

Management of Contracts and Memoranda of Understanding (MOUs) - Governing Policy



/about/policies-and-procedures/management-of-contracts-and-memoranda-of-understanding-mous-governing-policy

1. Purpose of policy

This policy addresses the administration of University agreements, such as Contracts and Memoranda of Understanding (MOUs). The University is committed to ensuring that agreements are entered into by appropriately delegated officers following due consideration of risks, benefits, compatibility with statutory obligations and, other relevant requirements and accountabilities, and alignment with the University's strategic aims. This policy deals with both legally binding Contracts and Deeds, and with Memoranda of Understanding which are formal or strategic agreements but do not bind the University in a strict legal sense.

2. Policy scope and application

2.1 This policy applies to all staff and members of University decision-making or advisory bodies, including the University Council and its Committees.

3. Definitions

Please refer to the University's Glossary of Terms for policies and procedures. Terms and definitions identified below are specific to these procedures and are critical to its effectiveness:

Agreement refers to both Contracts and MOUs.

Contract means an agreement between parties intended to have legal significance and involving the transfer of consideration (that is, value – financial or some other type of benefit - flowing from the beneficiary of the transaction). Contracts generally articulate business relationships for the acquisition or supply of goods or services, for the exploitation or transfer of intellectual property rights (e.g. licences) or for the provision of funding.

Deed means a form of legally binding agreement that requires a high degree of formality for its creation. Execution of an Agreement as a deed may occur under seal or by signing and delivery by a duly authorised signatory and ensures that the specified terms and conditions are legally enforceable, even in the absence of consideration. If the University Seal is required to be used for execution purposes it must be used and affixed to a deed in accordance with the University's Policy on the Use of the University Seal.

Memorandum of Understanding (MOU) means a document that is intended to formalise the terms of a relationship, arrangement or understanding between the University and another party, but unless otherwise specified is not intended to be legally binding on either party. An MOU may lead to the development of separate contracts with legal intent.

4. Principles

4.1 Agreements entered into on behalf of the University must be administered in a way which:

- delivers clear benefits without incurring undue risks
- incorporates probity, accountability, efficiency and effectiveness into their management
- is consistent with legislation, University policies and procedures and other compliance obligations
- is consistent with the Queensland Procurement Policy requirements and objectives, such as the advancement of government priorities, probity and achieving value for money and
- complies with corporate governance structures.

4.2 In entering into a contractual arrangement with a third party, the University will take all reasonable steps to minimise the restrictions or burdens imposed by such arrangements or conditions on the freedom of speech or academic freedom of any member of its staff or students carrying on research or study under such arrangements or subject to such conditions.

5. Risk Management

5.1 The University considers the integration of risk management throughout all levels of the organisation as fundamental to achieving the University's strategic and operational objectives, as outlined in the University's Enterprise Risk Management – Governing Policy. Consequently, it is the responsibility of the Cost Centre Manager or financial delegate to ensure an analysis of risks and benefits is undertaken prior to entering into an Agreement. Continuous monitoring of risk during performance or over the life of the Agreement should also be undertaken and this is the responsibility of the designated Agreement Manager, as outlined Section 6 below.

APPROVAL AUTHORITY

Council

RESPONSIBLE OFFICER

Vice-Chancellor and President

DESIGNATED OFFICER

Chief Operating Officer

FIRST APPROVED

20 April 2010

LAST AMENDED

12 February 2020

EFFECTIVE START DATE

10 December 2019

REVIEW DATE

8 December 2020

STATUS

Active

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5.2 Legal advice must be sought where so recommended by the relevant Cost Centre as outlined in section 6 (Legal Advice) of the Management of Contracts and Memoranda of Understanding – Procedures.

6. Role and Responsibilities of the Agreement Manager

6.1 The delegate authorising the Agreement will appoint an Agreement Manager who will normally be a University officer having expertise and/or responsibility for administration of the terms of the Contract or MOU, including financial administration.

6.2 With respect to University Consultancies and External Research Grants the specific roles and responsibilities of the Agreement Manager are provided in the Procedures relating to this policy.

6.3 It is the Agreement Manager's responsibility to ensure that Contracts or MOUs are monitored and/or reported on as appropriate in cooperation with the relevant Cost Centre.

6.4 Further detail is provided in section 7 (Roles and Responsibilities of the Agreement Manager) of the Management of Contracts and Memoranda of Understanding – Procedures.

7. Authority to Sign Agreements on behalf of the University

7.1 The University Council has delegated authority to enter into Agreements on behalf of the University to the Vice-Chancellor and President. In line with the University Governance Framework – Governing Policy, the Vice-Chancellor and President will ensure that Council is advised of any significant risks or issues relating to a Contract or MOU.

7.2 In all cases, refer to the Delegations Framework – Governing Policy and the associated USC Delegations Manual, which sets out the appropriate delegation for signing Agreements, Contracts, Deeds and MOUs.

8. Records

The Agreement Manager is responsible for ensuring appropriate records are maintained in accordance with the University's records management system and associated Information Management Framework – Governing Policy and Section 8. (Records Management) of Management of Contracts and Memoranda of Understanding - Procedures.

END

RELATED DOCUMENTS

Delegations Framework - Governing Policy

Enterprise Risk Management - Governing Policy

Externally Funded Research - Academic Policy

Financial Management Practices - Operational Policy

Fraud and Corruption Control - Governing Policy

Governance Framework - Governing Policy

Incoming Sponsorship - Operational Policy

Information and Records Management - Procedures

Information Management Framework - Governing Policy

Intellectual Property - Governing Policy

Management of Contracts and Memoranda of Understanding (MOUs) - Governing Policy

Management of Contracts and Memoranda of Understanding (MOUs) - Procedures

Outside Work and Private Practice - Operational Policy

University Consultancy Work - Operational Policy

University Consultancy Work - Procedures

LINKED DOCUMENTS

Management of Contracts and Memoranda of Understanding (MOUs) - Procedures

RELATED LEGISLATION / STANDARDS

University of the Sunshine Coast Act 1998

Financial Accountability Act 2009 (Qld)

Queensland Procurement Policy

Human Rights Act 2019 (Qld)