

# Contracts Procedure

## Section 1 - Summary

(1) The purpose of this Procedure is to set high-level, generalised, basic processes which are to be followed when entering into or managing contracts or agreements. It is supported by the [Contract Best Practice Guidelines](#) which provides more detailed information and advice about specific situations.

## Section 2 - Scope

(2) This Procedure applies to everyone across VU when they are involved in entering into or managing any contract, whether drafted by VU or by another party. This includes:

- a. Contracts where the University provides services, often generating revenue (e.g. delivery of courses, pathway agreements, and contracts involving research undertakings);
- b. Contracts where VU is collaborating with others in teaching work (e.g. where others are providing VU with direct input into the creation/preparation/delivery of courses, research, or generally to help meet VU's obligations to third parties); and
- c. Contracts where no money, goods or services passes hands (e.g. heads of agreement or memoranda of understanding).

(3) This Procedure does not apply to:

- a. Employment contracts (which are addressed separately under the relevant industrial instruments and People & Culture policies);
- b. Contracts involving procurement of goods or services for the University's end-use (which are addressed separately under the [Purchasing Policy](#)). Please note this does not mean contracts where VU is collaborating with others with respect to teaching services (e.g. where others are providing VU with direct input into the creation/preparation/delivery of courses, research, or generally to help meet VU's obligations to third parties) - these are still covered by this Policy; and
- c. Admission offers and enrolment agreements.

(4) As a baseline, this Procedure and [Contract Best Practice Guidelines](#) should always be complied with. However, exactly what level of detail will satisfy the requirements of the Procedure and [Contract Best Practice Guidelines](#) is dependent on the risk involved in a Contract or Undertaking. This means one must weigh the commercial realities and risk involved in the Undertaking or Contract. The [Contract Risk Assessment Matrix](#) provides guidance on how to assess this risk. If the risk is higher, then more rigorous evidence will be required to satisfy this Procedure and [Contract Best Practice Guidelines](#). If the risk is lower, then significantly less detail and documentation will satisfy this Procedure and [Contract Best Practice Guidelines](#). One is then responsible and accountable for one's risk assessment and decision.

## Section 3 - Definitions

(5) Nil

## Section 4 - Policy / Regulation

(6) [Contracts Policy](#)

## Section 5 - Procedures

### Part A - Summary of Roles and Responsibilities

Roles	Responsibility
Contract Manager	The person responsible for each particular stage of the Contract life-cycle. The Contract Manager may be someone in the relevant business area, or it may be someone in a specialised VU department with responsibility over a grouping of contracts.
Contract Signatory	The person responsible for signing the Contract in accordance with VU's Delegations and Authorisations Policy, and also perhaps an additional specialised procedure, or a specialised process detailed in Appendix A (pending).
VU specialist advice areas	University areas responsible for providing advice, to the extent of their specialisation, to the Contract Manager (ie. Office of the General Counsel, Insurance, Risk Management, Research, Compliance, International, Industry Engagement, etc).

### Part B - Procedures

(7) These are the steps to follow when contracting at VU. Each is explained in further detail in both this Procedure and in the [Contract Best Practice Guidelines](#) which supports this Procedure.

- a. Step 1: Make sure there is a Contract Manager
- b. Step 2: Plan for the Contract (as appropriate, this includes a risk assessment, preparing a Business Case, performing due diligence, and seeking specialist advice)
- c. Step 3: Find out if the Contract & Undertaking is in a Certain Field with Special Rules
- d. Step 4: Settle the Terms of a Contract
- e. Step 5: Execute or Sign the Contract
- f. Step 6: Manage & Monitor the Contract After Execution
- g. Step 7: What to do if there is a Dispute
- h. Step 8: What happens when the Contract Ends or is Renewed
- i. Step 9: Ensure Compliance with this Procedure and related Policy

(8) The detail that satisfies the Policy and its Procedures is proportional and dependent on individual circumstances: it is balanced with an assessment of the risk involved in the Contract or Undertaking.

(9) This means one must weigh the commercial realities, and the risk involved in the Undertaking or Contract, and then decide what amount of detail will satisfy the principles involved. One is then responsible and accountable for that assessment and decision.

(10) At the same time, VU's interests as a whole obviously need to be protected. VU needs comfort that the responsibility given is exercised appropriately.

(11) This means ensuring that risk and cost are managed well and within individual budgets; that benefits and efficiency are maximised; that there is appropriate reporting; and the University's strategic objectives and each individual area's business plan are supported.

(12) As a baseline, this Procedure and [Contract Best Practice Guidelines](#) should always be complied with.

(13) However, it is dependent on the risk as to what level of detail satisfies the requirements of the Procedure and [Contract Best Practice Guidelines](#). If the risk is higher, then more rigorous evidence will be required to satisfy this Procedure and [Contract Best Practice Guidelines](#). If the risk is lower, then significantly less detail and documentation will satisfy this Procedure and [Contract Best Practice Guidelines](#).

(14) Please see the [Contract Risk Assessment Matrix](#) and the [Contract Best Practice Guideline's](#) section on risk assessment for guidance on how to assess the risk of the Contract and Undertaking.

(15) Only Contracts meeting a particular risk threshold need be referred to the Office of the General Counsel for document review. It is dependent on the risk of the Contract and Undertaking as to whether legal advice is needed. If the risk inherent in the Contract or Undertaking is above "Moderate" (according to the [Contract Risk Assessment Matrix](#)), then the Contract Manager should seek advice from the Office of the General Counsel and their review of documents. If the risk is lower than "Moderate", there is no need to seek advice from the Office of the General Counsel, unless the Contract Manager is not certain about the risk assessment and impact of the Contract or Undertaking.

(16) If a Contract Manager is confident that they understand the impact of the Contract and Undertaking, and they consider the risks are acceptable to the University, they do not need to seek advice from the Office of the General Counsel. This is a question of proportion, and the Contract Manager bears responsibility for their decision on this point.

(17) Of course, no matter what the risk assessment threshold is if a Contract Manager or anyone ever has a legal question, they can contact the Office of the General Counsel.

### **Step 1: Make sure there is a Contract Manager**

(18) There should always be someone managing, facilitating and responsible for the Contract throughout the entire [Contract life-cycle](#).

(19) It doesn't have to be the same person at each stage, and of course, each unit at the University will have their own unique contracting process, but there must be someone responsible and accountable for the Contract at all times.

(20) This person is called the Contract Manager.

(21) Please see the [Contract Best Practice Guidelines](#) for more detail on the Contract Manager.

### **Step 2: Plan for the Contract**

(22) As appropriate, when planning a Contract - and before beginning to negotiate or draft the Contract - the Contract Manager must at a minimum perform a risk assessment (guided by the [Contract Risk Assessment Matrix](#) and the [Contract Best Practice Guidelines](#)), prepare a Business Case, perform due diligence, and seek specialist contracting advice where needed.

(23) The level of planning needed will vary from Contract to Contract, and according to the commercial judgement of the Contract Manager, their supervisor, and the business realities of their relevant business area. The level of planning will also depend on the assessment of the risk of the Contract or Undertaking.

(24) Please see the [Contract Best Practice Guidelines](#) and the [Contract Risk Assessment Matrix](#) for more detail on how to properly plan for a Contract: including the risk assessment, Business Case, diligence, and specialist advice where

needed (in particular, the circumstances where a matter needs to be elevated to the Office of the General Counsel for specialist advice, and when it definitely doesn't).

### **Step 3: Find out if the Contract & Undertaking is in a Certain Field with Special Rules**

(25) In certain fields and situations (such as international affairs, industry engagement, or research), there are additional special rules to follow regarding who must review particular types of Undertakings.

(26) In these circumstances, Contracts cannot be executed, nor the Undertaking conducted unless areas or individuals who have specific responsibilities for such Undertakings have been involved and provided with sufficient information to make an informed decision that the Undertaking may proceed. The Contract Manager should ensure compliance with these policies or processes.

(27) As appropriate, where the proposed Contract or Undertaking involves or impacts multiple specified fields, then the Contract Manager must consult with and involve all relevant stakeholders and impacted areas and comply with the requirements of each specialised field.

(28) Where a Contract is subject to an additional specialised procedure or process, then both this general Contracts Procedure and the specialised procedure should be adhered to.

### **Step 4: Settle the Contract Terms**

(29) When negotiating a Contract the Contract Manager must ensure that they, and every other person acting on behalf of VU, conduct themselves in accordance with the principles in the [Contracts Policy](#) or any additional specialised process.

(30) The Contract Manager must ensure that the terms of the Contract are consistent with the principles contained in the [Contracts Policy](#).

(31) The Contract Manager should make sure that no binding commitments are given before all terms have been agreed and signed-off by the appropriate VU person.

(32) The Contract Manager should determine if a VU contract template exists which is appropriate for use in the Undertaking. Templates are available via the Office of the General Counsel website. These templates are updated by the Office of the General Counsel periodically to address changes in the law and to improve their application, so every template must be downloaded from the Office of the General Counsel website immediately before it is used to ensure it is not outdated.

(33) If a suitable template does exist, the Contract Manager should:

- a. Where possible, provide the other party/ies with the template at the outset (so that even if it is not accepted by the other party in full, it forms the basis of the subsequent negotiation); and
- b. Secure advice as to the legal impact of any changes to a template from the Office of the General Counsel, if required and if the risk of the Contract or Undertaking is significant.

(34) If a suitable template does not exist, the Contract Manager should:

- a. Consult with the Office of the General Counsel so that an appropriate Contract can be prepared; and
- b. Inform the Office of the General Counsel of the likelihood of Undertakings of this nature recurring, so that the Office of the General Counsel can appropriately prioritise turning this ad hoc Contract into a future template.

(35) Where the risk assessment necessitates it, if the other party is providing a Contract to VU (ie. it is not a VU Contract) the Contract Manager should provide this Contract to the Office of the General Counsel (together with the

Business Case) for advice.

(36) Please see the [Contract Best Practice Guidelines](#) for more detail on settling the terms of a Contract.

### **Step 5: Execute or Sign the Contract**

(37) The Contract Manager is responsible for liaising with all contracting parties and relevant University staff to ensure the Contract is executed or signed properly and by the correct VU person (according to VU's Delegations & Authorisations Policy(the Contract Signatory)).

(38) The Contract Manager is responsible for ensuring that a Contract is in place prior to the performance or commencement of any obligations under the Contract. Except in exceptional circumstances, Contracts should not be completed or executed retrospectively.

(39) See the [Contract Best Practice Guidelines](#) for more detail on execution of Contracts or deeds.

### **Step 6: Manage & Monitor the Contract After Execution**

(40) As needed under the circumstances, the Contract Manager must pro-actively manage and monitor performance under the Contract, ensure all appropriate communication, diarise all appropriate dates, keep all appropriate records, and provide all appropriate reports relating to the Contract.

(41) If the obligations of any party (including VU) change in the course of performing an Undertaking, then this is a variation of the Contract. The Contract Manager must ensure that any amendment or variation to the Contract is fully documented and recorded. The document recording the variation is itself a Contract, and this Procedure and related [Contracts Policy](#) apply to it just as they do to the original Contract.

(42) Please see the [Contract Best Practice Guidelines](#) for more detail on how to manage and monitor the contract after execution.

### **Step 7: What to do if there is a Dispute**

(43) Sometimes an Undertaking goes so wrong that it cannot be amicably corrected as part of the ordinary course of the parties' relationship (ie. corrected by a Contract variation). For example, parties' expectations may not be met, there may be a dispute, there may be a breach, or there may be a claim made against VU. This results in a distressed Contract.

(44) As soon as possible after a distressed Contract is recognised, the Contract Manager must provide notice to all relevant people, including all relevant information.

(45) The Contract Manager is responsible for resolving the distressed Contract in the best interests of VU unless specific responsibility for resolving the issue is assumed in writing by another appropriate person at VU.

(46) Any decision to commence or defend legal proceedings must have prior approval from the Office of the General Counsel.

(47) Please see the [Contract Best Practice Guidelines](#) for more detail on what to do if there is a dispute.

### **Step 8: What happens when the Contract Ends or is Renewed**

(48) Prior to the end of the Contract, the Contract Manager should assess whether the Contract might be renewed/extended or ended/transitioned out.

(49) If the Contract is to be extended or renewed with the same party, then this is a Contract variation.

(50) At the end of a Contract or Undertaking, as appropriate, the Contract Manager should ensure all final administrative and operational arrangements have been taken care of, evaluate and review the Contract performance and experience and record some form of appraisal, and ensure all appropriate records are stored and retained in accordance with VU's [Records Management Policy](#).

(51) Please see the [Contract Best Practice Guidelines](#) for more detail on closing out or renewing a Contract.

#### **Step 9: Ensure compliance with this Procedure and related Policy**

(52) If there is a breach of these Procedures, everyone must seek to ensure that VU is not exposed to unacceptable risk and must employ appropriate mitigation and rectification strategies, including notifying the Office of the General Counsel and all other appropriate people at VU of the breach. This may include preparing and recording required documents, obtaining appropriate approvals, or ensuring that a Contract is put in place.

## **Section 6 - Supporting Documents and Information**

(53) [Contract Risk Assessment Matrix](#)

(54) [Contract Best Practice Guidelines](#)

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	31st May 2019
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<b>Accountable Officer</b>	Trish Roberts Deputy Chief Financial Officer trish.roberts@vu.edu.au
<b>Responsible Officer</b>	Lisa Filippin General Counsel lisa.filippin@vu.edu.au
<b>Enquiries Contact</b>	Lisa Filippin General Counsel lisa.filippin@vu.edu.au <hr/> Office of the General Counsel