

Contracts Policy (MPF1247)

1. Objective

1.1. The objectives of this policy are to minimise the University's exposure to legal, financial and reputational risk, while balancing the needs of the University to efficiently enter into and manage contracts and conduct its business.

2. Scope

2.1. This policy applies to:

- a) all University personnel; and
- b) all contracts entered into (or proposed to be entered into) by the University, including research related contracts, but excluding employment contracts.

2.2. Controlled entities must adopt and implement this policy, with appropriate amendments, or a policy which is equivalent to this policy in all material respects.

2.3. For a controlled entity that adopts this policy, references to the University are deemed to be references to the controlled entity, or to both the controlled entity and the University, as the context requires.

3. Authority

3.1. This policy is made under the [University of Melbourne Act 2009](#) (Vic) and the [Vice-Chancellor Regulation](#).

4. Policy

Pre-contractual matters

4.1. Discussions before, or without, a formal written contract may create binding legal obligations for the University. Except in exceptional circumstances, University personnel must avoid making any commitments to a third party or commencing any work before a contract is executed by all parties.

4.2. Contractual and pre-contractual negotiations must comply with all applicable laws (such as competition and consumer laws governing misleading and deceptive conduct and anti-competitive conduct) and the University's statute, regulations, policies and processes.

4.3. University personnel who are involved in negotiating or approving contracts must:

- a) ensure that any probity risks are managed in accordance with relevant University policies;
- b) ensure that the University's confidential information is appropriately protected; and
- c) disclose and manage any actual, potential or perceived conflicts of interest in accordance with the Managing Conflicts of Interest Policy ([MPF1366](#)).

Contracts

4.4. Contracts entered into by the University must:

- a) be in the best interests of the University;
- b) be consistent with the University's objects and functions; and
- c) comply with all applicable laws and the University's statute, regulations, policies and processes.

4.5. Contracts entered into by the University must be referred to Legal Services for review, unless they are:

- a) standard contracts;
- b) contracts to which section 4.6 applies; or
- c) research related contracts which are referred for review to Melbourne Research and Enterprise (MRE), or any successor function.

4.6. Non-standard contracts, or changes to standard contracts, do not need to be referred to Legal Services if the signing delegate or University contract manager (or nominee) is satisfied that the contract, or the change to a standard contract, does not need referral in accordance with the [Risk Assessment Guidance](#) (link accessible to University Staff only). The assessment in accordance with the Risk Assessment Guidance may be undertaken by University personnel with appropriate knowledge of the contract and provided to the signing delegate or University contract manager (or nominee) to inform their determination.

4.7. In general, contracts that do not need to be referred to Legal Services under section 4.6 are expected to be managed locally.

Obtaining external legal advice

4.8. External legal advice (on a contract or otherwise) must:

- a) only be sought with the assistance of Legal Services, unless a specific approval to brief directly has first been obtained from the General Counsel for the University; and
- b) comply with any University requirements which relate to briefing external lawyers.

4.9. Some contracting activities, such as for significant transactions or projects, may require support from external law firms. Legal Services manages a panel of external legal advisers who have agreed to certain fees and conditions. Legal Services will assist in the engagement of external lawyers but, in most cases, the cost of obtaining external legal advice will be the responsibility of the relevant division. Legal Services does not have a general legal expenses fund to pay for external legal advice. Where significant projects are proposed, Legal Services should be engaged early to assist in planning for the project and ensuring appropriate legal support can be provided and/or funded by the project.

Memoranda of understanding (MOUs)

4.10. For the avoidance of doubt, MOUs (memoranda of understanding) which are expressed to be non-binding (in whole or in part) are contracts for the purposes of this policy because:

- a) the University takes into account the detrimental impact on its reputation which may occur if the University fails to deliver as 'promised' under an MOU; and
- b) MOUs are often used when dealing with international parties and a number of international jurisdictions regard MOUs as legally binding and treat them as such in that country.

Management of contracts

4.11. The University contract manager is responsible for:

- a) managing the University's performance of, and receipt of benefits under, the contract entered into by the University; and
- b) ensuring that any variation to the contract (including any renewal, extension or termination) is documented. Each variation is itself a separate contract and this policy applies to it.

4.12. For research related contracts executed via MRE, the University contract manager is usually the lead researcher who is named as the lead University chief investigator in Cayuse. For non-research contracts, the University contract manager should be a member of University personnel who will carry out the responsibilities in section 4.11.

4.13. Except with prior approval of the signing delegate, students, honorary staff or contractors should not be appointed as a University contract manager. For the avoidance of doubt, honorary staff, students or contractors cannot execute a contract or commit the University to contractual obligations or expenditure.

4.14. The University contract manager must promptly notify any disputes arising under a contract to:

- a) the signing delegate who executed the contract; and
- b) Legal Services, unless the signing delegate is satisfied the dispute is able to be commercially resolved and unlikely to escalate.

Approval, execution and retention of contracts

4.15. Contracts must be approved and executed in accordance with the requirements of this policy and the [University delegations](#) (link accessible to University Staff only).

4.16. The University contract manager (or nominee) must properly brief the signing delegate on the contract prior to its approval and execution, including by providing the signing delegate with a completed signing request form or equivalent approved sign off documentation.

4.17. The University may accept electronic copies of executed contracts and electronic signatures in accordance with relevant State, Territory and Commonwealth legislation. Guidance on these requirements can be provided by Legal Services.

4.18. Fully executed contracts must be captured in the University Contracts Register (Content Manager) or, for research related contracts, in the Cayuse system. This must include required information to facilitate reporting, accountability and on-going contract management. Controlled entities must capture fully executed contracts in an appropriate record keeping system that facilitates reporting, accountability and on-going contract management.

5. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Responsibility</i>	<i>Conditions and limitations</i>
Approve standard contract templates	University Legal Services	University Legal Services is responsible for reviewing, updating and developing all approved standard contract templates, unless otherwise authorised by the General Counsel.
Ensure the contract meets the requirements of this policy and any other relevant policies.	Signing delegate	Contracts may also require approval from other University delegates as per the University delegations.
Ensure copies of fully executed contracts are submitted to the	University contract manager or signing delegate	

University Contracts Register or Cayuse, as appropriate		
Confirm the University contract manager	Signing delegate	Students, honorary staff or contractors should not be appointed as a University contract manager unless prior approval has been obtained from the signing delegate.
Ensure proper performance of the contract, and management of all related obligations of, and receipt of benefits by, the University under the contract	University contract manager	
Ensure fully executed contracts are correctly stored and managed in the University Contracts Register in compliance with the Records Management Policy (MPF1106)	Records & Information team	

6. Definitions

Contract means a contract, deed, MOU (whether binding or not) or other instrument between the University and another party that creates obligations for performance by the University and/or which confers rights or benefits upon the University.

Controlled entity means an entity that is subject to the control of the University in terms of section 50AA of the *Corporations Act 2001* (Cth) and includes an entity which is subject to the control of a controlled entity.

Signing delegate means a delegate who is authorised under the [University delegations](#) or any specific instrument (such as a power of attorney) to sign contracts on behalf of the University.

Signing request form means the approved sign off form that helps the signing delegate decide whether to authorise the proposed transaction on behalf of the University and then sign the document(s) necessary to give effect to that decision. The form also collects important metadata about the contract for the University's records. The approved signing request form is available on the [Legal Services Staff Hub](#) (link accessible to University staff only) page.

Standard contract means a contract made using a template which has been approved by Legal Services and includes contracts which comply with standing guidance provided by Legal Services. Standard contracts are available via the [Legal Services Staff Hub page](#) (link accessible to University staff only).

University contract manager means the University staff member or representative responsible for managing and implementing a contract as described in section 4.11 of this policy.

University personnel means all University staff and University contract managers. University personnel include honorary appointees to the extent that:

- a) the honorary is the lead University chief investigator in respect of the contract; and

b) the honorary's role is limited to negotiating the contract and/or appointment as the University contract manager.

POLICY APPROVER

Vice-President (Administration & Finance) and Chief Operating Officer

POLICY STEWARD

General Counsel and Chief Legal and Risk Officer

REVIEW

This policy is to be reviewed by [TBC].

DRAFT