

Contract Review

November, 2019;
Revised July, 2022

A contract is a legally enforceable agreement, upon sufficient consideration, to do or not to do a particular thing, between two or more persons, with a lawful purpose

- Offer
- Acceptance
- Consideration
- Legal capacity of the parties
- Genuine consent of the parties
- Legal purpose

Basic elements to a contract

- Parties
- Description of Product or Services
- Price or Compensation
- Term (Period of Performance)
- Terms and Conditions
 - Business terms
 - Legal Terms
- Signatures

United Educators' Guidance

Though supplemental review by an attorney may be necessary at times, routine contracts should be reviewed using [their] checklist by whoever is well-versed on the subject matter and integrally involved with the performance.

Checklist

- The contract's core terms are clear, accurate, and easy to understand
- The parties to the contract are clearly identified
 - Fairleigh Dickinson University (not particular School or department)
- The product or services promised are described completely and accurately
- The payment amount is clearly set forth and is reasonable for the responsible department
- All documents, websites, or other resources referenced in the contract have been reviewed and they are consistent with the contract's terms
- The term of the contract is set forth in specific dates (auto renewals disfavored)
- The University is able to perform its promises within the contract's duration and performance milestones
- The contract clearly states whether either party can terminate the contract and under what conditions
- If a risk allocation provision (indemnification, insurance) is included, it is clearly written and easy to understand
- The person signing the contract on behalf of the University has authority to sign

Contracts Requiring Additional Approvals

Item or Service	Approval Required
Advertising, Marketing & Logos - Use of the University identity/seal, advertising, clothing/promotional items, etc.	Vice President, University Communications Vice President, Enrollment Management
Capital Funding & Financing	Senior Vice President for Finance and Administration
Construction, Machinery, Hazardous Materials, Safety	Vice President, Facilities & Auxiliary Services
Employment Services including classified advertising for Faculty and Staff, Personnel Employment Services, Temporary Employment Services	Vice President, Human Resources
Information Technology Services - Computer Hardware, Technology, Software, Printers, Scanners, Projectors, SaaS (Software as a Service)	Vice President & Chief Information Officer
Locks – Interior/Exterior	Directors of Public Safety
Sponsorship Agreements	University Provost Senior Vice President for Finance and Administration Senior Vice President for University Advancement Vice President, University Communications Senior Vice President for Operations
Chemicals and Chemical Products	University Risk Manager

Fairleigh Dickinson University

Contract Review Procedure

Does your contract require legal review?

No

Effective July 1, 2022 the following types of contracts will no longer require contract review:

1. Contracts for the purchase of goods for less than \$10,000 (examples of goods: equipment, supplies, furniture, books, and other physical objects)
 - a. Note: the contract must be for goods and not for services. Exceptions: If the contract is mixed goods and services, it should go through contract review, and
 - b. Exclusive vendor contracts (when FDU is limited to buying all of a certain product from only one vendor);
2. Hotel room block reservation contracts, so long as FDU is not guaranteeing payment;
3. Restaurant contracts for meals in which no alcohol will be served (excluding banquet halls and catering facilities);
4. Charter bus reservation confirmations (must be an Approved Charter Transportation Provider);
5. Airline reservations;
6. Academic Affiliation or Articulation agreements with U.S. or Canadian colleges that do not contain financial or tuition terms and have been approved by University Provost Michael Avaltroni (example: an agreement with a community college that accepts certain courses in satisfaction of FDU degree requirements);
7. Contracts on FDU templates with no additional or changed terms;
8. Credit applications (do not require contract review but must be submitted to Purchasing for approval);
9. Travel-related contracts for athletic teams;
10. Invoices of any kind;
11. Library subscriptions;
12. Grants and Sponsored Research contracts; and
13. OIRT's software licensing click-on contract renewals;
14. Software and Hardware Maintenance contract renewals (OIRT approval is still required);
15. Grants and Sponsored Projects overseen by the University Director of Grants and Sponsored Projects.

Fairleigh Dickinson University

Contract Review Procedure

Yes

Step 1. Refer to Contract Procedures
[Contract Procedures \(PDF\)](#)

Step 2. Prepare Contract Routing Form
[Contract Routing Form \(Word document\)](#) or
[Contract Routing Form \(Fillable PDF\)](#)

- ***Do you have all required approvals?**
- ***Do you have delegated authority to submit contracts?**

Step 3. Submit to Contract Review:

- [General Contracts: contractreview@fd.edu](mailto:contractreview@fd.edu)
- [Affiliation Contracts: affiliation@fd.edu](mailto:affiliation@fd.edu)
- [Employment Contracts: employmentcontracts@fd.edu](mailto:employmentcontracts@fd.edu)

Step 4. Contract Review Process Begins

- We request 21 days for review from date of receipt of all required documents and approvals.

Step 5. Finalization of Contract

After contract is finalized vendor signs first, then Department signs and Department forwards the executed contract to contractreview@fd.edu.

Step 6.

For all contracts not exempt from review, your Purchase Order and signed contract must include the email from Contract Review stating that review is complete.

**The Office of General Counsel is the repository for
ALL University contracts.**

**Whether or not your contract must go through review, please send a copy of the signed contract to
contractreview@fd.edu.**

Risk Management

- Concept of insuring risks associated with accidental losses that may result from the contract, its performance, or its breach.
- In contracts, the objective of risk management is to protect the University from risk or loss.

Key Risk Management Clauses

- Indemnification

- Specifies what each party to the contract is responsible for if something goes wrong:
 - Contractor damages college property
 - Contractor harms someone else and that party sues the college
 - Contractor's employees are injured on college property and sue the college
 - University harms the contractor's property or employees, or contractor is sued because of something the college does
- Obligates one party to pay the other for damages, defense, etc.

- Insurance

- Guarantees that the parties have the money to pay indemnity obligations
- Not every contract requires Indemnification and Insurance clauses

The Insurance Clause

- Usually specifies types and amounts of insurance
 - General Liability
 - Workers Compensation and Employers' Liability
 - Auto Liability
 - Umbrella and Excess Liability
 - Professional Liability / Other specialty insurance, e.g., Pollution Liability
 - Cyber Liability
- Can vary widely based on the transaction
- Sets other requirements
 - Proof of insurance (Certificate of Insurance)
 - Additional Insured status

Other Clauses to Watch For

- **Limitation of liability**

- Contractor limits their liability to the value of the contract or a specific amount
- *The indemnity clause and insurance will not adequately protect the college*

- **Automatic Renewal**

- Contract renews automatically – *Who monitors this?*

- **Exclusivity**

- University is prohibited from using other vendors with similar products

- **Right of First Refusal**

- Contractor has the right to meet competing bids and keep business – *What happens if college is dissatisfied with contractor services?*

Limits of Contract Review

- Contract review team does not have ultimate authority; it can only recommend changes to the contract
 - Subject to other party's acceptance
 - If the other party will not accept our recommended changes, the responsible department must do a risk/benefit analysis: is the product or service more valuable or essential to the University to justify accepting a less than ideal contract? This is a business decision.