Contract Management Policy and Procedure

Section 1 - Preamble

(1) Charles Darwin University ('the University', 'CDU') may enter into contracts where they are consistent with, and further, the University's strategic objectives and functions.

Section 2 - Purpose

(2) This policy and procedure outlines the principles of, and associated requirements for, entering into a contract on behalf of the University, including the requirement to seek legal advice in certain circumstances.

Section 3 - Scope

(3) This policy and procedure applies to all staff at the University and to all contracts entered into by the University, whether drafted by the University or by another party, including memoranda of understanding (MOUs), contract negotiations, and non-binding instruments such as heads of agreements, term sheets, and statements of work. This policy and procedure also applies to pre-contractual negotiations and/or negotiations for the contract renewal.

(4) This policy and procedure applies to third party agreements along with the Third Party Partnerships for Educational Provision Policy and Procedure.

(5) This policy and procedure does not apply to:

a. the employment of staff or employment contracts, except for secondment agreements; or
b. admission offers and enrolment agreements.

Section 4 - Policy

(6) The University may enter into contracts, MOUs, and similar arrangements that align with and further the University's objectives and strategic plans, and where the benefits accruing to the University outweigh the risks assumed under such contracts, MOUs, or other instruments.

(7) The University is committed to ensuring that contracts, MOUs, or other instruments:

a. are only executed by the authorised officer with the appropriate delegation;
b. protect the University's best interest and reputation;
c. are consistent with the University's objectives, policies, procedures, strategies and with legal requirements;
d. are negotiated fairly and transparently;
e. address any perceived, potential, or actual conflicts of interest, including foreign arrangements, in a transparent manner and in accordance with the Conflicts of Interest Policy and Conflicts of Interest Procedure;
f. clearly identify the rights and obligations of each party to the contract and any deliverables, due dates (including the commencement date) and payment terms (where relevant), termination terms, post-termination

obligations (if any); and

g. can be implemented and delivered within University resources, including any contingent liabilities.

Section 5 - Procedure

(8) All contracts, MOUs, and other instruments must be reviewed by Governance, except:

a. Subscription agreements for information resources purchased by Library Services, unless:
    i. the indemnity, liability, termination, or auto-renewal clauses are not in accordance with the University's standard contract template; or
    ii. the purchase of the subscription would not be in accordance with the Delegations Policy or Delegations Register.
b. Research contracts that can be executed by the authorised officer at Research and Innovation in accordance with the Delegations Policy and Delegations Register.
    i. Research contracts to be sent to Governance must be reviewed first by Research and Innovation.

(9) Staff must declare all perceived, potential, and actual conflicts of interest in accordance with the Conflicts of Interest Policy and Conflicts of Interest Procedure.

(10) Staff who in the preceding 12 months have accepted gifts or benefits, including hospitality, from a third party to a draft or proposed contract, including renewal or variation of an existing contract, must recuse themselves from negotiating, drafting, and signing the contract.

(11) Staff must be aware that discussions prior to the execution of a contract, or even when a subsequent contract has not been made, may create binding legal obligations for the University.

a. A staff member who is in doubt about whether an arrangement constitutes a contract should contact Governance by emailing legal@cdu.edu.au for advice.

(12) A staff member drafting or/and dealing with a contract on behalf of the University must:

a. negotiate and draft the contract with the knowledge and authorisation of the relevant organisational unit and not in their individual capacity;
b. ensure all moneys received by the University under the contract are paid into the University account. The account details can be obtained by emailing treasury@cdu.edu.au;
c. ensure University and third party institutional account details for contracts involving payment are recorded in the payment schedule;
d. use a University approved standard contract template, which includes a legal description of the parties, including the parties' ABN or ACN as relevant, unless the other party has provided a draft contract;
e. ensure that no activities are undertaken before the contract is executed unless the Vice-President Governance and University Secretary approves of any such pre-execution activities in exceptional circumstances; and
f. ensure that contracts are executed under the University's legal authority (i.e. not the Corporations Act 2001 (Cth)).

(13) Where the indemnity or liability clause of a contract is not in accordance with the University's standard contract then Governance must be consulted at the earliest stage.

(14) If a new contract template needs to be developed, organisational units must consult with the University Senior Legal Officer at an early stage.

(15) If a contract involves a question of insurances by the University or the other party, the Treasury and Compliance Accountant must be consulted via email to treasury@cdu.edu.au.

(16) Organisational units proposing to seek external legal advice must consult with the Vice-President Governance and University Secretary prior to engagement.

Specialist advice from other relevant University areas

(17) Organisational units should first assess if contracts or MOUs require specialist advice, guidance and assistance from the relevant University area prior to execution.

(18) For guidance and assistance, all contracts relating to:

a. research, including research funding, must be reviewed by Research and Innovation by emailing researchcontracts@cdu.edu.au;
b. intellectual property (IP), licensing or commercialisation of IP rights must be reviewed by Research and Innovation, the Copyright Officer (where applicable), and the Senior Legal Officer;
c. a governance issue such as the establishment or joint operation of any Centre or Institute must be reviewed and approved by the Vice-President Governance and University Secretary;
d. any use of University property or facilities must be reviewed by the Director Property and Facilities;
e. quality of education and/or third-party providers must be reviewed by the Pro Vice-Chancellor Education Strategy;
f. donations/advancements must be reviewed by the Director Advancement;
g. procurement and supply must be reviewed by Finance and be established and executed in accordance with the Procurement Policy and Procurement Procedure;
h. business development must be reviewed by the Director Business Development and Partnerships in accordance with the University's internal business development process;
i. the CDU/NTG Partnership Framework Agreement must be reviewed by the Office of the Vice-Chancellor; and
j. international student recruitment, student exchange, or overseas student placement must be reviewed by the Director CDU Global.

Review of contract terms by Governance

(19) Governance must review the terms of a contract prior to its execution where a contract:

a. has been developed or provided by an external party;
b. has been developed by an external lawyer engaged by the University;
c. involves significant legal issues, such as matters relating to indemnity, insurance, or an exclusion or limitation of liability by the other party in respect of breaches of the agreement or for negligence;
d. is assessed as a high-risk contract or complex, including but not limited to:
    i. contracts involving multiple parties;
    ii. membership of the University of an incorporated entity or an unincorporated hub/association/centre;
    iii. an alliance with a company;
    iv. intellectual property;
    v. research commercialisation or consultancy; or
    vi. agreements with an international component involving foreign arrangements.
e. involves approval/execution by the Vice-Chancellor;
f. where it is not clear whether a proposed arrangement constitutes a contract; or
g. requires formalities for execution (such as execution with the University Seal).

Submitting a contract for review

(20) Contracts requiring review by Governance must be submitted to legal@cdu.edu.au at least two (2) weeks prior to the requested contract execution deadline.

(21) Urgent requests are to be raised with the University Senior Legal Officer or the Legal and Compliance Officer to ensure an expedited review timeframe can be met.

(22) Submissions must include the contract, any related head or funding agreements, and a one paragraph statement explaining the context of the contract.

Execution of a contract

(23) The University must not perform any obligations or undertake any activities under a contract unless it is executed by all relevant parties.

(24) When sending a contract to the Vice-Chancellor for execution, an accompanying note/memo, signed by the relevant senior executive, must also be sent, which will briefly describe the context and content of the contract and, among other matters, financial obligations of the University.

(25) Only staff members with the relevant delegation as specified in the Delegations Policy and University Delegations Register may execute contracts on behalf of the University.

a. Staff members with the delegation to execute a University contract must be satisfied that all advice, guidance and approvals required under this policy and procedure have been obtained.
b. Staff members executing contracts must ensure they understand the difference between expenditure contracts and revenue contracts in the light of their financial delegation.
c. Staff members executing a contract must ensure that they have a delegation to execute the given contract. Executing a contract is different from approving a contract. A delegation to approve a contract does not necessarily mean power to execute it. Execution means signing a contract off in accordance with the delegation of that power.

(26) Organisational units must ensure executed contracts are lodged via the Memorandum of Understanding, Contracts and Agreements eform on the University eCentre once executed by both (or all) parties and managed in accordance with the Records and Information Management Policy and Procedure.

Reporting foreign arrangements contracts

(27) Contracts with a foreign government or with a foreign university that does not have institutional autonomy must be reported to the Australian Government under the Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (Cth). For further information or details, staff may consult the University Foreign Interference Taskforce website.

a. Reports may be made through the Conflicts of Interest form in the University eCentre.
b. Governance will report contracts with a foreign arrangement element to the Vice-President Global and External Relations for registration in the University Foreign Interference Taskforce portal.

Contract management

(28) Each contract must have an authorised contract person responsible for ensuring and overseeing the proper performance of the contract and management of all related obligations of the University under the contract by:

a. managing the negotiation process for the contract;

b. ensuring that key deliverables, Key Performance Indicators (KPIs), and payment milestones are clearly set out in the contract;
c. where the contract has been drafted by an external lawyer engaged by CDU, providing the details of the external lawyer to Governance at legal@cdu.edu.au;
d. assessing the risks related to the relevant activity prior to entering into the contract and ensuring the ongoing management of risks throughout the contract;
e. managing and monitoring the performance of a contract throughout the life of the contract;
f. ensuring compliance by the University and the other party/parties with the terms and conditions of the contract;
g. ensuring a copy of the executed contract and all associated information to evidence how and why the University is entering into the contract is uploaded to the eCentre;
h. resolving issues or problems that arise during the term of the contract;
i. negotiating variations, renewals, termination or expiry of the contract;
j. ensuring records relating to the contract negotiations are kept; and
k. ensuring no payments are made unless the deliverables and KPIs have been submitted or achieved.

(29) The authorised contract person must promptly seek advice from Governance at legal@cdu.edu.au if there is any indication that:

a. a dispute may arise in relation to the contract; and/or
b. the University may not be able to perform all of its obligations under the contract.

Section 6 - Non-Compliance

(30) Non-compliance with Governance Documents is considered a breach of the Code of Conduct - Staff or the Code of Conduct - Students, as applicable, and is treated seriously by the University. Reports of concerns about non-compliance will be managed in accordance with the applicable disciplinary procedures.

(31) All staff members have an individual responsibility to raise any suspicion, allegation or report of fraud or corruption in accordance with the Fraud and Corruption Control Policy and Whistleblower Reporting (Improper Conduct) Procedure.

Status and Details

Status	Historic
Effective Date	18th November 2022
Review Date	18th November 2023
Approval Authority	Vice-Chancellor
Approval Date	18th November 2022
Expiry Date	13th April 2023
Responsible Executive	Brendon Douglas Vice-President Governance and University Secretary
Implementation Officer	Tom Harley Senior Legal Officer
Enquiries Contact	Tom Harley Senior Legal Officer

This policy document may be varied, withdrawn or replaced at any time. Printed copies, or parts thereof, are regarded as uncontrolled and should not be relied upon as the current version. It is the responsibility of staff printing this document to always refer to the Governance Document Library for the latest version.