

In Brief

Updates from the Office of Legal Affairs



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What You Need to Know About Contracts: An Overview of Essential Terms



As you collaborate with other businesses or universities, purchase goods, or hire vendors for JCU, you may have noticed that written contracts play an important role in most commercial or business ventures, and even in our personal lives. A contract in its simplest terms is an agreement between parties, creating mutual obligations and promises that are enforceable by law. A contract can come in many forms, and can have a slew of different titles or names. You may have heard of or dealt with Service Contracts, Non-Disclosure Agreements, Purchase Orders, Waivers, binding Memorandum of Understanding, etc., all of which may be legally enforceable contracts.

Different types of contracts are used for various kinds of arrangements and serve a multitude of purposes, but among the most important function of any contract is to outline each parties' obligations, while mitigating the risks involved in a transaction. Without a contract, a party could find themselves in a problematic situation if the other party fails to or refuses to uphold their end of the bargain. To ensure that contracts are effectively managing risk and outlining the parties' obligations, there are a handful of important contractual items (these may be referred to as "provisions" or "clauses") that the JCU Office of Legal Affairs reviews and negotiates to ensure that the University is entering into contracts that deliver the goods and services intended, while protecting JCU against potential risks.

Here are a few key things to consider about contracts:

1. **Term and Termination.** The contract Term sets the

timeframe in which a contract will be effective and legally enforceable. The Term is often related to the Termination provisions, which specify when and how a contract can be ended. These provisions are important to ensure that the contract contains reasonable timeframes and also reasonable terms to end the contract when needed.

2. **Value and Pay Terms.** Value is the cost of the contract, or in other words, the price to be paid. Pay terms are the provision(s) that detail how and when the contract is to be paid. The value can have a financial effect on JCU, and the total cost of the contract dictates which University employee is authorized to sign the document under JCU's Contract Approval and Signatory Policy, which is available [here](#). Note that contracts may only be signed by specific authorized JCU employees, and the level of signatory authority is directly tied to the overall value of the contract.

3. **Indemnification.** Indemnification provisions are among the most important and most heavily negotiated pieces of a business

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Assistance Animals on Campus



The presence of service and assistance animals on university campuses has grown in recent years and may raise questions about the legal requirements to accommodate the presence of these animals. You may be wondering - What can one ask someone who has an animal on campus and what are the requirements for those who have an assistance animal on campus? Here's what you need to know:

Assistance animals include both service animals and emotional support animals (ESAs). While these two categories of assistance animals have similarities, they are different in several ways in terms of how they are treated under the law. Service animals - which can only be dogs or miniature horses - are specially trained to do work or perform tasks for a person with a disability. ESAs - which can generally be any kind of domesticated animal as long as it is permitted by state or local law - alleviate symptoms or effects of a person's disability but do not have individualized training. Service animals are allowed to be present anywhere on campus, while ESAs are only allowed in residence hall rooms. ESAs cannot be overly large for a residence hall or pose a threat. The chart on Page 3 contains more detailed information on the differences and similarities between service animals and ESAs.

Process under JCU's Policy

Consistent with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Fair Housing Act, JCU supports the presence of assistance animals on campus through its [Animals on Campus Policy](#) and its [Assistance Animal Policy](#).

If a student plans to have a service animal in a residence hall, then the student must notify Student Accessibility Services (SAS) to coordinate the presence of the service animal. Employees who will have a service animal

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contract. These provisions, which are usually complex and densely worded, set out to protect one party from liability if a third-party is harmed in any way related to the contract. These provisions contractually obligate one party to compensate another party for losses or damages that have occurred or could occur in the future. Many contracts will typically include an unfavorable, one-sided, Indemnification provision, which heavily favors and protects the party that drafted the agreement. Reviewing indemnification provisions is important to ensure that the allocation of risk is acceptable, and that the indemnification requirements are fair.

4. Limitations on Liability and Damages. Limitation on Liability is a provision that specifically limits the amount a party must pay to the other party if they suffer losses under the contract. These provisions will sometimes also place specific limits on the types of damages and compensation one party can recover from the other. This provision is important because it can severely limit JCU's ability to recover funds if the other party breaches the contract, or conversely, may lead to having to pay an unlimited amount of damages.

5. Warranties and Disclaimers. Warranties are provisions that promise that there will be a certain level of quality for products or services, and also may contain assurances that facts or representations are true. In more simple terms, warranties are guarantees from one party to another. Warranties are often found in both service contracts and contracts for goods. In many scenarios, a party will incorporate contract provisions to "disclaim" warranties, which means that they will not accept liability for performance issues stemming from their products, services, or representations. Warranties are important to review to ensure that JCU is receiving goods or services of sufficient quality, and receiving adequate assurances that a party will uphold its obligations.

6. Insurance. Insurance provisions in contracts mandate that one party or both parties carry some type of insurance, specific types of coverage or certain amounts of coverage. These provisions are important because they allow JCU to ensure that the other party has adequate insurance coverage that would be available to pay for claims related to an injury, accident, or other covered damages.

Please note that the provisions listed here are not exhaustive and that contracts typically contain many other items that will be reviewed during the contract review process. If you come across a contract or other legal document whose

value is more than \$10,000, OR 2) contains Indemnification or Insurance provisions or involves greater than typical risk, the University's Contract Approval and Signatory Policy (which can be viewed [here](#)) requires that the contract be submitted to the Office of Legal Affairs for review. Requests for contract review or to request the creation of a new contract can be submitted using the online [Legal Contract Routing Form](#). If you have any questions or concerns about a contract or a specific contractual provision, please contact the [Office of Legal Affairs](#), and we will be glad to assist.

Do you need a contract reviewed by the Office of Legal Affairs?



To help streamline the contract review process, please submit contracts in need of review by the Office of Legal Affairs using a [Contract Intake Form](#). Doing so creates a workflow that tracks the contract review process and captures important information on the University's contracts.

In general, the contract review process works as follows:

- 1) Contract intake form is completed online,
- 2) Contract request is assigned to an attorney,
- 3) Contract is reviewed/drafted by the assigned attorney,
- 4) Reviewed contract is shared with University officers who need to approve and sign it.

Once your contract is signed by all parties, please submit a copy of the fully signed contract to the Office of Legal Affairs for University record-keeping in the contract workflow.

For more information regarding contract approval and review and the University contract signatory process, please visit the [Contract Approval and Review](#) page on the [Office of Legal Affairs website](#) or call the Office of Legal Affairs.

New Legal Requirements for Ringless Voicemails



Have you ever received a voicemail but your cell phone never rang? A recent Order from the Federal Communications Commission (FCC) has weighed in on when organizations can use these "ringless voicemails." A ringless voicemail (sometimes referred to as a "voicemail drop") is a pre-recorded audio message that is placed in a voicemail inbox without ringing the recipient's phone. Businesses began relying on ringless voicemails because the Telephone Consumer Protection Act (TCPA) prohibits "calls" to an individual's phone using an automatic telephone dialing system or an artificial or prerecorded voice, without the prior express consent of the called party.

Previously, ringless voicemails bypassed the restrictions of the TCPA because, without ringing a consumer's telephone, ringless voicemails were not considered a "call." As ringless voicemails grew in popularity, certain individuals and organizations began pursuing legal action against those placing voicemails without consent. Most courts across the country have now ruled that ringless voicemails are in fact "calls" for the purpose of the TCPA.

The nationwide litigation involving ringless voicemails began to cause confusion amongst businesses using this marketing strategy. In 2017, a telemarketing company who heavily relies on ringless voicemails filed a petition asking the FCC to find that delivery of a ringless message directly to a consumer's cell phone voicemail is not a "call" under the TCPA. In November 2022, the FCC ruled that ringless voicemails are, in fact, "calls" under the TCPA. Consequently, callers must now obtain a consumer's express written consent before delivering a ringless voicemail.

Despite clarifying that ringless voicemails are subject to the TCPA's requirements, the FCC's Order does not explicitly answer two questions: 1) What constitutes express written consent?, and 2) Are companies contracting with telemarketing businesses liable if those businesses deploy ringless voicemails without express written consent from consumers?

The answers to these legal questions may differ depending on the circumstances. For more information on using ringless voicemails and obtaining express written consent, please contact the [Office of Legal Affairs](#).



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in campus buildings should contact Human Resources to coordinate the service animal's presence on campus.

If a student wishes to have an ESA in their residence hall room, the student must submit a request to SAS with documentation of a disability provided by a licensed healthcare professional.

What Can Be Asked?

If a dog (or miniature horse) on campus is not readily apparent to be a service animal, SAS may ask two questions: (1) is the animal required because of a disability, and (2) what work or task has the animal been trained to perform? Only individuals affiliated with SAS or Human Resources should ask these questions, if necessary. In some scenarios, when the animal is not behaving, staff or faculty may ask the individual the above questions. Generally, there should be no need for students to ask an individual these questions.

Since ESAs must be approved through the accommodation process, individuals should generally not inquire about animals located in the residence halls. If a Residence Hall staff member finds an animal in the residence hall that they believe has not been approved, the Residence Hall staff member may ask whether the student has gone through the SAS accommodation process.

Questions?

If you have any questions regarding assistance animals for students, please contact [SAS](#) or the [Office of Legal Affairs](#). If you have questions regarding assistance animals for employees, please contact [Human Resources](#).



	Service Animals	Emotional Support Animals
What kind of animal is it, and what does it do?	A dog (or in rare cases a miniature horse) that is individually trained to do work or perform tasks for a person with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.	An animal that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. These animals need not be specially trained, and may be of any species or breed unless otherwise prohibited by state or local ordinances, or inappropriate for a residence hall due to their size.
Where is it allowed?	All areas of campus, both inside and outside.	Residence hall rooms only, with necessary trips outside while on a leash.
Who coordinates the presence of the animal?	Registration with SAS is voluntary other than for housing, where registration and a housing accommodation is required to coordinate the animal's presence.	The student goes through an accommodation process requiring documentation of the disability and approval by SAS, in coordination with Residence Life.
Is the animal allowed to be in a work area/classroom?	Yes, it can be in any campus area.	No, these animals are not allowed in a work area or classroom. They are permitted only in residence hall rooms.
What can I ask if I don't know if the animal is supposed to be present on campus?	If it is not readily apparent that an animal is a service animal, University staff may inquire into only these two questions: 1) Whether the animal is required because of a disability, and, 2) What work or tasks the animal is trained to perform.	If it is not readily apparent that an animal is an approved ESA, Residence Hall staff or SAS may ask whether the student has gone through the appropriate accommodation process.
What if the animal is not behaving?	If the animal is: 1) not housebroken or being cleaned up after, 2) poses a threat to health and/or safety, or 3) the animal is out of control and the owner does not regain control of it, then University staff may tell the owner to remove the animal in the short term and consult with SAS or Human Resources about the continued presence of the animal.	If the animal is: 1) not housebroken or being cleaned up after, 2) poses a threat to health and/or safety, or 3) the animal is out of control and the owner does not regain control of it, then University staff may tell the owner to remove the animal in the short term and consult with SAS about the continued presence of the animal.
Can I ask a person about their disability, ask about the animal's certification, or require the owner to put a vest or harness on their animal?	No. SAS or Human Resources should be consulted about any questions about a service animal.	No. SAS should be consulted about any concerns about an ESA.
What if I have an allergy to animals?	Please contact SAS or Human Resources to address this issue.	Please contact SAS or Human Resources to address this issue, as applicable.

Retaining Paper and Electronic Documents – How Long Do I Keep It?

With Spring time approaching, you and your department may be ready to do some Spring clean-up. So, you may be looking around your office at stacks of paper or scanning your extensive computer files and wondering - "How long do I need to keep this?" The JCU Records Retention Policy can help you answer this. The [Records Retention Policy](#) provides that certain kinds of documents must be retained for a set period of time for legal and institutional reasons. After that period of time has passed, those records can be destroyed.

Each department is to have a designated data steward and records custodian who helps manage data and records retention in that area. Each department or area will create a records retention schedule with the types of records created by the department and the length of time that record should be maintained. Those records retention schedules are reviewed and approved by the Office of Institutional Effectiveness in the Provost's Office, the Office of Legal Affairs and the Office of the Vice President of Finance and Administration.

The Office of Institutional Effectiveness is currently working with individual departments and divisions to create and have approved individual records retention schedules. For example, the Title IX Office may determine that its records must be retained for 7 years due to federal Title IX regulations, while another student-related office determines that certain academic records should be retained for 5 years after enrollment, and Human Resources may decide that employment applications should be retained for 1 year after the application for hire. The records retention schedules document the time frames, so that offices can then keep or destroy documents based on that schedule.

The JCU Records Retention Policy provides exceptions for retention of

documents when JCU is involved in litigation. In such a case, the University and JCU staff or faculty directly involved in the matter must retain documents related to a lawsuit or claim indefinitely, and may not destroy any related documents. This process ensures that the University is meeting its obligations under federal and state law on preservation of documents in litigation. In such an instance, the Office of Legal Affairs – in collaboration with the IT Department – will contact affected employees directly about obligations to retain documents and the appropriate steps the University will take to preserve the records.

For more information on records retention, contact the [Office of Institutional Effectiveness](#) or the [Office of Legal Affairs](#).

LEGAL UPDATE FOR SUPERVISORS

The Office of Legal Affairs is offering a legal update for supervisors on current legal issues that affect supervisors. The session will provide an overview of several relevant laws and issues, such as political activity guidelines, accommodating religious beliefs at work, laws on hiring foreign nationals, wage and hour issues, contract signatories, and more. The session will include the opportunity for questions and discussion on related topics.

- **DATE:** March 29, 2023
- **TIME:** 9:00 AM - 10:30 AM
- **LOCATION:** Murphy Room (LC-38A)



To register, please click [here](#). We look forward to seeing you!