General Rule: Review of Contracts by the Office of General Counsel

In general, contracts must be reviewed by an attorney in the Office of General Counsel (OGC) before they are signed by an authorized signatory on behalf of the University of Rhode Island (URI) and its Board of Trustees (URI-BOT). There are a number of exceptions set forth in this Protocol, however, to the requirement for OGC review.

What is a Contract?

Generally, a contract is any agreement between two or more parties where there is a mutual exchange of promises and which creates legally enforceable rights and/or duties of the parties, regardless of
whether there is any agreement to pay money and regardless of whether or not it is titled “contract.” A contract may be referred to by any number of names, including “agreement,” “memorandum of understanding,” “license,” “subscription,” “lease,” “order,” “amendment,” “addendum,” “renewal,” or “letter of intent.” A “click to agree” website contract is also a contract even though it is not signed by parties. A letter without any title can be a contract if, for instance, it indicates something at the end like “please acknowledge your agreement to the foregoing by signing where indicated below.” Ultimately, the title is not important. It is the content that determines whether something is a contract. This Protocol refers to any other (non-URI) party to a contract as a “counterparty”.

**What are “Business Terms” and what are “Legal Terms”?**

“Business terms” means things like time, manner or scope of services or delivery, product quantities, purchase price, fees, payment terms, period of performance (start date and end date), cancelation, termination or renewal provisions, and deliverables that would be negotiated by the requesting department. “Legal terms” include things like liability limitations, defense, indemnification or hold harmless provisions, choice of law, venue, forum or jurisdiction, dispute resolution (such as arbitration or mediation) provisions, liquidated damages clauses, force majeure or acts of god, warranties, non-competition, exclusivity or other covenants. Business terms should be fully negotiated and incorporated in the draft contract and any insurance terms should be based on approved boilerplate language from URI Enterprise Risk Management or be otherwise approved by that department in the draft contract before it is sent to OGC.

**What is the Role of OGC in Reviewing a Contract?**

Contracts that bind URI or the URI-BOT must be in writing. OGC’s review of a contract or drafting of a contract upon request of a department is not an approval of the business terms or authorization to proceed with the transaction. OGC review is to assess that the contract, as written, complies with relevant federal and state laws, policies and procedures, conforms to the University’s expectations, adequately protects the University’s interests and rights, and appropriately allocates risks among the parties. It is important to remember that a business contract is an agreement to a particular relationship or transaction, not just a set of legal boilerplate terms. The contract owner must assure that the business terms are consistent with the intended relationship or transaction and is responsible for reviewing and understanding it before it is executed and complying with its terms after it is executed.

**Attorney-Client Privileged Legal Advice**

Note that communications from OGC to URI employees and the URI-BOT with our attorney’s advice and comments on contracts are attorney-client privileged and should be shared only with those within URI who are responsible for negotiation and approval of the contract. Under no circumstances should OGC communications be forwarded to contract counterparties. The attorney-client privilege belongs to the University and cannot be asserted or waived by individuals. Also, this is counter-productive to negotiation because OGC advice may include alternate or fallback positions or questions for the contract owner and, even more importantly, renders the legal advice no longer confidential.

**Exceptions: When Does a Contract not Require OGC Review?**

The following categories of contracts do not require OGC review under the circumstances described below:
Templates
In order to simplify the contracts process, OGC has developed and approved standard template agreements for use by departments for routine transactions or relationships. It should not be routine to simply accept the vendor’s form of contract and forward it to OGC for review. These OGC-approved templates should be used whenever possible. Provided there are no changes, there is no requirement to send contracts using OGC-approved templates to OGC for approval. The requesting department simply fills out the terms where there are blanks in the template, without revising other language in the template, and submits the document through the appropriate department. If a requesting department has the need for a standard template agreement for its frequent use, and one does not exist, a template can be obtained by submitting a request for legal services to OGC’s matter intake email at OGC_Service_Request@etal.uri.edu.

Small Contracts
“Small contracts” do not require review by OGC. A “small contract” is one with a total contract value of $25,000 or less, EXCEPT if it relates to any of the following categories:

- Purchase, sale, lease/sublease, or license/sublicense of, or granting of naming rights in, any URI interest in real property;
- Settlement or release of legal claims or disputes;
- Financing, refinancing, restructuring or guarantee of debt or granting any security interest; or
- Transactions or relationships that are highly strategically important or involve potential for significant publicity.

Contracts in the foregoing categories must be reviewed by OGC regardless of dollar value. Total contract value measures how much value a contract is worth once executed. It includes any recurring revenue from the contract or obligations required to be paid under the contract, as well as all one-time charges like professional service fees, onboarding fees, and any other charges incurred throughout the contract term. The contract owner is responsible for completing and providing the Contract Cover Sheet and Appendix A to the authorized signatory when presenting a small contract to an authorized signatory for signature.

Renewals, Extensions and Amendments
Renewals, extensions or amendments of existing contracts that change only business terms do not need to be reviewed if the existing contract was previously reviewed by OGC or did not require review because it is a small contract, unless the underlying contract was reviewed by OGC more than five years before. The contract owner is responsible for carefully reviewing the existing contract and confirming that the terms are still appropriate before submitting a renewal or extension for review or signature. If an extension or renewal of an existing contract (other than a small contract) adds, deletes or modifies legal terms, if it results in extension more than five years from when the original contract was reviewed, or if a requesting department would like to renegotiate and amend legal terms of the existing contract, OGC should be contacted. When requesting legal review or negotiation assistance for a renewal, extension or amendment of an existing contact, it is important that a copy of the existing contract (including any prior amendments, renewals or extensions), as well as a summary of the desired changes to terms, be provided with the contract cover sheet and document requiring review.
Master Agreement Orders and Statements of Work

Master pricing agreements by vendors with the State of Rhode Island are not subject to review by OGC. When there is any master agreement with a counterparty (regardless of whether it is a State master pricing agreement), orders and statements of work that are issued under the master agreement to the counterparty do not need to be reviewed by OGC if they modify only business terms and not underlying legal terms of the master agreement. Orders and statements of work that are with a third party, not the counterparty to the master agreement, still require review unless they are small contracts.

How Do I Request OGC Contract Services?

A completed Contract Cover Sheet and Appendix A should be completed by the contract owner and submitted by the appropriate requesting department via email to OGC’s matter intake email at OGC_Service_Request@etal.uri.edu, copies of any prior relevant contracts with the counterparty and any term sheets, commitment letters, proposals or letters of intent related to the terms of the contract to be reviewed. The name of the contract owner, the contact person in the requesting department (if different than the contract owner) and the authorized signatory for the contract should be specified in the request for legal review or drafting so that the assigned OGC attorney can ask questions as needed and appropriately communicate the results of their review. Whenever possible, contracts should be provided in an editable word format so that OGC may mark suggested language changes in the document. All blanks must be completed and attachments included. OGC should be notified prior to review if a counterparty has presented a contract as “non-negotiable”. If the request is not complete based on the requirements of this Protocol, it will be returned to the requesting department for completion before a matter is opened and an attorney is assigned. Once an attorney is assigned, the contract owner, the contact person in the requesting department and the authorized signatory will receive an email indicating the matter number and name and the attorney assigned, after which all email communications regarding the contract should include that matter number and name in the subject line.

Timing of Request

In order for OGC to timely review and assess and/or draft a contract, please contact OGC as early as possible to provide adequate time prior to the anticipated start date of the relationship. All requests to review or draft a contract must be submitted before the work begins and before the contract is signed on behalf of URI with ample time between the time the request is submitted and the contract begins for an informed review that will provide for favorable terms to the University. Whenever possible, we ask that the requesting department allow at least 30 days for initial OGC review and allow time for negotiation of changes and final review. Note that this time is in addition to, not inclusive of, time needed for other required reviews and approvals, including by the Purchasing Department, as referenced under “Requesting Department” below, so the contract owner needs to plan accordingly to allow sufficient time for business review, OGC review and obtaining authorized signatory approval. If a shorter OGC review period is required the reason should be clearly indicated and explained in the contract review form. Indicating “ASAP” or “Urgent” is not sufficient for OGC to evaluate how to prioritize the volume of contract review requests received and the request will be returned to the requesting department for more information.

Requesting Department

It is important that requests for review or drafting of contracts originate from the appropriate University department to assure that there is business approval to proceed with the contract before it is sent to
OGC. All contracts for the purchase of goods or services must go first through the Purchasing Department (which will be the requesting department under this Protocol) in accordance with their policies, procedures, and regulations. Note there is a broad category of goods and services that must be procured through the Purchasing Department, including but not limited to consulting agreements, construction-related agreements, rental or lease of equipment or other personal property. It is important that the contract owner refer to the Purchasing Department policies, procedures, and regulations, and consult with the Purchasing Department on questions as to when a contract must be handled through them. In addition, engagements of legal counsel must originate with OGC, all contracts for employment or independent contractor services must go through the Department of Human Resources and all agreements for the purchase, sale, lease/sublease, license/sublicense of, or access to, URI real estate or for URI’s use of non-URI real estate must go through Planning and Real Estate Development.

Contract Owner
The contract owner is the person within the department that is requesting the goods, services or other relationships or transactions covered in the contract and who is responsible for the establishment and approval of its business terms and any potential risks associated with the relationship/transaction. If the University is expending money, the contract owner must ensure that their department has adequate funds for the purchase. It is the responsibility of the contract owner to assure that the requested contract is routed through the appropriate internal departments, but the contract owner may contact OGC with any questions about appropriate reviewing departments. In some cases the contract owner may be someone within the requesting department. In other cases, the contract owner will be within the department requesting the goods or services, but the requesting department will be different, such as the Purchasing Department in the case of purchasing contracts and Planning and Real Estate Development in the case of non-Purchasing real estate contracts.

Contract Negotiation
The requesting department is expected to negotiate business terms that are favorable to URI and within the applicable departmental budget before the contract is sent to OGC for review. Following their review, the OGC assigned attorney may make recommendations for changes in the contract. The requesting department (working with the contract owner if different) is then responsible to negotiate changes based on those recommendations. OGC may assist with negotiation when requested to do so. In addition, OGC should be contacted to assist in negotiations if the contract counterparty has an attorney involved in their negotiations. If OGC is asked to assist in negotiation, the assigned attorney must be first fully apprised of the background, business terms and ultimate goals of the contract and be assisted by the contract owner so the assigned attorney is equipped with relevant business considerations for the negotiations. If changes were requested, when negotiations are completed, the requesting department must send the contract back to the assigned attorney for final review indicating it has been fully negotiated and what changes have or have not been made in response to OGC comments.

Final OGC Review
After OGC contract review services are completed, a final review email will be sent by the assigned OGC attorney to the requesting department, contract owner and authorized signatory. If no changes are requested by OGC on first review, the final review email will state that the contract has been reviewed by OGC and it is legally sufficient. If changes were requested, the fully negotiated contract must be sent
back to OGC for final review and the assigned attorney will perform a final review. If all requested changes were substantively addressed to the satisfaction of the assigned attorney, the final review email will indicate the contract is legally sufficient. If requested changes were not addressed to the satisfaction of the assigned attorney, they will send a final review email indicating what changes were requested and not addressed and describing the associated risks or concerns and conclude with one of the following:

1. although all requested changes were not addressed, OGC would consider it not unreasonable for the authorized signatory to make a business decision to enter into the contract. The contract owner is responsible for making the case to the authorized signatory that the contract is of sufficient importance and the risk is sufficiently attenuated that they believe the contract should be executed. It is then the authorized signatory’s decision whether to enter into the business transaction on the terms offered and they may consult with the assigned attorney and contract owner to help evaluate the risk; or

2. it is our opinion that the contract violates applicable law, regulations or policies and should not be executed for a specified reason. Under certain limited circumstances, it may be possible to obtain a waiver of a URI policy or a URI or state purchasing regulatory requirement if the authorized signatory wishes to proceed with the contract. The requesting department should work with the assigned attorney if the authorized signatory wishes to seek such a waiver.

**Authorized Signatory and Final Approval**

It is the contract owner’s responsibility to determine who has signatory authority in their department or division based on the applicable [signature authority documents](https://uri0.sharepoint.com/sites/GeneralCounselOffice/Shared Documents/General/General Counsel Office Drive/OGC Protocols and Procedures/Contract Review Protocol FINAL Effective January 1, 2022.docx). The contract owner is responsible for assuring that the authorized signatory is apprised of and agreeable with the proposed business terms, risks, and relationship or transaction. It is the responsibility of the requesting department to notify the contract owner and authorized signatory when reviews are completed and the contract is ready for signature. It is the responsibility of the requesting department (with assistance of the contract owner if requested) to obtain signatures on the final contract by the counterparty and then by the authorized signatory on behalf of the University. OGC is not responsible for obtaining signatures on contracts.

**Contract Retention and Monitoring**

Both the contract owner and the requesting department, if different, should retain a copy of the fully executed agreement. OGC does not maintain a database of executed contracts. The contract owner has the obligation to oversee the performance of the contract and monitor URI’s compliance with the terms of the contract.

Effective Date: January 1, 2022