

Contracts Policy (MPF1247)

1. Objective

The objectives of this policy are to:

- (a) govern the negotiation, execution and management of contracts entered into by the University; and
- (b) minimise University exposure to financial and reputational risk.

2. Scope

2.1. This policy applies to all staff and honorary appointees and to all contracts, regardless of their form, entered into by the University, including pre-contractual negotiations.

2.2. This policy has the potential for broad application because it is not always clear whether a binding legal relationship has been created.

3. Authority

This policy is made under the [University of Melbourne Act 2009 \(Vic\)](#) and the [Vice-Chancellor Regulation](#), and supports compliance with all relevant legislative requirements, including:

- (a) *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- (b) *Competition and Consumer Act 2010* (Cth);
- (c) *Electronic Transactions Act 1999* (Cth);
- (d) *Electronic Transactions (Victoria) Act 2000* (Vic);
- (e) *Equal Opportunity Act 2010* (Vic);
- (f) *Fair Work Act 2009* (Cth);
- (g) *Australian Consumer Law and Fair Trading Act 2012* (Vic);
- (h) *Health Records Act 2001* (Vic).
- (i) *Instruments Act 1958* (Vic);
- (j) *Occupational Health and Safety Act 2004* (Vic);
- (k) *Privacy and Data Protection Act 2014* (Vic); and
- (l) *Public Records Act 1973* (Vic).

4. Policy

4.1. The University may enter into contracts if:

- (a) they are consistent with, and further, the University's objects and functions; and
- (b) the benefits accruing to the University under the contracts' terms outweigh the risks assumed by entering the contract.

4.2. University contracts must:

- (a) protect the University's best interests and reputation;
- (b) align with the University objects in the University of Melbourne Act and the University's strategic and business plans;
- (c) be consistent with legal requirements and community expectations;
- (d) address any real or perceived conflict of interest in a transparent manner;
- (e) clearly identify the rights and obligations of each party to the contract and any deliverables, due dates and payment terms (where relevant); and
- (f) be able to be implemented and delivered within University resources, including any contingent liabilities.

4.3. Staff must be aware that discussions before the execution of the contract, or without a subsequent contract, may create binding legal obligations for the University. Work, supply or acquisition of goods or services should not start without an executed contract.

5. Procedural principles

Entering into University contracts

5.1. Contracts can take many forms. If in doubt about whether an arrangement constitutes a contract, staff should contact Legal Services for advice.

5.2. Staff must use a University approved standard contract template.

5.3. All non-standard contracts must be referred to Legal Services for review, except where:

- (a) Research, Innovation and Commercialisation has the discretion to review as authorised by the University's General Counsel; or
- (b) as otherwise specified by the General Counsel.

5.4. The relevant authorised officer is responsible for determining when legal advice is required, and the scope of that advice, having regard at all times to the best interests of the University.

5.5. The head of the relevant division must also approve any decision not to seek legal advice where there are reasonable grounds to conclude that there is a material exposure to the University in entering into the contract.

5.6. If any division proposes to seek external legal advice, the General Counsel must approve the engagement of external contractors. No external legal advice sought without approval from Legal

Services will be paid from the internal legal expenses fund managed by the General Counsel. It is the responsibility of the relevant division.

Negotiating University contracts

5.7. Negotiation of University contracts must comply with all the following guiding principles:

- (a) Contracts must be negotiated fairly and transparently.
- (b) The person with delegated authority to approve the contract that is the subject of the negotiation must be involved in, or have authorised, the progress of negotiations and instructions provided to Legal Services and/or Research, Innovation and Commercialisation (RIC).
- (c) A staff member with an actual or perceived conflict of interest should not be involved in the negotiation process, including instructing Legal Services or RIC, recommending a contract for approval or approving a contract. When instructing Legal Services or RIC, the head of division must confirm that the instructions provided by the staff member with the actual or perceived conflict of interest are acceptable.
- (d) Any commitment of University funds (including the assumption of any contingent liabilities), staffing or services must be appropriate, as set out in the supporting process/es.
- (e) The negotiation process must comply with competition and consumer law (for example, misleading and deceptive conduct, unconscionable conduct and unfair contract terms).
- (f) Written records of contract negotiations must be kept in the enterprise records system.

Determining contractual terms

5.8. Contractual terms must:

- (a) protect the University's best interests, including its freedom to operate and carry on its core business of teaching, research and engagement;
- (b) be consistent with the University's objects, policies and processes, including matters relating to procurement, commercial activities and joint undertakings, intellectual property, pricing, conflicts of interest and privacy; and
- (c) be able to be complied with.

Executing University contracts

5.9. Contracts must be approved in accordance with the [Delegations Policy](#).

5.10. Contracts must be executed in accordance with the supporting contracts process. The University may accept electronic copies of executed contracts and electronic signatures in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic) and the *Electronic Transactions Act 1999* (Cth).

5.11. All fully executed contracts must be kept in the enterprise records system.

Managing University contracts

5.12. Each contract must have a contact person responsible for ensuring the proper performance of the contract, and management of all related obligations of the University under the contract including management of contract risks, by:

- (a) ensuring that timely actions are taken to fulfil the contract terms; and
- (b) being responsible for managing the expiry of the contract, negotiating renewals as appropriate and capturing the records of renewals.

5.13. The contact person must promptly seek advice from Legal Services if there is any indication that:

- (a) a dispute may arise in relation to the contract; and/or
- (b) the University may not be able to fully perform its obligations under the contract.

6. Roles and responsibilities

| <i>Role/Decision/Action</i> | <i>Responsibility</i> | <i>Conditions and limitations</i> |
|--|--|--|
| Approve University standard contract templates Review non-standard legal agreements | General Counsel | In accordance with section 5.3 of this policy |
| Ensure copies of fully executed contracts are kept | Head of division (or approver of final contract) | In accordance with sections 5.10 and 5.11 of this policy |
| Appoint the contact person | Head of division (or approver of final contract) | |
| Ensure proper performance of the contract and management of all related obligations of the University under the contract | Contact person | |

7. Definitions

Contact person means the University staff member responsible for managing and implementing a contract.

Contract means an agreement or other instrument, whether oral or in writing, between the University and another party, whether executed as a contract or as a deed, that creates obligations for performance by the University, whether at law or in a broader reputational context, and rights exercisable by the University against that other party. Examples of contracts are:

- (a) any written or oral agreements to which the University is a party;
- (b) heads of agreement and memoranda of understanding;
- (c) tenders;
- (d) strategic partnerships and affiliations; and
- (e) any variation, extension or renewal of any of the above.

Negotiate (and negotiation) means agree to commercial and other terms on behalf of the University for contracts that on execution (and not before) will be binding at law on the University or have impact in a broader reputational context as provided in the relevant instrument.

Standard contract means any agreement made using the University approved standard contract template or previously reviewed by Legal Services, including fast track agreements and schedules to umbrella agreements.

Staff includes all persons employed by the University, and for the purposes of this policy, also honorary appointees.

POLICY APPROVER

Vice-Chancellor

POLICY STEWARD

General Counsel and Executive Director Legal and Risk

REVIEW

This policy is to be reviewed by 16 August 2021.

VERSION HISTORY

| Version | Approved by | Approval Date | Effective Date | Sections modified |
|----------------|--------------------|----------------------|-----------------------|--|
| 1 | Council | 29 April 2013 | 29 April 2013 | N/A |
| 2 | Vice Chancellor | 16 August 2016 | 7 September 2016 | New version arising from the Policy Consolidation Project. |