

CONTRACT MANAGEMENT PROCEDURE

Section	Risk and Assurance
Contact	Director Risk and Assurance
Last Review	July 2016
Next Review	July 2019
Approval	Not required

Procedures

Contract Initiation
 Process Guidance
 Contract Preparation and Negotiation
 Pre-signature Review and Execution
 Implementation and Management
 Contract Review, Renewal or Variation
 Records Management

1. Contract Initiation

- 1.1 No staff member of manager can sign a legal agreement (contract) unless they have the required authority (as set out in this policy (see Section C1) and in the University Delegations of Authority) and subject to the consultative and/or approval requirements set out in this Policy and related Procedure.
- 1.2 The Contract Manager at Massey University is to be identified at the outset and they must collect all relevant information to assess whether to commence the Contract establishment process. Such information must include:
- Tender and/or proposal documentation;
 - Due Diligence information (mandatory inclusion);
 - Existing business case;
 - Quotations;
 - Correspondence;

 - Legal advice; and
 - Any other documentation that may be relevant on a case-by-case basis.
- 1.3 The Contract Manager must also evaluate whether the proposed Contract has specific policy and procedural guidelines with which it should comply with any specific policy requirements. These include, but are not limited to, the:
- [Research and Consultancy Contract Policy](#);

- [Sub-contracting of Teaching Activity Policy](#);
- [International policies and procedures](#);
- Sponsorship Policy; and
- [Procurement Policy and procedures](#) .

1.4 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. Process Guidance

2.1 The Contract Manager must seek guidance from the appropriate Responsible Area listed below, before a draft Contract is prepared and/or negotiated.

Contract Type	Responsible Area
Construction/Buildings and Leases of Land and Buildings	Office of AVC Operations, International and University Registrar - Facilities Management
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), Non-research consulting, commercial contracts	Office of AVC Strategy, Finance, IT and Commercial Operations - Procurement Group
Teaching contracts ((including sub-contracting of teaching, domestic articulation and pathway agreements, licensing and franchising agreements (for Teaching) and MOU's with Schools)) ,	Office of AVC Research, Academic and Enterprise
Internships	Office of AVC Research, Academic and Enterprise
Research and Consultancy (and Commercialisation of IP)	Office of AVC Research, Academic and Enterprise, Research and Enterprise
International (including Offshore)	Office of AVC Operations, International and University Registrar, - International Office
Venue and Sponsorship Agreements	Office of External Relations and Development

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

3. Confidentiality Agreements

3.1 A Confidentiality Agreement should be signed where any commercially sensitive information is likely to be shared with the Other Party prior to the Contract (including any any Pre-Contractual Agreement) being signed. Confidentiality Agreement templates are available from the applicable Responsible Area and must be discussed with them before being issued to the Other Party. Non-Massey Confidentiality Agreement

templates must only ever be used in consultation with the relevant Responsible Area above, due to the possible intellectual property and liability implications associated with agreements of this nature.

4. Pre-Contractual Agreements

- 4.1 Pre-contractual Agreements such as an MOU or letter of intent are available from the applicable Responsible Area but:
- 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 goods, services, payment or other deliverables.

5. Contract Preparation and Negotiation

- 5.1 All Massey University Contracts must be in writing and all draft Contracts must be prepared using either a Massey University template, or a legally approved (whether internal or external as applicable) contract document.
- 5.2 [Massey templates](#) are available via the Policy Guide, or from the relevant Responsible Area (see 2.1 above). However, the Contract Manager must consult with the appropriate Responsible Area regarding the process to follow to prepare a draft Contract to be tabled with the Other Party.
- 5.3 The Contract Manager co-ordinates the Contract negotiation process, and is responsible for:
- Setting up a contract file (hard copy/electronic or both), and retaining copies of all correspondence relating to the proposed contract, in accordance with the Records Management Procedures;
 - Consulting with all relevant individuals for advice, guidance and approvals (including ongoing consultation with the relevant Responsible Area (and their advisors) as required through each stage of the process);
 - Ensuring an appropriate consultation and review process occurs during the negotiation process;
 - Preparing, and managing, the timelines for the negotiation;
 - Ensuring the Pre-signature Review of the Contract is completed;
 - Ensuring the correct authorised signatory signs the Contract; and
 - Ensuring compliance with all relevant policies and procedures.
- 5.4 No draft contract offered by the Other Party shall be used unless the relevant Responsible Area, supported as necessary by internal contracts, procurement or external legal advisors:
- determines that the cost and effort of amending it to meet acceptable risk tolerance levels will be less than that of amending, or producing, a new Massey University template; and
 - amends the draft agreement to meet acceptable risk tolerance levels prior to it being tabled for consideration by the Other Party;

- 5.5 Prior to issuing the draft Contract, the Contract Manager must ensure that all policy compliance requirements (see section 1.2) to be met prior to issuing the draft Contract, have been satisfied.
- 5.6 The Contract Manager must seek advice if Massey University's standard terms and conditions require variation. In such circumstances, advice must be sought from the applicable Responsible Area supported as necessary by internal contracts or procurement advisors, or where applicable from external legal advisors, prior to any commitments being made.
- 5.7 A schedule of approved external Massey University external Legal Advisors is maintained by the AVC People and Organisational Development. Alternative providers of external legal services cannot be used without prior written approval of the AVC People and Organisational Development. Delegated authorities to engage external legal advisors are confirmed in the [Delegations of Authority Document](#).
- 5.8 The Contract Manager must ensure the person undertaking the Pre-signature Review is kept informed during negotiations for and any draft Contract where material changes to Massey University's standard terms and conditions are proposed, to avoid any undue delay once the proposed Contract is passed through to the Pre-signature Review and Execution stage.

6. Pre-signature Review and Execution

- 6.1 This process involves finalising the pre-signature review and signing of the Contract.
- 6.2 The appropriate Responsible Area and the nominated roles identified in the [Delegations of Authority Document](#) - Section 2, must review and endorse the proposed Contract for execution.
- 6.3 The Contract Manager (or their nominee) facilitates the completion of the [Contract/Lease Signing Coversheet](#), ensuring all reviews are completed and forwards the proposed Contract to the Authorised Signatory for execution.
- 6.4 The Authorised Signatory returns the signed Contract to the Contract Manager (or their nominee), who will ensure that the Other Party signs the contract and is provided with a fully executed copy.
- 6.5 The Contract Manager of a non-research Contract has responsibility for ensuring the signed Contract plus any relevant signed Pre-contractual Agreements are entered into the Contract Register. 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 Risk and Assurance who will perform this function.
- 6.6 Irrespective of who loads the documents into the Contract Register, the Contract Manager of a non-research Contract (or their nominee) must send the original signed Contract with coversheet to Risk and Assurance for safe storage in accordance with the Vital Records Procedure.

- 6.7 Research Contracts are loaded into the Contact Register directly by the internal contract advisor and the original signed Contract and coversheet are also archived directly by the internal contracts team in accordance with the Vital Records Procedure.

7. Implementation and Management

Service Delivery

- 7.1 Service delivery management ensures that the service is being delivered as agreed, to the required level of performance and quality.
- 7.2 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.
- 7.3 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 under the contract.

Relationship Management

- 7.4 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.
- 7.5 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.
- 7.6 If a material issue arises that has potential to create risk of any type for Massey University, the Contract Manager must advise their manager and review the matter with the applicable Responsible Area in section 2.1 to ascertain what action (if any) needs to be taken.
- 7.7 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 dispute 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 member. The Director of Risk and Assurance 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.

Contract Administration

- 7.8 Contracts must be monitored in accordance with any monitoring and reporting requirements specified in the contract terms and conditions, and in line with section 7.5 above.
- 7.9 Any Key dates (i.e. annual reviews and meetings) established following the execution of the Contract should be advised to the Contract Administrator or to Risk and Assurance 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).
- 7.10 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.
- 7.11 The Contract Management Process may be audited by Internal Audit periodically.
- 7.12 Compliance with contractual obligations may be monitored by Risk and Assurance, who holds responsibility for reviewing and maintaining the frameworks, systems and policies that support compliance within Massey University.

8. Contract Review, Renewal or Variation

- 8.1 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 supported as necessary by internal contracts or procurement advisors, or where applicable from external legal advisors, before initiating and concluding any review, renewal or variation process.
- 8.2 Proactive management of all review and renewal processes must be undertaken to secure best advantage. Any request for Contract renewal therefore, should be received or initiated by the Contract Manager no later than the commencement of the final year of the Contract term (or in the case of a Contract term of 12 months or less, no later than 6 months before the renewal or expiry date) unless another date has been stipulated in the Contract. Any request for Contract review, should be received or initiated by the Contract Manager no later 3 months before the review date specified in the Contract, unless another date has been stipulated in the Contract
- 8.3 If the request is to:
- Renew (or not to renew) the Contract, the Contract Manager must discuss with the relevant Responsible Area supported as necessary by internal contracts, procurement or external legal advisors 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;

- 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) supported as necessary by internal contracts, procurement or external advisors;
 - 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 8.4 below.

8.4 If the Contract Manager wants to initiate a variation to the terms and conditions of the Contract, or receives a request to do so from the Other Party 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 and if the decision is made to proceed with such Variation, it must be prepared and negotiated in accordance with section 5 (Contract Preparation and Negotiation) and the procedures detailed in section 6 (Pre-signature Review and Execution) above.

9. Records Management

9.1 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

Authorised Signatory: Person with the delegated authority to sign the contract, as detailed in the [Delegations of Authority Document](#).

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;

Contract: Any agreement that commits Massey University in legal or financial terms and for the purposes of these procedures includes **Pre-contractual Agreements** not intended to be legally binding.

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 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.

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.

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 Agreements; means written agreements not intended to be legally binding which may include letters of intent, memorandums of understanding (MOU), or other similar documents.

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.

Responsible Area means the applicable area set out in Table 2.1 above, and includes as required, the internal contracts or procurement team that provides support to that area.

Audience

All Massey University staff.

Related procedures/documents

[Contract Management Policy](#)
[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](#)

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