

Owner:	Legal Services
Version number:	4.0
Date of approval:	3 October 2017
Approved by:	Legal Services and UET
Effective date:	4 October 2017
Date of last review:	October 2017
Due for review:	October 2020

Contract Signing Policy and Procedures

1. SCOPE AND PURPOSE

- 1.1 This policy and these procedures apply to all BU staff, including those employed by subsidiaries and external board members and contractors providing services to BU and their staff.
- 1.2 This policy and these procedures apply to ALL contracts entered into by the University or its subsidiary companies, including all agreements which have or might have legal effect.
- 1.3 The purpose of this policy is:
 - to reduce risk to the University by ensuring that properly approved and signed contracts are in place before projects start; and
 - to facilitate this risk management by having clear procedures in place to support contract signatories and other staff.

2. KEY RESPONSIBILITIES

- 2.1 Faculties and Professional Services must have clearly identified processes for ensuring that the Contract Signing Policy and Procedures are complied with.
- 2.2 The Financial Regulations state that “it is the responsibility of Deans and Directors of Professional Services to ensure that their staff read and understand the Financial Regulations and underpinning procedures”. In addition the Director of Operations or equivalent has responsibility for implementation of the Contract Signing Policy and Procedures within their Faculty or Service. Responsibilities include:
 - ensuring contracts are sent for legal review in a timely manner;
 - ensuring contracts are only signed off when approved by the legal advisor;
 - ensuring that contracts are signed by the authorised contract signatory;
 - ensuring that work does not start until the contract has been signed by all parties;

- ensuring that all original contracts are forwarded to Legal Services and copies provided to the correct parties; and
- ensuring that contracts are complied with (this may be shared responsibility, for example with named grant holders).

Note that in relation to research and enterprise activity, some of the above responsibilities will be delegated to the Research & Knowledge Exchange Office.

- 2.3 Where required to do so the Director of Operations or equivalent will act as the central point of contact for all issues relating to contracts in their Faculty or Professional Service.

3. LINKS TO OTHER BU DOCUMENTS

- 3.1 This policy and these procedures sit under the University's [Financial Regulations](#), which set out BU's policies on financial control.

Policy

4. Policy for review and approval of contracts

- 4.1 Unless covered by an exemption agreed by Legal Services in accordance with paragraph 9 below, all contracts must receive legal review before signature either by the internal legal team (Legal Services) or by external solicitors instructed by Legal Services.
- 4.2 Where parts of other Professional Services have a responsibility to review documents (for example Academic Partnerships for institutional partnership agreements and Procurement for purchasing contracts) it is still necessary to ensure that contracts receive legal review.
- 4.3 The contract review and approval procedures set out below are crucial to managing risk to the University and must be adhered to.

Procedures

5. Contract Review Process

- 5.1 ALL terms and conditions of other parties MUST be reviewed by Legal Services before they become binding.
- 5.2 This requirement for legal review includes variations to and extensions and renewals of contracts.

- 5.3 Due consideration must be given to the potential contractual position at the earliest possible stage of a project, and contractual documents submitted to Legal Services promptly. There can be short timescales or time and cost implications for projects which would benefit from early consideration. Early consultation regarding contracts also helps Legal Services develop an appropriate suite of model contracts, to streamline future work.

6. Contract Approval

- 6.1 Unless covered by an exemption agreed by Legal Services (see paragraph 9 below), all contracts presented for signature must be accompanied by a Contract Authorisation Form. This document acts as a formal control mechanism and records issues identified and actions taken to address them. It is the means by which contract signatories are required to satisfy themselves that the contract has received legal and financial approval and that all other necessary steps have been taken (for example, approval sought from Director of Finance and Performance or Chief Operating Officer where required). Contract signatories must not sign a contract without a completed Contract Authorisation Form or a CAF Exemption Form (see paragraph 9 below).
- 6.2 The Contract Authorisation Form is an internal-only document containing information that is legal advice and is likely to be confidential and/or commercially sensitive to the University. It must not be sent to a party outside the University without the express permission of Legal Services.
- 6.3 Any pre-signatory actions set out in the Contract Authorisation Form must be completed before the contract is signed. Any post-signatory requirements set out in the Contract Authorisation Form must be monitored and completed.

7. Research Bids and Tenders

- 7.1 Where available, funders' terms and conditions must be submitted to or obtained by the Research and Knowledge Exchange Office prior to application for a research grant. The Research and Knowledge Exchange Office will review the funder's terms and contact Legal Services to request a Contract Authorisation Form if required at this stage. Note that the terms and conditions for research bids will **not** require a Contract Authorisation Form at bid stage provided that no commitment is being made at bid stage. The Research and Knowledge Exchange Office will be responsible for checking whether a commitment is being made at bid stage and will implement appropriate escalations within their team to ensure that this is appropriately verified.
- 7.2 All tender terms and conditions must be sent to Legal Services for review before submission of the tender. A Contract Authorisation Form will be

required for tenders as submission is often taken as legal acceptance of the terms.

- 7.3 **All** successful bids and tenders must be referred to Legal Services at award stage for review (whether reviewed at application stage or exempt at application stage).

8. BU Standard Contracts

- 8.1 Where there is the option, Bournemouth University Terms of Business or model contracts should be used. Legal Services will advise which document is most appropriate.
- 8.2 Use of BU's Terms of Business is promoted in appropriate cases as a time efficient way to manage risks. Terms of Business must be accompanied by a properly drafted Agreement letter which must be approved by Legal Services before signature. Guidance on the use of the Terms of Business is contained within the Template Agreement Letter and should be referred to and complied with.
- 8.3 For the avoidance of doubt, agreements based on BU standard terms must be submitted to Legal Services for review and a Contract Authorisation Form (unless covered by an exemption in accordance with paragraph 9 below) in the same way as agreements based on other parties' terms.

9. Exempt Contracts

- 9.1 Certain categories of contract have been pre-approved by Legal Services and are exempt from the requirement for a Contract Authorisation Form (**Exempt Contracts**). This is on the basis that they are considered low risk and are (in most cases) based on BU standard terms. Exempt Contracts are listed in a Contract Authorisation Form Exemption document (**CAF Exemption Form**) which should be presented to a contract signatory instead of an approved Contract Authorisation Form.
- 9.2 Any amendment to an approved version of an Exempt Contract must be submitted to Legal Services for review and a Contract Authorisation Form.
- 9.3 Decisions about Exempt Contracts are made by the Head of Legal Services and Corporate Governance, in consultation with the Chief Operating Officer if considered necessary. Legal Services maintains an up-to-date list of Exempt Contracts and should be consulted where there are any queries relating to Exempt Contracts.

10. Insurance and Indemnity Issues

- 10.1 Where an issue relating to insurance or indemnity is raised, Legal Services will normally refer the matter to the Insurance Officer in Finance and Performance for advice. The Insurance Officer will refer questions to the University's insurers where appropriate. The advice of the Insurance Officer and the insurers is binding and may only be departed from with the express authority of the Director of Finance and Performance.
- 10.2 Where Legal Services and/or the Insurance Officer believe it is appropriate any decision will be referred to the Director of Finance and Performance for determination.

11. Authorised Contract Signatories

- 11.1 The Financial Regulations set Financial Authority Limits and also provide for authorisation processes for activity. When determining the appropriate signatory for contracts the relevant financial limit is the total potential financial liability to the University and not the price.
- 11.2 Legal Services will determine the appropriate level of contract signatory and will confirm this on the Contract Authorisation Form. As a minimum, the level of authorised contract signatory set out in the Contract Authorisation Form will be the level required by the Financial Authority Limits. It may be higher depending on the risk associated with the particular contract.
- 11.3 Where a contract signatory is absent or unavailable the contract must be referred upwards, for example, if a Dean is absent UET sign-off is required.

12. Decision-making by Contract Signatories

- 12.1 It is recognised that contract signatories will face difficult decisions, particularly concerning the quantification of legal and commercial risk in relation to a particular project.
- 12.2 The Guidelines at Appendix 1 to this document are in force to assist contract signatories in high risk areas. Where it becomes necessary from time to time additional Guidelines may be added.

13. Secure Storage of Contracts

- 13.1 Contracts can have legal effect for many years, even after the end of the work or the termination of the contract. It is essential that fire resistant secure storage is available on a long term basis. A central store for contracts and other legal documents is managed by Legal Services.

13.2 Unless covered by an exception agreed by Legal Services, the central store must be used for all signed original contracts. Once signed by all parties the Faculty or Professional Service must take sufficient copies of the original for their own use and should send the original signed document to Legal Services for secure storage.

14. Staff Development

14.1 Staff development sessions regarding the Contract Signing Policy and Procedures and risk management in relation to contracts generally will be offered by Legal Services, Procurement and Finance.

14.2 It is the responsibility of Directors of Operations or equivalent to identify all staff who require training in the Contract Signing Policy and Procedures and to make Legal Services aware of them. There is an additional responsibility on individual staff to notify their Director of Operations or equivalent if they have not received training and are dealing with contracts.

15. Disputes

15.1 Where any member of staff becomes aware of a potential contractual or legal dispute they must notify their Director of Operations or equivalent.

15.2 The Director of Operations or equivalent must ensure that the following occurs:

- their Dean of Faculty or Director of Professional Service is informed; and
- the matter is referred to Legal Services.

15.3 Once notified Legal Services will take appropriate action with the Insurance Officer. The Insurance Officer will liaise with and notify insurers as appropriate.

16. Non-compliance and Audit

16.1 A member of staff who fails to comply with the Contract Signing Policy and Procedures may be subject to disciplinary action under the University's disciplinary policy. As stated in the Financial Regulations it is the responsibility of Deans of Faculties and Directors of Professional Services to ensure that their staff read and understand this document.

16.2 If any points are unclear please contact Legal Services.

16.3 Where Legal Services become aware of non-compliance with these procedures they will record any such breach in the Contract Authorisation Form and may refer the matter to the Director of Finance and Performance for

further action under the Financial Regulations or to Human Resources for investigation under the University's disciplinary policy.

- 16.4 Unless covered by an exception agreed by Legal Services, following consultation with the Director of Finance and Performance, Finance will not issue an activity code for a project without confirmation that a signed and approved contract is in place.
- 16.5 Compliance with the Contract Signing Policy and Procedures will be the subject of internal checks and audits of Faculties and Professional Services.

General

17. APPENDIX 1

Guidelines for Contract Signatories

Appendix 1

Guidelines for Contract Signatories

A) Indemnities and Uninsured Risk

Contracts may contain indemnities. Indemnities are promises to pay a party for sums/events specified. Indemnities can be very wide ranging and may not be insurable risks, for example non-fault indemnities.

Indemnities will only be acceptable to the University in certain limited circumstances. Legal Services will seek to identify indemnities and liaise with the Insurance Officer regarding their status.

Uninsured risk can arise in other areas, for example where cover limits are exceeded or subject matter is excluded from cover.

Where Legal Services and/or the Insurance Officer and/or the insurers have concerns about an indemnity or uninsured risk the matter must be referred to the Director of Finance and Performance for determination if the relevant clauses cannot be removed or amended to resolve the issue.

B) Restrictions on Activity

Some contracts contain clauses which may restrict the future activity of staff and/or students of the University. Restrictions may be explicit, for example non-compete clauses, or implicit, for example assigning away intellectual property or onerous confidentiality clauses.

Restrictions on future activity, if accepted, may affect the University as a whole and not just the Faculty or Professional Service involved in that particular project. There are two main risks:

- 1) The University is unable to carry out its core business or to meet its strategic objectives as a result of contractual restrictions.
- 2) The University will be sued for failure to comply with a clause with restrictive effect.

Restrictions on future activity must be given careful consideration and are unlikely to be acceptable.

If Legal Services or a contract signatory has concerns about possible restrictive effect the express authority of the Chief Operating Officer is required if the relevant clauses cannot be removed or amended to resolve the issue.

C) Law and Jurisdiction

A contract should specify which laws apply to it (for example English law) and the jurisdiction which applies (that is which courts will have authority to determine any issue or dispute).

From the University's perspective, there are risks attached to any law that is not English law and jurisdiction that is other than the courts of England and Wales. The main risks are:

- 1) Legal advice cannot be given internally on any law other than English law. The cost of obtaining specialist legal advice on another law is likely to be prohibitive.
- 2) Some jurisdictions are excluded from insurance cover or have limited cover which exposes the University to uninsured risk.
- 3) The costs involved in handling disputes in another jurisdiction are higher than those in England and Wales due to the additional advice/legal input required.
- 4) The risks of non-payment for out of jurisdiction contracts are much higher as the University is unlikely to take steps to enforce the contract due to prohibitive cost/difficulties in enforcing judgements out of jurisdiction.

Except as set out below, any law other than English law, or jurisdiction other than England or England and Wales, must not be accepted without the express authority of the Chief Operating Officer.

The Chief Operating Officer may reach working agreements with Legal Services to identify specific cases where exceptions are permitted without the need for a referral. The exercise of these exceptions will be at the sole discretion of Legal Services.