

# Contracts and Legal Instruments Management Policy

## Section 1 - Purpose

(1) This Policy establishes a University-wide governance framework for managing contracts, agreements, deeds and memoranda of understanding (MOUs) with parties external to the University (collectively referred to in this Policy as “contracts”). Contracts must be entered into, and managed effectively, by appropriately delegated officers following due consideration of risks, value, benefits, accountabilities, and alignment with QUT's strategic vision, strategies and plans.

(2) Contracts entered into on behalf of QUT must be executed and administered in a way that:

- a. identifies and manages risks;
- b. maximises the value and benefits for QUT;
- c. incorporates best practice management in terms of probity, accountability, efficiency and effectiveness;
- d. is consistent with legislation and standards, QUT policies and procedures and QUT's compliance obligations; and
- e. utilises QUT's corporate contract management system, QUT Contracts, to initiate development of business requirements and manage performance of obligations.

(3) Certain deeds have specific execution requirements as detailed in [QUT Seal Policy](#).

(4) QUT manages contracts in accordance with Commonwealth legislation relating to foreign arrangements, foreign influence and other statutory obligations. This Policy should be read in conjunction with the procedures for [Foreign Arrangements](#) and [Foreign Interference and Influence](#) in the Digital Workplace (QUT staff access only).

## Section 2 - Application

(5) This Policy applies to:

- a. all relevant QUT officers involved in any stage of the negotiation, execution and management of contracts on behalf of the University; and
- b. all contracts with external parties entered into by QUT, regardless of their form.

(6) This Policy does not apply to contracts for employment of staff which are addressed separately under the relevant Human Resources policies and enterprise agreements. It will also not normally apply to contracts between QUT and students.

## Section 3 - Roles and Responsibilities

Position	Responsibility
Contract signing delegate	<p>For expenditure contracts, ensures the financial delegate has approved funds for the contract over its lifecycle.</p> <p>Signs contracts on behalf of QUT.</p> <p>Assesses and approves variations to original scope.</p> <p>Appoints a contract manager.</p> <p>Oversees and monitors proper performance of the contract and delivery of contract outcomes.</p> <p>Oversees and monitors risk identification and management.</p>
Financial delegate (may be same officer as contract signing delegate)	Ensures funds are available for the contract over its lifecycle.
Contract manager	<p>Manages the end-to-end negotiation process for the contract including identifying, assessing and managing variations to original scope.</p> <p>Obtains any necessary legal, financial, procurement and/or insurance advice and addresses compliance issues relevant to their portfolio.</p> <p>Ensures contracts are compliant with legislative obligations and QUT's policies.</p> <p>Undertakes appropriate risk assessment of contract and manages identified risks.</p> <p>Develops contract management plan.</p> <p>Retains and manages records in compliance with legislation and QUT policy.</p> <p>Monitors performance of the contract and undertakes periodic reviews of performance.</p> <p>Reports on performance to contract signing delegate.</p> <p>Manages close-out of contract.</p> <p>Considers external notifications requirements under legislation.</p>
Legal Services Portfolio	Approves QUT Contract Management Framework.
University lawyers	<p>Review non-standard QUT contracts, third party contracts and proposed changes to QUT standard contracts.</p> <p>Provide legal advice, as needed, on contracts requiring external notification under legislation.</p>

## Section 4 - Management Across Contract Lifecycle

(7) The set-up, management and close-out of a contract must be undertaken in accordance with the QUT Contract Management Framework and documented using QUT Contracts, where appropriate. The QUT Contract Management Framework provides information on the best practice administration of contracts across their lifecycle.

## Section 5 - Risk Management

(8) An analysis of risks and benefits must be undertaken prior to entering into a contract, in accordance with QUT's [Risk Management Policy](#) and [Risk Management Framework](#) (QUT staff access only).

(9) It is the responsibility of the contract signing delegate to ensure that the following risk management considerations have been addressed:

- a. The adequacy of QUT's insurance provisions, including coverage for indemnities;
- b. QUT's requirements are clearly scoped and documented in writing;
- c. an expiry or termination date is specified, or a timeframe is specified after which a review will be undertaken;
- d. operational, workload, space, Human Resources or Health, Safety and Environment impacts for relevant areas of the University;
- e. consideration of any privacy risks over the life of the contract, in accordance with the [Information Privacy Policy](#);
- f. consideration of any confidentiality and/or commercial-in-confidence requirements;
- g. any reputational risks if the contract fails for any reason, or any impacts on other potential suppliers, partners or collaborators by virtue of the contract;
- h. the need for due diligence checks in relation to the other party/ies to the contract; and
- i. the documents to be signed are in an appropriate form, comply with any legal formalities and contain standard terms and conditions (where applicable).

(10) The designated contract manager must undertake continuous evaluation of risk over the life of the contract. Prior to entering into a contract, all types of contracts (research and other) with foreign entities must be assessed in terms of the [Foreign Influence Transparency Scheme Act 2018](#), the [National Security Legislation Amendment \(Espionage and Foreign Interference\) Act 2018](#) and the [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020](#). Guidance for staff negotiating, developing or renewing a contract with a foreign entity or overseas university is provided in the [Foreign Arrangements](#) (QUT staff access only) and advice may be sought from the Office of the Deputy Vice-Chancellor and Vice-President (International and External Relations).

## Section 6 - Standard Terms and Conditions

(11) Where possible, contracts should contain standard QUT terms and conditions to aid interpretation and to ensure all relevant matters are addressed. The use of non-standard terms and conditions must be accepted by the contract signing delegate.

(12) Depending on the nature of the contract, a number of resources are available for consultation, including:

- a. a suite of QUT standard contracts maintained by Legal Services;
- b. QUT standard purchase order terms and conditions;
- c. [capital works](#) and building maintenance;
- d. ICT contracts, including Queensland Information Technology Contracting framework (QITC);
- e. Office of Research Services standard agreements.

## Section 7 - Legal Review Prior to Executing Contracts

(13) Prior to executing contracts legal advice must be obtained for research grants, industry research, major research initiatives and commercialisation contracts.

(14) For other categories of contracts, contract managers must seek legal advice from Legal Services where:

- a. significant, complex or high-risk legal issues are involved;
- b. the other party has proposed non-standard or non-QUT mandated terms and conditions;
- c. it is not clear whether the proposed contract is legally binding or requires formalities for execution;

- d. the contract contains a clause in which QUT indemnifies third parties.

(15) Where necessary, contract managers should seek advice on procurement procedures from Campus Services and Procurement or insurance matters from Human Resources.

## Section 8 - Performance Monitoring and Periodic Review

(16) The contract manager must ensure that the contract is monitored and reviewed periodically over its term. A contract must be reviewed:

- a. following any request to vary the original terms;
- b. following any changes to the risk assessment during the term;
- c. prior to expiry;
- d. at regular intervals, for perpetual contracts;
- e. where applicable, prior to entering any extension period.

(17) A review should not only consider the performance of parties against specified key performance indicators or performance milestones, but also the performance of the contract against the values and benefits planned for QUT.

(18) A checklist to assist contract managers in analysing and monitoring progress of the contract can be found in the QUT Contract Management Framework.

## Section 9 - Records Management

(19) The contract manager is responsible for ensuring that appropriate and comprehensive records of a contract, the process of assessing and negotiating a contract, and copies of all relevant correspondence including records relating to variations, terminations, disputes and any reporting required as part of the terms of the contract are created and kept, consistent with QUT's [Records Governance Policy](#).

(20) These records must be stored in the University's corporate recordkeeping system, QRecords. Records stored in QUT Contracts will automatically be saved in QRecords.

(21) Further details on maintaining appropriate records can be found in the QUT Contract Management Framework.

## Section 10 - Use of Digital Signatures

(22) QUT will accept digital signatures in the execution of contracts, provided that the use of the digital signature is in accordance with applicable State and Commonwealth legislation, including in respect of electronic transactions. QUT Contracts provides digital signature capability.

## Section 11 - Contract Variations

(23) Any variation to the terms and conditions of a contract must be approved by the contract signing delegate. A variation that would increase the total financial value of a contract must be approved by the original financial delegate. Where a variation to a contract results in the total financial value exceeding the original financial delegate's authorised delegation amount, approval must be escalated to the next highest financial delegate ([Register of Authorities and Delegations](#) (QUT staff access only)).

## Section 12 - Contract Dispute Management

(24) Any disagreement about a contract should be promptly identified and addressed by the contract manager to facilitate an early resolution between both parties, on advice from the University's lawyers where required.

(25) A disagreement that cannot be resolved at the local level must be escalated to Legal Services (or the Office of Research Services for research related contracts). The University's lawyers, in consultation with the contract signing delegate, are responsible for initiating, where necessary, formal dispute resolution proceedings.

## Section 13 - Definitions

Term	Definition
Contract	A contract is an agreement between parties intended to have legal significance and involving the transfer of consideration (that is, value - financial or some other type of benefit - flowing from the beneficiary of the transaction). Contracts generally articulate business relationships for the acquisition or supply of goods or services, for the exploitation or transfer of intellectual property rights (eg licences) or for the provision of funding, including gift agreements.
Contract Manager	A contract manager (also known as agreement manager, business manager, chief investigator (for research grants), contract administrator, contract authority, contract representative, contract superintendent, Project Manager or memorandum of understanding manager) is a QUT officer appointed by the contract signing delegate to administer and manage a contract over its lifecycle.
Contract Signing Delegate	A contract signing delegate is a QUT officer delegated with the authority to sign contracts on behalf of QUT, in accordance with the Register of Authorities and Delegations. In most cases, the contract signing delegate is also the financial delegate, responsible for ensuring funds are available for the contract over its lifecycle.
Deed	A deed is a formal legal instrument under which a promise is given to meet an obligation to do or to refrain from doing something. Unlike a normal contract or agreement, deeds do not require consideration (that is, money or another benefit provided in return for a legally binding promise) to be enforceable. Certain deeds have specific execution requirements as detailed in the <a href="#">QUT Seal Policy</a> .
Digital Signature	A digital signature is a signature created within an approved digital signature software program containing encrypted information used to validate the authenticity and integrity of a document or email, and to minimise the risk of fraud or impersonation. An electronic signature consisting of a picture of text is not considered to be a digital signature.
Memorandum of Understanding (MOU)	An MOU is a document intended to formalise the terms of a relationship, arrangement or understanding between QUT and another party, but is not usually intended to be legally binding on either party. An MOU is a general, mutually agreed but diplomatic document, setting out principles, strategies and mechanisms for dealing with the common issues of the relationship. It may lead to the negotiation and development of separate contracts with legal intent. MOUs are sometimes referred to as collaboration agreements, partnership agreements, letters of agreement of intent or heads of agreements.

## Section 14 - Delegations

(26) Refer to the [Register of Authorities and Delegations](#) (QUT staff access only).

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	19th December 2019
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<b>Policy Owner</b>	Kiri Pettigrew General Counsel
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