Financial and Contract Sub-delegations Procedure

Section 1 - Purpose and Scope

(1) The purpose of this Procedure is to outline the steps Sub-delegates must take when exercising Financial or Contract Sub-delegations.

(2) This Procedure applies to all Staff. Boards of controlled entities must implement their own devolutions of authority, consistent with their constitutions.

Section 2 - Process and Key Controls

(3) The Delegations Policy sets out the principles applicable to the University's delegations and sub-delegations and summarises the applicable regulatory framework for Staff.

(4) When exercising Financial or Contract Sub-delegations, Sub-delegates must comply with:

a. this Procedure, including the key requirements in Section 3; and
b. the general principles applicable to all the University's delegations in the Delegations Policy.

(5) This Procedure must be read in conjunction with:

a. The summaries of the sub-delegated powers in the Schedule showing:
    i. sub-delegates;
    ii. sub-delegations conferred;
    iii. conditions or limits on the exercise of the relevant powers and functions, and
b. Other applicable University policies and procedures including:
    i. Staff Code of Conduct Policy;
    ii. Conflict of Interest Policy;
    iii. Intellectual Property Policy
    iv. Financial Reporting and Disclosure Policy and the Plant and Equipment Leasing Procedure;
    v. Occupation of University Land by Lease or Licence Policy;
    vi. Procurement Policy;
    vii. Assets Procedure; and
    viii. Records Management Procedure and the Retention and Disposal Schedules.

(6) Where there is an inconsistency between a Sub-delegations Instrument and this Procedure or another University policy or procedure, the Sub-delegations Instrument has precedence.

(7) A breach of the provisions of this Procedure:

a. may be regarded as misconduct and may be subject to disciplinary action and
b. does not affect or diminish the legal conferral of a power under a Sub-delegations Instrument or invalidate the

exercise of a Sub-delegation.

Section 3 - Key Requirements

Part A - General Requirements for Sub-delegations

(8) Sub-delegates must:

a. observe the general principles applicable to all delegations in the Delegations Policy;
b. not further sub-delegate the function or power conferred on them by a Sub-delegations Instrument (only the Senate may delegate its functions and powers and only the Vice-Chancellor may sub-delegate Senate delegations conferred on the Vice-Chancellor); and
c. take the following actions before exercising a relevant Sub-delegation:

Accountability and Probity	• Only incur Expenditure or sign Contracts within the financial limit for their Office, specified in the Sub-delegations Instrument. • Ensure the University has Budgeted for any proposed Expenditure or Contract imposed financial obligation or liability on the University. • Observe Accountability and Probity requirements as detailed in the 'Accountability and Probity' provisions in section 3 of this Procedure.
Over Budget Expenditure Requires Approval	• If proposed Expenditure or a Contract obligation exceeds the Budgeted funds, sub-delegates must request approval for an increase in the Budgeted funds from the next higher level relevant budget holder. • For example, if the sub-delegate is a Head of School, approval must be sought from the relevant Executive Dean, or if the sub-delegate is a Director of a central services unit, approval must be sought from the Chief Operating Officer.
Pre-Contract Due Diligence	• Ensure an appropriate level of pre-Contract Due Diligence is conducted. • Apply any relevant Due Diligence measures as detailed in the 'Pre-Contract Due Diligence' provisions in section 3 of this Procedure.
Reservation of University Rights Pre-Contract Negotiations	• Protect the University's legal and financial position during Contract negotiations. • Apply any relevant pre-Contract measures in the 'Pre-Contract Negotiations' provisions in section 3 of this Procedure.
Protect the University's Intellectual Property	• Comply with the University's Intellectual Property Policy, including requirements regarding restraints. • Ensure the proposed Contract does not contain any inappropriate or unauthorised assignment, licence detailing with or disposal of, the University's Intellectual Property. • Where necessary obtain Legal Advice about the proposed Contract's effect on the University's Intellectual Property.

Part B - Requirements for Financial Sub-delegations

(9) In addition to the requirements in Part A ('General Requirements for Sub-delegations'), Sub-delegates must, when exercising a Financial Sub-delegation:

a. not split or divide transactions in order to manipulate a financial limit;

b. comply with the Procurement Policy, if the Expenditure relates to a University procurement activity; and
c. ensure any Expenditure is:
    i. legally warranted or justified;
    ii. correct as to its amount;
    iii. properly recorded or documented, and
d. comply with the Financial Sub-delegations Instrument.

(10) Where Expenditure under a Financial Sub-delegation is made in discharge of a Contractual obligation, Sub-delegates should also consider and apply the relevant parts of Part C 'Requirements for Contract Sub-delegations' below.

(11) Part C 'Requirements for Contract Sub-delegations' does not apply to transactions which are not contractual in nature such as payment of government taxes, rates or duties or the write off of assets, or waiving parking fines.

(12) Part C 'Requirements for Contract Sub-delegations' does not apply to repayment of Treasury loans.

Calculating Total Expenditure

(13) To determine the applicable financial limit for a Sub-delegation, the financial value of the Expenditure or transaction will:

a. Exclude GST but include all other duties and taxes.
b. Include the total expenditure required under a Contract over its entire life. For example, the approval level for a 10-year lease will be determined by the total 10-year expected outlay, not the first year's rent amount.
c. Transactions must not be split or divided in order to manipulate a financial limit.
d. Be the higher of the total revenue (before any net off) or total expenditure (before any net off) amounts where 'netting-off' is allowed. For example, a transaction involving a trade-in will use the market price of the item before any trade-in values are applied.
e. Use the accumulated amount of the transaction, project or Contract where increases are required to the initial approved amount. That is, the variation cannot be approved by a Delegate if the total accumulated amount of the transaction, project or contract is higher than the financial limit for their level of delegation.

Part C - Requirements for Contract Sub-delegation

Accountability and Probity

(14) Before committing to, or signing a Contract, Sub-delegates must:

a. ensure the subject matter of the Contract falls within the University's functions in sections 5 and 6 of the University of Queensland Act 1998;
b. comply with the University's Conflict of Interest Policy and ensure they have no conflict of interest arising out of the proposed Contract;
c. comply with Procurement Policy if the Contract relates to a University procurement activity;
d. ensure the total Consideration of the Contract does not exceed the Sub-delegates' financial limit;
e. where necessary, obtain Legal Advice, particularly if:
    i. the transaction involves unacceptable legal risks for the University (see clause 25 below); or
    ii. there are any other material or unusual legal issues associated with the transaction;
f. ensure they are entitled to sign the Contract as a Sub-delegate and have complied with the Contract Sub-delegations Instrument;

g. ensure any expenditure is legally warranted, correct as to its amount and for a valid University purpose; and
h. ensure the Contract is appropriately documented including in accordance with Records Management Procedure.

Pre-Contract Due Diligence

(15) Before a Sub-delegate binds the University in a Contract, the Sub-delegate must conduct an appropriate level of Due Diligence.

(16) Due Diligence protects the University's commercial, legal, financial interests and reputation.

(17) The requisite level of due diligence is determined by the nature, value, and significance of the Contract and reputational risk for the University.

For example, a Contract to purchase a high value asset from an overseas supplier with whom the University has no transactional experience requires more due diligence than a Contract to buy low value consumables from a reputable, local supplier with whom the University has a long standing and satisfactory, customer-supplier relationship.

(18) Due Diligence must be tailored to the particular circumstances of the proposed Contract. In some circumstances, Due Diligence enquiries may be conducted to confirm that the other party is:

a. a solvent, reputable, legal entity; and
b. capable of performing its contractual obligations to the University at the times, in the manner and to the standard required by the University.

(19) For Contracts to buy an asset, the asset:

a. is legally owned by the seller;
b. is free of third-party interests or claims; and
c. conforms to specifications required by the University.

(20) The 'Additional Due Diligence Considerations' provisions in the Appendix of this Procedure provides more detail about Due Diligence investigations and enquiries that may be undertaken, depending on the materiality and risk of the proposed Contract.

Calculating Expenditure or Consideration of a Contract

(21) When determining the applicable financial limit for the exercise of a Contract Sub-delegation, the Consideration or Contract value, will be assessed in the manner described in the 'Calculating Total Expenditure' provisions (clause 13).

Pre-Contract Negotiations

(22) Prior to the commencement of negotiations with external entities about Contract terms and conditions, Sub-delegates should:

a. consider whether the contract would impact, or would be impacted by, other areas of the University, and if so, ensure appropriate level of consultation with those areas about the contract;
b. for international agreements or memorandum of understanding, consult Global Engagement and ensure compliance with the International Agreements Procedure; and
c. inform the other party that:
    i. any statement, offer or representation made by or on behalf of the University concerning a proposed Contract is:

- subject to the proposed Contract being documented on terms and conditions and in a form, acceptable to the University;
- not binding on the University until the Contract is duly signed by all parties;

ii. any proposed Contract may be subject to approvals, including financial approvals from the University's senior executives; and

iii. until the Contract is duly signed, the University reserves its rights entirely.

(23) Sub-delegates should ensure the Contract contains:

a. precise language about each party's obligations so that the University understands:
   i. what each party must do; and
   ii. by when; and
   iii. to what standard, and
b. an appropriate exit/termination regime.

(24) Some Contracts (such as consultancies and service agreements where the University is the buyer) should preferably confer on the University rights to terminate for convenience and suspend the Contract without penalty.

(25) Unacceptable Legal Risks and Contracts which are Unlawful:

a. Sub-delegates must not sign Contracts which contain unacceptable legal risks for the University, including:
   i. exposures to unlimited consequential or indirect losses;
   ii. inappropriate or unfair indemnities or warranties;
   iii. terms which impose material liability on the University for matters beyond the University's control;
   iv. penalties; or
   v. other conditions which pose an unacceptable legal risk to the University.
b. Sub-delegates should determine whether the:
   i. illegality or unacceptable legal risk discussed in subclause 25(a) above, can be omitted from the proposed Contract or appropriately amended to remove the illegality or unacceptable legal risk; and
   ii. other party will agree to its omission or amendment.
c. Sub-delegates are encouraged to seek Legal Advice about the revised Contract.
d. Sub-delegates must not sign or enter Contracts which are unlawful.
e. Examples of unlawful Contracts include those which:
   i. Breach relevant statutes.

      The statutes which are relevant will depend on the nature and terms of the Contract. Examples could include:
      - Australian Consumer Law - directed relevantly at cartels, misleading or deceptive conduct, unconscionable conduct and unfair contract terms;
      - Criminal Code Act 1995 (Cth) - directed relevantly at bribery of foreign officials;
      - Work Health and Safety Act 2011; and
      - Environmental Protection Act 1994,
   ii. Oblige the University to act:
      - beyond its statutory powers;
      - illegally or unlawfully; or
   iii. Legal Advice indicates are unlawful.

Execution of Contracts

Administrative Allocation of Contracts

(26) The University allocates responsibility for certain Contracts according to the nature or subject matter of the Contract.

(27) The Vice-Chancellor can, subject to the respective Financial Limits, sign all Contracts.

(28) The Provost and the Chief Operating Officer can, subject to their respective Financial Limits, sign all Contracts pertaining to their Organisational Area.

(29) However, in the ordinary course of University business, specific types of Contracts should only be signed and administered by Sub-delegates within Organisational Areas specified in the table below:

	Contract Type	Who Signs and Administers the Contract?
1	Research Agreements	Sub-delegates within the Research areas of the University specified in the Contract Sub-delegations Instrument
2	International Agreements	Sub-delegates within the International areas of the University specified in the Contract Sub-delegations Instrument after satisfying the requirements of the International Agreements Procedure
3	Construction Contracts	Sub-delegates within the Property and Facilities Division of the University specified in the Contract Sub-delegations Instrument
4	Information Technology Services Contracts	Sub-delegates within the ITS Division of the University specified in the Contract Sub-delegations Instrument
5	Contracts that: • are not Construction Contracts, Research Contracts, ITS Contracts; or • do not involve International activities.	Sub-delegates specified in the Contract Sub-delegations Instrument.

Execution of Complex Non-Standard Contracts

(30) If delegated to do so, before Sub-delegates sign complex, high risk or high value ($5M or above):

a. Non-Standard Contracts;
b. MoUs; or
c. Contracts with foreign entities,

Sub-delegates must seek Legal Advice in relation to the draft Contract.

Execution of Standard Contracts

(31) Subject to applicable financial limits in the Sub-delegations Instrument, Standard Contracts must be signed by Sub-delegates from the appropriate Organisational Area.

(32) Sub-delegates must also comply with any Guidelines that accompany the relevant Standard Contract.

(33) Sub-delegates are encouraged to seek Legal Advice in relation to any proposed material changes to the Standard Contracts.

Restriction on Execution of certain Construction Contracts

(34) Sub-delegates must not sign and Administer Contracts for the construction or Major Alteration of University Buildings and Facilities except with the prior approval of the:

a. Senate;
b. Department of Education (Cth); and /or
c. Chief Operating Officer;

as required, and with prior confirmation that Construction Funding is available.

Contract Administration

(35) Sub-delegates must properly administer Contracts in accordance with the contract terms and conditions.

(36) After signing a Contract, Sub-delegates must where relevant to the subject Contract:

a. note the manner and standard of performance of contract obligations or deliverables and then monitor and measure performance to ensure the other party complies;
b. ensure any goods, materials or services purchased by the University match the quality, quantity and description specified in the Contract;
c. ensure any acceptance testing is conducted on time and in the manner prescribed by the Contract;
d. ensure the University complies with its own Contract obligations on time and in the manner prescribed by the Contract;
e. comply with the process stipulated in the Contract, regarding Contract breaches by the other party;
f. not state, represent or indicate that the University will waive or disregard any Contract non-compliance by the other party. Instead inform the other party who is non-compliant that the University reserves its rights;
g. seek Legal Advice if there is material non-compliance by the counter-party which could justify a notice from the University:
    i. about a breach of Contract; or
    ii. terminating the Contract; and
h. ensure Contracts are retained in accordance with the Records Management Procedure.

Binding Options in Contracts

(37) Where relevant to Contracts they have signed, Sub-delegates should ensure proper monitoring of and compliance with:

a. the dates by which binding options to renew the Contract are to be exercised; and
b. the Contract requirements regarding the manner of exercise of an option.

For example, leases of land may have options exercisable by written notice from the tenant to the landlord, given anywhere between 9 and 3 months before expiry of the then current, lease Term.

Negotiated Renewals of Non-Standard Contracts

(38) If the University and the other party intend to negotiate a renewal of an existing, executed Non-Standard Contract, Sub-delegates should where relevant:

a. record or distill from the Contract the process by which that Contract may be extended and comply with the process in the subject Contract; or

b. if no process for extension is prescribed in the existing Non-Standard Contract, seek Legal Advice about preparing and signing a deed of extension of the subject Contract before the Contract expires.

(39) The Sub-delegate can sign a renewal of the Non-Standard Contract if:

a. other than the Term (being start and end dates), the proposed renewed or extended Contract contains the same terms and conditions as the existing Non Standard Contract;
b. any legal advice about the existing Non-Standard Contract did not note or warn of any unusual legal risks;
c. the consideration for the proposed renewed Contract is within the Sub-delegate's financial limit; and
d. the Sub-delegate records and preserves a memo or formal file note regarding the background to the Contract's renewal.

Legal Proceedings

(40) Other than the Provost and the Chief Operating Officer, Sub-delegates must not commence or prosecute Legal Proceedings involving the University, or sign deeds of settlement or release resulting from Legal Proceedings. The Provost and Chief Operating Officer must report any signed deeds of settlement or release above $500,000 to the Vice-Chancellor.

(41) If Legal Proceedings are threatened or commenced against the University, Sub-delegates must seek Legal Advice from or through the University's Legal Services, immediately after they become aware of such Legal Proceedings being threatened or commenced against the University.

(42) Under no circumstances should any liability be admitted or agreement made with a third party. Staff must not discuss, negotiate or sign any agreement in the form or nature of, a release, discharge or settlement of liability without specific advice from UQ Legal Services or lawyers appointed by UQ's insurers.

Part D - Sub-delegations Schedule

(43) Details of financial and contract Sub-delegations are provided in the Sub-delegations Schedules.

(44) The Schedules also specify any conditions or restrictions associated with a specific delegation.

Section 4 - Roles, Responsibilities and Accountabilities

Vice-Chancellor

(45) The Vice-Chancellor remains responsible for the actions of Sub-delegates when exercising their Sub-delegations.

University Senior Executive Team

(46) The University Senior Executive Team is responsible for monitoring the operation of the Sub-delegations and such other functions as the Vice-Chancellor may require.

Sub-delegates

(47) Sub-delegates responsibilities are itemised in this Procedure.

Associate Director, Governance and Policy

(48) The Associate Director, Governance and Policy is responsible for maintaining the delegations schedule to reflect the Vice-Chancellor's sub-delegations from time to time.

Section 5 - Monitoring, Review and Assurance

(49) The Chief Financial Officer is required to monitor the application of financial Sub-delegations and review the schedule of financial Sub-delegations on an annual basis.

(50) The Director, Governance and Risk is required to monitor the application of contract Sub-delegations and review the schedule of contract Sub-delegations on an annual basis.

Section 6 - Recording and Reporting

Records

(51) In relation to contract sub-delegations, Sub-delegates are required to keep records of all contracts executed in accordance with this Procedure. Where a contract relates to a procurement of goods and services under the UQ Procurement Policy, the records maintained under that policy will satisfy the records obligations under this Procedure.

Reporting

(52) When required, Sub-delegates must provide reports to the Vice-Chancellor on the exercise of Sub-delegations.

(53) The Provost and Chief Operating Officer must report any signed deeds of settlement or release above $500,000 to the Vice-Chancellor.

Section 7 - Appendix

Definitions

(54) The definitions in the Vice-Chancellor's Sub-delegations Instruments and the definitions below, apply to this Procedure.

Term	Definition
Administer	Includes doing an act to administer, enforce, manage or perform a Contract for and on behalf of the University, in accordance with the Contract's terms including: a. giving and receiving valid receipts, discharges and notices; b. making and receiving payments; c. receiving or transferring rights and title in Property; d. representing the University in Dispute Resolution processes; and e. amending or varying the Contract.
Budgeted	Means in respect of any Expenditure or Contract, which contains or imposes on the University a financial obligation or liability, for which the University has: a. budgeted; or b. funds available and dedicated; or c. otherwise made adequate provision, for that Expenditure or Contract liability.
Contract	Has the meaning as defined under the Schedule of Contract Delegations and Sub-delegations.
Delegations Policy	Means the Delegations Policy approved by the Senate.

Term	Definition
Expenditure	Means the payment on behalf of the University of cash or cash-equivalent for, goods or services, or a charge against available funds in settlement of an obligation as evidenced by an invoice, Contract or in the discharge of any other contractual legal obligation of the University.
Legal Advice	Means, legal advice by: a. a lawyer from the University's Legal Services; or b. an external lawyer, retained in consultation with the University's Legal Services.
Major Alteration	Means building and construction works to University Buildings and Facilities including alterations, renovations, repair or replacement with a consideration or value exceeding $5 million.
Staff	Means academic and other staff of the University.
Sub-delegate	Means a Staff member to whom a Sub-delegation has been made.
Sub-delegation	Means a conferral by the Vice-Chancellor on a Staff member, of a delegated power to exercise a Senate function or power.

Additional Due Diligence Considerations

(55) Where the other party is a corporation undertake ASIC searches and Business names enquiries. Ascertain the key details about the company, including:

a. where it is incorporated;
b. the ownership structure of the company; and
c. the company officers and key personnel like the company secretary.

(56) Review the financial records of the other party and determine if they have sufficient assets. If the other party is a company, obtain and review the company's financial statements for the most recent, three financial years.

(57) Solvency and credit reference checks on the other party (e.g. conducting commercial profile checks through Dun & Bradstreet).

(58) Court proceedings searches to determine if the other party is or has been, a party to legal proceedings and if so, the nature and relevance to the proposed Expenditure or Contract.

(59) Reference checks on the other party with other customers, banks or third parties.

(60) Searches of the Office of Fair Trading including for Public Warnings.

(61) Enquiries about the reputation standing and public record of the other party;

(62) Copies of the other party's current insurance policies required by the proposed Contract, especially public liability, product liability, professional indemnity insurances and workers compensation insurance (as the case may be).

(63) Patents circuit layouts; registered designs, trademark and other intellectual property searches and enquires (as the case may be).

(64) Personal Property Securities Register searches if the Expenditure or Contract involves the University acquiring personal Property (that is, any asset, equipment or plant other than land).

(65) Reviews of any transferrable warranties or product guarantees.

(66) Before the University purchases or leases any land, real property searches to confirm legal, registered, interests

in land (there is an extensive set of real property searches, which should be undertaken with Legal Advice).

(67) If a tender process has been undertaken prior to the Contract, confirm that the Contract accords with the tender requirements and that any departures are acceptable to the University.

(68) Confirm that the other party has in place appropriate procedures to comply with the Work Health and Safety Act 2011. Complete checks for the quality and safety of plant and equipment and other WHSA investigations.

(69) Complete testing of materials and products to confirm:

a. they match the seller's samples or descriptions;
b. are fit for the University's purpose; and
c. comply with Australian Standards.

(70) Other Due Diligence enquiries as may be appropriate for the nature of the proposed Contract.

Status and Details

Status	Current
Effective Date	1st June 2020
Review Date	26th April 2021
Approval Authority	Vice-Chancellor and President
Approval Date	1st June 2020
Expiry Date	Not Applicable
Policy Owner	Joanna Spanjaard Director, Governance and Risk
Enquiries Contact	Governance and Risk Division

This document may be varied, withdrawn or replaced at any time. Printed copies, or part thereof, are regarded as uncontrolled and should not be relied upon as the current version. It is the responsibility of the individual reading this document to refer to The University of Queensland's Policy and Procedure Library for the latest version.