Contracts Policy

Section 1 - Purpose / Objectives

(1) The purpose of this Policy is to provide a streamlined and flexible process to empower you to grasp opportunities, be innovative and entrepreneurial in your work for VU, and importantly to allow you to take responsibility and accountability for your own contracts.

(2) The Policy aims to equip you with consistent and clear principles to follow when entering into and managing contracts, so as to ensure that the contracts VU enters into are in the best interests of the University.

(3) At the same time, VU needs comfort that the responsibility it has given you is exercised appropriately, so this Policy aims to ensure that risk and cost are assessed and managed well, that benefits and efficiency are maximised, that there is appropriate reporting, and the University's strategic objectives are supported.

Section 2 - Scope / Application

(4) This Policy applies to everyone across VU when they are involved in entering into or managing any contract (whether the contract is 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 engaging others to teach, or create learning materials, or to conduct research; and
c. Contracts where no money, goods or services passes hands (e.g. heads of agreement or memoranda of understanding).

(5) This Policy does not apply to:

a. Employment contracts (which are addressed separately under the relevant industrial instruments and People & Culture policies); and
b. Contracts involving procurement of goods or services for the University's end-use (which are addressed separately under the Purchasing Policy). Please note that teaching and research related agreements do not fall within the Purchasing Policy. Please also note that where VU is collaborating with others in teaching or research, where others are providing VU with direct input into the creation/preparation/delivery of outputs which are required to help meet VU's obligations to third parties, this is not considered to be for VU's "end-use".

Section 3 - Definitions

(6) Contracts means all agreements (no matter what they are called) between VU and at least one other non-VU party or parties (which can be individuals, partnerships, trusts or government or corporate entities):

a. Where either VU or the other party can reasonably expect the other to do what they said they will do in an

Undertaking; and

b. Where VU or the other party could sue or be sued if they don't do what they said they will do.

This includes:

a. Revenue-generating contracts for the sale of goods and/or services;
b. Any variation, extension or renewal of an existing contract; and
c. Heads of agreement and memoranda of understanding.

For more information about contracts, please see the Legal Services website.

(7) Undertaking means the whole project which the Contract is created to facilitate. This includes every stage of the Contract (from initial discussions until contractual obligations have concluded, including post-implementation review), and it includes the obligations of VU and the other party/ies. An Undertaking may involve several separate Contracts, each of which deals with a separate part.

Section 4 - Policy Statement

(8) You need to be able to grasp opportunities, and to be innovative, effective and entrepreneurial in your work. This helps the University as a whole achieve its strategic objectives. Contracting is an essential part of this work.

(9) You need to be able to have control over your work - including your contracting work. This obviously means you will also have responsibility and accountability for that work.

(10) The University intends that the contracting process be streamlined and flexible, to meet your needs. The Policy principles and the corresponding procedural process are not created to impose an unnecessary burden on your work.

(11) The detail that satisfies the Policy and its Procedures is dependent on individual circumstances: it is balanced with your own assessment of the risk involved in your Contract or Undertaking. This means you 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. You are then responsible and accountable for your assessment and your decision.

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

(13) To make all this happen, this Policy equips you with consistent, clear, general, over-arching principles to follow when entering into or managing contracts or agreements.

(14) With all Contracts, you must:

a. Not enter into Contracts unless the risk to VU of the Undertaking is known, appreciated, considered acceptable, and mitigated or dealt with (including through a risk assessment where applicable);
b. Fairly allocate the risk of an Undertaking to the party best able to control it;
c. Maximise benefits for the University (e.g. is there value-for-money? Are all obligations under the contract performed?); and
d. Maximise efficiencies across the University, including making sure you use the expertise of your colleagues in VU's shared services (such as legal, financial, risk, insurance, compliance, research, industry engagement, international and other expertise).

Part A - Core Contracting Responsibilities

(15) There should be a finalised, written Contract whenever VU or another party are committing resources in any way (except in exceptional circumstances, or if there is a specific exclusion in this Policy and related Procedures).

(16) Except in exceptional circumstances, this means that no commitment (written or verbal) should be made; no dealings should be commenced; no resources should be expended; no goods or services should be procured or provided, until there is a written, finalised Contract. This is so all obligations are clear and VU's position is protected. Otherwise, VU might end up with a legally binding commitment that was unintended and not fully considered.

(17) If the obligations of any party (including VU) change, then this is a variation of the Contract. Every variation must be documented. The document recording the variation is itself a separate Contract, and this Policy applies to it just as it does to the original Contract.

(18) When contracting you must:

a. Assign accountabilities to specific individuals for all aspects, and the entire period, of the Undertaking;
b. Perform obligations efficiently;
c. Appropriately monitor performance;
d. Ensure appropriate communication between all parties, throughout the entire period of the Undertaking, so that all have the same understanding and expectations; and
e. Assert any rights to enforce the contractual terms (within VU and with third parties) fairly and firmly.

(19) The whole time when working on an Undertaking and its Contract/s, you must:

a. Act in good faith with respect to VU and the other party/ies, dealing with everyone fairly;
b. Address any perceived, potential or real conflict of interest in a transparent manner, by disclosing it and appropriately managing it (if it relates to VU staff, in accordance with the VU Appropriate Workplace Behaviour Policy);
c. Not make statements that are false or misleading, or allow another party to continue negotiations where it is clear that it has an incorrect understanding of relevant circumstances;
d. Make clear at the outset who within the University has the authority to enter into the Contract - and ensure the other party understands VU will not be bound until it has been properly approved within VU; and
e. State and support the University's rights and legitimate expectations, maximising the benefits of the Undertaking, maximising value for money, protecting VU's reputation, and acting in the best interests of VU.

(20) You should only enter into Contracts which are:

a. Legally and operationally acceptable;
b. Good value for money and/or valuable in strategic terms;
c. Clearly, adequately and concisely documented; and
d. Consistent with this Policy and related Procedures, with the terms of VU's insurance and finance instruments, with other VU policies and with VU's strategic objectives.

Part B - Problems with an Undertaking or Contract

(21) If there is an actual or potential problem with a Contract or the relationship between the parties, whoever is responsible for the Contract at VU must promptly address the issue, and if appropriate escalate the issue within the University, so that the problem can be dealt with at an early stage and any risks mitigated.

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Part C - Documentation & Records

(22) In accordance with common and usual good-filing principles and practice, you should prepare, record and keep accurate and sufficiently-detailed documentation and records for all stages of the Contract and Undertaking. Relevant documents should be provided to particular University departments, or relevant stakeholders, whenever common sense judges this would be useful and whenever required (by the Procedures to this Policy and VU's Records Management Policy and Procedures).

Part D - Advice & Support

(23) As early as possible - perhaps even when just considering entering into a Contract - you should pro-actively obtain and use all necessary advice, support and resources from within VU. This includes:

a. Consulting key stakeholders where this makes sense;
b. Reviewing relevant VU Intranet resources for guidance (for example, relating to legal, financial, risk, insurance, compliance, research, industry engagement, international and other expert advice);
c. Using VU templates and tools where available and appropriate; and
d. Contacting VU shared services and specialist departments where required (for example, for legal, financial, risk, insurance, compliance, research, industry engagement, international and other expertise).

(24) When you seek support from within the University for contracting purposes, you should provide them with sufficient information and context about the proposed Contract and Undertaking, with adequate time for consideration and letting them know your critical dates, so that they can help achieve the common objectives.

Risk

(25) By entering into any Contract, VU must assume some risk. However, not all risk is bad.

(26) You should pro-actively research, raise, address and manage the risks of the Undertaking and Contract. The detail required to satisfy yourself (about the management and mitigation of the risk of the Undertaking) will necessarily be dependent on the risk of the Undertaking as a whole.

(27) Considering risk and identifying appropriate mitigation strategies should be done before entering into a Contract. This includes reviewing and complying with VU's Risk Management Policy and Risk Management Procedure, perhaps consulting with Risk Services if there are questions, and perhaps requesting a risk assessment from Risk Services where applicable.

(28) The responsibility for assessing the risk and benefit, and deciding whether or not to enter into the Contract, ultimately remains with the person executing the Contract.

(29) Where possible, the VU person or unit drafting or negotiating the Contract should try to limit the responsibility for, and impact of, the Contract to only those directly involved in the Undertaking, and minimise the responsibility and impact on other parts of the University.

Part E - Contracts & Undertakings in Specialised Fields

(30) Certain Contracts relating to Undertakings in specific fields (such as international affairs, industry engagement or research) require those with specific responsibilities for these areas to be involved - and provided with sufficient information to fulfil their separate responsibilities.

(31) Where a given Undertaking falls within more than one of these specialised fields, then all relevant stakeholders should be involved.

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(32) The Procedures to this Policy specify these particular types of Undertakings and Contracts, and their specialised approval and execution requirements and procedures.

(33) All Contracts are subject to the Contracts Procedure. Where a Contract in a specialised field is also subject to a specialised procedure, then both the general Contracts Procedure and the specialised procedure must be adhered to.

Part F - Approval & Signing

(34) Everyone should comply with VU's delegations rules with respect to Contracts.

(35) An authorised VU representative can only execute a Contract if the Contract has been approved by all necessary stakeholders, and if they are fully informed how this will affect VU and understand what they are doing. If this person has not negotiated the Contract themselves, then they should be provided with sufficient information and time to satisfy themselves of the merits of the Contract and the Undertaking. In turn, the VU representative executing the Contract should do so expeditiously, to satisfy the business imperatives of the particular project or Undertaking.

Part G - Breach

(36) If there is a breach of this Policy or its Procedures, every person involved should seek to ensure that VU's position is protected and employ appropriate mitigation and rectification strategies. This includes notifying Legal Services and all other appropriate people at VU of the breach. This may include retroactively preparing and recording required documents, obtaining appropriate approvals, or ensuring that a Contract is put in place.

Section 5 - References

(37) This policy is required as specified below:

a. Victoria University Act 2010 (Vic), Part 6, Division 6, Sections 52-59 ("Guidelines concerning commercial activities" which govern commercial activity at VU)
b. Financial Delegations Schedule (new Delegation Policy under draft)
c. Risk Management Policy
d. Compliance Policy
e. Records Management Policy

Section 6 - Supporting Documents

(38) The following documents support this policy:

a. Purchasing Policy
b. Purchasing (Credit) Cards Policy
c. Policy Development Policy
d. Financial Code of Conduct Policy
e. Probity Guidelines
f. Appropriate Workplace Behaviour Policy
g. Competition and Consumer Law Act 2010 (Cth)
h. Australian Consumer Law and Fair Trading Act 2012
i. Instruments Act 1958 (Vic)
j. AS/NZS ISO 31000 : 2009 Risk Management

k. Australian Standard AS/ISO 19600:2015

Section 7 - Procedures

(39) Contracts Procedure

Section 8 - Guidelines

(40) Nil

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