



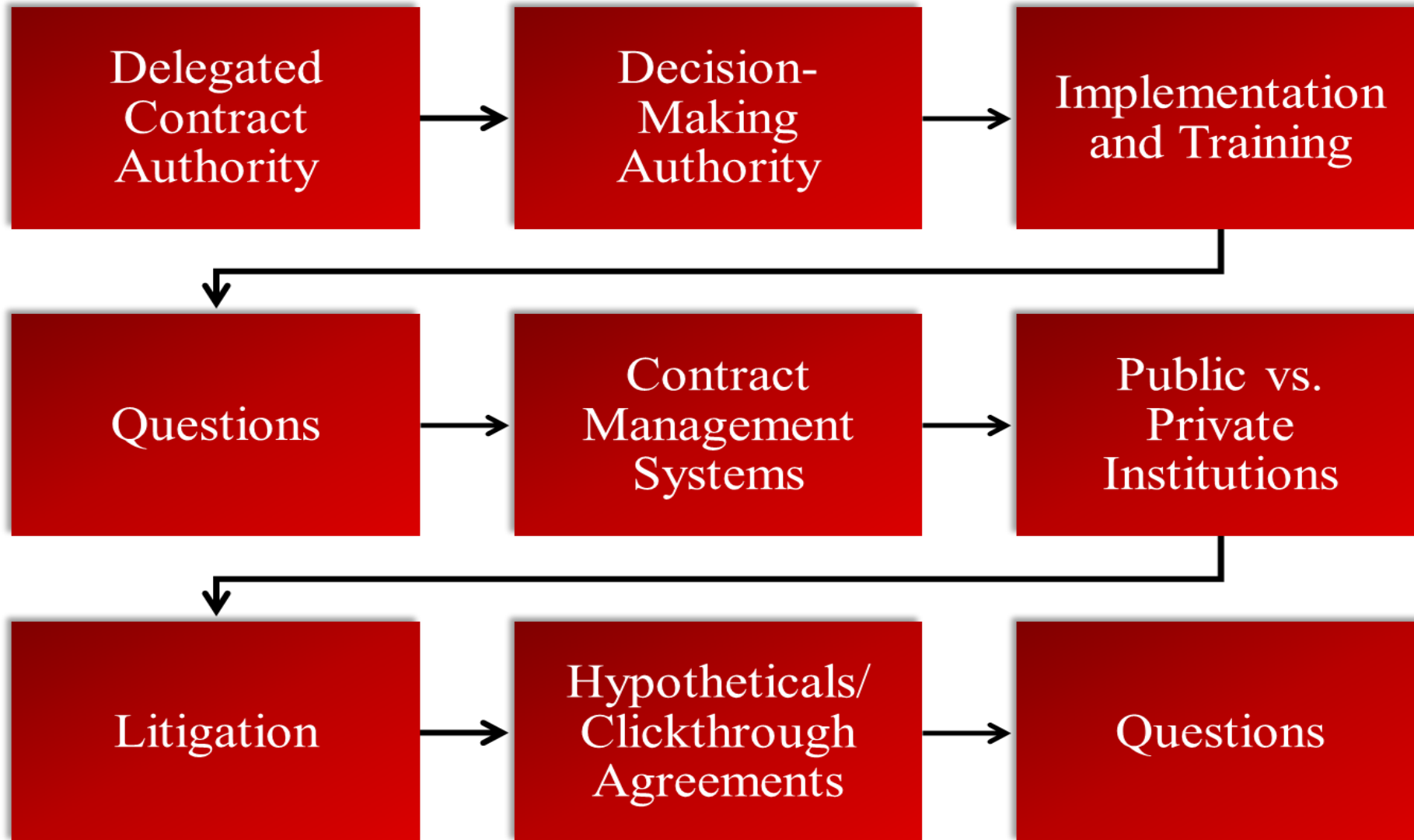
Webinar

You Signed What?! Delegated Contractual Authority – Best Practices and Policies

Kate Peterson, Deputy General Counsel, Brown University

Matthew Wallis, Director of Contracts, Texas Christian University

Roadmap



Delegated Contractual Authority Fundamentals

Importance of Contracts



Contracts are a critical part of any University's operation

Establish University's financial exposure.

Define deliverables of a relationship between contracting parties.

Define conditions under which you, your department and the University are liable for risks and/or damages.

Define roles and responsibilities including security measures taken to protect data, injury to parties involved, and intellectual property rights.

Types of agreements/contracts

Employment	Finance, Banking, Audit, and Investment	Insurance	Intellectual Property	Legal and Corporate Compliance
Real Estate	General Supply Contracts	Licensing	MOU/NDA/Confidentiality	Advancement
Academic	Medicine and Biological Sciences	Research Contracts and Sponsored Programs	Public Safety	Revenue Generating
	Clickthrough Agreements	Letter of Intent	Data Use Agreement	

What is Delegated Contractual Authority?



Employee's ability to sign contracts on behalf of, and therefore bind, the University.



Only certain employees have the authority to sign contracts.



Questions often arise about whether a specific employee has the authority to sign a contract.

PSA: If you aren't sure, you probably don't have authority to sign!

Types of Authority

Actual

Gold
Standard

Applied

Not
always
black and
white

Apparent

Always gray,
significant
risk
exposure

Why is this important for you?

Unauthorized signatures make a contract potentially unenforceable

Unauthorized signatures may cost the University time and money to correct

Unauthorized signatures may expose the unauthorized signer to legal liability. . .

. . .In certain states, personal liability

It is imperative that employees **make sure** that they are authorized to sign on behalf of the University **before** doing so

Delegation of Authority Policy



A Policy for designating the persons who are authorized to execute and approve contracts on behalf of the University.



Defines an authorized signatory and establishes procedures for delegating signature and approval authority, including placing limits on the scope of that authority.



Sets out general responsibilities for authorized signatories when reviewing, approving, and executing company contracts.

Best Practices for Policy

- ✓ **Keep it clear, concise and not riddled with legalese**
- ✓ **Language should be approachable, easily understood by all employees**
- ✓ **Clearly define roles and responsibilities and definition section**
- ✓ **Outline procedure for proper delegation of authority**
- ✓ **Specify general and specific delegations of authority**
- ✓ **Unauthorized contracts – explain consequences for failure to comply with policy**

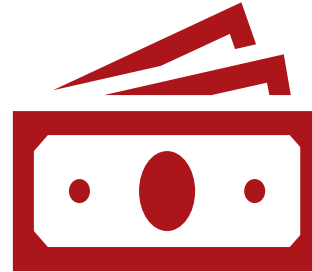
Best Practices



Create an
audit trail



Limit
delegation
and sub-
delegation



Create dollar
limits for
each
category



Maintain a central
list of current
signature
authorities,
delegation and
sub-delegations

Every delegation needs: who, what, where, and when



Dean



**Purchase goods and services
>\$1 million
(Limitation: may not sub-delegate further)**



School of Engineering



Effective date

Best Practices – Updating Delegations

Maintain

- A central list of current signature authorities and valid delegations and sub-delegations

Update

- The list at least annually

Post

- The list in a location accessible to all employees and, if appropriate, third parties

Delegation of Authority – Sample Matrix

NAME	TITLE	DEPARTMENT	THRESHOLD	DA 1058 SERVICE AGREEMENTS	DA 2100 PURCHASE ORDERS	DA 2231 REAL PROPERTY	DA 2233 EASEMENTS & RIGHT OF WAY	FACILITY USE	CONTRACT TEMPLATE
Vacant	Contract Analyst	Contracts	\$95,000	x	x			x	
Paulina Heather	Contract Analyst	Contracts	\$95,000	x	x			x	
Leila Thomas	Contract Analyst	Contracts	\$250,000	x	x	x	x	x	
Patrick Anglin	Buyer	Purchasing	\$95,000		x				
TJ Bloominger	Buyer	Purchasing	\$95,000		x				



Area	Department	Position	Employee	Description of Authority	Authority Limit
All Campus Life	All Campus Life	AVP Campus Life	David Clark	Backup, All ECL contracts up to \$100,000	\$150,000
		SVP of Campus Life	Enku Gelaye	All ECL contracts up to \$250,000	\$250,000
		CBO	Lina Vargas	Backup, All ECL contracts up to \$50,000	\$50,000
Dean of Students	Parent & Family Programs	TBD	(Open)	All Alumni Relations and Parent & Family Program contracts	\$50,000
David Clark	All Portfolio	AVP Campus Life	David Clark	All portfolio contracts up to \$150,000	\$150,000
	Communications	Director	Sara Tanner	All Communications contracts	\$25,000
	Dining	Director	Chad Sunstein	Back up, All Food Services Contracts	\$50,000
	ESC, SILT & CCE	Executive Director	Lydia Washington	ESC, SILT & CCE Contracts	\$50,000
	ESC & Returning Student Programs	Director	Jackie Grinvalds	ESC & Returning Student Programs Contracts	\$25,000
	Housing & Conferences	Sr. Director	Elaine Turner	All Housing & Conferences Contracts	\$50,000
		<i>Sr. Director</i>	<i>Elaine Turner</i>	<i>(Internal Only) Limited to Project Authorization Forms for department (PAF's)</i>	<i>\$500,000</i>
		Director	Sherry Ebrahimi	Backup: All Housing & Conferences Contracts	\$25,000
		<i>Director</i>	<i>Raymond Hebert</i>	<i>(Internal Only) Limited to Project Authorization Forms for department (PAF's)</i>	<i>\$100,000</i>
	HR	Director	Mekeshua North	All HR Departmental Contracts	\$5,000
ORSLF	Sr. Director	Scott Rausch	All Residence, Sorority, Fraternity Life contracts	\$25,000	
Technical Services	Director, CLTS	Bruce Covey	All CLTS contracts	\$25,000	
Dona Yarbrough	All Portfolio	AVP, Campus Life	Dona Yarbrough	Backup, All L&I umbrella contracts up to \$50,000	\$50,000
	Barkley Forum	Director	Mikaela Malisin	All Barkley Forum contracts	\$25,000
	Center for Women	Director	Chanel Tanner	All Center for Women Contracts	\$5,000
	LGBT Life	Director	Danielle Bruce-Steele	All LGBT Life contracts	\$5,000
	RACE	Director	(Open)	All RACE contracts	\$25,000
James Raper	Health Wellbeing Access and Prevention	VP, Campus Life	James Raper	All Health Wellbeing Access and Prevention contracts	\$100,000
		Director	Asti Magby	Back up, All Health Wellbeing Access and Prevention Contracts	\$25,000
	Counseling Ctr.	Director	Kellan Rickard	All Counseling Center & Respect contracts	\$25,000
	Respect	Director	Emily Palmieri	All Respect contracts	\$5,000
	OHP	Director	Brandi Benton	All OHP contracts	\$5,000
Kelko Price	Athletics	AVP, Campus Life	Kelko Price	Athletic & Recreation Contracts	\$50,000
	Athletics: SAAC	Director	April Flint	Back up, All SAAC Contracts	\$25,000
		Deputy Athletics Director	Devon Hendricks	Back up, All SAAC Contracts	\$25,000
	Rec & Wellness	Director	April Flint	Back up, Rec & Wellness Contracts	\$25,000
Sharon Rabinovitz	Student Health	Executive Director	Sharon Rabinovitz	All Student Health contracts	\$50,000
		Director	(Open)	All Student Health contracts	\$5,000
		Assistant Professor	(Open)	All Student Health contracts	\$5,000
Dean of Students	All Portfolio	VP Campus Life	David Clark	All Community contracts up to \$50,000	\$50,000

Academic & Student Affairs

Name	Scope of Authority
Elizabeth Bejar Provost, Executive Vice President and Chief Operating Officer Office of the Provost Sr. Vice President, Academic & Student Affairs Division of Academic & Student Affairs	\$1,000,000 Approve and execute all agreements, and contracts for the procurement of goods and services, with a value not to exceed \$1,000,000 and to sign all documents related thereto for the benefit of the Office of the Provost and the Division of Academic and Student Affairs. This authority does not include any category of contracts specifically assigned to another senior vice president.
Robert Grillo Vice President Division of IT	\$250,000 Approve and execute all contracts for the procurement of goods and services with a value not to exceed \$250,000, and to sign all documents related thereto, for the benefit of the Division of Information Technology.
Pablo G. Ortiz Vice President Regional Academic Locations & Institutional Development	\$250,000 Approve and execute all international agreements and contracts for international engagement with a value not to exceed \$250,000, and to sign all documents related thereto, for the benefit of the Office of the Provost.
Charles Andrews Interim Vice President Student Affairs	\$ N/A Approve and execute all documents for FIU pertaining to the Department of Defense Voluntary Education Partnership Memorandum of Understanding.
Barbara Manzano Associate Provost Office of the Provost	\$100,000 Approve and execute the following agreements with a value not to exceed \$100,000 on behalf of the Office of the Provost: • Procurement of goods and services • Premises Use Agreements, Letters of Agreement, Performance Agreements, Loan Agreements for Works of Art, Preparatory Course Agreements, gift receipts for collection items donated, Museum Premises Use Agreement

Delegations of Authority for The University of Texas at Arlington*

<u>Board of Regents' Rules and Regulations</u>	<u>From</u>	<u>Delegate</u>	<u>Date</u>
CURRENT PURPOSE GIFTS: Delegation of authority to accept current purpose gifts other than securities to The University of Texas at Arlington; provided that each gift is processed in accordance with applicable laws, Rules, policies and the UT Gift Acceptance Procedures.	<i>Rule 60601, Section 5; Section 7, UT System Gift Acceptance Procedures</i>	Dr. Jennifer Cowley, President	Marie E. Schultz, Vice President for Development & Alumni Relations November 14, 2022
CURRENT PURPOSE GIFTS OF SECURITIES: Delegation of authority to accept current purpose gifts of securities to The University of Texas at Arlington provided that each gift is processed in accordance with all applicable laws, Rules, policies and the UT Gift Acceptance Procedures.	<i>Rule 60101, Section 5; Section 7, UT System Gift Acceptance Procedures</i>	Dr. Jennifer Cowley, President	<u>UT System Office of External Relations, Communications and Advancement Services</u> Randa S. Safady, Ph.D., Vice Chancellor of External Relations, Communications and Advancement Services Andria Brannon, Associate Vice Chancellor for Advancement Services June 14, 2022
IRS FORMS - GIFTS: Delegation of authority to execute necessary IRS forms, including without limitation IRS Forms 8283 and 8282. Authority extends only to necessary IRS forms relating to gifts accepted on behalf of The University of Texas at Arlington.	<i>Rule 60101, Sections 8 and 2; Section 3.6, Gift Acceptance Procedures</i>	Dr. Jennifer Cowley, President	Marie E. Schultz, Vice President for Development & Alumni Relations November 14, 2022
IRS FORMS - GIFTS: Delegation of authority to execute necessary IRS forms, including without limitation IRS Forms 8283 and 8282, relating to gifts. Authority extends only to necessary IRS forms relating to gifts accepted on behalf of The University of Texas at Arlington.	<i>Rule 60101, Sections 2 and 8</i>	Dr. Jennifer Cowley, President	John Davidson, Vice President for Business & Finance and Chief Financial Officer March 14, 2023 (eff. August 22, 2022)
BANKING: Delegation of authority to execute and deliver contracts for banking services. Authority extends only to contracts for banking services with banks that have a depository agreement with the Board of Regents of The University of Texas System.	<i>Rule 10501; UTS166 and UTS167</i>	Dr. Jennifer Cowley, President	John Hall, Vice President for Administration & Economic Development August 25, 2022

**Please be aware that this chart provides only a brief summary of each delegation memorandum. You will need to review the specific delegation memorandum that is of interest to you for detailed scope and restrictions related to such delegation. As of 3-25-2020, with the exception of certain Special Procedure Contracts, the Board approval threshold for UT Arlington is \$2,500,000, and the OGC threshold is \$1,000,000 (see Rule 10501 and UTS145). Delegation chart current as of 4/27/2023.*

Sample Policies



EMORY
UNIVERSITY



Middlebury
College

Decision-Making Authority

Decision Making Authority

Delegated Contractual Authority

=

Decision Making Authority

Decision Making Authority

Who "owns" it?



Decision Making Authority

Who Owns it?

The Delegate



Decision Making Authority

Who Owns it?

Subject Matter Experts-individuals held responsible for compliance

FERPA

Clery Act

Risk Management

CFO

PCI Compliance

Marketing and Branding

GDPR

Sensitive Data

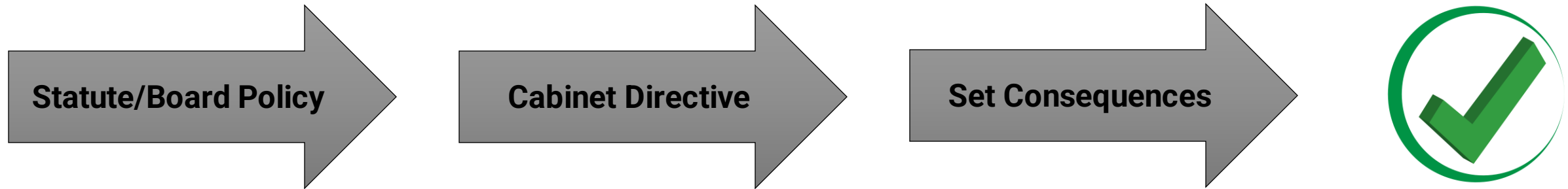
Decision Making Authority

Campus Rock Stars



Implementation and Training

Implementation and Training



Implementation and Training

Cultivate Relationships with VIPs

- **Business Officers**
- **Subject Matter Experts**
- **CFO**
- **General Counsel**
- **Executive Assistants to Delegates & Delegates**

Implementation and Training

Be a Groupie!




Implementation and Training

- **Train and support managers and delegates**
- **Train general employees**

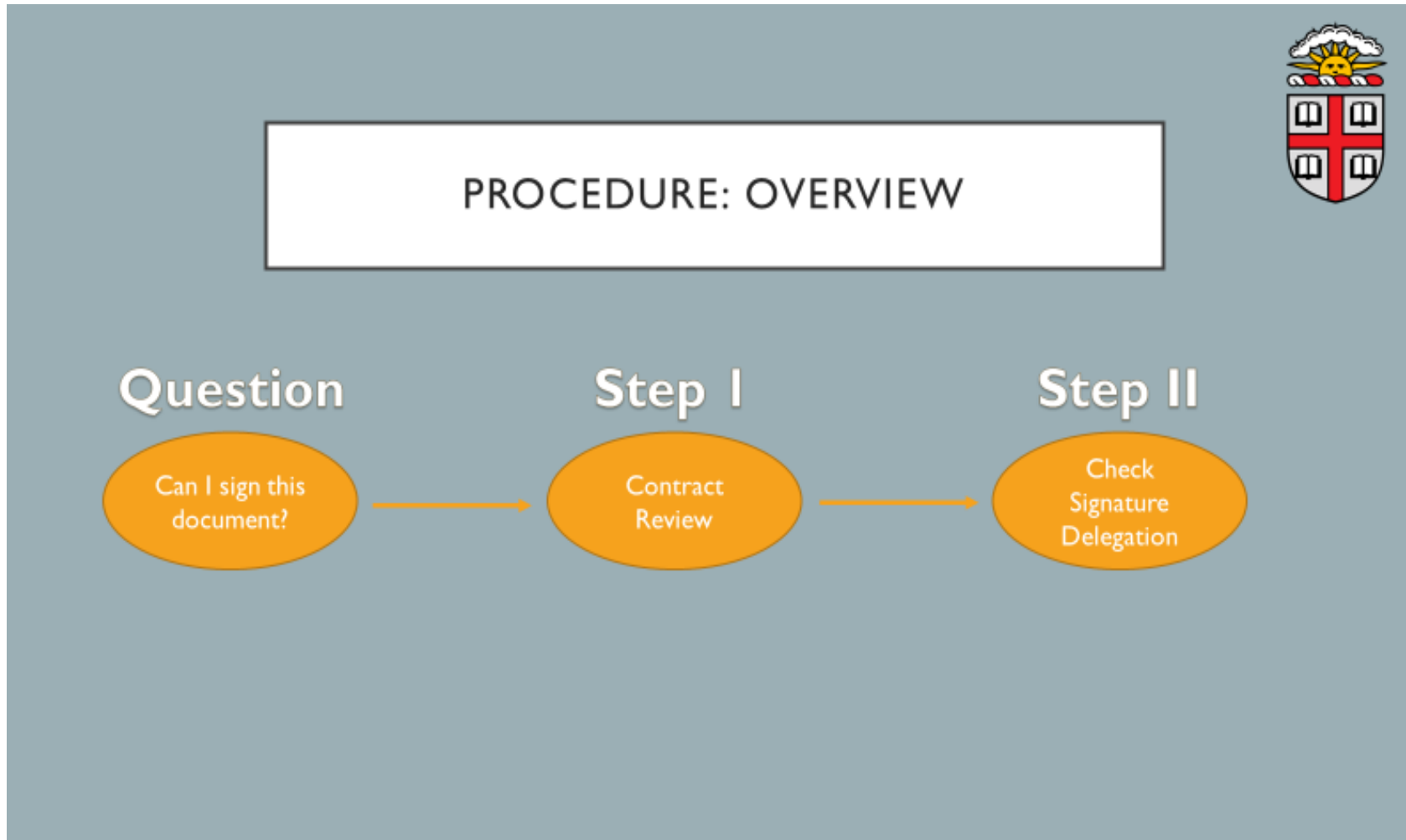
What does that entail?

Implementation and Training

Everyone needs basic contract training

- **What is a contract: quotes, confirmations, click-through, reservations, etc.**
- **Necessary information & docs: COI, embedded links  static copy**
- **Basic subject matter expert information**

Implementation and Training



PROCEDURE: CONTRACT REVIEW

1. Before the transaction begins, the contract must be reviewed by an authorized reviewing office

- This review must happen before anything is purchased or sold, work is begun, and **before the contract is signed**

2. Most contracts will be reviewed by the Purchasing office

- Only high level and real estate transactions should be sent to the Office of General Counsel (OGC)
- The Office of the Vice President for Research (OVPR) and the Computing & Information Services (CIS) can also review department-specific contracts

* If you are unsure whether or not a contract has been reviewed, **check with your supervisor**

Authorized Reviewing Offices



Implementation and Training

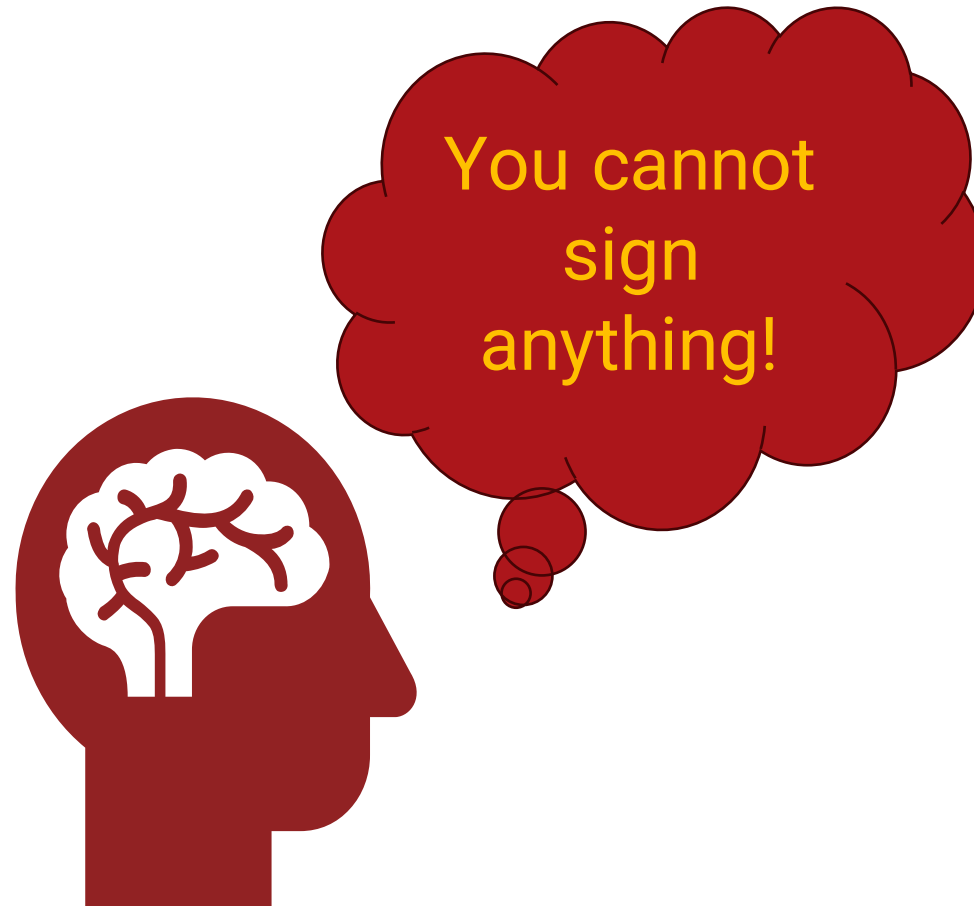
Make yourself available

- Email address for contract questions: contract_questions@tcu.edu
- On-going campus updates and trainings
- Feedback sessions with VIPs

Implementation and Training



Implementation and Training



Implementation and Training







Violations will be subject to discipline, up to and including termination of employment

Only authorized signatories may execute contracts on behalf of the university

Risk of personal liability

Implementation and Training

Real Life Examples of What Not to Do!

-  Execute contract outside of signature delegation authority limits.
-  Draft your own contract form or modify a template.
-  Execute contract outside of established processes- reviews, approvals, contract system.
-  Request immediate contract review.

A close-up photograph of a person in a dark suit and tie, holding a white marker in their right hand over an open document. The person's left hand is also visible, holding the edge of the document. The background is dark and out of focus. Overlaid on the center of the image is the word "Questions?" in a large, bold, white sans-serif font.

Questions?

Contract Management Systems

Contract Management Systems

- Fully integrated life-cycle, including e-signature
- Places business decisions, review processes and signatures in the correct buckets
- What does your campus use?
- Not a cure-all

Contract Management Systems

New and improved systems will not fix broken processes



Public vs. Private Institutions

Public vs. Private Institutions

It's a Crime! Or . . . Is it?



Public vs. Private Institutions

Public

- **State purchasing laws**
- **Criminal statutes**
- **Rigid system**

Private

- **Limited legal requirements**
- **Termination, if that**
- **Flexibility to customize**

Public vs. Private Institutions

It's not a crime and the struggle is real!



Litigation



Litigation Wins

- *F.D.I.C. v. Providence College*, 115 F.3d 136 (1997).
- *Kaman Aerospace v. Arizona Bd. Of Regents*, 217 Ariz. 148 (2007).
- *El Camino Community College Dist. v. Superior Court*, 173 Cal.App.3d 606 (1985).

Litigation Losses

- *Earl v. St. Louis University*, 875 S.W.2d 234 (1994).
- *Linkage Corp. v. Trustees of Boston University*, 425 Mass. 1 (1997).
- *Brown v. Wichita State University*, 217 Kan. 279 (1975).

How to avoid litigation

Enact clear, non-legalese written policy that clearly outlines who can and who cannot execute a contract on behalf of the University



Sample language to include:

University does not recognize contracts signed by University employees or agents as binding on the University unless the employee who signed the contract has duly delegated signatory authority.

Employees who sign contracts purporting to bind the University without authority may be personally liable to the contractor and the University, and may be subject to University disciplinary action, up to and including dismissal or discharge for cause.

All previous delegations of authority are superseded and rendered void as of the effective date of this regulation.

Contracts, including electronic agreements, signed without proper authority shall not be binding on the University.

Hypotheticals & Clickthrough Agreements

Hypothetical Assumptions

- Distributed Contractual Signature Authority
- Dean authority to sign up to \$50,000
- Provost authority to sign above \$50,000 and up to \$100,000
- CTO reviews/approves sensitive data and PCI Compliance
- Registrar reviews/approves FERPA
- Vice Chancellor Marketing reviews/approves use of University Marks

Hypothetical #1

Dr. Joe Big Time, Professor of the world-renowned Institute of Cauliflower Knowledge & Yum (ICKY), decides to engage the services of a smartphone app builder for his new app ICKY Stuff. The app will be available on smartphone app stores and on the College of Science's webpage. The ICKY Stuff app will allow users to purchase exclusive cauliflower-related content, such as video training on how to raise cauliflower, an in-app game-Cauliflower & Zombies, and PG-13 cauliflower pics. There will be no out of pocket expense for the smartphone app builder, who will, instead, take a percentage of revenue generated by in-app purchases.

How would you handle under your college/university delegated contractual authority policy?

Hypothetical #2

Same hypothetical, but Dr. Joe Big Time has been sent a click-through agreement by the smartphone app builder for her app building services.

How would you handle under your college/university delegated contractual authority policy?

Hypothetical #3

Dr. Joe Big Time has sent you a proposed 5-year lease on a \$75,000 pick-up truck. He plans to use the truck for ICKY-related travel to farms and cauliflower evangelism events across the country. While reviewing the lease agreement over lunch at a patio you look up and see Dr. Joe Big Time driving the new truck already.

How would you handle under your college/university delegated contractual authority policy?

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Questions?

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