

This process applies in addition to, and not in lieu of, the University's [Procurement Guidelines](#).

Furman University Contract Development and Review Process

What is a contract? A **contract** is a legally enforceable agreement between two or more parties. It may involve the purchase of goods or services, or it may involve performing certain obligations with no payment at all. It is important to keep the following in mind:

- **The title or form of a document does not determine whether or not it is a contract.** Whether called an “agreement,” a “memorandum of understanding,” or “terms and conditions,” a written document may constitute a legally binding contract. Verbal agreements may constitute legally binding contracts as well.
- **Entering into a contract exposes the University to risk.** Remember that the dollar value of the contract (or lack thereof) is not always indicative of the amount of potential risk.

What do I need to do to have my contract approved? University departments, faculty, or staff seeking to bind the University to a contract must follow the guidelines and process outlined below.

- I. **Obtain initial approval.** You must first obtain approval for the proposed arrangement from the appropriate senior administrator. For administrative departments or staff, this will be the Vice President (or equivalent) who oversees your unit. For academic departments or faculty, this will be the Vice President for Academic Affairs and Provost. Initial approval of the proposed transaction does not mean that you will receive final approval for the contract. **All contracts must be approved in their final form and signed by the appropriate senior administrator.**
- II. **Negotiate and determine the business terms.** *Business terms may include a description of the goods or services to be provided, the dates of performance or length of the contractual relationship, price, and payment schedule.* For contracts requiring payment by the University, you should research the options available to accomplish the contract objective, along with the variance in pricing amongst those options. Doing so will assist in negotiating the business terms of the contract.
- III. **Negotiate the contract.** The University strongly prefers using its own template contracts, rather than a contract proposed by the external party. To that end, you should ask OGC for a template contract that you can use. There may be occasions, however, when the University’s templates are not a good fit for the contract objective or the external party will not agree to use the University’s templates. Under these circumstances, it is acceptable to use the external party’s draft contract as a starting point. Both options are discussed below.

Do not forward any OGC emails to an external party, and do not discuss OGC’s advice with an external party. OGC’s emails and advice are generally “privileged,” meaning they are protected from disclosure in any subsequent lawsuit. Sharing these communications with the external party destroys this privilege and its protections.

A. Using a University template contract.

1. Read the entire template contract.
2. **Insert the business terms into the editable portion of the template contract.** OGC is happy to assist you in this process. Taking time to draft the business terms will ensure that you have a clear picture of (1) the objectives you want to accomplish through the contract and (2) what you (and the University) are obligated to do. You are responsible for confirming that the contract accurately and fully represents your understanding of the business arrangement.
3. If you want to make changes to the portion of the template contract that is not editable, please contact OGC.
4. Send the external party the draft template contract, which includes the business terms you inserted.
5. **Any changes by the external party to the non-editable provisions of the template contract must be reviewed by OGC.** When you send the revisions to OGC, you should indicate that the proposed transaction has received initial approval from the appropriate senior administrator.

**Benefits of University
Templates**

Lower Risk. Most importantly, the University's template contracts contain language intended to protect the University from excess legal exposure.

Fairer Terms. External parties often send a form contract that disproportionately shifts legal risk to the University.

Efficiency. As a general rule, you should allow a minimum of 3-4 weeks for OGC's review of a non-template contract. Using the University's template contracts will reduce — and potentially eliminate altogether — this period of review.

B. Using an external party's proposed contract.

1. Read the entire contract and make any necessary changes to the business terms. You are responsible for confirming that the contract accurately and fully represents your understanding of the business arrangement.
2. Determine whether additional review and approval is required by consulting the table below. If additional review and approval is required, submit the contract for such review and approval as set forth in the table. If no additional review and approval is required, proceed to Step IV and submit the contract for final review and signature.

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No Further Approval Required <i>If the contract meets <u>all</u> of the following criteria, no additional approval is needed, and you may negotiate the contract with the external party. After you and the external party have approved the contract, you may proceed to Step IV and submit the contract for final approval and signature.</i>	Further Approval Required <i>If the contract requires further approval and review as set forth in the column on the left, you must seek such review and approval as set forth below before proceeding to Step IV and submitting the contract for final approval and signature.</i>
<p><u>All</u> of the following conditions must be met:</p> <ul style="list-style-type: none"> • The value of the contract is less than \$25,000 (i.e., neither party is paying the other \$25,000 or more) • The contract is not related to any of the following: <ul style="list-style-type: none"> ○ Information Technology (IT) ○ Major construction or architecture ○ Grants and/or research ○ Marketing and/or communications ○ Entertainment • The contract does not contain any language relating to: <ul style="list-style-type: none"> ○ Insurance requirements ○ Indemnification ○ Limitation of liability ○ Intellectual property (IP) ○ Receiving or transferring data ○ Compliance with laws <div data-bbox="138 1260 738 1690" style="border: 2px solid purple; padding: 10px; transform: rotate(-15deg); margin-top: 20px;"> <p>NOTE: If the contract is a renewal and the terms have not changed, please note as much when you send the contract for special and OGC review, as it may be that the process can be significantly expedited.</p> </div>	<p>Special Review and Approval</p> <p>Certain contracts require special review and approval before being submitted to OGC for legal review, as follows:</p> <ul style="list-style-type: none"> • IT-related contracts – Chief Information Officer • Contracts imposing insurance requirements on either party – Director of Risk Management • Major construction and architectural contracts – AVP for Facilities Services • Entertainment contracts – the Facility Operator • Contracts related to grants and research – Director of Grants and Research Administration • Contracts related to marketing and communications – Vice President for University Communications <hr/> <p>OGC Review and Approval</p> <p>After obtaining specialist review and approval as set forth above, if applicable, submit your contract to OGC for review and approval. When you send the revisions to OGC, you should indicate that the proposed transaction has received initial approval from the appropriate senior administrator.</p> <p>Allow a minimum of 3-4 weeks for this process, during which OGC may contact you with questions or return the draft to you with comments that require your response.</p> <p>OGC will email you any revisions in “redline” and “clean” format and ask you to return the revisions to the external party for review. Do not forward any OGC emails to an external party, and do not discuss OGC’s advice with an external party.</p> <p>Notify OGC once you receive a response from the external party. You should indicate any revisions the external party has rejected. Note that some rejected revisions may require further approval by the appropriate senior administrator. It is not uncommon to go through several rounds of negotiation with an external party.</p>

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IV. **Finalizing the Contract.** After you and the external party have approved the draft contract and all required parties have completed their review, the contract must be signed by the appropriate senior administrator:

Contract	Required Signature
IT-related contracts	Chief Information Officer
Lease agreements	Vice President for Finance & Administration
Real estate	Vice President for Finance & Administration
Contracts not listed above with a total value less than \$25,000	The appropriate senior administrator (For administrative departments or staff, this will be the Vice President (or equivalent) who oversees your unit. For academic departments or faculty, this will be the Vice President for Academic Affairs and Provost.)
Contracts not listed above with a total value greater than or equal to \$25,000	Vice President for Finance & Administration

Only those individuals who are granted signatory authority by [Policy 370.5](#) may sign contracts on behalf of the University.

After the contract is signed by both parties, send an electronic copy to OGC and retain a copy for your records.

Questions. If you have questions at any step in the process, contact OGC at ogc@furman.edu or x2409.

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