1. Contract Initiation Request

1.1 An initial request to enter into a contractual arrangement may be initiated by either Massey University or another party (Other Party).

1.2 The Contract Manager at Massey University, if not the requester, should be identified at the outset of the contracting process.

1.3 The Contract Manager must collect sufficient basic information to make an informed decision about the feasibility and suitability of the proposed Contract. Pre-contractual documentation may include all or any of:
   - Existing tender and/or proposal documentation;
   - Due Diligence information (mandatory inclusion) as specified in the Due Diligence Checklist;
   - Existing business case;
   - Quotations;
   - Letters;
   - Emails;
   - Legal advice; and
   - Any other documentation that may be relevant on a case-by-case basis.

1.4 The Contract Manager must evaluate whether the proposed Contract has specific policy and procedural guidelines with which it should comply. These include, but are not limited to, the:
   - Research and Consultancy Contract Policy;
   - Sub-contracting of Teaching Activity Policy;
1.5 If the Contract Manager concludes that it is not feasible or suitable to proceed with the proposed Contract, the Contract Manager must advise the Other Party without delay.

2. Mandatory Guidance

2.1 If the decision is made to proceed, the Contract Manager should complete all relevant forms (e.g. Application to Negotiate) and must seek guidance from the appropriate section listed below ("Responsible Area"), before preparing and/or negotiating the contract.

<table>
<thead>
<tr>
<th>Contract Type</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</td>
</tr>
<tr>
<td>Miscellaneous agreements and one-off contracts not listed above</td>
<td>Office of AVC Operations and University Registrar, Risk Management</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.

2.2 Confidentiality Agreements (also known as Non-disclosure Agreements) should be put in place in all instances where discussions are likely to be of a commercially sensitive nature or any commercially sensitive documents are to be supplied to the Other Party prior to the Contract or any other Pre-Contractual Negotiation Agreements being concluded between the parties. Confidentiality agreement templates and clauses are available on request from the Responsible Area and must be discussed with the relevant Responsible Area above before being issued to the Other Party. Confidentiality Agreements issued by the Other Party must only ever be used instead of the Massey University templates in consultation with, and review by, the relevant Responsible Area above due to the intellectual property and liability provisions associated with agreements of this nature.
### Contract Management Procedure

2.3 The Contract Manager should consider if other Pre-contractual Negotiation Agreements are necessary. Such agreements may include Letters of Intent, MOU, or similar documents. Example Pre-Contractual Negotiation Agreements are available on request from the Responsible Area.

2.4 Pre-contractual Negotiation Agreements:
- Should be used only as absolutely necessary and only after consultation with the relevant Responsible Area above;
- Must be stated to be not legally binding; and
- Must not be used in place of a contract for, or include provisions for, the supply or receipt of any deliverables.

2.5 The Contract Manager should prepare a Contract File (hard copy/electronic or both), and retain copies of all correspondence relating to the proposed Contract, in accordance with the Records Management Procedures.

### 3. Contract Preparation and Negotiation

3.1 Fundamental aspects that should be covered in any Contract are described below but are not an exhaustive list. Additional or alternative subject areas will need to be added on a case-by-case basis.

<table>
<thead>
<tr>
<th>CONTRACT FUNDAMENTALS</th>
<th>EXPLANATION/COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Identification of Parties</td>
<td>Massey University needs to determine who is the appropriate party? NB: You must ensure you have the correct legal name of the parties. If not the individual signing could be personally liable for the contract. Some countries require incorporation numbers to be stated.</td>
</tr>
<tr>
<td>b) Background (sometime “Recitals”)</td>
<td>Not legally necessary but useful to focus both parties on the main objectives. Also records key background which helps put the contract in context.</td>
</tr>
<tr>
<td>c) Term (including start and finish dates)</td>
<td>The life of the contract: Specific and/or on-going (need to refer to termination and renewal).</td>
</tr>
<tr>
<td>d) Price (or other consideration)</td>
<td>Must be sufficiently certain, otherwise contract can be unenforceable. If not a dollar amount, should specify formula or some mechanism for determining price.</td>
</tr>
<tr>
<td>e) Payment Methods</td>
<td>Specify method for payment. (Note cashflow and credit implications). Does interest apply if payment late?</td>
</tr>
<tr>
<td>f) Fundamental Obligations e.g. what is being bought/sold? Who is doing what? Who supplies what?</td>
<td>Important (legally and practically) to have obligations specified in sufficient detail.</td>
</tr>
<tr>
<td>g) Intellectual Property</td>
<td>Specify obligations of the parties in relation to the use of Massey University’s intellectual property, and to any intellectual property created under this agreement. Refer to Intellectual Property</td>
</tr>
<tr>
<td>OTHER BASIC ISSUES</td>
<td>EXPLANATION/COMMENT</td>
</tr>
<tr>
<td>--------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>a) General</td>
<td>Is there a process for renewal?</td>
</tr>
<tr>
<td>b) Consequences of termination</td>
<td>What are the parties’ obligations when the contract expires?</td>
</tr>
<tr>
<td>c) Escalation procedures</td>
<td>What are the parties obligations regarding escalation of issues</td>
</tr>
<tr>
<td>d) Disputes Procedures</td>
<td>Include alternative dispute resolution such as mediation and arbitration.</td>
</tr>
<tr>
<td>e) Liability and Indemnity</td>
<td>Deal with liability for consequential losses (e.g. loss of profits), caps on liability and other risk allocation issues, including insurance.</td>
</tr>
<tr>
<td>f) Confidentiality</td>
<td>Protect against unauthorised disclosures; specify when disclosure can be made.</td>
</tr>
<tr>
<td>g) Assignment and Novation</td>
<td>Usually cannot do without written consent of both parties</td>
</tr>
<tr>
<td>h) Subcontracting</td>
<td>When a third party can perform any of the obligations of either party (if ever).</td>
</tr>
<tr>
<td>i) Force Majeure</td>
<td>Allows a party to be excused from failure to perform obligations where prevented by circumstances outside control.</td>
</tr>
<tr>
<td>j) Notices</td>
<td>How notices can be given and when they are deemed to be received.</td>
</tr>
<tr>
<td>k) Variations</td>
<td>How the Agreement is to be varied?</td>
</tr>
<tr>
<td>l) Warranties</td>
<td>What representations does either party commit to as being legally enforceable? This section can be used to allocate risks between the parties; i.e. who picks up the bill if the unexpected happens.</td>
</tr>
</tbody>
</table>
3.2 The Contract Manager leads the Contract preparation and negotiation process, and is responsible for:
- Consulting with all relevant individuals for advice, guidance and approvals;
- Preparing the initial and iterative drafts of the Contract to be tabled with the Other Party;
- Ensuring an appropriate consultation and review process, is established and operated, during the negotiation process;
- Preparing, and managing, the timelines for the negotiation;
- Identifying who completes the Pre-signature Review of the Contract;
- Identifying the authorised signatory or signatories to the Contract; and
- Ensuring compliance with all relevant policies and procedures.

3.3 All Massey University Contracts must be in writing and the Contract Manager must prepare the draft Contract using either a Massey University template, or a legally approved contract document.

3.4 It is preferable that an Approved Massey University Contract template is used wherever possible. If a Contract template is not available, consult with the appropriate Responsible Area (see 2.1 above) to prepare a draft Contract to be tabled with the Other Party.

3.5 If the Other Party has provided their draft agreement, this must be reviewed by the appropriate Responsible Area (see 2.1 above) and such agreement must only be used if:
- the relevant Responsible Area determines that cost and effort of amending the Other Party’s agreement to bring it within acceptable risk tolerance levels for Massey University will be less than the cost and effort of producing a new Massey University template; and
- it is amended by, or in consultation with, the relevant Responsible Area to bring it within acceptable risk tolerance levels for Massey University, prior to being tabled for consideration by the Other Party.

3.6 All high risk Contracts require written approval to proceed, by the appropriate Level 3 Manager, before submission of the draft contract to the Other Party for consideration. High risk contracts are those which fit any one of the following criteria (“High Risk Contracts”):
- The Due Diligence process undertaken in respect to the Other Party identified any Material Concerns;
- The proposed Contract is to be with an international partner(s);
- Involves a financial commitment greater than $100,000 (i.e. over the life of the contract);
- Is for a term longer than 3 years;
- Is not on an approved Massey University Contract template;
- Relates to land and buildings;
- Involves borrowing of funds, or leasing of equipment; or
- Meets the criteria described as ‘high risk’ in the Subcontracting of Teaching Activity Policy.
3.7 The process of negotiation may involve multiple iterations. In order to record the progress of negotiations, the Contract Manager must maintain written file notes during the negotiation process and retain a copy of each uniquely identified and numbered version of the draft Contract that has been reviewed and issued. These documents should be stored in the Contract File in the care of the Contract Manager.

3.8 If Massey University’s standard terms and conditions (including those inserted into any amended Other Party’s standard agreement under section 3.5 above) require variation in any way, the Contract Manager must first seek advice from the relevant Responsible Area (see 2.1), and where deemed necessary in accordance with the Delegations Document process, legal advice should be sought prior to any commitments being made.

3.9 The Contract Manager must also ensure that the SLT Sponsor is kept informed, and consulted with, on a regular basis during the progress of the negotiations in respect to all High Risk Contracts, and any draft Contracts where material changes to Massey University’s standard terms and conditions are proposed, in order to avoid any unnecessary reiterations of the negotiation process once the proposed Contract is passed through to the Pre-signature Review and Execution stage below.

4. Pre-signature Review and Execution

4.1 This process involves finalising the pre-signature review and signing of the Contract.

4.2 The appropriate Responsible Area (see 2.1 above) and the nominated individuals identified in the Delegations Document - Section 2, must review and endorse the proposed Contract for execution.

4.3 The Contract Manager completes the Contract/Lease Signing Coversheet, ensuring all reviews are completed and forwards the proposed Contract to the Delegated Authority for execution.

4.4 The Delegated Authority returns the signed Contract to the Contract Manager, who will ensure that the Other Party signs the contract and is provided with a fully executed copy.

4.5 The Contract Manager has responsibility for ensuring the signed Contract document plus any relevant signed Pre-contractual Negotiation Agreements are entered into the Contract Register, along with any other associated contract documentation that should be retained with the contract record (legal opinions, due diligence, negotiation documentation etc). Where the department has an authorised Contract Administrator with access to the Contract Register, they will perform this operation. Where the department does not have an authorised Contract Administrator all such documents must be sent electronically to the Risk Management Office who will perform this function.

Irrespective of who loads the Contract documents into the Contract Register, 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 accordance with the Vital Records Procedure.
5. Implementation and Management

Service Delivery

5.1 Service delivery management ensures that the service is being delivered as agreed, to the required level of performance and quality.

5.2 The Contract Manager and the Other Party must agree a timeline and process for Contract implementation. This is particularly important with large and complex contracts. The process may be set out in the Contract, or in an ancillary document, but must be documented.

5.3 The Contract Manager must note key performance indicators included in the Contract in relation to implementation, and make arrangements to ensure that performance is being measured and monitored. Considerations should include:
   • Deliverables against specification;
   • Charges against contract price;
   • Quality against KPIs and/or agreed standards;
   • Identifying opportunities for cost or efficiency gains
   • Supplier’s overall performance;
   • Identification of lessons learned;
   • Massey University’s performance in meeting its obligations agreed in the contract.

Relationship Management

5.4 Once implemented, the Contract Manager must ensure that the relationship with the Other Party is being proactively managed. The Contract Manager may appoint a liaison person to act as their delegate.

5.5 Contract Managers’ should ensure they hold regular meetings with the Other Party to discuss overall performance; achievement of objectives and key performance indicators and each party’s adherence to the contractual terms. The format, frequency and venue of these meetings will be dependent upon the nature of the Contract and should be determined and agreed early on. Minutes and files notes of such meetings must be kept and added to the Contract File.

5.6 If a material issue arises that has potential to create risk of any type for Massey University, the Contract Manager must identify and assess the risk in accordance with the risk management procedure of Massey University, log the emerging risk on the Massey University Risk Register, and advise their Level 3 manager.

5.7 If disputes arise they should be dealt with proactively and in accordance with the dispute resolution clauses included in the Contract. The initial responsibility for contract resolution is with the Contract Manager and the appointed representative of the Other Party. If resolution is not possible and a dispute is likely to escalate, this must be advised without delay to the relevant SLT Sponsor. The Risk Manager must be advised of any contract dispute that may involve the chance of legal action between the parties as soon as this is considered a possibility.

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Contract administration

5.8 Contracts must be monitored in accordance with any monitoring and reporting requirements specified in the contract terms and conditions, and in line with section 5.5 above.

5.9 Any Key dates (i.e. annual reviews and meetings) established following the execution of the Contract should be advised to the Contract Administrator or the Risk Management Office for entering into the Contract Register (key dates specified in the contract should have been entered into the coversheet prior to signing and would have been entered at this time).

5.10 The Contract Manager must ensure arrangements are made with Finance and Asset Management to ensure payments to be made or received under the Contract are either invoiced to the Other Party, or paid by Massey University to the Other Party, in accordance with the timeframes specified in the Contract.

5.11 The Risk Management Office will monitor key Contract dates and report to the Risk Management Committee every 6 months on contract management activity. The Contract Management Process will be audited by Internal Audit periodically.

5.12 Compliance with contractual obligations may be monitored by the Risk Management Office, who holds responsibility for reviewing and maintaining the frameworks, systems and policies that support compliance within Massey University.

6. Contract Review, Renewal or Variation

6.1 The Contract Manager is responsible for the contract and performance review processes relating to the Contract and must seek guidance from the relevant Responsible Area (see 2.1) before initiating and concluding any review, renewal or variation process.

6.2 Proactive management of all review and renewal processes must be undertaken to secure best advantage. Accordingly, any request for Contract review or renewal must be received by the Contract Manager, or initiated, by the Contract Manager, no later than 3 months before the review or renewal date specified in the Contract (or expiry date where no such renewal dates are specified) unless another date has been stipulated in the Contract.

6.3 If the request is to:

1) Renew (or not to renew) the Contract, the Contract Manager must discuss with the relevant Responsible Area (see 2.1 above) and follow the process set out in the Contract, ensuring that deadlines pertaining to notices to be issued or received are met, and that there is sufficient time in the process to address any issues or concerns.

2) Review the Contract, the Contract Manager should follow the process set out in the Contract and:
   • note the date and parameters of the review;
   • obtain advice and guidance from the relevant section (see 2.1);
   • evaluate the contract;
   • prepare issues for discussion at review time;
• communicate any issues arising out of the review; and
• where applicable, document a Variation of Contract (or other agreed action) in accordance with the process set out in 6.3 below.

6.4 If the Contract Manager wants to initiate a variation to the terms and conditions of the Contract, or receives a request from the Other Party to so vary the Contract, during its term, check that variations are permitted under the contract and under what circumstances. Variations are usually only permitted with the written approval of each party. Any proposed contract variation should be discussed with the relevant Responsible Area (see 2.1 above) and if the decision is made to proceed with such Variation, it must be prepared and negotiated in accordance with section 3 (Contract Preparation and Negotiation) and the procedures detailed in section 4 (Pre-signature Review and Execution) above.

7. Records Management

7.1 Contracts are classified as Vital Records. Storage, archival and retention of contracts must be in accordance with the record keeping requirements of Massey University, as detailed in the Records Management website. Disposal of Contracts and Contract related records must be undertaken in accordance with the Massey University General Disposal Authority (GDA). See the Records Management website for specific information.

Definitions

Compliance: Adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards.

Confidentiality Agreements: Pre-contractual agreements designed to prevent disclosure of commercially sensitive information to a third party, or into the public domain, during the negotiation process - also known as Non-disclosure Agreements.

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

Contract File: A file containing hard copies of correspondence and documentation relating to the contract, and the negotiation process. It is retained by the Contract Manager.

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

Contract Administrator: Massey University staff member who has authority to administer and enter contracts into the Contracts Register - includes scanning of original documents into Electronic Document Records Management System (“EDRMS”), reporting and updating information on advice of the Contracts Manager.

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

Delegated Authority: Person with the delegated authority to sign the contract, as detailed in the Delegations of Authority Document.
Due Diligence: The collection of information which will enable an assessment to be made of the ability of the Other Party to meet their obligations under the Contract.

Material Concerns: Issues identified during the Due Diligence process relating financial and non-financial matters that could pose a risk to Massey University in terms of the Other Party’s ability to meet their obligations under the Contract or could otherwise have a detrimental impact on it’s business reputation or public image.

Other Party: The organisation or individual outside Massey University, with whom we are entering into a contract. There may be multiple parties to a contract.

Pre-contractual Negotiation Agreements: Various types of pre-negotiation documents designed to record the discussion and any agreement made in the course of these negotiations. Although these documents should not be intended to legally bind the parties, in some cases they may form part of the contract.

Pre-signature Review: The process carried out before the contract is finalised for execution. Those delegated to review documents before signature are listed in the Delegations Document.

Audience
All Massey University staff.

Related procedures/documents

Contract Management Policy
Contract Management Process Maps
Conflict of Commitment and Interest Policy
Approved Massey University Contract Templates
Compliance Policy
Delegations of Authority Document
Procurement Policy
Procurement Procedure (including the University Tender Process)
Subcontracting of Teaching Activity Policy
Research and Consultancy Contracts Policy
Records Management Policy

Document Management Control:

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Owned by: AVC Operations and University Registrar
Approved by: n/a
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