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CONTRACT MANAGEMENT POLICY

Section	Finance		
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Next Review	24.11.2018	Responsibility	Chief Operating Officer
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PURPOSE

The purpose of this policy is to provide direction to NMIT staff involved in the contracting process to ensure that contracts entered into by NMIT:

- clearly document the agreement between the parties,
- comply with legal requirements, and
- minimise operational, financial and reputational risk to NMIT

This document should be read in conjunction with the NMIT Contract Management Guidelines.

SCOPE

This is an NMIT wide policy and applies to all NMIT employees who are involved in the contracting process.

It covers all types of contracts, with the exception of:

- Employment contracts, and
- Fixed term contracts for teaching services by independent contractors.

Employment contracts made in relation to NMIT staff and fixed term contracts for teaching services entered into with independent contractors are covered by Human Resources policy and procedures.

DEFINITIONS

Contract	<p>Any agreement that commits NMIT in legal or financial terms. This includes, but is not limited to, the following:</p> <ul style="list-style-type: none"> ▪ Leases ▪ Joint venture agreements ▪ Sub-contractor agreements ▪ Agreements for purchase of goods or services ▪ Agreements for sale of goods or services ▪ Sponsorship agreements ▪ Licensing agreements ▪ Memorandum of Understanding (MOU) ▪ Academic co-operation agreements ▪ Tender submissions which, when accepted, will constitute a contract
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Contract Owner	<p>The Head of Department or Business Support Team Leader to whose budget and/or area of responsibility the contract relates.</p> <p>The Contract Owner is responsible for the management of the contract.</p>
Contracts Database	The centralised database containing details of all NMIT contracts.
Contracts Administrator	The NMIT staff member who is responsible for maintaining and updating the contracts database.
Contract Management Plan	A written document outlining the high level requirements, deliverables, performance measures and actions required for the successful delivery of the contract.
Other Party	The other party (or parties) to the contract.

RESPONSIBILITIES

Contract Owner	<ul style="list-style-type: none"> ▪ Ensure that the contract reflects what has been agreed between the parties. ▪ Act as a single point of contact for all contract matters. ▪ Oversee the contract's day-to-day operations. ▪ Ensure that revenue is invoiced and/or payments are made in accordance with the terms of the contract in conjunction with the Finance Team. ▪ Implement a formal Contract Management Plan if required. ▪ Regularly monitor and report on agreed performance measures. ▪ Ensure issues are identified and resolved quickly and effectively. ▪ Escalate issues as necessary. ▪ Maintain an overview of the contract specifications and seek changes where appropriate to meet changing business needs. ▪ Ensure compliance with NMIT's policies, procedures and guidelines. ▪ Regularly review contracts for renewal or expiry and renegotiate as required. ▪ Ensure signed original, variations, renewals and cancellations are provided to the Contracts Administrator.
Chief Executive	<ul style="list-style-type: none"> ▪ Final review and signature of contracts within delegated authority.
Chief Operating Officer	<ul style="list-style-type: none"> ▪ Pre-signature review of all contracts with a lifetime financial value in excess of the Contract Owner's delegated authority. ▪ Final review and signature of contracts within delegated authority.
Contracts Administrator	<ul style="list-style-type: none"> ▪ Ensure that all contracts (and changes to contracts) are recorded in the Contracts Database. ▪ Maintain files of electronic and hard copy contracts.

Directorate Member	<ul style="list-style-type: none"> ▪ Review all new contracts, renewals, variations and cancellations for contracts within their Directorate with a financial value in excess of the Contract Owner's delegated authority.
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POLICY

CONTRACTING PRINCIPLES:

The following guiding principles must be applied to all aspects of the contracting process:

- 1) NMIT has a public law obligation to act in a fair and reasonable manner in its dealings with other parties.
- 2) NMIT will be, and will be seen to be, impartial in its decision-making.
- 3) NMIT will endeavour to obtain the best value for money over the life of the contract, taking into consideration factors such as price, quality, reliability, delivery, maintenance, technological change, service levels, health and safety issues, and environmental issues.
- 4) NMIT procurement policy and processes will provide for open and effective competition between potential suppliers.
- 5) NMIT will act with honesty, integrity and transparency in its dealings with other parties while protecting commercially sensitive information.
- 6) NMIT will comply with all relevant legislation.

CONFLICTS OF INTEREST:

- 1) Staff involved in the negotiation, preparation, review or signing of contracts must declare any conflict of interest in accordance with the NMIT Procurement Procedure.

CONTRACT NEGOTIATION:

- 1) Staff involved in negotiating contracts must have an appropriate knowledge of relevant legislation, and must comply with NMIT policy, procedure and guidelines in respect of the contracting process.
- 2) The Contract Owner must consult internally with relevant parties before proceeding with contract negotiations.
- 3) The Contract Owner must keep a complete record of all contract negotiations and related correspondence.

CONTRACT PREPARATION:

- 1) Staff involved in contract preparation must have an appropriate knowledge of relevant legislation, and must comply with NMIT policy, procedure and guidelines in respect of the contracting process.
- 2) All contracts entered into by NMIT must be in writing.
- 3) Contracts involving the procurement of goods or services must comply with the NMIT Procurement Policy and NMIT Procurement Procedure.

- 4) All contracts must contain details as specified in the Contract Management Guidelines.
- 5) Where contracts are prepared by NMIT, they should use a standard NMIT template whenever possible. If no standard template exists, the Contract Owner should seek assistance from the Chief Operating Officer to draft a contract.

CONTRACT REVIEW:

- 1) All contracts in excess of the Contract Owner's delegated authority must be reviewed by an appropriate Directorate member.
- 2) All contracts with a lifetime financial value in excess of the Director's delegated authority must be reviewed by the Chief Operating Officer.

SIGNING CONTRACTS:

- 1) An NMIT staff member may only sign a contract on behalf of NMIT if the lifetime financial value of the contract falls within their delegated authority. No other staff members are authorised to sign a contract on NMIT's behalf.
- 2) Only the Chief Executive and Chief Operating Officer, under delegated authority, may sign Preferred Supplier Agreements.
- 3) If a contract poses potential risks to NMIT's brand or reputation it must be signed by the Chief Executive or Chief Operating Officer regardless of its financial value.

CONTRACTS ADMINISTRATION:

- 1) NMIT will maintain a central database of all contracts to which this policy applies.
- 2) The Contracts Administrator is responsible for the administration of contracts in accordance with the Contract Management Guidelines.

CONTRACT MANAGEMENT:

- 1) The Contract Owner is responsible for the ongoing management of the contract in accordance with NMIT's Contract Management Guidelines.

PROCEDURE

- 1) All staff involved in the contracting process are required to follow the procedures outlined in the Contract Management Guidelines.

REFERENCES

INTERNAL

Procurement Policy
Procurement Procedure
Records Management Policy

EXTERNAL

Commerce Act 1986
Consumer Guarantees Act 1993
Contracts (Privity) Act 1982
Contractual Mistakes Act 1977
Contractual Remedies Act 1979
Copyright Act 1994
Fair Trading Act 1986
Illegal Contracts Act 1970
Māori Language Act 2016
Minors' Contracts Act 1969
Official Information Act 1982
Privacy Act 1993
Public Records Act 2005
Sale of Goods Act 1908
Contract & Relationship Management – A Guide for Government Agencies, March 2011

APPENDIX

Contract Management Guidelines

CONTRACT MANAGEMENT GUIDELINES

NMIT enters into a wide range of contracts in the course of its business, such as contracts for the purchase of goods and services, academic cooperation agreements, sponsorship agreements, joint venture agreements, and leases of property.

This document sets out guidelines for entering into contracts and their ongoing management. It should be read in conjunction with the Contract Management Policy, NMIT Procurement Policy and NMIT Procurement Procedure.

CONTRACT NEGOTIATION

RESPONSIBILITIES:

- 1) The contracting process may be initiated:
 - a) By NMIT, as a result of identifying a need or an opportunity, or
 - b) By an external party approaching NMIT with a proposal.
- 2) Where the contracting process is initiated by NMIT, the Contract Owner is responsible for ensuring that all relevant internal documentation, such as a business case, is completed.
- 3) Where the contracting process is initiated by another party, the Contract Owner must undertake an assessment of the proposal. Where the lifetime financial value of the contract is within the Contract Owner's delegated authority, they may proceed with negotiations. Where the lifetime financial value of the contract is outside the Contract Owner's delegated authority, they must discuss the contract with their Director and the Chief Operating Officer to determine the level of expertise and advice required before proceeding.
- 4) The Contract Owner is responsible for leading negotiations with the Other Party. They must:
 - a) Consult with all relevant parties within NMIT;
 - b) Prepare and manage the timeline for negotiations;
 - c) Obtain appropriate sign off of initial and subsequent draft contracts;
 - d) Ensure compliance with relevant NMIT policies and procedures.
- 5) The negotiation process is an iterative one. The Contract Owner must clearly document all discussions with the Other Party. Version control should be applied to revisions of the draft contract, with a copy of each version retained by the Contract Owner.

RELEVANT PARTIES:

- 1) Where a contract relates to any of the following, the Contract Manager must consult internally with the relevant party listed in the table below.

Contract Relates to ...	Relevant Party
Building construction	Facilities Manager

Lease of land, buildings or equipment	Facilities Manager
Sale of land, buildings or equipment	Chief Operating Officer
Research	Director of Learning and Teaching
Software/Hardware Purchases	Head of IT
Lease of IT Equipment	Head of IT
Subcontracting/Joint Ventures	Chief Operating Officer
Sponsorship	Director of Marketing and International Development

CONFIDENTIALITY AGREEMENTS:

- 1) NMIT may require the Other Party to sign a confidentiality agreement where commercially sensitive information will be disclosed to the Other Party during negotiations. The Chief Operating Officer can advise on whether a confidentiality agreement is required and provide assistance in drafting an agreement.
- 2) If the Other Party requires NMIT to enter into a Confidentiality Agreement, it must be referred to the Chief Operating Officer for review.

CONTRACT PREPARATION

RESPONSIBILITY:

- 1) The contract may be prepared by NMIT or the Other Party. Generally:
 - a) where NMIT is the vendor, the NMIT Contract Owner will prepare the contract;
 - b) where NMIT is the purchaser, the contract will be prepared by the Other Party.
- 2) Where the contract is prepared by the Other Party, the Contract Owner must ensure that it clearly reflects what has been agreed between the parties.
- 3) Where the contract is prepared by NMIT, the draft contract must be reviewed by the Contract Owner's Directorate member and the Chief Operating Officer (where the lifetime financial value of the contract exceeds the Contract Owner's delegated authority) prior to providing the draft contract to the Other Party.

FORM OF CONTRACT:

- 1) All contracts entered into by NMIT must be in writing, either as a paper version or a digital version.
- 2) Where the contract is prepared by NMIT, an existing contract template should be used wherever possible. If there is no existing contract template, the Contract Owner should seek assistance from the Chief Operating Officer to prepare a draft contract.

ESSENTIAL CONTENT:

- 1) The contract must contain the following:

- a) Legal name and address of all parties to the contract
 - b) Description of goods or services being sold, purchased or provided
 - c) Responsibilities and obligations of the parties;
 - d) Financial terms, including:
 - i) the price (may be a specific amount, or a formula for determining price)
 - ii) GST
 - iii) price variation mechanisms (for contracts longer than one year)
 - iv) payment method
 - v) payment terms, including milestone payments (if required)
 - vi) penalties or incentive/bonus payments, and
 - vii) retentions (if appropriate)
 - viii) documentation/invoicing requirements;
 - e) Contract term, including:
 - i) commencement date
 - ii) end date
 - iii) term of contract (or statement that the contract is ongoing if it is not for a specific term) and
 - iv) Any rights of renewal
 - f) Circumstances in which the contract can be terminated, e.g. expiry, default, other specified circumstances.
 - g) Authorised signatories and witnesses
- 2) The Contract Owner must ensure that contracts prepared by the Other Party contain the above details.

ADDITIONAL CLAUSES:

- 1) The contract may also contain clauses in relation to:
- a) Interpretation and definitions;
 - b) The background to the contract;
 - c) Technical specifications of the goods/services.
 - d) Performance standards that must be met, e.g. deliverables, timeframes, and procedures for reporting and review of those measures.
 - e) Obligations of the parties in relation to the use of intellectual property, and to any intellectual property created under the contract.
 - f) Obligations of the parties in respect to private information.
 - g) Confidentiality, including any situations in which disclosure can be made.
 - h) Procedures for escalation of issues.
 - i) Procedures for resolving disputes, such as mediation or arbitration.
 - j) Default and Penalty, including the process for default (e.g. period of grace in which to remedy) and consequences.
 - k) Force Majeure, allowing a party to be excused from failure to perform obligations where prevented by circumstances outside their control.
 - l) Early expiry, outlining circumstances in which the contract shall expire before the expiry date.
 - m) Procedures for varying the agreement.
 - n) Processes for renewal of the contract.

- o) Whether the contract can be assigned and, if so, the procedure.
- p) Whether a third party can be subcontracted to perform any of the obligations of any of the parties to the contract and, if so, the procedure.
- q) Liability and indemnity, including limitation of liability.
- r) How notices are to be given and when they are deemed to be received.
- s) Obligations of all parties to the contract when the contract expires.

LEGAL ADVICE:

- 1) Contracts should be reviewed by independent legal advisors in the following situations:
 - a) Where the contract involves the sale or purchase of land or buildings;
 - b) Where the contract value exceeds \$250,000

CONTRACT REVIEW & SIGNING

- 1) The Contract Owner is responsible for coordinating the contract review process, ensuring that the contract is reviewed by their Director and Chief Operating Officer (where required).
- 2) The Contract Owner must submit the contract to the Chief Executive or Chief Operating Officer for review and signature.
- 3) The signed contract is given to the Contracts Administrator who will notify the Contract Owner that the contract has been signed.
- 4) If the contract has already been signed by the Other Party, the Contracts Administrator will return a signed original to the Other Party.
- 5) If the contract needs to be signed by the Other Party, the Contracts Administrator will liaise with the Contract Owner to obtain the signature of the Other Party.

CONTRACT MANAGEMENT

The nature and extent of contract management will vary between contracts depending on the type, value and term of the contract. The Contract Owner is responsible for ensuring that contract management procedures appropriate to the contract are undertaken.

CONTRACT MANAGEMENT PLAN:

- 1) A formal contract management plan is required in the following cases:
 - a) The contract is for the purchase of goods or services by NMIT, and
 - b) The contract value exceeds \$250,000
- 2) The contract management plan should include:
 - Name and contact details of the NMIT Contract Owner
 - Name and contact details of the Other Party's person responsible for the contract
 - The key responsibilities of each party
 - A timeline of key actions, deliverables, milestones and payment dates
 - Reporting requirements (frequency, type, content and distribution)

- Meeting requirements (chairperson, location and standard agenda items)
- An implementation or transition plan
- The process for achieving and checking key deliverables, acceptance strategy or test plan
- The quality/standards and measuring process (e.g. KPIs)
- Payment procedures
- The process for agreeing and controlling variations and changes to the contract
- A risk management plan
- A fixed asset plan and register (where required)
- Guidance on any NMIT policies or procedures that apply to the Other Party

3) The contract management plan should be updated as required during the contract term.

SERVICE DELIVERY:

Service delivery management is about managing a supplier's performance against the performance indicators in the contract.

- 1) The Contract Owner should decide how service delivery performance will be measured. Measures should include volumes, timeframes, costs, and quality. Quality measures may include assessing aspects such as completeness, availability, capacity, reliability, flexibility and timeliness.
- 2) Measures should be communicated to the supplier and may be included in the contract.
- 3) Performance against the specified measures should be regularly undertaken.
- 4) If supplier performance fails to meet the specified standards, the Contract Owner must ensure that either appropriate remedial action is taken or that the contract is terminated in compliance with the relevant clauses in the contract.

RELATIONSHIP MANAGEMENT:

- 1) The Contract Owner is responsible for maintaining an effective relationship with the Other Party.
- 2) The Contract Owner should hold regular meetings with the Other Party to discuss overall performance, achievement of objectives and key performance indicators and each party's adherence to the contractual terms.
- 3) The timing and frequency of contact with the Other Party will depend on the nature and duration of the contract.
- 4) Where an issue arises, the Contract Owner should raise it promptly with the Other Party and seek a resolution.

DISPUTES:

- 1) Disputes should be dealt with according to the procedure set out in the contract.
- 2) The Contract Owner should ensure that details of disputes and discussions with the other party are documented.
- 3) If the Contract Owner is unable to resolve the issue with the Other Party, it should be escalated to the relevant Directorate member in the first instance. If the Contract Owner believes that there is a material risk to NMIT, they should advise the Chief Operating Officer.

CONTRACT COMPLETION:

- 1) Upon completion of the contract, the Contract Owner should ensure that the Other Party has completed the required deliverables and/or performed all services to the standards required under the contract before payment is made.
- 2) The Contract Owner should undertake a reconciliation of the costs incurred to ensure that all invoices have been received and all payments made in accordance with the contract, including any retentions.
- 3) The Contract Owner must ensure that appropriate certifications are obtained where required, such as in the case of building construction.
- 4) The Contract Owner must ensure that any commitments or obligations, such as warranty commitments or intellectual property obligations that extend beyond completion of the contract are monitored for compliance.

CONTRACT RENEWAL OR EXPIRY:

- 1) Well in advance of the expiry of the contract term, and in accordance with any period specified in the contract, the Contract Owner should undertake a review to determine whether to renew the contract or not.
- 2) The review should cover the following:
 - a) Are NMIT's needs being met?
 - b) Are agreed performance standards being met?
 - c) Are there any issues that need to be addressed?
 - d) Are the contract requirements still relevant?
 - e) What further term should the contract be renewed for?
 - f) Is the current pricing appropriate?
 - g) Whether to renew the contract with the existing party or change to an alternative?

CONTRACT VARIATIONS:

- 1) Contract variations typically require the written agreement of both parties to the contract.
- 2) If the Other Party requests a contract variation, the Contract Owner should:
 - a) Check that the variation is permitted under the contract;
 - b) Evaluate the impact of the variation.
 - c) Discuss the request with their Director and the Chief Operating Officer.
- 3) If the variation is acceptable, it should be documented, reviewed and signed in accordance with the Contract Preparation, Contract Review and Contract Signing sections of this document.

CONTRACT ADMINISTRATION

- 1) The Contracts Administrator is responsible for maintaining a database of all NMIT's contracts.
- 2) The Contracts Administrator must enter details of all contracts (new, variations, cancellations, expiries) into the Contracts Database along with a scanned copy of the contract, and file the original contract in the central contracts file.

- 3) Contracts must be retained in accordance with legislative requirements, and with NMIT's Records Management Policy.
- 4) Disposal of contracts and contract related records must be undertaken in accordance with legislative requirements, and with NMIT's Records Management Policy.
- 5) The Contracts Administrator must provide a report of current contracts to each Contract Owner at the beginning of each quarter (January, April, July, and October).

LEGISLATIVE REQUIREMENTS

- 1) All NMIT staff involved in the contracting process must be aware of and comply with relevant legislation. A brief description of some of the relevant legislation is given below. Full copies of the legislation, can be accessed at www.legislation.govt.nz. Where there is any doubt regarding the application of the legislation, specialist legal advice should be obtained.

Commerce Act 1986

Prohibits conduct that restricts competition and purchase of shares or assets where that would lessen competition in a market.

Consumer Guarantees Act 1993

Sets out guarantees that goods and services must meet when sold by someone in trade.

Contracts (Privity) Act 1982

Enables third parties to enforce a provision of a contract if they are sufficiently identified as beneficiaries by the contract and, in the contract, it is expressed or implied that they should be able to enforce this benefit.

Contractual Mistakes Act 1977

Provides for a remedy where one party's decision to enter into a contract is influenced by a mistake in the contract that is known to the other party.

Contractual Remedies Act 1979

Provides for a remedy where one party relies on a representation made by the other party and the representation is misleading.

Fair Trading Act 1986

Prohibits misleading or deceptive conduct and the making of false claims in respect to goods or services.

Illegal Contracts Act 1970

States that illegal contracts are not enforceable, but contains provisions for obtaining relief.

Māori Language Act 2016

Declares the Maori language to be an official language of New Zealand.

Minors' Contracts Act 1969

Provides that a contract entered into with a minor (i.e. person under 18 years of age) is not enforceable against the minor.

Official Information Act 1982

Establishes rules and requirements governing access to official information. The guiding principle is that information must be made available unless good reason exists under the Act for withholding it.

Privacy Act 1993

Controls how organisations' collect, use, disclose, store, and give access to personal information.

Public Records Act 2005

Establishes a framework for recordkeeping in public offices and local authorities. This includes tertiary institutions. It requires the creation and maintenance of full and accurate records in accordance with normal, prudent business practice. Public records and archives can only be destroyed and disposed of with the authority of the Chief Archivist.

Sale of Goods Act 1908

Establishes rules and requirements in relation to the sale of goods. The Act may be contracted out of.