



# Independent Contractor (Contract for Service) Policy

## Purpose

The aim of this policy is:

- a. To provide a clear statement of policy and supporting procedures relating to the use of contracts for service and to provide guidance on issues that might arise in relation to the use of such contracts.
- b. To ensure that independent contractors are engaged to provide services under a contract for service and that all contracts for service meet the requirements of the law and this policy.
- c. To reduce the risks to Unitec associated with categorizing an individual as an independent contractor when they should be, or may subsequently be regarded as an employee.
- d. To ensure that the rights and responsibilities of Unitec and an independent contractor contracted to Unitec, are clear to both parties.
- e. To ensure that Unitec complies with all applicable legislation and with the requirements of the Inland Revenue Department.
- f. To ensure the consistent application of the policy throughout Unitec.

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## Scope

All Independent Contractors hired for any purpose required by Unitec.

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## Policy Statement(s)

1. In keeping with the desire to create a culture of research and to enhance career development of staff, wherever practicable, an employment agreement should normally be used in preference to an independent contract arrangement for any services that are 'core' to the on-going business of Unitec. Activities such as teaching, research and tutoring are considered core services.
2. Contracts for service entered into with independent contractors may be permitted from time to time, but only in accordance with guidelines issued by the Executive Director, People & Safety. Normally it would be considered appropriate to enter into a contract for service, instead of an employment agreement, where Unitec wishes to engage the services of an independent contractor to provide a particular specialised service, for a specified limited period. For example, Unitec commonly engages independent contractors to perform the following non-integral roles:
  - Monitors
  - Adjunct Professors
  - Visiting professors
  - Research associates

- Technical Support
3. It is recognised that senior leaders will often have legitimate reason to engage the services of independent contractors with specific expert skills.
  4. Whether a person is an independent contractor or an employee is determined by a consideration of all surrounding facts, including the form of the contract between the parties, their intention and by having regard to a number of tests established by the Courts. The Inland Revenue Department has also published a guideline that can be used to help assess the status of the person "Self-employed or an employee?" IR 336 (April 2009). Individuals should not be engaged to work as an independent contractor unless Unitec is satisfied the risk of the person subsequently being found to be wrongly categorised is minimised. To ensure this requirement is complied with, all requests for contracts for service must be submitted to Human Resources with all relevant supporting information (see paragraph 5 below).
  5. Before the services of a person or organisation are engaged under a contract for service, the proposed engagement should be closely scrutinized, especially where the arrangement mirrors, or is substantially similar to any existing employment relationship.
  6. Contracts for service are not usually required when engaging:
    - a company to deliver an occasional service outside the core business of the Institute e.g. car hire, plumber, and for which
      - a. the company or individual is clearly in the business of providing that service to multiple clients, and
      - b. expectations of the service are clearly understood and agreed
    - a guest lecturer delivering 5 or fewer lectures
  7. It should be noted that Unitec has the right to offer to establish an employment relationship, rather than a contractor relationship with an individual, if it considers that the real nature of the relationship is that of an employment relationship and not a contractor relationship.

## Risks

1. There are significant risks to Unitec in not categorizing the relationship correctly and in accordance with the law.
2. Under the Employment Relations Act 2000, the Employment Relations Authority or the Employment Court may determine the real nature of a relationship between the parties, taking into account all relevant factors. A written agreement that declares a contract for service relationship may be regarded as merely a 'label' if the circumstances and facts are indicative of a different relationship. If the Employment Authority or the Employment Court were subsequently to determine that a relationship between Unitec and an independent contractor was in reality an employment relationship, then the individual would be entitled to the normal protections and entitlements afforded by employment law. This may include redress for unjustified dismissal (in the event of termination of a contract), or an unjustified disadvantage, personal grievance claims, holiday and leave arrears and other minimum employment entitlements. Unitec could also be exposed to fines and penalties under the Employment Relations Act 2000.
3. Separately, or in addition, if the IRD determines that an 'Independent Contractor' should have been treated by Unitec as an 'employee', then Unitec could be prosecuted for failing to deduct PAYE tax. In such case, Unitec may face substantial liabilities in relation to tax, as well as penalties for late payment of tax. Unitec might also be prosecuted and heavy fines may be imposed.

## Associated Procedures

1. Current information in relation to requesting a contract for service is available through Finance.
2. The **Finance Department** is responsible for the contract for service process; including obtaining the appropriate authorisation and the issuing of contracts. The process is detailed in **Appendix A**
3. The **contracting manager** should ensure that the services to be performed are clearly specified (except for Monitors, in which case the AQO will complete the relevant information). Any specific performance standards, critical dates, and final dates for completion of the tasks should be noted. If specific material is to be provided by the contractor then this should form part of the contract. It is important to be clear about the expectations of delivery of the service. All known costs and expenses that will be incurred by the contractor should be included in the overall fee. A total fee, inclusive of GST, should be agreed in the contract.
4. The **Executive Director, People and Safety, or his/her delegate** will confirm the appropriateness of issuing a contract for service through the approval process, based on the information provided and working through tests as prescribed by law. As these tests are not definitive, any area of concern will be discussed with the **contracting manager**.
5. The **contracting manager** is responsible for ensuring that a signed contract is in place, along with an authorised purchase order, **before any services are delivered.**
6. The **Finance Department** is responsible for ensuring that payments are made promptly on a receipt of a duly authorised invoice. Invoices received without any contract or purchase order having been received will not be passed for payment, but will be referred back to the contracting manager.

## Responsibilities

Role	Responsibilities
Executive Director, People & Safety	<ul style="list-style-type: none"> <li>Has the delegated authority to update any forms or appendices with this policy</li> </ul>

## Definitions

In order to apply the policy and procedures in a correct manner it is important that these defined terms are fully understood.

Term	Means
Contracting Manager	The person with delegated authority, in writing from the Chief Executive of Unitec, to negotiate and enter into a contract for service on behalf of Unitec.
Employment Agreement	A contract <b><u>of</u></b> service between an employer and an employee, and includes an employee's terms and conditions of employment.

Term	Means
Employee	Defined by the Employment Relations Act 2000 as "any person employed by an employer to do any work for hire or rewards under a contract of service". Employers are required to deduct PAYE tax from an employee's salary or wages, and have obligations under the KiwiSaver Act 2006. Employees receive various protections and entitlements under the law that contractors do not. For example, employees receive ACC coverage, holiday and sick leave pay, and any disputes are usually resolved in the specialist employment jurisdiction.
Independent Contractor	<p>An individual or organisation (including a company) that supplies labour services through a contract <b>for</b> service. Independent contractors <b>are not employees</b> of Unitec. Independent contractors who are individuals may be employees of another organisation or they may be self-employed.</p> <p>The terms of independent contracting arrangements are determined by agreement between the parties and disputes are resolved in the civil court jurisdiction. Independent contractors are required to manage their own tax liabilities. If, however, the services that they provide fall into the categories<sup>1</sup> defined in Schedule 4 of the Income Tax Act 2007. Unitec is legally required to deduct schedular payments.</p> <p>Independent contractors do not get paid a 'salary'. They are paid a fee for their services. Payments to independent contractors are paid by Unitec (through the Finance Department) on production of an invoice by the contractor. They are not paid via Payroll. Payments to independent contractors are usually made in a lump sum on completion of the contract, or in instalments as progress is made on the services they are contracted to provide.</p> <p>Independent contractors do not receive holiday pay, sick leave, or any other type of benefit that is usually included in an employment agreement. Independent contractors are <b>not employees of Unitec</b>.</p>

## Reference Documents

- Employment Relations Act 2000
- Income Tax (Withholding Payments) Regulations 1979

<sup>1</sup> Note that under Part F of Schedule 4, lecturers classed as providing or performing "entertainment" with regard to withholding payments. Individuals on a contract for service to deliver lectures will therefore have withholding payments deducted at source, unless they provide Unitec with a Certificate of Exemption.

- [Request for Contract for Service – Artist in Residence](#)
- [Request for Contract for Service - Company](#)
- [Request for Contract for Service – Individual](#)
- [Request for Contract for Service – Monitor](#)
- [Request for Variation for Existing Contract for Service](#)
- [Details Collection Form for Prospective Contractors](#)

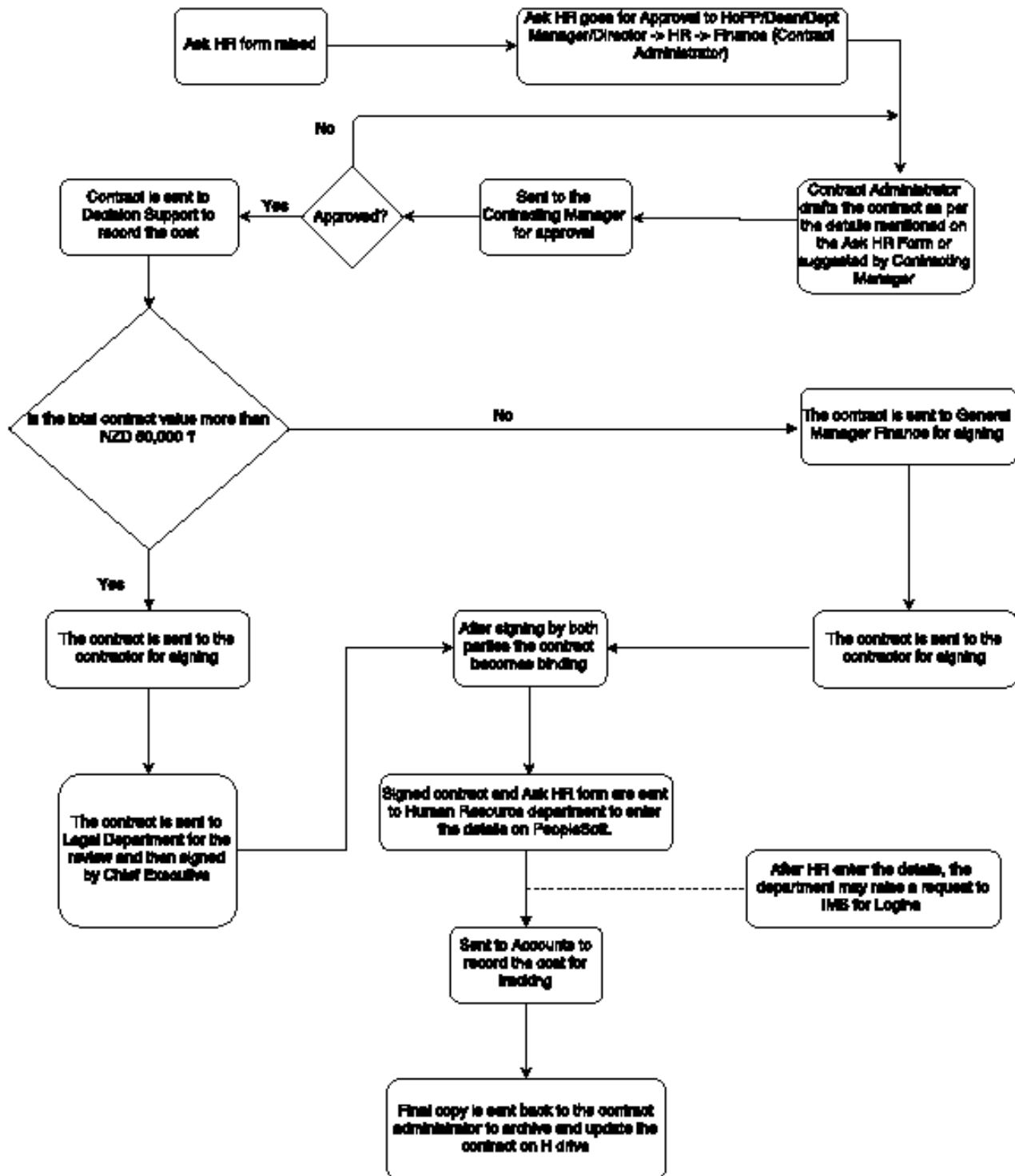
## Approval Details

<b>Version number (this version):</b>	2	<b>Issue Date (this version):</b>	June 2017
<b>Consultation Scope:</b>	All Independent Contractors and hiring managers		
<b>Approval authority:</b>	Senior Management Team	<b>Date of Approval</b>	12 September 2003
<b>Policy Sponsor (May have authority to approve minor amendments)</b>	Executive Director, People and Safety	<b>Policy Owner:</b>	HR Services Lead
<b>Contact Person</b>	HR Business Partner	<b>Date of Next Review</b>	June 2020

## Amendment History

<b>Version History (Amendments made to this version)</b>	Date of amendment/s:	Amendment/s:
	<ul style="list-style-type: none"> <li>• March 2009</li> </ul>	<ul style="list-style-type: none"> <li>• Added 'Associated Forms' section for ease of access to all forms related to this policy</li> </ul>
	<ul style="list-style-type: none"> <li>• June 2017</li> </ul>	<ul style="list-style-type: none"> <li>• Reformatted for placement on the Unitec Staff Portal and to reflect organisational structure changes. Process section updated to reflect change to process following it's transfer to the Finance Department.</li> </ul>
	<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>

## Appendix A: Contract for Service Process



Contract Administrator keeps co-ordination with all the departments and ensures the smooth flow of the contract.