

# **Instructions for drafting contracts at Karolinska Institutet**

Legal Office, 2017-01-23



**Karolinska  
Institutet**



# Instructions for drafting contracts at Karolinska Institutet

Ref. no. 1-786/2016

## CONTENTS

1. Introduction .....	1
2. Contract Processor .....	1
3. Drafts from the counterparty or Karolinska Institutet templates.....	1
4. Investigation.....	1
5. The drafting process .....	2
5.1 Review within the Organisational Entity.....	3
5.2 Legal review.....	3
5.3 Negotiations .....	4
5.4 Negotiated contract and final check.....	4
5.5 Signing.....	4
5.6 Consent.....	5
5.7 Post-processing .....	5

### Annex 1: Checklist for Contract Processors

<b>Reference number:</b> 1-786/2016	<b>Ref. no. For the previous version:</b>	<b>Decision date:</b> 2017-01-23	<b>Period of validity:</b> Until further notice
<b>Decision:</b> Head of Legal Office		<b>Document type:</b> Instructions	
<b>Handled by department/unit/function:</b> Legal Office		<b>Preparation with:</b> Heads of Departments and Administration, Office Heads at Central Administration and the Administrative Council	
<b>Review with respect to:</b>			

Please note that these instructions have been drawn up in the Swedish language. In case of discrepancies between the Swedish text version of these instructions and any translation, the Swedish version shall prevail.

## 1. Introduction

The Legal Office, through the Legal Unit, assists Karolinska Institutet (*KI*) with matters relating to contracts and supports each part of the organisation, from university management and central administration to individual departments. Each such individual part of the organisation will hereinafter be referred to as an *Organisational Entity*. Given the considerable demand for legal support, advance planning in dealing with the Legal Unit is recommended.

These instructions have been issued to promote effectiveness and legal certainty in the drafting of contracts and in contact with the Legal Unit. These instructions are primarily intended for the *Contract Processor*, the person tasked to process a specific contract. They are applicable to most common kinds of contracts, including those with more than two parties.

## 2. Contract Processor

An Organisational Entity should assign a Contract Processor as early as possible in each contract matter. The Contract Processor is to act as a correspondent both internally (e.g. with the Legal Unit) and externally (with the counterparty). The Contract Processor will also act as the overall case officer and is expected to be the one who drives the matter forward. The Organisational Entity must always make sure that the assigned Contract Processor does not have a conflict of interest in relation to the contract matter.<sup>1</sup>

It is up to each Organisational Entity to decide if the position of Contract Processor is to be permanent for one or more members of staff or if it is to change from one contract matter to the next. Whichever option is chosen, the Organisational Entity should make sure that each contract matter only gets *one* explicitly designated Contract Processor for corresponding with the Legal Unit.

## 3. Drafts from the counterparty or Karolinska Institutet templates

Counterparties sometimes offer to draft a contract. Such drafts can require several amendments, sometimes major ones, before the contract may be signed.

The Legal Unit provides templates for common types of contracts. These templates are laid out in accordance with applicable rules and in certain cases contain useful comments for the Organisational Entity. Contact the Legal Unit at [avtal@ki.se](mailto:avtal@ki.se) for advice on the most suitable approach for any one contract matter.

## 4. Investigation

The content of contracts can raise several issues for an Organisational Entity to deal with. The Contract Processor should make sure that such issues are identified and cleared up before the contract is subjected to further review. When issues arise concerning

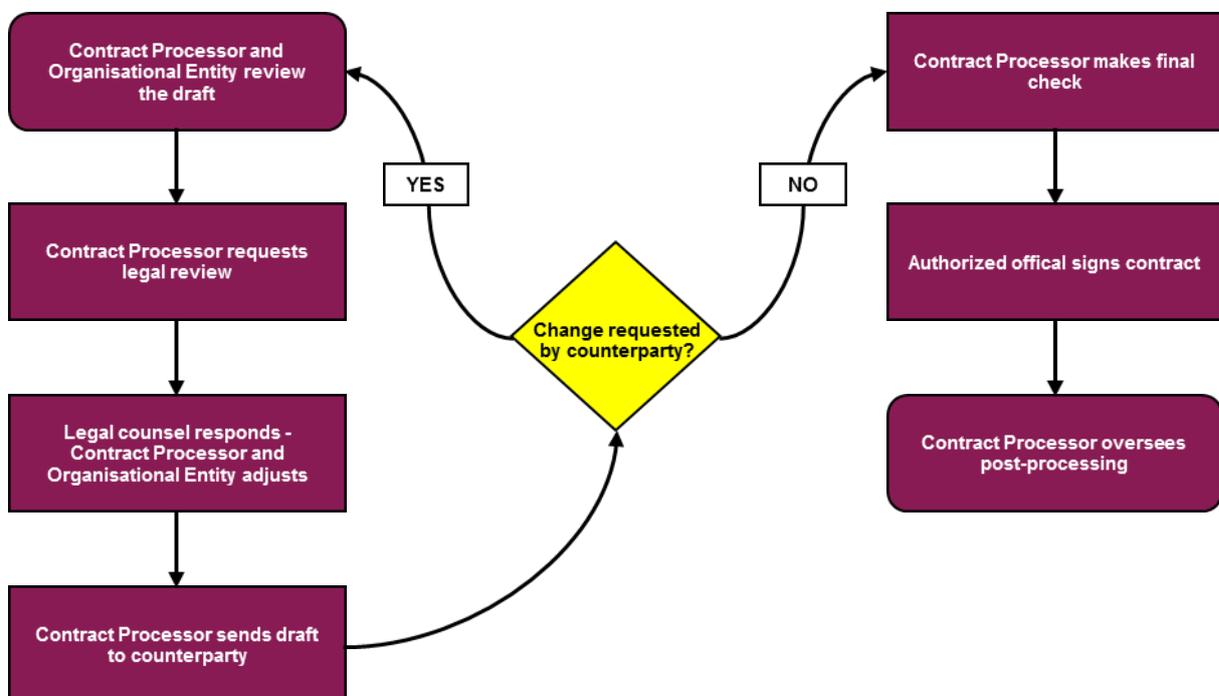
---

<sup>1</sup> See latest version of *Rules governing Conflict of Interest at Karolinska Institutet*.

- external research financing by means of a grant, contact the *Grants Office*
- innovation and exploitation of research, contact the *Innovation Office*
- a possible conflict of interest with a KI employee through her or his secondary occupation, contact the *HR Office*
- purchases and procurements (e.g. materials or services), contact the *Procurement Unit*
- a general collaboration with another department (or the equivalent) at a foreign university or research/education institution, contact the *International Relations Office*
- arranging executive education, contact the *Executive and Professional Education Unit*
- gifts or donations, contact the *Development Office*
- the use of the KI name and brand, contact the *Communications and Public Relations Office*

## 5. The drafting process

Once any issues concerning the draft have been dealt with, the Contract Processor should adhere to the following flowchart, each stage of which is described in further detail below.



## 5.1 Review within the Organisational Entity

The Contract Processor should always review the draft together with those responsible within the Organisational Entity in question. Those responsible must approve all terms and conditions, from financing to research plans. For example, at the department level, responsible persons will likely include the Head of Department, the Head of Administration and the Principal Investigator (*PI*).

At this stage, the Contract Processor should also make sure that the contract gets properly filled out (e.g. in regards to addresses, contact details and descriptions). The *Comment* and *Track Changes* functions in Word should be used to show the differences between the amended document and the original.

## 5.2 Legal review

Once review within the Organisational Entity has been conducted, the Contract Processor can request a legal review. At this stage, it is presumed that all investigated and identified issues have been dealt with and that all terms and conditions have been approved by those within the Organisational Entity who are responsible. If there are any uncertainties or issues remaining, the Contract Processor must inform the Legal Unit accordingly.

The draft is to be sent to [avtal@ki.se](mailto:avtal@ki.se) accompanied by a summary of the following information (when relevant):

- A brief description of the purpose of the contract and any other points worth noting
- Name of Contract Processor
- Name of concerned department, office or similar
- Name of Principal Investigator (PI)
- Name of counterparty/ies
- The total contractual value of the contract<sup>2</sup>
- Name of the legal counsel(s) previously involved in the contract matter

If the above mentioned information is not provided in summarized form along with the request for legal review, the matter may appear unclear. This may in turn prolong the time needed for review. To simply refer to attached email correspondence for information is not the same as providing the information in a summarized form. The assigned legal counsel may not be able to proceed with legal review until proper information is provided by the Contract Processor.

Upon sending the draft, there will be a confirmation of receipt. A legal counsel will review the draft and leave feedback in the form of supplementary questions, comments or suggested amendments. The Contract Processor and those responsible within the Organisational Entity should thereafter review the feedback and make such changes to the draft as are deemed necessary.

---

<sup>2</sup> The contractual value is the aggregate value of all services delivered during the term of the contract including options to extend as if exercised.

### 5.3 Negotiations

Parties seldom accept and sign the first draft of a contract, the form and content of which are usually negotiated and renegotiated. This is customary practice and only very rarely does it have a detrimental effect on the planned partnership or collaboration. It could be useful to remember that both parties at this stage have already expressed their intention to enter an agreement with each other.

Once the Organisational Entity has decided on changes, the Contract Processor can send the amended draft to the counterparty. All proposed changes from KI are to be made clearly visible to the counterparty/ies (preferably through the use of the Comment and Track Changes functions in Word) so that versions may be compared.

A contract can require several rounds of review by both those responsible within the Organisational Entity and the assigned legal counsel. A considerable amount of time can be saved by using the Track Changes function to confine the review to the wording that the parties actually disagree on.

### 5.4 Negotiated contract and final check

When all proposed changes have been accepted, the contract is ready for signing. First, however, the Contract Processor should do a final check that all the information is correct and that all agreed changes have been included. The Contract Processor then creates a PDF document for signing without tracked changes, watermarks and the like.

### 5.5 Signing

The contract is now ready to be signed by the designated authorised signatories. These can be found through the *Vice-Chancellor's decision-making procedures and delegation rules for Karolinska Institutet*, which in turn can be found on the KI intranet.

Some contracts must be signed by an official in combination with another in accordance with the above mentioned procedures and rules. In such cases, separate signing procedures might be in place. Below are two such signing procedures.

#### **Head of department and University Director**

Contact the University Director's secretary, who will issue a special form to be completed and returned with the agreement, signed by the head of department.

#### **Head of department and head of the Grants Office**

Write to [grantsoffice@ki.se](mailto:grantsoffice@ki.se) to present the matter or arrange a time for signing. An administrator will issue a special form with instructions.

When signing in combination with any other university official, contact the person in question for further instructions.

All contracts at KI must currently be entered into (*executed*) through original handwritten signatures from both parties. When practicable, it is recommended

that the signing official also writes her or his initials in the margin of every page of the contract (*initializing*). By doing so, the official shows that they have read and approved each page of the contract.

The exchange of contract counterparts should preferably be made through the post. This ensures that each party ends up with a contract counterpart containing original handwritten signatures. Notwithstanding, the exchange of contract counterparts as scanned PDF-files over e-mail is also acceptable.<sup>3</sup>

The counterparty should preferably initiate the signing process. In the event that a contract must be signed by more than one official, the head of the department should always sign before the other official.

## 5.6 Consent

Many contracts contain terms and conditions that will require project participants to sign a consent form. The terms and conditions may, for example, concern obligations of confidentiality or distribution of future intellectual property. By signing a consent form, the signatory confirms that she or he has read and approved all of the content of the contract.

The consent form is an internal document and is not to be sent to the counterparty. Each original form is to be registered along with the signed contract it adheres to with a copy given to the signatory. As part of the legal review, the legal counsel will note if a contract will require signed consents, in which case a consent template will be issued.

It is the responsibility of the Principal Investigator (*PI*) to make sure that all current and future participants in the project are informed of contracts governing their work and that those participants sign consent forms when necessary.

## 5.7 Post-processing

When a contract has been signed, the Contract Processor is to ensure that the contract original is duly registered along with any required consent forms. If the contract is entered into by a department, registration is to be made at that department.

---

<sup>3</sup> See latest version of *Arkivhandboken* for instructions on how to register and archive electronic documents.

## Checklist for Contract Processors

The following is a checklist of common questions to which Contract Processors should pay regard if and when they arise.

- Does the contract accord with the activities, guidelines and ethical principles of KI and the department?
- Are there any issues that must be dealt with before actual contract review commences (e.g. concerning secondary occupations, conflicts of interest, purchases or procurements)?
- Have those responsible within your Organisational Entity (e.g. Head of Department and Head of Administration) approved
  - financial terms, including budget
  - research plans
  - terms for termination or extension of contract
  - terms for dispute resolution, if contract states anything other than Swedish governing law and court jurisdiction?
- How are the responsibilities of the parties described?
- What is the contract term (start and end dates)?
- What has been agreed in regard to
  - reports (nature of, time for, etc.)
  - the publication of research results (in what form, possible delays, etc.)
  - confidentiality (in relation to the principle of public access to official records)
  - intellectual property rights
  - accountability and damages
  - the use of party names, logos and trademarks?
- Who is to sign the contract according to the *Vice-Chancellor's decision-making procedures and delegation rules for Karolinska Institutet*?
- Does the Principal Investigator (*PI*) understand that she or he is responsible for ensuring that all present and future project participants are informed of the contract and that such participants sign consent forms when needed?
- Have the signed contract and any possible consent forms been registered?
- Is the contract reasonably equal in terms of rights and obligations for each party?