



CHANGE THE WORLD FROM HERE

Contract Policy

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POLICY STATEMENT

The University of San Francisco (“University”) has established this contract signing/authorization policy for all contractual obligations. This policy applies to any transaction that binds the University to a course of action that could result in a financial obligation, performance or service guarantee. In order to ensure proper documentation and compliance with this policy, all contracts should be in writing. If that writing is in the form of an electronic or digital communication, such communication must be made and authorized in compliance with this policy.

Construction, real estate, and technology contracts are often more complex and specialized and may require a more in-depth review process.

Excluded from this policy are employment contracts which are handled by Human Resources.

This policy supersedes and replaces any previous policies on this subject.

REASON FOR POLICY

In order to conduct its academic and business affairs, the University of San Francisco enters into contractual agreements with third parties that involve a wide array of activities, including, but not limited to, services, consulting, maintenance, supplies, educational affiliations, performances, education abroad, service learning, facility use, construction, design, research, and publications. Well executed contracts clarify and define the agreement between the parties and protect the University against unnecessary risk to its resources and reputation.

WHO SHOULD READ THIS POLICY

Any third party, contractor, contract reviewer, company aiming to provide services and/or receive services from the University, members of the Leadership Team, as well as any employee who is responsible for contracting with any third party, contractor, or company for services, and any supervisors or Business Managers who supervise an individual with such responsibilities.

EXCEPTIONS

Any exceptions to this Policy require advance written approval from the Director of Risk Management or the Office of General Counsel. A request for an exception must include a written statement explaining why the standards set forth in the Policy are not attainable or desirable and a description of the alternative procedures, if any, that would be implemented in their place.

SIGNATURE AUTHORITY AND AUTHORIZED SIGNERS

The individuals signing the contract on behalf of USF and the other party must each have authority to bind their respective party to the contract. Persons with signature authority have the responsibility to exercise their authority in the manner of a prudent University employee.

The author of all contracts is the Vice President, Vice Provost, or Dean of each department, college/school, or business unit.

CONTRACT REVIEW PROCESS

A contract review gives USF the opportunity to ensure that the contract is fair, beneficial, and legally sound.

Before sending to Risk Management or OGC, the department or unit desiring to enter into the contract should carefully read the contract to make sure it satisfies USF's business requirements and accurately reflects the agreement of the parties. Review should include, but not be necessarily limited to:

- The ability and budgeted authorization of the University to meet any financial or other obligations resulting from the agreement;
- Who has authority to sign the contract on behalf of USF.
- The ability of the other party(ies) to perform and meet its (their) obligations;
- Compliance with law;
- Compliance with University policy(ies) and practices;
- That financial and/or other benefits in keeping with the University's mission will result from the agreement;
- That the overhead rate, if any, included in the contract is consistent with University guidelines;
- That any provisions regarding intellectual property have followed University policy;
- That any perceived or actual conflict of interest respecting University employees and the contractual relationship has been appropriately resolved; Please refer to [USF's Conflict of Interest Policy](#). If a conflict arises, the responsible official must disclose the conflict promptly to their supervisor and complete a [Conflict Of Interest Disclosure Form](#). Responsible officials with a conflict of interest may not participate in contract negotiations or review. In such cases, another university official shall be designated to assume responsibility for the contract.

Divisions/Departments, at their discretion, may require additional review or authorization processes, such as approval by Department Head, Dean, Associate Vice President, Vice President, Associate Provosts, or Senior Vice President.

Once these initial contract authorization and review requirements are met, the contract must be sent to the Office of Business and Finance/Risk Management and the Office of General Counsel for final review. The Office of General Counsel may include other departments/divisions in the review process, such as ITS or the Office of Tax Compliance and Internal Audit, depending on the type of contract.

Among the issues that Risk Management and General Counsel will vet are:

- Any property, liability, and/or legal issues which are inherent in the contract and which may present adverse risk to the University;
- Appropriate risk allocation;
- Insurance requirements;
- Indemnification;
- Dispute resolution; and
- Legal remedies.

Should you have any questions about the contract review process, please contact Melissa Diaz in Risk Management at mddiaz2@usfca.edu.

In order to facilitate a more timely review and approval of all contracts, the following procedures should be observed:

- Whenever possible, send the other party's contract in the form of an editable Word document instead of a PDF. Complete all blanks in the contract first.
- Before sending contracts to Risk Management or OGC for review, read through the agreement, resolve any business or operational issues, and highlight any anticipated issues.
- Include a description of why your department or division desires to enter the proposed agreement.
- Notify Risk Management and OGC if USF has contracted with the other party in the past and provide any additional information that may impact their review.
- Allow at least 15 business days for review of standard contracts. If a contract is complex, additional time may be required for review.
- After obtaining OGC and Risk Management approval and an authorized signature on behalf of USF, ensure that the other party signs the contract and returns the executed agreement to USF. After the agreement is signed by both parties, the original must be returned to the office responsible for retaining the executed agreement.

THIRD PARTY CLAIMS

RISK ALLOCATION & INSURANCE PROVISIONS

Every written contract should address how the parties will share or allocate responsibility for third-party claims arising out of the parties' actions under the contract. This includes indemnification provisions, hold harmless/assumption of risk, and/or waiver/release of liability clauses. Additionally, insurance is important proof of a contracting party's ability to pay for third-party claims. USF requires both risk allocation and [proof of insurance](#) provisions in its contracts and may request a certificate of insurance, naming USF as an "additional insured" under the other party to the contract's insurance policy. The other party to the contract may also request or require USF to

carry certain lines or amounts of insurance. The Department of Risk Management will ensure that the limits requested or required of the contracting parties are adequate for potential exposure/s presented by the contract and issue a [certificate of insurance](#) (COI) if requested.

Limitation of Liability Clauses

When reviewing contracts, the Office of Risk Management looks for language or clauses that place monetary limitations on the amount of liability assumed by the other party in an agreement. These clauses set limits on the liability assumed by the other party. This often works in favor of the other party and against the University. Limitation of liability can also devalue indemnity and insurance limit requirements.

CONTRACT DRAFTING PROCESS

Whenever possible, the University's template contracts containing pre-approved terms and conditions should be used by departments entering into agreements involving similar or on-going relationships with third-parties.

Contract templates for speakers, entertainers and independent contractors can be found [here](#). The Office of the General Counsel can assist you with defining key terms and drafting other agreements.

UPDATING AN EXISTING AGREEMENT

USF and the Contractor shall not vary or modify the terms and conditions of the contract except by written amendment duly executed by both Parties.

Mutually agreed changes in scope of services (either due to budget or other conditions) that result in changes in remuneration, will be cause for a modification in the contract that accurately reflects the updated cost and/or scheduling changes in writing.

For the avoidance of doubt, the Contractor shall not be entitled to request price adjustments due to: fluctuations in foreign exchange rates, changes in actual or contingent costs, or any other similar grounds.

If the contract will be extended for additional periods in accordance with its terms and conditions, the terms and conditions applicable to any extended Contract term will stay the same as previously stated unless both parties agree to an amendment.

INDEPENDENT CONSULTANT/CONTRACTOR AGREEMENTS

The University may, on occasion, contract with an Independent Contractor to provide professional, technical, administrative or unique services not otherwise available from existing University employees. The use of an Independent Contractor should address the performance of a specific business task or job that will be accomplished within a limited period of time. An Independent Contractor shall not be used to direct a University program, provide services that are a regular or key aspect of the University's business, or be retained on an indefinite basis to perform tasks normally assigned to University employees.

The classification of an individual as an Independent Contractor under applicable employment and tax laws depends on a number of factors. Importantly, any Independent Contractor Agreement should avoid provisions that provide the University with the right to direct the individual as to the details of the individual's performance or exercise a measure of control over the individual's work.

Any department planning to contract with an individual Independent Contractor must complete the [I.C. Approval Request Form](#) for review and approval prior to the individual performing any services for the University. For more information, please review the [University's Independent Contractor Policy](#).

SOFTWARE AND CYBER RISK

An End User License Agreement (EULA) is a contract between a software supplier and an individual customer/user. EULAs are often referred to as "click-wrap" or "click-through" agreements. EULAs ask you to agree or accept the agreement before the software can be installed. EULAs are legally binding contracts between you and a software developer. EULAs can impose terms and conditions that affect your online security and privacy. If the University does not have a contract with the software developer that includes the particular software you are installing, you are exposing yourself to personal liability for the requirements stated in the EULA.

How EULAs affect security and privacy

EULAs can require terms and conditions that include such things as monitoring your internet activity, collecting personal information, using your computing resources, and holding you to terms of third party software agreements. All these scenarios pose a risk to the security and privacy of your personal information. In addition, because your USF computer is connected to the University network, this risk extends to other University computers, University data, and the University as a whole.

EULAs and Your Legal Responsibilities

In addition to the hidden dangers for privacy and information security that may be obscured in the text of a click-through software license, there may also be significant personal legal (civil and criminal) liability for you. When you agree to an EULA, you are personally exposing yourself to liability related to the EULA. Such personal exposure means that you could be held personally responsible for any breach of the agreement. This is an important distinction between software licensed by the University in a University contract versus software you purchase in shrink-wrap fashion or download over the Internet. If you have any questions about whether a software package is covered by a University contract, you should contact ITS at (415) 422-6668 or itshelp@usfca.edu.

The risks associated with IT products and services are ever-evolving, which means careful attention must be paid to the contract language, along with the insurance requirements. The ability to transfer these risks to traditional insurance or look to typical contractual indemnity is severely limited due to the complexity of these risks.

Many vendor's services require access to USF data, and contracts oftentimes do not clearly define the responsibilities and obligations of the vendor when doing so. With clearly defined privacy and data security provisions in vendor contracts, USF can ensure that vendors have a responsibility to protect University data and there is an adequate remedy if they fail to honor that duty. If a contract involves the processing of any private, confidential, restricted, mission-critical, high-risk, or data covered by the Clery Act, HIPAA, Title IX, DMCA or GLBA, contact ITS.

When acquiring a new IT solution (on-premise or cloud application), a Vendor Security Assessment (VSA) and Vendor Technology Assessment (VTA) may be required. The process is to provide USF with sufficient technical (including security and accessibility) information to assess the level of risk associated with adopting the technology, assess alignment with existing and supported computing/data platforms, and the protection of USF's business, personal, or financial data and/or information. Acquiring new or renewing existing technology must follow the [ITS technology acquisition process](#).

If a contract involves the acquisition of Instructional Technology or Equipment, [contact ITS](#) to ensure that the purchase is compatible with the University's network, does not conflict with exclusivity provisions in other contracts and to ensure that the contract sufficiently addresses accessibility requirements (Section 508 of the Rehabilitation Act of 1973, WCAG 2.1 etc.)

MISCELLANEOUS CONTRACTS

USF Trademarks or Logos

If a contract involves the use of any USF trademark, logo, or other University intellectual property, contact the [Office of Marketing and Communications](#).

Student Data Storage or Processing

If a contract involves the processing or storage of student data, contact the [Registrar's Office](#) to ensure that the contract contains provisions necessary to satisfy the University's obligations under the Family Educational Rights and Privacy Act (FERPA).

Grants and Sponsored Research

If a contract involves the receipt of public or private grant and sponsored program funding, contact the [Office of Contracts and Grants](#). Both government and corporate contracts require written approval by an appropriate University official on a Research Project Authorization form.

Events

If a contract relates to an on or off-campus event or involves the use of hotels, facilities or catering services, it should be reviewed by the [Director of Events Management](#).

Student Organizations

Only registered student organizations may request the University to enter into a contract on their behalf in the name of the University. No student or student group may negotiate contracts without prior written University approval. Contracts signed by individual students or in the name of a student group, registered or unregistered, will not be honored by the University and the individual student or students involved will be responsible for any financial commitments that result. Student organizations who wish to enter into a contract with an outside party must work with the office of [Student Leadership and Engagement](#).

VIOLATIONS & DISCIPLINARY ACTIONS

The law recognizes that a contract can be binding even if it is entered into by an employee without contracting authority if university officials are aware of the employee entering into contracts and do nothing to stop it.

University representatives who enter into obligations on behalf of the University without the authority to do so may cause damage to USF's reputation and cause USF to suffer legal consequences. Any individual who enters into a contract on behalf of the University without authorization may be held personally liable for obligations resulting from the contract and may be subject to legal action.

Employees who violate this policy are subject to a range of discipline, up to and including termination of employment and/or legal action.

All employees or contractors who engage in fraud or unlawful practices will be referred for civil action or criminal prosecution.

EMERGENCY

In case of emergency, as determined by the President or the Board of Trustees, any or all provisions of this policy may be temporarily suspended.

RELATED INFORMATION

Type	Title	URL
Risk Management	Certificate of Insurance Website	https://myusf.usfca.edu/risk/insurance
Risk Management	Insurance Requirements for a 3rd Party	https://myusf.usfca.edu/sites/default/files/contractor_vendor_notice.pdf
Internal Audit and Tax Compliance	Independent Contractor Policy	https://myusf.usfca.edu/sites/default/files/documents/ABS/Independent-Contractor-Policy_040920.pdf
Information Technology Services	Acquiring New Technology	How Do I: Acquire New or Renew Technology or Services for Use at USF?
United Educators	A Guide for Reviewing Contracts Checklist	https://www.ue.org/risk-management/enterprise-risk-management/reviewing-contracts/
United Educators	Contracting Fundamentals Course	https://learn.ue.org/FA24Q788956/usfca-Training
Alliant Insurance Services	Insurance Requirements in Contracts	https://www.alliant.com/news-resources/insurance-requirements-in-contracts-iric-manual/

DEFINITIONS

Term	Definition
Contract	Any promise or agreement, written, or verbal, supported by consideration by which an authorized University official and another party or parties have exchanged promises intending to be bound thereby is a contract (e.g. a commercial transaction, mutual promises, a promise for an act or the rendering of services, etc). This includes promises for grants, pledges and promises to make a gift which are supported by consideration or a material change of position.
Indemnity	A contractual obligation of one party to defend, indemnify, or hold harmless the other party from and against any and all claims, losses, etc., arising from injury to persons or damage to property as a result of an act or omission of the consultant, contractor, lessee, or vendor.
Certificate of Insurance	A certificate of insurance (COI) is a document that shows proof of the vendor's/contractor's insurance coverage. Vendors/contractors, or other outside parties who are providing services to the University or using University facilities, are required to provide evidence of the insurance required by the University by submitting a Certificate of Insurance (COI) to Risk Management before commencing work.
Authorized Signer	The primary signer of all contracts is the Vice President, Vice Provost, or Dean of each department, college/school, or business unit and has authority to sign contracts and agreements on behalf of the University.
End User License Agreement	An EULA is software license between the licensor and purchaser, establishing the purchaser's right to use the software. The license may define ways under which the copy can be used, in addition to the automatic rights of the buyer including the first sale

	doctrine and 17 U.S.C. § 117 (Limitations on exclusive rights: Computer programs).
Independent Contractor	An Independent Contractor relationship exists when the University has the right to control only the result of a worker's service, not the manner of performance.

ADDITIONAL CONTACTS

Subject	Contact	Phone Number	E-mail or URL
Risk Management	Melissa Diaz	(415) 422-5899	mddiaz2@usfca.edu
Risk Management Assistant	Risk Assistant		usftravel@usfca.edu
Office of General Counsel	Donna Davis	(415) 422-6822	generalcounsel@usfca.edu
Information Technology Services	Vince Villarama	(415) 422-4218	vsvillarama@usfca.edu
Business and Finance	Charles E. Cross	(415) 422-6522	cross@usfca.edu
Tax Compliance	Dawn Mayer	(415) 422-5816	dgmayer@usfca.edu

RESPONSIBILITIES

Department/Business Manager

- Contract review should begin with the department / Business Manager desiring to enter into the contract.
- Once the initial contract authorization and review requirements are met, the contract must be sent to the Office of Business and Finance/Risk Management and the Office of General Counsel for final review.

Risk Management

- Reviews contract for any property and liability issues which are inherent in the contract and which may present adverse risk to the University;
- Appropriate risk allocation; and
- Insurance requirements.

General Counsel

- Reviews contract for any legal issues which are inherent in the contract and which may present adverse risk to the University;
- Dispute resolution; and
- Legal remedies.

Vice President, Business & Finance

- In consultation with the Risk Management, reviews and approves, if appropriate, requests for an exception to this Policy and violations of the Policy.

President, Vice Presidents, Vice Provosts, and Deans

- Ensures that employees in their division are in compliance with this Policy.
- The Primary Signer of all contracts is the Vice President, Vice Provost, or Dean of each department, college/school, or business unit.

REVISION HISTORY

05/01/2023 First publication of Policy.

APPENDICES
