Filing of Contracts.** The OGC shall maintain all original executed contracts **that are subject to review under this policy** and Officers shall have such original executed contracts forwarded to the OGC in a timely manner. Original contracts may include contracts with faxed or scanned signatures. The OGC may establish appropriate practices and procedures for maintaining and protecting original signed contracts. Absent other arrangements approved by the OGC, departments shall file, maintain and protect all other original signed contracts in their respective areas in accordance with DePaul's Records Management policy and shall not forward originals or copies of such contracts to the OGC. See [Records Management](#) policy.

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## Procedures

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### Approval and Filing of Contracts Process in Detail when a Purchase Order is Required:

A Purchase Order generally is required for all goods or services over \$3,500. See the [Purchasing & Bidding Requirements](#) policy for more information. For contracts requiring a Purchase Order, follow these procedures:

**STEP 1:** Officers or Specific Designees who seek to enter into a contract on behalf of DePaul shall (a) carefully read and review the proposed contract and make sure the contract makes good business sense for DePaul; and (b) review and approve the contract's business terms (e.g., dates, pricing, quantities, payment terms, scope of work, etc.).

**STEP 2:** The requesting department enters a requisition into the PeopleSoft Financials system and submits the proposed contract along with any exhibits, the [Contract Review Submission Form](#) (unless not required by the OGC), and any needed backup to Procurement Services.

**STEP 3:** Procurement Services will review the business terms and route the draft contract to any additional offices for review as outlined in the [Purchasing & Bidding Requirements](#) policy. This routing also will include the OGC if the draft contract requires legal review as outlined above (i.e., the contract is \$50,000 or more or a Special Risk contract).

**STEP 4:** If legal review is required, the OGC will endeavor to respond to the department via email within one business day to acknowledge receipt of the contract. The OGC will check the signatory listed on the Contract Review Submission Form against its list of authorized signatories. An OGC attorney will be assigned to review the legal terms of the contract. Barring special circumstances (e.g., an agreement with the department submitting the contract), the OGC will endeavor to respond within 7 business days with comments on the contract and potentially a red-lined version of the contract and will inform the department if the contract requires specific mandatory terms. (The 7 business day timeframe only begins once all pertinent documentation has been received by the OGC.) During the review process, the OGC will assist the department in contacting other DePaul departments or offices if additional review may be required. If a contract has unreasonable indemnification requirements, unreasonably exposes DePaul to significant risk or liability, requires DePaul to insure an outside party, or an outside party to insure DePaul, the OGC will consult with Risk Management or recommend to the department that it do so.

**STEP 5:** The department will review the OGC's suggested modifications and will negotiate the revised contract with the third party to determine that the suggested modifications are acceptable.

**STEP 6:** The Officer or Specific Designee will review the revised pre-execution contract and confirm that all mutually agreed upon changes have been incorporated and that, if necessary, the contract contains the applicable mandatory terms. If mandatory terms are absent, the OGC will, as necessary, consult with the appropriate Executive Officer. The assigned OGC attorney will assist with further review if additional modifications to the contract are suggested.

**STEP 7:** The Officer or Specific Designee will sign the contract and return the original to Procurement Services immediately upon receiving the fully executed contract. Procurement Services will in-turn, approve the requisition and generate a Purchase Order as well as ensure the original contract is delivered to the OGC for storage in accordance with DePaul's Records Management policy.

**STEP 8:** When the OGC receives the signed contract, it will review the contract, as necessary, for the inclusion of specified mandatory terms and will notify the appropriate Executive Officer immediately if a mandatory term is absent.

**STEP 9:** The OGC will report semi-annually to Executive Officers, Internal Audit and the Office of Institutional Compliance on (1) contracts reviewed; (2) the non-receipt of signed contracts; and (3) the absence of mandatory contractual terms.

#### **Approval and Filing of Contracts Process in Detail when a Purchase Order is not Required:**

For all other types of contracts not requiring a Purchase Order (e.g., employment contracts, master agreements, leases, etc.), follow these procedures:

**STEP 1:** Officers or Specific Designees who seek to enter into a contract on behalf of DePaul shall (a) carefully read and review the proposed contract and make sure the contract makes good business sense for DePaul; (b) review and approve the contract's business terms (e.g., dates, pricing, quantities, payment terms, scope of work, etc.); (c) determine what DePaul policies may apply to the review and signature of the contract; and (d) obtain review and approvals from other DePaul offices

or departments (e.g., Risk Management for insurance-related matters, Financial Affairs for accounting, international and tax-related matters, ORS for sponsored research, etc.).

**STEP 2:** If OGC review of the legal terms is not required (i.e., the contract is under \$50,000 and is not a Special Risk contract), the Officer and/or Specific Designee shall route the contract through the appropriate departments or offices (e.g., ORS for grant agreements, Procurement Services for vehicle purchase agreements, etc.).

**STEP 3:** If OGC review of the legal terms is required (i.e., the contract is \$50,000 or more or a Special Risk contract), the department responsible for the contract shall (a) route the contract through the appropriate departments or offices (e.g., ORS for grant agreements, Risk Management for insurance-related terms, Financial Affairs for accounting, international, tax-related issues, and payment terms, Public Safety for safety-related issues, etc.); and then (b) complete a Contract Submission Form (available at [Contract Review Submission Form](#)) (unless not required by the OGC) and submit it along with the contract (including all addenda, exhibits, etc.) to the OGC, preferably in electronic format via [contractreview@depaul.edu](mailto:contractreview@depaul.edu).

**STEP 4:** The OGC will endeavor to respond to the department via email within one business day to acknowledge receipt of the contract. The OGC will check the signatory listed on the Contract Review Submission Form against its list of authorized signatories. An OGC attorney will be assigned to review the legal terms of the contract. Barring special circumstances (e.g., an agreement with the department submitting the contract), the OGC will endeavor to respond within 7 business days with comments on the contract and potentially a red-lined version of the contract and will inform the department if the contract requires specific mandatory terms. (The 7 business day timeframe only begins once all pertinent documentation has been received by the OGC.) During the review process, the OGC will assist the department in contacting other DePaul departments or offices if additional review may be required. If a contract has unreasonable indemnification requirements, unreasonably exposes DePaul to significant risk or liability, requires DePaul to insure an outside party, or an outside party to insure DePaul, the OGC will consult with Risk Management or recommend to the department that it do so.

**STEP 5:** The department will review the OGC's suggested modifications and will negotiate the revised contract with the third party to determine that the suggested modifications are acceptable.

**STEP 6:** The Officer or Specific Designee will review the revised pre-execution contract and confirm that all mutually agreed upon changes have been incorporated and that, if necessary, the contract contains the applicable mandatory terms. If mandatory terms are absent, the OGC will, as necessary, consult with the appropriate Executive Officer. The assigned OGC attorney will assist with further review if additional modifications to the contract are suggested.

**STEP 7:** The Officer or Specific Designee will sign the contract and return the original to the OGC for storage in accordance with DePaul's Records Management policy within 7 days of receiving the fully executed contract. If after 30 days, the OGC still has not received the signed contract, it will inquire regarding the status of negotiations and remind the Officer or Specific Designee of the contract-filing requirement. If the Officer or Specific Designee responds that the contract still is under negotiation, does not respond, or does not submit the signed contract, the OGC will send an additional reminder after another 30 days.

**STEP 8:** When the OGC receives the signed contract, it will review the contract, as necessary, for the inclusion of specified mandatory terms and will notify the appropriate Executive Officer immediately if a mandatory term is absent.

**STEP 9:** The OGC will report semi-annually to Executive Officers, Internal Audit and the Office of Institutional Compliance on (1) contracts reviewed; (2) the non-receipt of signed contracts; and (3) the absence of mandatory contractual terms.

### **Authorized Designees**

The OGC shall contact Officers annually and ask them to provide a written list of individuals authorized to sign contracts within their area of competence and responsibility ("Specific Designees") along with authorized dollar levels, within the limits set forth in the grid in Section V. Officers shall promptly notify the OGC in writing of any changes during the year.

### **Training**

The OGC will periodically offer training sessions and materials regarding this policy and its related processes.

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## **Divisional Collaborations**

Compliance & Risk Management

Insurance and Loss Prevention

Internal Audit

Procurement Services

Financial Affairs (Controller's Office, Accounts Payable, Tax Services, and Treasury)

Academic Affairs

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## **Contact Information**

General questions regarding the Contract Requirements and Procedures Policy may be answered by consulting the [Office of the General Counsel's website](#). Employees with specific questions may forward their requests for information to [contractreview@depaul.edu](mailto:contractreview@depaul.edu).

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## **Appendices**

**OTHER UNIVERSITY POLICIES.** Departments should be aware that other university policies may apply to the review, negotiation, internal DePaul routing, and signing of a contract, including but not limited to the following:

**Purchases More Than \$3,500.** Departments making purchases of more than \$3,500 must open a requisition with Procurement Services. Departments should review DePaul's [Purchasing & Bidding Requirements](#) policies and contact Procurement Services for additional information. See [Purchasing & Bidding Requirements](#) policy.

**Externally Funded Grants and Contracts.** All externally funded grants and contracts must be submitted to the Office of Research Services (ORS), which is responsible for



coordinating proposal review, proposal approval, award negotiation, and final contract execution. Departments and Principal Investigators should consult DePaul's Administration of Externally Funded Grants and Contracts policy and contact ORS for additional information. See [Administration of Externally Funded Grants and Contracts](#) policy.

**Vehicle Purchase/Lease Agreements.** All requests for vehicle purchases or leases must be initiated through Procurement Services.

**Purchasing & Bidding Requirements.** All purchases over \$25,000 require documentation of competitive bids, an approved exception from either Procurement Services or an Executive Officer, or otherwise be in compliance with the Purchasing & Bidding Requirements policy. Departments and individuals should consult the Purchasing & Bidding Requirements policy and contact Procurement Services for additional information. See [Purchasing & Bidding Requirements](#) policy.

**Conflict of Interest.** Employees who have a conflict of interest or an appearance of a conflict of interest in a matter must refrain from involvement in that matter or disclose the matter pursuant to DePaul's Conflict of Interest policy and ensure that proper safeguards are put in place. Employees should contact Accounts Payable or the Controller's Office for additional information. See [Conflict of Interest](#) policy.

**Prohibited and Special Purchases.** Certain types of purchases have special processes or may not be allowed (e.g. catering, computers, gift cards, sales tax, used equipment, etc.). See the [Prohibited and Special Purchasing Processes](#) policy for more information.

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## **History/Revisions**

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