

CONTRACTORS (ACADEMIC & GENERAL STAFF DUTIES) PROCEDURES

Section	AVC and University Registrar
Contact	AVC and University Registrar
Last Review	February 2012
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Purpose:

To provide Managers with a procedure for concluding contracts with Contractors to the University. In particular the procedures provide:

- (a) a mechanism for identifying whether a person is a Contractor or an Employee in order that the person that is to be engaged as a contractor meets the legal tests applicable to Contractors;
- (b) a mechanism that enables managers to appropriately assess whether the appropriate contractual arrangement is applied before engaging a person as a Contractor; and
- (c) procedures for concluding agreements on behalf of the University with Contractors; and
- (d) a template contract (for services to a maximum of \$50,000) that is to be used when engaging third parties provided the legal tests are met.

Procedures:

Authorisation

No person shall negotiate and conclude a contract or agreement with a third party on behalf of Massey University without the requisite authority in accordance with [Delegations of Authority Document](#). Consideration must also be given to any conflict of commitment and/or interest as set out in the [Conflict of Commitment and Interest Policy](#). Any and all conflicts must be disclosed prior to the conclusion of the contract process.

Determination of status of Third Party

Before any contract or agreement may be concluded with any third party/person on behalf of the University for the provision of services to the University, a determination must be made as to whether the third party/person will constitute an Employee or a Contractor under Schedule 1 of this Policy.

Provision of services by an Employee

Any agreement for the provision of service by an Employee must be entered into in accordance with the Delegations of Authority (provided in the Delegations of Authority Document) for recruitment and appointment of staff, and in line with the information regarding recruitment of employees, available through the People and Organisational Development website at <http://pod.massey.ac.nz>. This Contractors procedure will not apply.

Provision of services by a Contractor

- 1.1 Any contract for services (for services to a maximum of \$50,000) negotiated by a Manager with the appropriate authority with a third party/person who can be defined as a Contractor must be in the form of the Template Contract as provided in Schedule 2 of this policy. All applicable details on the cover page and page 1 of the Template Contract must be completed. Relevant details must be inserted into the schedules of the Template Contract and must specify the services which will be provided by the Contractor, the fee that will be charged to the University by the Contractor and all other required details as applicable.
- 1.2 Notwithstanding paragraph 1.1 above, if the Contractor would be providing research services to the University, the Manager negotiating the contract must liaise with the Team Leader - Contracts of Research Management Services to determine whether it is appropriate to proceed with the contract for research consultancy services under this Procedure or under the Massey University Policy on Research Contracts. The assessment of the Team Leader - Contracts of Research Management Services shall be determinative in this regard.
- 1.3 In accordance with the Contractor's Health and Safety Policy, the contract must also contain particular health and safety statements to ensure communication of significant hazards, particularly those that the Contractor may bring on to the University's premises, occurs, as well as to identify who is responsible for the control of hazards. If further information is required or you need assistance with this section of the contract contact the health and Safety officer.

Management of a contract with a Contractor

- 1.4 When a contract has been agreed and signed with a Contractor on behalf of the University, the Manager should hold the original signed contract on behalf of the University and forward a copy to the Contractor. The Manager must also register the contract in the Massey University Contract Management System.
- 1.5 All invoices for contractors **must be** sent to the Accounts Payable Office. Where there are activities that are subject to Withholding tax (as detailed in: [Tax Procedures Manual](#)) the Contractor will also need to submit either a completed IR330 Tax Code Declaration or a Tax Exemption Certificate. If withholding tax is not applicable the invoice **must be** supported by an approved # Purchasing, Massey number.
- 1.6 Prior to the Contractor providing any services to the University, the Contractor must be inducted into appropriate health and safety procedures relevant to the provision of the services. No services may be provided to the University by the Contractor until such induction has been completed.

Audience:

All Managers

Related procedures / documents:

[Contract Management Policy](#)

Document Management Control:

Prepared by: Employment Relations Manager
Authorised by: Assistant Vice-Chancellor and University Registrar
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SCHEDULE 1

1. Determination of Status of Third Party

- 1.1 Although there is no single test or exhaustive list to determine the status of a Third party/person, the five broad tests which follow are useful in determining this status. To ensure the status of a third party/person is correctly determined as either an Employee or a Contractor, the relevant Manager must answer the questions in tables A - E below.
- 1.2 If all of the responses to the questions in tables A - E are in column A, then the Third party/person is a Contractor.
- 1.3 If one or more on the responses to the questions in tables A - E are in column B, or if the Manager is not certain of whether a Third party/person is a Contractor, then the Manager answering the questions must contact their Human Resources Advisor for assistance in determining whether the Third party/person is an Employee or Contractor.

TABLE A -- CONTROL TEST	A	B
<i>The control test looks at the degree of control the University seeks to have over the work of the Third party/person and the manner in which this work is to be undertaken. The greater the extent to which the University controls the work of a Third party/person the more likely it is that the Third party/person will be an Employee.</i>		
Does the third party/person have control over how, where and when the services are performed (within practicality)?	Yes	No
Is the third party/person responsible for the quality and pricing of the services to be provided?	Yes	No
Will the third party/person supervise the provision of services and can the Third party/person hire other people to perform some or all of the services?	Yes	No
Can the third party/person negotiate the price to be paid by the University for the provision of the services?	Yes	No

TABLE B -- INTEGRATION TEST	A	B
<i>The integration test looks at whether the Third party/person is 'part and parcel' of the University. The work is likely to be undertaken by an Employee if the work is; integral to the core business of the University, is work commonly done by Employees, is continuous, and is for the benefit of the University rather than the Third party/person.</i>		
Are the services to be provided by the Third party/person different from work usually performed by Employees of the University?	Yes	No
Will the Third party/person pay for any expenditure incurred in performing the services?	Yes	No
Will the Third party/person invoice the University for the price of the services?	Yes	No
Will the Third party/person be paid only as the services are performed as opposed to a regular salary payment?	Yes	No
Are the services to be performed by the Third party/person 'one-off' as opposed to there being a continuous need for the services?	Yes	No

TABLE C --INDEPENDENCE TEST	A	B
<i>This is the converse of the control test (Table A). A high level of independence indicates the work is likely to be undertaken by a Contractor. Indicators of a high level of independence include; work for other people or clients, supply the equipment, premises, and materials used, advertise and invoice for the work.</i>		
Will the Third party/person supply the necessary tools, vehicles, office, phone, computer etc to perform the services?	Yes	No
Will the Third party/person be providing consultancy advice?	Yes	No
Is the Third party/person free to work for other organisations?	Yes	No
Does the Third party/person have their own client base?	Yes	No
Does the Third party/person advertise their services?	Yes	No
Would the University be required to pay GST in addition to any payment for the services performed by the Third party/person?	Yes	No
Does the Third party/person pay tax, ACC and insurance directly?	Yes	No
Is the Third party responsible for arranging any cover in the event that they are sick or absent?	Yes	No

Does the Third party/person have staff ID card	No	Yes
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TABLE D -- ECONOMIC REALITY/FUNDAMENTAL TEST	A	B
<i>This test considers the extent to which the Third party/person is in business on their own account. If in business on their own account, they are likely to be a contractor.</i>		
Will the third party/person keep for themselves any loss or profit resulting from the provision of the services?	Yes	No
Would the third party/person be exposed to normal business risks in the provision of the services to the University?	Yes	No
Would the third party/person be liable for correcting sub-standard work?	Yes	No

TABLE E -- INTENTION TEST	A	B
<i>This test looks at the intentions of the parties regarding the nature of the relationship. The description of the relationship (in the contract) is a strong but not conclusive indication of the type of relationship that exists.</i>		
Would the third party/person be performing services which had been performed by independent contractors?	Yes	No
Could the University sue the third party/person for loss resulting from the provision of services?	Yes	No
If the services were not performed to the standard specified in the proposed agreement with the third party/person, could the University withhold payment?	Yes	No
Has the third party/person specifically stated that they want to provide services to the University as an independent contractor?	Yes	No
Has the third party/person always worked with the University as an independent contractor?	Yes	No