

Contract Management Framework

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Governing Policy

[Delegations of Authority to Enter into Contracts](#)

Purpose

The purpose of this Framework is to provide a clear and standardised approach to managing and administering contracts.

Scope

The requirements of this Framework apply to all contracts entered into by the University including in relation to day-to-day business operations, teaching and research activities, property and infrastructure developments and strategic projects.

Exclusions

This Framework does not apply to purchases of goods and services via petty cash, credit card, fuel cards and purchase orders, carried out in accordance with the Purchasing Policy. It also does not apply to employment agreements, which are administered by People & Culture.

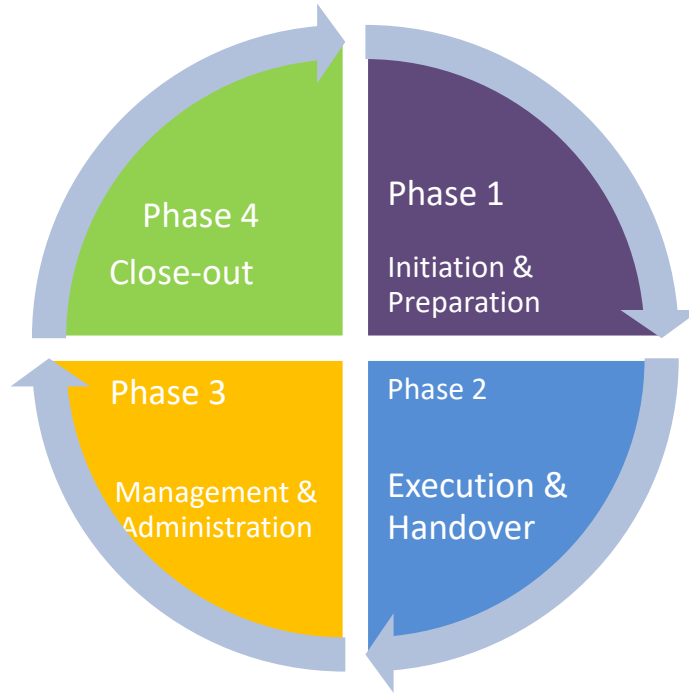
1 Introduction

The purpose of this Contract Management Framework is to set out a clear and consistent approach to entering into, managing and administering contracts.

This will assist in ensuring that Flinders and its counterparties understand the obligations and commitments they are entering into, that their respective commitments are met as efficiently and effectively as possible and the intended outcomes of the contract are achieved.

2 Contract Management Life Cycle

The Flinders' approach to Contract Management can be described in the 4 phases depicted below.



The following table summarises the key steps typical in each phase.

Phase 1 –Initiation & Preparation	Planning
	Contract preparation
	Negotiation
	Due Diligence
Phase 2 -Execution & Handover	Contract execution
	Handover
	Set-up
Phase 3 – Management & Administration	Contract administration
	Financial administration
	Performance management
	Risk management
	Extensions / renewals / variations
Phase 4 - Close-out	Final performance review
	Contract close-out/transition
	Lessons learned

3 Roles and responsibilities

There are three key roles typically involved in the contract lifecycle. The table below summarises the key accountabilities of and tasks performed by each of these roles, depending on the complexity of the contract.

The table below is not prescriptive and does not provide a strict demarcation. Sometimes the same person can perform more than one role. And, some of the tasks can be performed jointly or shared by more than one role. Also, in some areas the terminology may be different. For example, in relation to Research contracts, the Chief Investigator performs similar or analogous roles to the Contract Manager.

Role	Key Accountabilities
Contract Owner	Owns or approves the budget that funds the contract eg the Head of the relevant Portfolio, College or Business Unit (or their delegate)
	Accountable for contract performance (this may not always be the case eg a DoC may be the Contract Owner for contracts within a College for oversight and visibility but will not be accountable for the performance of the contract)
	Appoints Contract Manager
Contract Manager * in most cases, the person who requests / initiates preparation of a contract via Service One will be the Contract Manager unless advised otherwise ** in the case of Research Contracts, the Contract Manager is likely to be the Chief Investigator	Pre-contract planning
	Secure necessary approvals
	Requests preparation and negotiation of contract via Service One
	Due diligence
	Either sets up key contract information in Service One once the contract is executed or confirms the information set up by the Contract Administrator
	Accountable to the Contract Owner for the management of the contract
	Manages the contract as the single point of contact on all contract matters
	Manages contract performance and compliance including milestones, KPIs etc
	Prepares Contract Management plan (if required)
	Contract and financial administration
	Risk Management
	Manage contract extensions / renewals / variations
	Manage close-out
Contract Administrator* * specialist staff whose designated roles specifically include the preparation of contracts and the other responsibilities of a Contract Administrator as set out in this Framework	Due diligence
	Confirming necessary approvals are in place
	Contract preparation & negotiation
	Arranges execution of contract
	Sets up key contract information in Service One once contract is executed
	Assists Contract Manager in agreed tasks

4 Contract Management Lifecycle

4.1 Phase 1 – Initiation and Preparation

This phase includes all the activities relating to the initiation, preparation and negotiation of a contract to the stage where it is ready for signature.

4.1.1 Planning

Planning for the contract should commence as early as possible. Examples of typical planning activities include:

- identifying the resources required to meet the University's obligations under the contract
- identifying the Contract Owner and Contract Manager
- confirming that the necessary budget exists for any expenditure under the contract
- confirming the necessary resources exist to carry out the obligations under the contract
- preparing the business case and identifying the objectives and purpose of the contract
- assessing what KPIs, milestones and other performance targets may be required
- ascertaining what internal approvals and delegations will be required, including procurement approvals
- identifying any applicable legislative and regulatory requirements
- identifying key risks.

4.1.2 Service One

The University's Service One Contract Management Platform will be used:

- to record key information required for the effective management of the contract such as the parties, value, duration, critical dates, number of and length of any renewals/extensions, any variations etc; and
- as a central repository and record for all contracts entered into by the University.

The Service One platform is currently progressively being configured and rolled out with the intention that it will eventually be used as a repository for and the management of all contracts across the University (subject to any exceptions as may be approved by the General Counsel, such as Defence Contracts, which require a higher level of security than currently available under University's Service One Contract Management Platform).

4.1.3 Integration with Content Manager

An 'interconnector' has been installed to ensure that records entered into the Service One platform will automatically and seamlessly be transferred into the University's Content Manager system in compliance with the University's record management obligations under the State Records Act 1997.

4.1.4 Pre-contractual supply

No goods, services or works may be acquired or procured by Flinders before the relevant contract is entered into unless written approval has been obtained from the Vice-President Corporate Services (VPCS) or the Vice-Chancellor for contracts outside the VPCS' delegation.

Commencing the supply of goods, services or works during negotiations and before the contract is entered into can severely compromise the University's negotiating position. Also, it can complicate or restrict enforcement of the University's rights and recovery of any costs should any accident, dispute, dissatisfaction with the goods or services supplied or other such event occur.

4.1.5 Preparation and negotiation

All contracts entered into by the University will be prepared and negotiated by either a Contract Administrator or Legal* in accordance with the Contract Owner / Manager's instructions.

* *Legal refers to the University's in-house legal team and includes any lawyer in that team*

Contract Administrators should seek advice and assistance from Legal as required in relation to the preparation and negotiation of contracts and in accordance with any local area work instructions. Generally speaking, more complex and high-risk contracts should be escalated to Legal. If in doubt, escalate.

4.1.6 External legal advice

External legal advice and assistance in relation to the preparation and negotiation of a contract may be sought only with the written approval of Legal.

4.1.7 Due Diligence

During this phase, and before the contract is finalised for execution the Contract Manager must ensure that the necessary due diligence has been carried out to ensure that:

- the University is able to meet its obligations under the terms of the contract, and it is likely that the other party or parties can meet their obligations
- the contract complies with any legislative or regulatory requirements
- the contract and its procurement conform with relevant University policies and administrative procedures
- the appropriate level of approval has been obtained
- any necessary internal or external advice has been sought
- any requisite consultation with other staff or operational areas of the University has occurred
- the financial and other benefits, detriments or risks which are expected to flow or attach to the University as a result of the contract have been considered, and any identifiable risks have been properly addressed in the contract, including intellectual property, physical damage or injury indemnities
- negotiation of the contract has been sufficiently documented to provide a proper record of the rights and responsibilities of the parties and appropriate records filed in accordance with University Records Management Policy.

The Contract Administrator and/or Legal will usually assist the Contract Manager in respect of the due diligence required but the Contract Manager is ultimately accountable to ensure that the above matters have been satisfied.

4.2 Phase 2 – Execution and Handover

4.2.1 Contract execution

The Contract Administrator and/or Legal staff member who was involved in the preparation of the contract will usually be responsible for submitting the contract to the relevant authorised signatory for execution together with any required supporting documents.

As required by the Delegation of Authority to Enter into Contracts, the Report of Entry into Contract (DOCX 32KB) (ROEC) form must be completed, signed by the person recommending the contract for signature and presented with the required number of copies of the contract for signing by the relevant University authorised delegate.

For more complex or higher value agreements, a memo from the Contract Manager or Owner may also be required by the authorised signatory which supplements the information in the ROEC and sets out the key benefits, obligations and risks associated with the contract.

4.2.2 Electronic execution

Contracts may be executed electronically using AdobeSign provided the requirements of Appendix - Use of Electronic Signatures are complied with.

On rare occasions, the DocuSign platform may be used if the research grant funder or counterparty insists.

No other electronic signature software or platform may be used unless written approval has been given by the General Counsel and the Chief Information Security Officer.

4.2.3 Authorised signatories

Before signing a contract, authorised signatories must ensure that:

- they have the necessary delegation to sign the contract
- the requirements of the Delegations of Authority to Enter into Contracts have been satisfied.

Authorised signatories may satisfy themselves of these things by obtaining the necessary information and assurances from the relevant Contract Owner/Manager and/or Contract Administrator via the ROEC form or otherwise as they see fit.

4.2.4 Contract hand-over

At the end of the contract execution process, the Contract Administrator must ensure that the signed contract is stored in the Contract Management System and handed over to the Contract Manager.

4.2.5 Set-up information

The Contract Manager / Administrator will set up the relevant information and records in the Contract Management System in order to manage and administer the contract in accordance with the objectives of this section. For example, typical documents and information include

Documents to be filed:

- Signed contract
- Bank guarantee (if applicable)
- Insurance certificates
- Scope of work (if separate to the signed contract)
- Tender documents
- Contract Management Plan (where applicable)

Information to be recorded:

- Parties
- Contract value
- Duration
- Key contacts
- Performance targets and KPIs / SLAs
- Expiry, renewal, milestone and other key dates
- Key risks associated with the contract should be identified, with appropriate mitigation strategies

4.3 Phase 3 – Contract Management

The objective of Contract Management is to ensure that all parties meet their respective commitments as efficiently and effectively as possible and that the intended outcomes of the contract

are delivered. Contract Management includes but is not purely administrative in nature but also involves strategic thinking, decision making and oversight.

Successful Contract Management requires a strong relationship with the counterparty and ongoing monitoring of contract performance.

The Contract Manager is responsible for the management and administration of the contract which may include the following activities. What follows in this section is not a prescriptive or comprehensive list, as not all contracts will require all these activities or the same extent of activity. For example, routine contracts may not warrant having a kick-off meeting or the preparation of a Contract Management Plan. Contract Managers are expected to exercise judgment as required.

4.3.1 Conduct kick-off meeting

Organise a kick-off meeting as soon as possible after the contract has been awarded.

4.3.2 Contract Management Plan

For more complex and high-risk contracts, consider whether a Contract Management Plan is required.

If required, the Contract Manager will establish the Plan which should contain all the key information detailing how a contract will be managed including the systems, responsibilities and processes to ensure that both parties comply with the terms and conditions during the life of the contract and the framework against which the performance of both parties can be monitored and problems easily identified, before or as they occur.

4.3.3 Managing performance

Proactively manage performance management under the contract to ensure that the expected benefits and value are realized from the contract. Identify all KPIs/SLAs, milestones and other performance measures in the contract and implement the necessary performance monitoring and management activities (eg periodic meetings and reporting) to:

- ensure the relevant parties (suppliers, researchers etc) deliver efficiently and effectively on the contractual requirements
- identify high-performing or low-performing suppliers and other counterparties
- identify trends, issues or problems that can be addressed and resolved before the problem becomes significant
- ensure that benefits are being realised under the contract

4.3.4 Unsatisfactory performance

When a counterparty's performance is unsatisfactory the Contract Manager needs to anticipate problems or address them promptly as they arise.

Options for managing unsatisfactory performance include

Informal discussions	involving senior management from both parties participating in face-to-face discussions or written communications. Addressing performance this way can avoid damaging the relationship with the counterparty by preventing the need to escalate the issue
Withholding / reducing payments/ incentives	<ul style="list-style-type: none"> • for non-delivery in accordance with the terms of the contract • as a result of failure to meet KPIs/ SLAs

Liquidated damages	where the contract designates an applicable sum in the instance of a certain breach, which can be applied to the payment regime
Default notice	when a default event occurs. This may include a requirement for the counterparty to provide a plan identifying how it plans to resolve the issues, which is monitored by the Contract Manager
Dispute resolution	methods such as negotiation, arbitration and mediation. These can be facilitated by an external third party
'Step-in' rights	where Flinders or another person(s) takes temporary control over the service delivery until the counterparty resolves significant or repeated problems or issues. This includes the requirement for the counterparty to provide a plan identifying how they plan to resolve the issues. This continues to be monitored by the Contract Manager after the counterparty has resumed service delivery
Termination of contract	this occurs in the instance of serious, repeated or significant breaches of contract
Litigation	where legal action is initiated to have a dispute resolved in court

Some of these options can have extremely poor consequences if used inappropriately. Their availability will also depend on the terms of the contract. Consult with and seek advice from Legal and escalate as necessary to the Contract Owner and/or relevant Senior staff when considering any of these options. The objective of effective Contract Management is to address issues early on and avoid having to resort to some of the harsher options

4.3.5 Financial administration

Monitor the contract spend throughout the contract lifecycle: Payment to counterparties should only be made:

- following submission of a valid tax invoice for goods and/or services covered under the scope of the contract
- when the Contract Administrator is satisfied that the relevant goods or services have been supplied and/or the milestones or deliverables have been met
- where the payment amounts are validated and in accordance with the contract
- when the necessary internal authorisations have been received

4.3.6 Risk Management

Actively identify and manage risks throughout the life of the contract.

For contracts with more significant risks, a separate risk register may need to be developed and periodically reviewed and updated throughout the life of the contract.

Risk reviews can be incorporated into the regular performance review meeting to ensure they remain up to date.

An escalation process should be put in place, with all high to extreme risks reported to the Contract Owner together with the recommended controls and mitigants.

4.3.7 Variations

During the contract lifecycle, circumstances may require the contract to be varied. Reasons why variations may be needed include:

- technology changes or improvements
- changes in legislation that impact the contract and specification
- demand fluctuations
- requests for additional goods or services outside the original scope
- exchange rate fluctuations
- changes in external pricing drivers
- the relevant researcher(s) moving institutions
- the change out of a key person / researcher
- circumstances which affect the performance of the contract.

Each variation is a contract in itself and should be entered into and managed in accordance with the University's requirements for entering into contracts including this Framework, procurement / purchasing policies and Delegations of Authority to Enter into Contracts and financial delegations.

4.3.8 Extensions / renewals / new procurement

Before a contract is completed or expires, the Contract Manager will need to assess whether there is an ongoing need for the goods and/or services delivered under the existing contract. If there is an ongoing need for the services / products consideration should be given to whether the contract should be extended or renewed or whether the market should be tested with a fresh competitive tender or other procurement process:

The assessment needs to commence in a reasonable time before the contract expiry date, because if an option to extend is not available or not accepted, a procurement activity may be required to source a new contract, and timelines will be involved in seeking the necessary approvals (including from the Contract Owner, Strategic Procurement Committee etc as applicable) and the procurement process.

These assessments are required even in the case of contracts with rollover clauses. These clauses usually have the effect that the contract will be automatically extended unless notice is given that the extension is not required. An active assessment and decision is therefore still needed, and procurement approvals and processes may also apply, before the contract is allowed to "automatically rollover".

The assessment of whether an extension / renewal or new contract is required should occur a sufficient amount of time prior to the scheduled completion of the contract, to take into account the procurement process required for the extension/ renewal or new contract. See diagram below



4.4 Phase 4 - Contract Close-out

The contract close-out is the step for ensuring that contract obligations have been completed. It may also include transitioning to another supplier for the good and/or services. For Research Contracts

it includes ensuring that all milestones, reporting and other requirements of the relevant research grant have been completed.

Not all contracts will require a formal close-out process. The Contract Manager should determine whether it is required having regard to the size, duration, complexity and nature of the contract and the services / products supplied under it.

If required, the close-out process may include the following activities.

4.4.1 Final performance review

The objective of this activity is to evaluate counterparty performance and provide feedback that can be used as a reference for future work.

Prior to the close-out of the contract, the Contract Manager should conduct a final performance review. The depth and details of the review process will vary depending on the contract. Where appropriate the Contract Manager should provide all or part of the feedback from the contract review to the other contracted party. This will enable future arrangements to better meet the needs of customers.

The following should be taken into consideration as part of the review:

- whether the contract achieved its objectives
- the counterparty's performance
- satisfaction of the users
- contract variations
- any disputes
- budget versus actual spend
- weaknesses in planning, management and procedures
- audit reports

4.4.2 Transition

There may be the need for the goods/services to continue, but with a different counterparty. The transition period from one contract to another can be a high-risk period. It is the responsibility of the Contract Manager to develop a transition plan. The following aspects should be considered when developing the transition plan:

- identify any specific differences between the current and future contract
- develop a new communication plan, identify stakeholders, both internally and externally who may be impacted by the changes
- update internal processes or procedures with any changes required under the new contract

4.4.3 Contract Closure

The matters that should typically be considered at the conclusion/expiry of the contract, include the following:

- confirm that all contract deliverables, research or other milestones and other obligations have been delivered or met
- arranging for the return of all Flinders equipment and assets
- obtain all final reports, documentation and clearances
- ensure all 3rd party access rights and security passes are terminated
- finalise all final payments under the contract

4.4.4 Lessons learned

Once a contract has concluded it is important that the contract is reviewed and lessons are logged. The best practice approach is to gather the Contract Management team and undertake a review session to capture the lessons learned. It is best to do this before any team member move on to other contracts or new projects.

An effective 'lessons learned' exercise requires that the relevant data and information are tracked and document at regular intervals through the life of the contract. This ensures that lessons are continually captured. This is particularly relevant for long term contracts when staff turnover is more likely and when remembering all the critical considerations and events after the contract closure is more difficult.

The lessons learned activity should focus on the:

- relationship between the counterparty and key stakeholders
- overall performance of the counterparty in delivering the contract
- overall performance of the team managing the contract
- suitability of the contractual documentation, performance management regime and specifications
- Flinders' performance in the management of the contract
- benefits realised versus expectations

A 'lessons learned' workshop provides an opportunity staff involved with the contract to talk about what happened during the contract in terms of:

- successes
- unintended outcomes
- other things that, in retrospect, might have been better handled if done differently
- recommendations to others who might be involved in developing and managing contracts of a similar type.

The following questions can be used to facilitate the discussion:

- what worked well? What didn't work well?
- how did the customer report problems?
- what changes are recommended for next time
- how might problems be avoided or resolved more quickly?
- what lessons might affect how Flinders agrees future terms and conditions

Appendix - Use of Electronic signatures in Contracts

The University supports the use of electronic signatures in contracts where an appropriate electronic signature platform is used. The key risk with any signature (electronic or wet-ink) is the other contracting party disclaiming the contract on the grounds that their signature has been forged or that the signatory signing the document on behalf of the third party organisation has signed it without the necessary authority. These risks also exist with wet-ink signatures, however, s129 of the Corporations Act allows the University to legally assume that an agreement which appears on the face of it to have been signed (with a wet-ink signature) by a company by its Director(s) and/or Company Secretary has in fact been validly signed by the company. The law is far from settled but this legal assumption is potentially not available for an electronic signature.

An appropriate electronic signature platform like **Adobe Sign** significantly addresses the forgery risk as it uses common electronic authentication methods to verify signer identity¹ and each step in the signature process is logged, such as, when the agreement was sent, opened and signed and the IP addresses of signers etc, creating an auditable trail. Secondly, the risk of an organisation being able to disclaim a contract on the grounds of it not having been signed with the necessary authority is addressed in part if the contract has been performed by the other party.

Accordingly Governance, Legal & Risk considers that the risk of using electronic signatures is low and subject to some exceptions and the rules outlined below, electronic signatures may be used for all contracts and agreements and associated documents (including memos associated with the signing process).

Note: Adobe Sign is a contract signing workflow management tool and should not be used for letters, internal memos and other non-contractual documents. Adobe Pro has a digital signature function (Fill & Sign) which can be used for other non-contractual documents.

1. What type of electronic signature may be used?

Only electronic signatures managed and authenticated by the Adobe Sign tool may be used by the University and similarly, only third party electronic signatures using the Adobe Sign tool will be accepted by the University.

2. What types of contracts or legal instruments cannot be signed using electronic signatures?

The following documents should not be signed electronically -

- a. Deeds
- b. Documents signed under power of attorney
- c. Affidavits, statutory declarations or other documents that require a party's signature to be witnessed
- d. Documents to be filed at ASIC /ASX /ATO
- e. Documents relating to lease or other property transactions or stamp duty

Note also that regardless of the type of contract, the other contracting party may have a preference for wet-ink signatures and may not accept electronic signatures by the University

3. Who can sign contracts electronically on behalf of Flinders University?

Signatories who have been approved by the Senior Contracts Officer - Governance, Legal & Risk and enrolled into the Adobe Sign platform by the IDS Identity Team and who have been authorised to sign the type and value of contract pursuant to the Delegations of Authority to Enter into Contracts Policy, subject to the relevant limitations and requirements in the policy.

4. Risk assessment

Before using or accepting electronic signatures, all signatories and the Legal and Contracts / Research Contracts teams and should always consider whether it is appropriate to do so having regard to the value or risk associated with the particular contract or transaction. In some cases, a

¹ In most cases, standard authentication is achieved via an email request with a private link, as most signers have unique access to one email account

determination may be made that it is more appropriate for the contract to be signed with wet-ink signatures having regard to the nature of the contract, the value or some other reason.

Considerations relevant to the decision whether to use or accept electronic signatures from a third party include:

- **Prohibited document:** Check that the document is not one of those mentioned in section 2 of this guide
- **Concurrence with other party:** Check that the other party is happy to use and accept *Adobe Sign* electronic signatures. **Any electronic platform other than Adobe Sign will require specific prior Legal and IDS due diligence and sign-off**
- **Risk analysis:** Consider the nature and scale of the transaction, the quality of the counterparty, and the risk and consequences of something going wrong. The greater the risk/consequences, the more likely that wet-ink signatures should be used
- **Confirm authority to sign:** Confirm that any signatory signing electronically on behalf of an entity has the authority to sign as an authorised representative. Email confirmation from the relevant individual(s) can be helpful
- **Risk awareness:** The ease and speed with which electronic signatures can be used can lead to a less careful attitude in relation to entering into legally binding agreements
- **Legal advice:** If there is any doubt, seek advice from the University's in-house Legal team