

# Contract Best Practice Guidelines

This Contract Best Practice Guidelines supports the [Contracts Policy](#) and [Contracts Procedure](#) , and should be read in conjunction with them.

## Section 1 - Make sure there is a Contract Manager

(1) This section provides advice and assistance on how to appoint a Contract Manager and broadly what they should do. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(2) The Contract Manager may not perform every task described in the Procedure or this Best Practice Guidelines themselves, but they are responsible for ensuring it is done. The Contract Manager may authorise another staff member to perform particular functions, but remains responsible as Contract Manager. The Contract Manager may also have the right to delegate under VU's [Delegations & Authorisations Policy](#) .

(3) A Contract must have a Contract Manager, but not more than one at any given time.

(4) The person first involved in a Contract becomes responsible for that Contract and is the Contract Manager, unless and until another person is designated. (If the potential value of the Contract is outside their financial delegation according to VU's [Delegations & Authorisations Policy](#), then a first Contract Manager must be appointed by a suitably authorised person).

(5) Where a Contract is likely to be performed over a number of distinct phases or stages, a different Contract Manager may be appointed for each phase or stage. This means that the Contract Manager role and responsibility may shift from one person to another at different stages of the Contract lifecycle.

(6) The Contract Manager should ensure their supervisor approves their status as Contract Manager.

(7) The supervisor of the Contract Manager must make sure that the Contract Manager is a staff member proximate to the Contract at the business level, closely connected with the University project the subject of the relevant Contract, with appropriate skill and experience to carry out their responsibility as Contract Manager.

(8) The Contract Manager may be someone in a specialist VU area with responsibility over a grouping of contracts (ie. VU's Procurement department has responsibility for all procurement contracts).

(9) Once appointed, the name/position of the Contract Manager (or Contract Managers at different stages) must immediately be included in the [Business Case](#) .

## Section 2 - Plan for the Contract

(10) This section provides advice and assistance for Contract Managers on how to properly plan before entering into a Contract. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(11) As a baseline, this Best Practice Guidelines and the [Contracts Procedure](#) should always be complied with. However, it is dependent on the risk as to what level of detail satisfies the requirements of the Procedure and Best Practice Guidelines. The [Contract Risk Assessment Matrix](#) provides guidance on how to assess the risk of the Contract

and Undertaking. The more severe the consequences of the risk, or the more likely those risks will occur, then more rigorous evidence will be required to satisfy this Procedure and Best Practice Guidelines. If the risk is lower, then significantly less detail and documentation will satisfy this Procedure and Best Practice Guidelines. It is a matter of proportion, and the Contract Manager bears responsibility for making the decision about proportion.

(12) When planning a Contract (before beginning to negotiate or draft the Contract) the Contract Manager:

- a. Must ensure that every Undertaking in which either VU or another party are to commit resources is documented in a written Contract (unless specifically excluded in the Procedure and related [Contracts Policy](#) ). Unless there are exceptional circumstances, no dealings should be commenced, no resources should be expended, no goods or services should be procured or provided, and no commitment (written or verbal) should be made which may be legally binding on VU, until a Contract has been finalised and executed in accordance with this Procedure (and related Policy);
- b. Is responsible and accountable for complying with the [Contracts Policy](#) throughout the contracting process (ie. acting in good faith, addressing conflicts of interest, assessing benefits and risks, performing obligations efficiently, monitoring performance, etc);
- c. Must conduct a risk assessment in accordance with the Contract Risk Assessment section of this Best Practice Guidelines , the [Contract Risk Assessment Matrix](#), and VU's [Risk Management Policy](#) and [Procedure](#) ;
- d. Must prepare the Business Case for the specific Undertaking, and so must fully understand the nature of the Undertaking (including the resources that will need to be committed, the timeframes, milestones, targets, standards and deliverables, the risks and benefits) to ensure the Contract achieves the purposes for which it was developed. The Contract Business Case section of this Best Practice Guidelines provides advice and assistance on how to draft and maintain the [Business Case](#) ;
- e. Must review and update the Business Case to ensure it is kept current until the Contract is executed; retain the Business Case as an essential record under VU's [Records Management Policy](#) ; ensure the Business Case is reviewed and approved by the person or people responsible for allocating the VU resources needed for the Undertaking to proceed; and provide the Business Case to everyone involved with the Contract and Undertaking, including the Contract Signatory, to ensure everyone can make fully informed decisions;
- f. Must conduct a Due Diligence Check to assess the other party's suitability as a contracting party. This Check should be proportionate to the risk and value of the Contract. Contracts that are (i) of low value, or (ii) low risk, or (iii) with a known contracting party will generally require less due diligence enquiry than Contracts involving high risk or high value or in cases where the contracting party is unknown to the University. For complex, risky or high value arrangements, the Contract Manager should consult with Legal Services. The Due Diligence Guidelines in this Best Practice Guidelines provide advice and assistance on how to perform the Due Diligence Check;
- g. Must find out whether there are additional external obligations or implications in respect of the proposed Contract or Undertaking, and review and understand these in order to comply with them. This will involve, in part, a review of the [Compliance section](#) in the VU intranet For example:
  - i. whether there are legal, regulatory or compliance obligations or implications in respect of the proposed Contract or Undertaking? (ie. privacy, OH&S, copyright, Education Services for Overseas Students Act 2000, Australian Competition and Consumer Law Act 2010, terrorism or war crimes listed in regulations under the Commonwealth Criminal Code Act 1995);
  - ii. whether the executed Contract is required to be registered with a relevant regulatory entity (eg. certain leases, charges and securities); or
  - iii. whether stamp duty is payable with respect to the Contract.
- h. If there are questions or concerns regarding external contracting obligations or implications, refer to VU's Compliance department or Legal Services ;
- i. Must find out whether there are additional internal University obligations or implications in respect of the proposed Contract or Undertaking, and review and understand these in order to comply with them. This will

involve, in part, a review of the [Compliance section](#) in the VU intranet For example:

- i. whether the VU Commercial Guidelines (the "Guidelines concerning commercial activities" in accordance with Part 6, Division 6 of the [Victoria University Act 2010](#)) apply to the Contract or Undertaking; or
  - ii. whether the Undertaking and Contract are subject to a specialised process or procedure in addition to this Contracts Procedure.
- j. Must involve and seek advice from relevant specialist areas at VU, to the extent of their specialisation (such as Legal Services, Procurement, Insurance, Risk Management, Research, Compliance, International, Industry Engagement, etc). This advice and input should be sought, as appropriate, throughout the contracting process and over the entire period of the Undertaking. The Specialist Contracting Advice section in this Best Practice Guidelines provides assistance on how and when to seek specialist advice from within VU;
- k. Must involve any required stakeholders and provide them with the following, in advance and with as much lead time as possible:
- i. the Business Case (which includes resourcing ramifications);
  - ii. an explanation of what sort of input or advice is required;
  - iii. the preferred timeframe for the negotiation and execution of the Contract; and
  - iv. any other relevant information.
- l. Must ensure that the University's governance arrangements, such as delegations and authorisations requirements contained in the [Delegations & Authorisation Policy](#) and Procedures , are obtained or complied with throughout the contracting process. The Contract Manager must determine which University staff member can approve and sign the contract, and must involve that person to ensure that they can make fully informed decisions. The Contract Manager must obtain all approvals for the Contract and Undertaking (including necessary support from senior management);
- m. Is responsible for compliance with the University's records requirements contained in the [Records Management Policy](#) and [Procedures](#) (for example, with respect to storage, management and filing of the executed Contract) and for maintaining necessary records throughout the contracting process; and
- n. Must consider whether any perceived, potential or real conflict of interest could arise at any point in the Undertaking, and address it appropriately. The Contract Manager should make themselves familiar with the provisions in the VU [Staff Code of Conduct](#) Policy regarding conflicts and VU employees.

## Section 3 - Perform Contract Risk Assessment

(13) This section provides advice and assistance for Contract Managers on how to perform a risk assessment before entering into a Contract. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(14) As appropriate, the Contract Manager should pro-actively research and identify the risks (legal, reputational, commercial or practical) to VU in conducting the Undertaking and entering into the Contract.

(15) The Contract Manager should identify all practical measures that would mitigate or minimise those risks (whether through the implementation of specific processes or management, or other mitigation strategies). Please see the [Contract Risk Assessment Matrix](#) for guidance on how to assess the risk of the Contract and Undertaking.

(16) As a baseline, this Best Practice Guidelines and the Contracts Procedure should always be complied with. However, it is dependent on the risk as to what level of detail satisfies the requirements of the Procedure and Best Practice Guidelines. The risk assessment should be reasonable and proportionate: the more severe the consequences of the risk, or the more likely those risks will occur, then the more rigorous and detailed the risk assessment should be. If the risk is higher, then more rigorous evidence will be required to satisfy this Procedure and Best Practice Guidelines. If the risk is lower, then significantly less detail and documentation will satisfy this Procedure and Best Practice Guidelines.

(17) The Contract Manager should review and comply with VU's Risk Management Policy and Procedures and organize a risk consultation and assessment if appropriate.

(18) The Contract Manager should understand and address any insurance implications and requirements.

(19) Assessment of the risk should take place periodically throughout the contracting process and over the entire period of the Undertaking.

(20) The responsibility for assessing the net risk and benefit to VU of an Undertaking, and deciding whether or not to enter a given Contract, remains with the person executing the Contract.

(21) The party best placed to control the risk in a Contract or Undertaking (and therefore to prevent the risk from creating actual damage) is ordinarily liable under the Contract for the resulting loss.

## Section 4 - Prepare a Contract Business Case

(22) This section provides advice and assistance for Contract Managers on how to draft the document called the "[Business Case](#)", an essential record required as part of the due diligence process for every Undertaking involving a Contract. It provides instruction on how to assess and quantify the resources that will need to be committed, the timeframes, and the deliverables and KPIs, all with respect to a Contract or Undertaking. It supports then [Contracts Policy](#) and [Contracts Procedure](#).

(23) The Contract Manager should create an initial Business Case before beginning to negotiate a Contract. This is necessary for each Undertaking, and may be necessary for each Contract (unless it is part of a suite of Contracts dealing with a similar issue).

(24) It is dependent on the risk of the Contract and Undertaking as to what level of detail is needed in the Business Case. The previous section advised how to perform an assessment of the risk using the [Contract Risk Assessment Matrix](#) for guidance. If the risk inherent in the Contract or Undertaking is higher, then greater detail is required in the Business Case. If the risk is lower, then significantly less detail and documentation is required in the Business Case. It is a matter of proportion, and the Contract Manager bears responsibility for making the decision about proportion.

(25) Preparing the Business Case requires the Contract Manager to fully understand the nature of the Contract and Undertaking (including the resources that will need to be committed, the timeframes, milestones, targets, standards and deliverables) to ensure the Contract achieves the purposes for which it was developed.

(26) The Business Case should be retained as an essential contracting record.

(27) The Contract Manager should review the Business Case periodically throughout the Undertaking and update it as necessary to reflect changing circumstances.

(28) The Contract Manager should ensure that the Business Case (and every update to it) is reviewed and approved by the person or people responsible for allocating the VU resources needed for the Undertaking to proceed.

(29) The Contract Manager should provide the Business Case to everyone involved with the Contract and Undertaking. This includes to those VU specialty areas where advice is sought, to those deciding whether to enter into the Contract, and to the person executing the Contract. This is to ensure everyone fully understands the nature of the Undertaking, and can make an informed assessment of the benefit and risk to VU and the best interests of VU.

(30) If any Undertaking constitutes a "commercial activity" under the VU Commercial Guidelines (in Part 6, Division 6 of the [Victoria University Act 2010](#)), then the Contract Manager should ensure that the Business Case and the due diligence process accords with the VU Commercial Guidelines as well as with this Procedure.

(31) The Business Case can be a document (in any form) summarizing the key facts of the Undertaking, including:

- a. The purpose and objectives of the Contract and Undertaking;
- b. The identities of all involved in the Undertaking (including parties to the Contract/s) and the nature of their involvement;
- c. The identity/position of the Contract Manager/s for that particular Contract and Undertaking;
- d. The term (start and finish dates) of the Undertaking and the Contract;
- e. The nature of the deliverables: what needs to be done or delivered; to what standard; and in what timeframe. Contract deliverables can also be thought of as a statement of works/requirements/specifications, and should describe and explain the arrangements proposed by the Contract or Undertaking. Contract deliverables may be described in terms of required results or outcomes (rather than on inputs and processes) to allow for operational flexibility and innovation. Where there is little scope for flexibility, it may be more appropriate for deliverables to be described more prescriptively;
- f. How performance or the success of the contract or Undertaking will be measured (ie. quantity, quality, timeliness);
- g. The resources that will need to be committed by the parties over the life of the Undertaking (and determining whether the University has the available expertise and resources to perform its obligations as envisaged);
- h. An assessment of the parties' capacities to perform their obligations in light of the required timeframes;
- i. Any aspects of the Undertaking that are not within either party's control;
- j. Whether a reasonable business case exists for entering into a proposed Contract. For Contracts dealing with large, risky, complex or significant arrangements, the business case may need to be documented in a proposal for approval by the head of the relevant business unit or by senior management;
- k. The benefits (legal, reputational, commercial or practical) to VU in the Contract and conducting the Undertaking. Assessment of the benefits should take place periodically throughout the contracting process and over the entire period of the Undertaking;
- l. The risks (legal, reputational, commercial or practical) to VU in conducting the Undertaking (based upon a review of VU's [Risk Management Policy](#) and [Procedure](#) and a risk consultation and assessment if appropriate, and using the Contract Risk Assessment Guidelines in this Best Practice Guidelines ). The Contract Manager should pro-actively research and identify the risks of the Undertaking and the Contract, and identify practical measures that would mitigate those risks. The risk assessment should be reasonable and proportionate: the more severe the consequences of the risk, or the more likely those risks will occur, then the more rigorous and detailed the risk assessment should be. The Contract Manager should review and comply with VU's [Risk Management Policy](#) and [Procedure](#) and understand and address insurance implications and requirements. Assessment of the risk should take place periodically throughout the contracting process and over the entire period of the Undertaking. The responsibility for assessing the net risk and benefit to VU of an Undertaking and deciding whether or not to enter a given Contract remains with the person executing the Contract. The party best placed to control the risk in a Contract or Undertaking (and therefore to prevent the risk from creating actual damage) should ordinarily be liable under the Contract for the resulting loss;
- m. All practical ways that any risks can be minimized (whether through the implementation of specific processes or management, or other mitigation strategies);
- n. A budget and balance sheet for the Undertaking in which every identified risk and benefit should be assigned a dollar value;
- o. Any issues that VU considers to be important or non-negotiable;
- p. The link between VU's strategic objectives and that particular Contract and Undertaking; and
- q. Any important or unusual circumstances which are specific to the Undertaking.

(32) As appropriate, all of the above key facts should be reassessed periodically throughout the contracting process and over the entire period of the Undertaking.

## Section 5 - Perform Contract Due Diligence

(33) This section provides advice and assistance for Contract Managers on how to perform the essential due diligence process for every Undertaking involving a Contract. The due diligence process is performed to assess the other party's suitability as a contracting party. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(34) As appropriate, the Contract Manager should perform a Due Diligence Check before beginning to negotiate a Contract. It is dependent on the risk of the Contract and Undertaking as to what level of due diligence checking is required. A previous section advised how to perform an assessment of the risk using the [Contract Risk Assessment Matrix](#) for guidance. If the risk inherent in the Contract or Undertaking is higher, then greater due diligence checking is required. If the risk is lower, then significantly less due diligence checking is required. It is a matter of proportion, and the Contract Manager bears responsibility for making the decision about proportion.

(35) The Due Diligence Check results should be retained as an essential record under VU's records management rules.

(36) The Due Diligence Check does not have to be completed where the other party is generally regarded as being reputable and of sound financial standing. If this assessment is made, it should be clearly stated in the Contract Business Case with reasons why that assessment was made.

(37) The Contract Manager should identify the correct legal entity that the University is contracting with. This can be determined using the other contracting party's ABN or ACN. Websites such as "ABN Lookup" and "ASIC" websites can provide basic details about the other contracting party. There may be different implications depending on the type of legal entity, which should be discussed with Legal Services . The Contract Manager should consider:

- a. Is the University dealing with a sole trader, trust, partnership or company? There may be different implications in each scenario. In particular, if the other party is an independent contractor, there are potential insurance implications (professional liability and public liability) which should be considered and potentially discussed with Insurance Services.
- b. Is the other party in Administration, Liquidation or Receivership? If so, the University should not deal with them.
- c. Is the company a private or public company? There are different implications for each, for example a public company is required to disclose more information about their operations.

(38) The Contract Manager should determine the financial stability of the other party. Credit Reports can be ordered and purchased from external credit agencies (ie. Dunn & Brad Street Report) through Financial Services . For larger, complex or riskier Contracts and Undertakings, it is important to know that the other party is financially sound and the small cost of obtaining these reports can provide some comfort.

(39) The Contract Manager should evaluate the insurance requirements with respect to the Contract. If required, the Contract Manager should request copies of the Insurance Certificates of Currency from the other contracting party, and determine whether the insurance is adequate in the circumstances. These Certificates disclose the type and level of insurance cover held by the other party. These certificates are valid only for a defined period, so the Contract Manager should ensure that the other party provides evidence of any renewal of its certificate and that they are informed of any changes to insurance levels or insurance provider. The University's templates and insurance rules set out the minimum level of insurance required. The University risks being financially exposed if it deals with an uninsured contracting party and a dispute arises or losses are suffered. See the University's Insurance unit for further advice.

(40) The Contract Manager should assess the reputation of the other contracting party. An internet (ie. Google) search may be sufficient to reveal any major issues or concerns such as financial difficulty, legal disputes, or poor business history. The University's reputation can be affected by being associated with a non-reputable party.



(41) The Contract Manager should assess the track record and suitability of the other party to take part in this particular Contract or Undertaking with the University. Considerations may include the other contracting party's:

- a. Track record and history of service;
- b. Size of its organization and breadth of its operations;
- c. Assets and number of staff; and
- d. Relevant expertise and technical skills.

## Section 6 - Obtain Specialist Contracting Advice

(42) This section provides advice and assistance for Contract Managers on how to seek specialist advice from within VU about Contracts. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(43) The Contract Manager should involve, and seek advice from, all responsible parties in relevant VU specialist units to the extent of their specialization, regarding:

- a. legal implications;
- b. compliance implications;
- c. risk management implications;
- d. insurance implications;
- e. procurement/purchasing issues;
- f. commercialisation implications;
- g. academic matters;
- h. research matters;
- i. international activities;
- j. industry engagement;
- k. financial considerations;
- l. intellectual property implications;
- m. physical space implications;
- n. human resources implications; and
- o. marketing implications.

(44) The Contract Manager should be aware that Undertakings can have significant lead times, or may be viable only if they are undertaken immediately. They should also be aware that all VU specialist units will have varying workloads and strategic priorities, which will impact their ability to control the timing of their input.

(45) The Contract Manager should first review the information on the particular VU specialty unit's website. There may be a risk threshold that should be met before needing to refer a Contract to the VU specialty area (for example, only Contracts meeting a particular risk threshold need be referred to Legal Services, see below).

(46) After reviewing the relevant website, the Contract Manager should next contact the specialty unit for advice.

(47) When seeking advice, the Contract Manager should provide each specialty unit with the following, in advance and with as much lead time as possible:

- a. the Business Case;
- b. an explanation of what sort of input or advice is required;
- c. the preferred timeframe for the negotiation and execution of the Contract; and

d. any other requested information.

(48) Each VU specialty unit should promptly acknowledge receipt of the Contract Manager's request for input, and inform the Contract Manager if the preferred timeline needs to be amended. Each specialty area should try to provide their input so as to preserve and promote VU's ability to take advantage of opportunities.

(49) Please see the websites of other VU specialist units and shared services for information regarding the advice they provide and how and when to contract them.

### **Obtaining advice from Legal Services**

(50) Legal Services provides advice as to the legal risks involved in an Undertaking, and ways to reduce or manage those risks in a Contract. The impact of the legal risks in any given Contract varies with the circumstances of each Undertaking. Without knowing the legal risks, anyone involved in negotiating and executing a Contract cannot be fully informed.

(51) Only Contracts meeting a particular risk threshold need be referred to Legal Services for document review. It is dependent on the risk of the Contract and Undertaking as to whether legal advice is needed. A previous section advised how to perform a risk assessment using the [Contract Risk Assessment Matrix](#) for guidance. If the risk inherent in the Contract or Undertaking is above "Moderate", then the Contract Manager should seek advice from Legal Services and their review of documents. If the risk is lower than "Moderate", there is no need to seek advice from Legal Services - unless the Contract Manager is not certain about the risk assessment and the impact of the Contract or Undertaking.

(52) 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 Legal Services. This is a question of proportion, and the Contract Manager bears responsibility for their decision on this point.

(53) Of course, no matter what the risk assessment threshold is, if a Contract Manager or anyone ever has a legal question, they can contact Legal Services.

(54) Advice should definitely be sought from Legal Services where:

- a. Significant legal issues are involved (for example where a guarantee or indemnity is given limiting the liability of the other party if there is a contract breach or negligence);
- b. The contract is complex or high risk (for example relating to intellectual property, research commercialization or consultancy, international contracts, or non-VU standard clauses);
- c. It is unclear whether the Contract is legally binding;
- d. The Contract requires more complex execution formalities (for example under seal);
- e. The Contract is not a VU template and has been developed by a non-VU party; or
- f. There is any uncertainty or ambiguity about what anything in the Contract means.

(55) The Contract Manager should still follow all the steps described above in sections 1-6 of this Best Practice Guidelines and provide this information to Legal Services when seeking advice.

## **Section 7 - Settle the Contract Terms**

(56) This section provides advice and assistance for Contract Managers on how to settle the Contract terms - meaning how to negotiate, and prepare or draft, the Contract. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(57) When negotiating a Contract the Contract Manager should ensure that they, and every other person acting on



behalf of VU, conduct themselves in accordance with the principles in the [Contracts Policy](#) . These include:

- a. Acting in good faith;
- b. Dealing with other parties on an arm's length basis;
- c. Not making false or misleading statements;
- d. Acting in the best interests of the University;
- e. Not making any commitment (whether written or verbal, which may be legally binding on VU before the contract has been executed; and
- f. If applicable, complying with the procedures mandated in the VU Commercial Guidelines

(58) The Contract Manager should ensure that the terms of the Contract are consistent with the principles contained in the [Contracts Policy](#) and, where applicable, the directions in any specialised contracting procedure.

(59) The Contract Manager should review and if necessary revise the Business Case on an ongoing basis as the negotiation proceeds (the Business Case only becomes a finalised, historical document upon signing of the Contract).

(60) The Contract Manager should:

- a. Ensure that the drafting is clear, complete, accurate, unambiguous and not conflicting with other Contract terms and conditions;
- b. Pro-actively address the risks of the Undertaking and appropriately allocate each risk to the party that is best placed to control this, whether or not the risk materializes; and
- c. Identify and allocate all costs (either specifically or in categories), including payment of stamp duty or other government charges (if applicable) and allocate responsibility for complying with any external statutory or administrative requirements such as lodgement or registration (if applicable).

(61) Ensure that the Undertaking (including the nature of any services, the timeframes and the deliverables) are fully and unambiguously defined so that (if necessary) an outsider who reads the Contract can immediately understand what is going on, who is responsible for what, and could take over running the matter without needing to seek help. The deliverables should also be measurable and verifiable.

(62) Ensure that the processes written into the Contract are feasible and practicable, such as aligning payments to milestones and allowing sufficient time for VU's internal processes to operate (ie. processing invoices).

(63) The Contract Manager should determine the term (start and finish dates) of the Undertaking or Contract. Some Contracts contain options to extend their operation or term, and in such cases the term is calculated as follows:

- a. If VU alone has the right to exercise such an option, or alternatively if VU must give its consent before the exercise of an option by another party becomes effective, then the term of the Contract is the initial term of the Contract, without the extended dates in the option.
- b. If an option can be exercised independently of VU, or operates automatically unless active steps are taken to terminate the Contract, then the term of the Contract includes all extended dates in the option.

(64) Champion VU's rights and legitimate expectations and act in the best interests of VU. VU's rights and legitimate expectations should only be varied where it is reasonable in the circumstances. (For example, the following matters shouldn't need to be compromised:

- a. the rights of authors to be named as such;
- b. the rights to publish without censorship; and
- c. the fair allotment of ownership of intellectual property created during an Undertaking and the ability to use

materials created in future projects).

## Section 8 - Execute or Sign the Contract

(65) This section provides advice and assistance for Contract Managers on how to execute or sign a Contract or deed. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(66) 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 people according to VU's Delegations & Authorisations Policy (Contract Signatory) and that a Contract is in place before taking any action under the Contract. Contracts should not be completed retrospectively.

(67) A VU officer may only enter into a Contract if the notional value of the Undertaking is at or below the maximum amount of their financial delegation, as detailed in VU's Delegations & Authorisations Policy. The Contract Manager should determine the "value" of the Undertaking or Contract. Undertakings may involve VU and other parties providing cash (or not), services or other "in-kind" contributions (or a mixture of them). The notional value assigned to these Undertakings (and documented in the Business Case) is that of VU's total contribution over the life of the Undertaking.

(68) When having a Contract executed, the Contract Manager should ensure that:

- a. The Contract Signatory has the necessary authority to execute the Contract according to VU's Delegations & Authorisations Policy;
- b. Any additional requirements for authority to execute a Contract have been met;
- c. The Contract Signatory has the latest version of the Business Case and fully understands it;
- d. Each request for approval of the terms or execution of a Contract is accompanied by a Document Execution Form in the latest form accessible from the Legal Services website;
- e. All necessary details in the Contract are completed, including attachments and the contents of schedules;
- f. The Contract is dated at the time of execution;
- g. All individuals or units with a role in the process have participated as required;
- h. The people at VU who are to perform VU's obligations under the Contract fully understand the Undertaking and the obligations of everyone under the Contract;
- i. A Contract is in place prior to the performance or commencement of any obligations under the Contract (Contracts should not be completed retrospectively); and
- j. The other party/ies are individuals or corporate entities, and their execution of the Contract will also be binding.

(69) When Contracts are executed as deeds the Contract Manager should comply with the [Common Seal Regulation 2013](#) .

(70) After having the Contract executed, the Contract Manager is responsible for complying with the University's records management rules in accordance with VU's Records Management Policy. The Contract Manager should:

- a. Provide the original (fully executed) Contract and any variations to Record Services;
- b. Retain a copy for the Contract Manager's own files; and
- c. Where Legal Services has provided input, a copy of the executed Contract to Legal Services.

(71) Further information regarding recordkeeping obligations can be accessed on Record Services' website.

(72) The Contract Manager should immediately ensure that any subsidiary agreements needed by the executed Contract are also prepared and executed (if this has not already been done).

## Section 9 - Manage & Monitor the Contract After Execution

(73) This section provides advice and assistance for Contract Managers on how to manage and monitor the Contract after execution. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(74) As appropriate to the risk of the Undertaking, the Contract Manager should:

- a. pro-actively and regularly manage the performance of the contracting parties (including VU) and all relationships involved, through good lines of communication, so that all parties' expectations are met, disputes are avoided (where possible), and VU's reputation is increased;
- b. benchmark performance against the expectations detailed in the Business Case and the Contract;
- c. ensure arrangements are in place to monitor the key deliverables, outcomes, timeframes, milestones and KPIs in the Contract;
- d. keep written records of all dealings and communications regarding the Contract, and its administration and performance, and maintain and file these records in the appropriate Contract file, document repository or system;
- e. diarise important dates (for example, an option to renew) with respect to the Contract;
- f. ensure arrangements are in place for the timely receipt and processing of any invoices and payments under the Contract (as applicable); and
- g. arrange for another person to be appointed (whether on a temporary basis or otherwise) in the event of absence from VU.

(75) As appropriate, the Contract Manager must provide reports as required under VU's Risk and Compliance requirements and also to:

- a. the VU sponsor or owner of the Contract or Undertaking;
- b. the head of the area which is primarily responsible for performing VU's obligations under the Contract; and
- c. any other relevant University employee;

(76) as necessary to keep them informed or to enable them to perform any obligation they may have with regard to the Contract or Undertaking.

## Section 10 - What happens when there is a Dispute

(77) This section provides advice and assistance for Contract Managers on what to do if there is a dispute. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(78) As soon as possible after a distressed Contract is recognised, the Contract Manager must provide written notice (which is also recorded in the appropriate Contract file or system) to:

- a. Legal Services;
- b. all stakeholders who have an interest in the Contract or Undertaking; and
- c. the Contract Signatory or the person who currently holds the equivalent position of the Contract Signatory; and
- d. Obtain all necessary advice from within VU.

(79) When notifying others that there is a distressed Contract, the Contract Manager must include:

- a. a copy of the Business Case as at the date the Contract was executed;
- b. a summary of the relevant conduct of the Undertaking;
- c. the reason why the Contract is a distressed Contract, including the evidence to support this conclusion;
- d. details of all steps taken to resolve the issue (both before and after it was recognised that it was a distressed Contract);
- e. suggested courses of action, the potential risks and benefits in adopting such courses, their likelihood of success and relevant time frames; and
- f. a recommended course of action, with details of why it is recommended.

## **Section 11 - What happens when the Contract Ends or is Renewed**

(80) This section provides advice and assistance for Contract Managers on what happens when the Contract ends or is renewed. It supports the [Contracts Policy](#) and [Contracts Procedure](#) .

(81) If the Contract is to end, and a new Contract be entered into with a different party for a similar Undertaking, the Contract Manager must ensure that transitional processes and arrangements are in place and are followed, such that VU suffers the least possible disruption.

(82) Where the University or the other contracting party seeks early termination (terminating a Contract before all obligations under the Contract have concluded) then the Contract Manager must seek advice from Legal Services.

(83) The Contract Manager must ensure all final administrative and operational arrangements have been taken care of at the end of the Contract. For example:

- a. De-activate any access or privileges (ie. IT, facility);
- b. Return (or recover) any goods or equipment to the relevant party;
- c. Ensure all records and confidential documents are returned to (or recovered from) the relevant party (noting that under VU's Records Management Policy, VU cannot destroy documents);
- d. Ensure final payment and acquittal of accounts.

(84) The Contract Manager must evaluate and review the Contract performance and experience and record some form of appraisal. This appraisal is to determine whether the University received value for money and whether the milestones, deliverables, outcomes or KPIs were met. Where an expectation was not met, the Contract Manager should document this in an attachment to the Business Case. The Contract Manager should also document any key lessons learnt from the Contract process or Undertaking in an attachment to the Business Case, and ensure this information is maintained or disseminated to the relevant University staff to ensure quality assurance.

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	9th December 2015
<b>Review Date</b>	9th August 2018
<b>Approval Authority</b>	Vice-Chancellor
<b>Approval Date</b>	3rd December 2015
<b>Expiry Date</b>	20th February 2017
<b>Responsible Officer</b>	Lisa Filippin General Counsel lisa.filippin@vu.edu.au
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