

# HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

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## **HLS Contracts and Commitments Policy**

*This document was derived from the OGC Contract Review Checklist, a more complete checklist and further guidance can be found here: <https://ogc.harvard.edu/pages/model-documents>*

**Reason for Policy:** To provide guidance to the HLS community when reviewing and signing contracts that commit HLS resources; to ensure that contracts and commitments minimize the exposure of financial and/or other risk to the University; and to comply with external audit requirements to disclose significant commitments in the University's annual financial report.

**Scope:** Included in the scope of these guidelines are written contracts and commitments entered into for goods and services, individual contracts, building and equipment commitments, sponsored research sub-contracts, other agreements and commitments and any orders and/or purchases that bind HLS.

Depending on the nature and dollar value of the contract or commitment, there are corresponding approval requirements – please refer to Appendix A for relevant approval thresholds. If questions of application remain, please contact the HLS Finance Office.

Please note:

- Agreements that involve **Endowment and Gifts** or **Sponsored Awards** should be directed to **HLS Development Office** or the **University Office for Sponsored Programs (OSP)**, respectively.
- Agreements that involve **sharing confidential** or **high-risk data**, no matter the dollar amount, please contact the HLS Finance Office, who will bring in the OGC as needed
- If unsure about any aspect of a contract, please contact the HLS Finance Office

**Model agreements:** Harvard's OGC has drafted a number of model agreements for reference. The agreements include model consulting, publication, and speaker consent agreements, among others. These model agreements can be found at: <https://ogc.harvard.edu/pages/model-documents>.

## Contract Review Checklist

The following guidelines highlight a number of common elements to be considered before entering into a contract. Please be sure to review this checklist each time a contract is reviewed.

### Preliminary Review

- Read the contract. The contract terms should be clear and understandable.
- Does it contain all the terms that you consider essential to the transaction (i.e. description of goods or services, price, and dates for performance or delivery)?
- Are all lists, price sheets, schedules, appendices, order forms, and other documents mentioned in the contract are attached?

### Identification of the Parties

- Harvard's legal name is '**President and Fellows of Harvard College**' and it should be so identified, or by the trade name 'Harvard University'.
- The contract should begin with a paragraph identifying both parties, such as "*Agreement between President and Fellows of Harvard College and ABC Corporation.*" A contract should **not** be entered into with a particular school, department or employee as the named party. For example, the contract should be with "*President and Fellows of Harvard College, acting through Harvard Law School Berkman Klein Center...*"

### Subject of the Contract

- The product or service must be clearly identified and fully described, including any needed specifications. The quantity of the product or the nature of the services being purchased must be stated specifically. There should be no ambiguity about what is being purchased.

### Use of Harvard's Name

- Harvard University's Use-of-Name policies and guidelines govern the manner in which Harvard schools, departments, units, and the wider Harvard community may use the Harvard name. As the Office of the Provost's Harvard Trademark Program states: "*The University and its members have a responsibility to ensure that any implied association with the University is accurate.*"
- Prior to the use of Harvard names and/or insignias by any HLS member, organization or department, individuals should consult the Harvard Trademark Program website (<https://trademark.harvard.edu>) with a specific focus on:
  - Use-of-Name Policies & Guidelines (<https://trademark.harvard.edu/policy-on-use-of-harvard-names-and-insignias>)
  - Endorsement Guidelines (<https://trademark.harvard.edu/endorsement-guidelines>)
  - FAQs on the Use of Harvard's Name (<https://trademark.harvard.edu/frequently-asked-questions-use-of-harvards-name>)
- Every contract must include a clause prohibiting the other party from using Harvard's name for advertising, promotion, or other purposes without the express prior written permission of Harvard in each instance. For example, "*Vendor shall not use the name 'Harvard' (alone or as part of another name) or any Harvard-affiliated logos or insignia in advertising or promotional materials except as expressly provided in this Agreement and with the prior written approval of, and in accordance with restrictions required by, Harvard.*"

### Intellectual Property (IP) Rights in Work Product

- Harvard should usually own the intellectual property (IP) rights in any deliverable produced by a vendor for Harvard. Pay careful attention to provisions that give the intellectual property rights in work product to the vendor. This may be appropriate in some cases, such as software consulting agreements, in which case it is important that Harvard is properly licensed to use the software.
- Contracts for the transfer or acquisition of Harvard intellectual property rights (excluding boilerplate transfers of rights from a vendor or consultant to Harvard) should be reviewed by OTD or OGC.

### Limitation of Liability

- Some vendors seek to place limits on their liability for negligence, breach of contract, or other wrongful act or omission. In some cases, these limitations are phrased so that they absolve the vendor of all liability. Such provisions are unacceptable and **must be deleted**. Harvard has every right to expect a vendor to stand behind its product and/or services.

### Indemnification by Harvard

- Beware of contracts that call for Harvard to indemnify the other party (i.e., reimburse costs or otherwise defend the party from liability) in any way. Harvard does not indemnify vendors or their employees in ordinary commercial situations.

### Governing Law and Disputes

- In the event of a dispute over the meaning of a contract provision, parties must look to the law of a particular jurisdiction (state or country) for guidance. So-called 'choice of law' and 'choice of forum' clauses are frequently found in contracts ("*this contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts laws*"). Harvard naturally prefers to sign contracts governed by **Massachusetts law**. If you cannot persuade the other party to include a provision calling for Massachusetts law to apply, **try to delete the provision altogether**.

### Confidentiality

- The vendor should respect and preserve the confidential nature of any information pertaining to Harvard that Harvard identifies to the vendor as confidential. Confidentiality may be quite important in some contracts, less so in others. If the transaction involves sharing with a vendor any High Risk Confidential Information, as defined in Harvard's information security policy, or any other personal information about employees or students, you should contact your local Information Security Officer about security standards to be included in such agreements.
- Vendors regularly ask Harvard to keep certain parts of the vendor's information confidential. Be sure that the vendor's request is reasonable and that Harvard has the capacity to comply with it. The vendor should be required to describe clearly what information is confidential. If the vendor asks for non-disclosure agreements from Harvard's employees, review the form of agreement carefully before signing the contract and make sure that all current and new employees sign the non-disclosure agreement. You should generally reject provisions that require Harvard to keep the existence and terms of the agreement confidential; in certain cases, it may be appropriate to agree to keep the financial terms confidential.

### Review by Other University Offices

- For contracts involving High Risk Confidential Information, as defined in Harvard's information security policy, and other personally identifiable information, consult with HLS IT Office.
- Contracts with foreign government agencies must be reviewed by OGC.
- Contracts for the transfer or acquisition of Harvard intellectual property rights (excluding boilerplate transfers of rights from a vendor or consultant to Harvard) should be reviewed by OTD or OGC.
- All contracts for security, custodial, or dining services for a period of nine months or more and payments exceeding \$50,000 must be reviewed by OGC or the Office of Strategic Procurement.
- Consult the Office of Strategic Procurement if your business goal or the vendor's is an agreement that will apply to the relevant activities of all or multiple Harvard units.
- Consult the Office for Sponsored Programs (OSP) with respect to any subcontract under a federal contract or for the purchase of goods or services under a federal contract.
- Large long-term contracts, contracts involving atypical risks, and contracts under which the vendor is providing key deliverables should usually require the vendor to maintain liability insurance. For further information, see the University Insurance Department's standards and requirements for such insurance: <http://rmas.fad.harvard.edu/pages/vendor-insurance-requirements-0>

## HLS Contracts and Commitments Policy – Signers/Approval Requirements Matrix

### Appendix A

Please note: HLS Departments and Centers should route all applicable contracts and commitments through the Finance Office to obtain the appropriate levels of approval.

Type	\$ Threshold	Required Signers/Approvers
<b>Individual Contractors (i.e., consultants)</b> <ul style="list-style-type: none"> <li>Harvard employees/students are NOT independent contractors and must be paid through Peoplesoft</li> <li>Independent Contractor Policy and Procedures must be followed to determine appropriate way to pay individual</li> <li>See HLS HR website for policy</li> <li>(Applicable for payments to individuals, not business entities)</li> </ul>	Up to \$10,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>Associate Director, HR</li> </ul>
	\$10,000+ to \$50,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>Associate Director, HR</li> <li>HLS Controller or HLS Manager of Accounting</li> <li>HLS Financial Dean and CFO</li> </ul>
	\$50,000+ to \$250,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> <li>HLS HR Dean and CHRO</li> </ul>
	\$250,000+ to \$500,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> <li>HLS HR Dean and CHRO</li> <li>HLS Dean for Administration**</li> </ul>
	All \$500,000+	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> <li>Office of General Counsel**</li> <li>University Associate Director of Human Resources**</li> </ul>

<b>Goods and Services (not from individuals)</b> <ul style="list-style-type: none"> <li>(e.g., conferences, hotels, catering, etc.)</li> </ul>	\$0 to \$5,000 – one-year commitment (or less)	<ul style="list-style-type: none"> <li>No additional approvals needed</li> </ul>
	\$0 to \$5,000 – AND multi-year commitment	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Controller or HLS Manager of Accounting</li> </ul>
	\$5,000+ to \$100,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Controller or HLS Manager of Accounting</li> </ul>
	\$100,000+ to \$250,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> </ul>
	\$250,000+ to \$500,000	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> </ul>
	All \$500,000+	<ul style="list-style-type: none"> <li>Department/Center Financial Manager</li> <li>Department/Center Executive Director or Equivalent</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> <li>Office of General Counsel**</li> <li>University VP for Finance**</li> </ul>
<b>Building and Equipment</b>		
<ul style="list-style-type: none"> <li>Construction contracts (CIP)</li> </ul>	\$50,000+ and multi-year commitment	<ul style="list-style-type: none"> <li>Copy to HLS Finance</li> </ul>
<ul style="list-style-type: none"> <li>Building leases</li> </ul>	ALL	<ul style="list-style-type: none"> <li>HLS Director of Facilities and Operations</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> <li>Office of the General Counsel**</li> </ul>
<ul style="list-style-type: none"> <li>Equipment leases</li> </ul>	Up to \$10,000	<ul style="list-style-type: none"> <li>Facilities and/or IT Financial Manager</li> </ul>
	\$10,000+ to \$100,000	<ul style="list-style-type: none"> <li>Facilities and/or IT Financial Manager</li> <li>HLS Controller or HLS Manager of Accounting</li> <li>HLS Director of Facilities and Operations and/or CIO</li> </ul>
	\$100,000+ to \$250,000	<ul style="list-style-type: none"> <li>Facilities and/or IT Financial Manager</li> <li>HLS Director of Facilities and Operations</li> <li>HLS Financial Dean and CFO</li> </ul>
	\$250,000+	<ul style="list-style-type: none"> <li>Facilities and/or IT Financial Manager</li> <li>HLS Director of Facilities and Operations and/or CIO</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> </ul>

<b>Software and Cloud Hosted Services</b>	ALL	<ul style="list-style-type: none"> <li>HLS Deputy CIO</li> </ul>
<b>Sponsored Research Sub-contracts (must be signed by PI)</b>	ALL	<ul style="list-style-type: none"> <li>HLS Assistant Director for Research Administration</li> </ul>
<b>Collaboration Agreements</b> <ul style="list-style-type: none"> <li>Agreements with external organizations, with or without transfer of funds, that include: data use agreements, intellectual property, exchanges of confidential information, results and/or intellectual property</li> <li>(Not applicable, i.e., no prior HLS review and approval needed, in cases of standard academic practice that involve none of the above-listed items)</li> </ul>	ALL	<ul style="list-style-type: none"> <li>HLS Assistant Director for Research Administration</li> </ul>
<b>Use of Name (HLS or Harvard University)</b>	ALL	<ul style="list-style-type: none"> <li>HLS Assistant Director for Research Administration</li> <li>HLS Financial Dean and CFO</li> <li>HLS Dean for Administration**</li> </ul>

\*Note: at each \$ threshold level, all named individuals are required to approve the contract/commitment

\*\*In cases of the double asterisk notation, these approvals will be obtained as deemed necessary by HLS Finance

\*\*\*Note: "Department/Center Financial Manager" includes senior administrators and/or persons with budget authority at the department level