



## CONTRACTS LEGAL REVIEW PROCEDURE

### Introduction

Royal Holloway, University of London, routinely enters into a wide variety of contracts. Such arrangements can, either individually or taken as a whole, have a material effect on the financial/legal exposure and operations of the College.

The purpose of this Procedure is to ensure that contractual risks are effectively managed on behalf of the College.

### Definitions

For the purposes of this Procedure the following definitions apply:

"*Authorised Signatory*" means the individual with direct or delegated authority to approve a Contract in accordance with the College's Schedule of Council Delegation and/or Financial Regulations.

"*Contract*" means any document, or other evidence, of an intention to establish a binding legal relationship between the College and one or more third parties.

"*Contract Implementer*" means the individual or department that initiates a Contract, provides or receives a good, service, or other benefit, pursuant to the Contract, and/or is responsible for meeting obligations under the Contract.

"*Contract Management*" describes the set of activities required to properly manage contractual commitments to and from third parties and includes the management of pre-Contract diligence, negotiation, and implementation activities.

"*Legal Review*" means a review of a draft Contract by Legal Services to ensure that:

- The Contract Implementer is made aware of the risks and obligations associated with the Contract prior to signing;
- The terms of the Contract will not subject the College to an unacceptable level of liability or risk; and
- The Contract does not contain unacceptable legal commitments.

### When does this procedure apply?

Apart from the exceptions set out below, this procedure applies to all contracts entered into by or on behalf of the College. The contracts which are exempt from this procedure are:

1. Contracts which are subject to the Procurement Policy and Procedure (ie with a non-pay expenditure value for goods/works and services over £50,000);
2. Research related contracts managed by Research and Innovation (please see appendix 1 for a list of research related contracts);
3. Transactions which are undertaken and paid for by way of a purchase order number and invoices from the supplier incorporating the College's standard PO terms and conditions, with no other

- additional contractual documents or supplier standard Terms and Conditions being entered into;
4. Contracts of employment.

## **Contract Due Diligence**

It is the responsibility of the Contract Implementer to ensure that relevant internal approvals and authorisations are obtained.

The Contract Implementer is responsible for carrying out due diligence (ie background checks and investigation) on external third parties contracting with the College prior to the College entering into any contract with them. This may include asking the external third party to provide information in order to allow a review to assess, for example, employment, legal, tax, and insurance implications.

If required, advice on the most appropriate due diligence process can be sought from Legal Services.

## **Determining if Legal Review is required**

Prior to a Contract being approved and executed, the Authorised Signatory will determine if a Legal Review is needed.

The Authorised Signatory is responsible for determining whether Legal Review is required, discretionary or excepted under this Procedure.

1. **Required Legal Review:** The Authorised Signatory will obtain a Legal Review where the terms of a Contract present risk in one or more of the following ways:
  - a. **Financial** where the total value of the Contract is in excess of £20,000.
  - b. **Reputation** where a potential Contract :
    - Involves the transfer, storage or use of personal data;
    - Raises questions of significant legal or regulatory compliance.
  - c. **Assumption of liability or indemnity by the College** where:
    - The College is agreeing to take on liability greater than £20,000;
    - The Contract is silent on liability (which can be understood to mean that the College has uncapped liability); and/or
    - The College agrees to indemnify another party the costs of which may exceed £20,000;
  - d. **Contract length exceeds three years and/or is subject to automatic renewal;**
  - e. **Risk to property and person** where the Contract contains significant risk factors and/or potential for injury to individuals or property;
  - f. **Intellectual Property (IP)** where the College is considering transferring, sharing or acquiring IP or obligations related to IP;
  - g. **Non-standard terms and conditions** for example where the contract is with a non-UK third party or otherwise departs from common practice.
2. **Discretionary Legal Review:** In the following circumstances, the Authorised Signatory may determine whether or not a Legal Review is required, based on his or her assessment of the nature and extent of the risk presented:

- a. **Financial** where the total value of the Contract is less than £20,000.
  - b. **Reputation** where a potential Contract may:
    - Not align with the mission and values of the College;
    - Bring the activities or decisions of the College under public scrutiny;
    - Have an impact on any of the College's strategic relationships;
    - Involve matters considered controversial;
  - c. **Assumption of liability or indemnity by the College** where:
    - The College is agreeing to take on liability less than £20,000; and/or
    - The College agrees to indemnify another party the costs of which will not exceed £20,000;
3. **Exceptions to Legal Review:** The Authorised Signatory may presume that a Legal Review will not be required where:
- a. A Contract is developed from a pre-approved College template that has not been modified in any substantive way.
  - b. Legal Services waives the requirement for Legal Review.
  - c. The Contract value and College liability (including indemnity, if any) is less than £5,000.

Where there is any specific concern regarding the provisions of a Contract, the Authorised Signatory may request a Legal Review, even if one is not required under this Procedure.

Legal Services can also provide training and guidance to colleagues whose roles and responsibilities may involve the review and sign off of legally binding contracts, to include, for example, key red flags to look out for.

Exemption from Legal Review will not exempt a Contract from the requirement to comply with College Policies/Procedures, and legislation.

### Requesting a Legal Review

Where the Authorised Signatory determines that a Legal Review is required in accordance with this Procedure, he or she will arrange for the draft Contract to be submitted to Legal Services.

Authorised Signatories or Contract Implementers are encouraged to consult with Legal Services as early as possible in the Contract Management process. Requests for Legal Review should normally be submitted *at least* two weeks in advance of the anticipated completion date. Please note that following review, it may be necessary for negotiations to take place with the third party and sufficient time should be factored in to allow for this and that at peak times, it may not be possible for legal review to be completed within two weeks. It is usually expected that the Contract Implementer will lead on any negotiations, with support from legal services, unless third party legal representation is involved, in which case Legal Services will lead on the Contract Implementer's behalf.

When submitting a draft Contract for Legal Review, the Authorised Signatory or Contract Implementer should provide the following information:

1. Outline of the objectives and/or requirements giving rise to the Contract;
2. Summary of any concerns;
3. Supporting documents, as applicable; and
4. Timeframe in which input is required.

Upon reviewing the draft Contract, Legal Services has the authority to determine if the assistance of external legal advice is required.

## Outcome of a Legal Review

When the Legal Review is complete, Legal Services will inform the Authorised Signatory or Contract Implementer of any issues that, in their opinion:

1. Should be addressed or negotiated by the Authorised Signatory or Contract Implementer prior to the Contract being approved; or
2. Present a substantial risk to the College that cannot be mitigated through revision or negotiation of the Contract. In these circumstances, it will be for the Authorised Signatory to determine whether or not to nevertheless proceed. In some cases, the proposal may need to be escalated for Executive sign off.

## Contracts library and log

Once contract negotiations are completed, a signed copy of the Contract *must* be provided to Legal Services for safe storage in compliance with Financial Regulation 12.10.

A log will be kept of key Contract information, such as: expiry/renewal date; value; Contract Implementer.

For any queries in relation to this procedure, please contact the Director of Governance and Legal Services.

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