Purpose

To ensure Massey University manages the risk associated with legal agreements by providing clear direction to their establishment, and responsibilities of staff entering into legally binding agreements with other parties.

As such, it includes all types of agreements that contain the fundamental requirements of a contract which are an offer, acceptance of that offer, and consideration, including tender submissions which, when accepted, will constitute a contract. For purposes of completeness, Memorandums of Understanding (MOU) are also included.

Massey University’s contract management policy and procedures are aligned to the expectations of good practice contract management as described in the Office of the Audit General “Procurement Guidance for Public Entities” and other State Sector guidelines.

Excludes employment contracts (contracts of service) made in relation to Massey University staff. Managers should be aware that Contracts for Services should not be used to avoid obligations under the Employment Relations Act 2000 and that there is a legal risk in engaging a person under a Contract for Services when they should more appropriately be an employee. To assist managers in determining whether or not the person should be engaged as an employee or as a contractor a short question and answer test is provided as part of the Contractors Procedures. If the manager is still unclear, they should contact People & Organisational Development.

Definitions

Contract: Any agreement that commits Massey University in legal or financial terms.

Contract Manager: The Massey University staff member with responsibility for ensuring that the rights and obligations under the contract are met.

Contract Register: The centralised online, digital repository holding all Massey University contracts.

Policy

A. Negotiating the Contract

1. A full and proper record must be kept of all contract negotiation and related correspondence. An official contract file must be established for all new contracts. Contract drafts, amended copies and a full copy of the
2. Managers negotiating contracts must liaise in the first instance with the appropriate section listed in Table 1 below for guidance and assistance:

**Table 1: Responsibility for Contract Areas**

<table>
<thead>
<tr>
<th>Contract area</th>
<th>Responsible Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/Buildings and Leases of Land and Buildings</td>
<td>Office of AVC Operations and University Registrar</td>
</tr>
<tr>
<td>Procurement of Equipment, Consumables and Services (including but not limited to IT Services, and leases relating to Equipment including those pertaining to installation, supply or fabrication of equipment)</td>
<td>Procurement Group</td>
</tr>
<tr>
<td>Business Services (including non-research consulting and legal services)</td>
<td>Office of AVC Operations and University Registrar</td>
</tr>
<tr>
<td>Teaching contracts (including sub-contracting of teaching)</td>
<td>Office of AVC Academic and International</td>
</tr>
<tr>
<td>Internships</td>
<td>Office of AVC Academic and International</td>
</tr>
<tr>
<td>Research and Consultancy (and Commercialisation of IP)</td>
<td>Office of AVC Research and Enterprise</td>
</tr>
<tr>
<td>International</td>
<td>Office of AVC Academic and International, International Office</td>
</tr>
<tr>
<td>Miscellaneous agreements and one-off contracts, not listed above</td>
<td>Risk Management, Office of AVC Operations and University Registrar.</td>
</tr>
</tbody>
</table>

*Note: If it is unclear which is the Responsible Area for the contract, staff must contact the Risk Management Office for clarification and advice.*

**B. Preparing the Contract**

1. All Massey University contracts must be in writing.

2. Every contract must include the position title of the Massey University staff member accountable for the management of the contract. This person will be known as the “Contract Manager” and will be responsible for ensuring Massey University’s rights and obligations under the contract are met.

3. Those staff involved in negotiating or preparing contracts must have an appropriate knowledge of contract, consumer and competition law, good practice contract management in the State Sector, and must comply with Massey University policy and procedure in respect of the contracting process.

4. Where contracts involve a tender, the *University Tender Process* and the *Tenders Board Process* contained in the *Procurement Procedures* must be followed.

5. Massey University’s standard terms and conditions as provided in the contract templates should be used for all contracts.
Legally approved contract templates are provided by the following sections and available to staff upon request:

- Research Management Services
- Procurement Group
- International Office
- Risk Management Office

All legally approved contract templates must be reviewed each year by the relevant section to ensure they remain current and fit for purpose.

6. If Massey University’s standard terms and conditions require variation in any way, or a non-standard contract developed by a third party is proposed to be used, the Contract Manager must first seek advice. In such circumstances, advice should be sought from the Responsible Area identified in Table 1 above, and, where legal advice is required must be sought (in accordance with the Delegations Document) as early as possible in the contracting process and in any event prior to any commitments being made.

A schedule of approved Massey University Legal Advisors must be confirmed each year, by the AVC Operations and University Registrar. Alternative providers of legal services must not be used without prior written approval of the AVC Operations and University Registrar. Delegated authorities to engage legal advisors are confirmed in the Delegations Document.

7. Systems of effective monitoring and review of the contract should be documented within the contract, and maintained in accordance with the Contract Management Procedures.

8. Agreement on terms and conditions of any contract, remain subject to approval by the Vice-Chancellor (or delegate).

C. Signing and Storing the Contract

1. Only those staff members identified in the Contract Signing Delegations - Section 2: Delegations Document, have authority to review, and sign contracts on behalf of Massey University.

2. All contracts must be entered into the Massey University Contract Register. The responsibility for ensuring the contract information is entered into the Contract Document Management System, rests with the Contract Manager.

3. All contracts are deemed ‘Vital Records’ and original documents must be securely stored in accordance with the Vital Records Procedure. The Contract Manager must send the original signed Contract with coversheet, plus any relevant signed Pre-contractual Negotiation Agreements, to the Risk Management Office for safe storage in the accordance with the Vital Records Procedure.

D. Related Policy and Procedures Compliance

1. All Contracts must be managed in accordance with the Contract Management Procedure.

2. Contracts for research and consultancy must comply with the Research and Consultancy Contracts Policy.
3. Contracts for teaching activity must comply with the *Subcontracting of Teaching Activity Policy*.

4. Conflicts of Interest arising in the Contracting Process will be managed in accordance with the *Conflict of Commitment and Interest Policy*.

5. Contracts and MOU’s with international institutions must follow the *Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement*.


**E. Audit**

1. The Contract Management process will be periodically audited to ensure compliance with Massey University policies and procedures.

**Audience**

All Staff

**Relevant Legislation**

Public Records Act 2005
Contracts (Privity) Act 1982
Contract Enforcement Act 1956
Illegal Contracts Act 1970
Minors’ Contracts Act 1969
Contractual Mistake Act 1977
Employment Relations Act 2000

**Legal compliance**

Public Records Act 2005 – provides for the selection of public records and archives for creation, maintenance and retention. The Act directs that public records and archives can only be destroyed and disposed of with the authority of the Chief Archivist. Contracts are deemed Vital Records under the Act.

Contracts (Privity) Act 1982 – Enables a non-party to a contract to enforce a provision of that contract under certain conditions. This may apply to some classes of procurement, and other benefits negotiated for the sector.

Contract Enforcement Act 1956 – provides that certain types of contracts must be recorded in writing and signed. This applies to contracts pertaining to Massey University land and any guarantees provided by Massey University.

Illegal Contracts Act 1970 – provides that illegal contracts are not enforceable.

Minors’ Contracts Act 1969 - A minor is deemed to be any person under 20 years who is unmarried, or has never been married. Some contracts against a minor under 18 years are not enforceable. The minor may however be able to enforce the contract in whole or in part.

Contractual Mistakes Act 1977 – provides for a remedy should a mistake in the contract be known to the other party.
Employment Relations Act 2000 – defines “employee” and “employment contract”. Should a contractor be deemed to be an employee then the employer will be liable to provide and pay for any benefits associated with being an employee e.g. sick leave, holiday pay, redundancy payments for unjustifiable dismissals or disadvantage.

Related documents and procedures

- Contractors Procedures
- Contractors Health and Safety Policy
- Contract Management Procedure
- Contract Templates
- Delegations Document
- Procurement Policy
- Procurement Procedure (including the University Tender Process)
- Research and Consultancy Activity Policy
- Records Management Policy
- Records Management Procedure
- Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement

Document management control

Prepared by:  Risk Manager
Owned by:  AVC Operations and University Registrar
Approved by:  SLT 13/02/06
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Next review:  February 2016