

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



/explore/policies-and-procedures/management-of-contracts-and-memoranda-of-understanding-mous-procedures

1. Purpose of procedures

These procedures specify the requirement and processes associated with the Management of Contracts and Memoranda of Understanding (MOUs) – Governing Policy and should be read in conjunction with that policy.

2. 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.

3. University agreements

It is vital that there is a clear understanding of the type of agreement that is being entered into, i.e. deed, contract or Memorandum of Understanding (MOU), to ensure the appropriate procedures are followed.

4. Managing risk in University agreements

4.1 The following table is provided to assist in managing the risks in executing an agreement on behalf of the University. See also, Appendix One – Agreement Check List. This check list is to be completed, signed and provided to the financial delegate with responsibility to execute the agreement. In addition to this check list, a simple workflow diagram is provided as Appendix Two – Finalising a University Agreement,

Table 1: Agreement risk assessment

RISK ASSESSMENT ISSUE	ACTION REQUIRED
1. Has an Agreement Manager been appointed for this Agreement?	Appoint an Agreement Manager
2. Is the agreement necessary in order for the University to receive the benefits?	Consider necessity of agreement if this lessens risk overall
3. Has the capacity of the other party to the agreement to meet its contractual requirements been considered?	Consider other party's capacity to meet agreement terms and conditions
4. Does the agreement serve a valid purpose such as reduce risks to the University, lock in scope, resources or timeframe of a particular project)?	Consider purpose of agreement
5. Are there conditions in the agreement that the University may not be able to fulfil, or require support or approval from other Cost Centres?	Discuss University's ability to meet agreement terms and conditions, with all relevant Cost Centre Managers

APPROVAL AUTHORITY

Vice-Chancellor and President

RESPONSIBLE OFFICER

Vice-Chancellor and President

DESIGNATED OFFICER

Chief Operating Officer

FIRST APPROVED

29 April 2010

LAST AMENDED

10 December 2019

EFFECTIVE START DATE

10 December 2019

REVIEW DATE

8 December 2020

STATUS

Active

usc.edu.au/policy

6. Are there any milestones, standards or timelines relating to implementation and/or monitoring of the agreement?	Agreement Manager to develop a schedule to ensure progress of performance under agreement is completed
7. What commitments will this agreement require of the University and over what time period?	Consider resource implications related to the agreement
8. What due diligence checks have been carried out on the other party or parties to the agreement?	Consider checks that have been completed and if further checks are necessary
9. Is there adequate insurance cover related to the agreement	If unsure, refer to the University Risk Manager
10. Are there any research implications or is this associated with any research grants?	Seek advice from the Director, Office of Research
11. Are there any legal issues that require clarification, in particular granting of indemnities or guarantees?	Follow the directives relating to legal advice which are contained in the section 6 of these procedures.
12. Are there any financial implications that may require further consideration? Are the University's standard payment terms of 30 days by EFT included?	Seek advice from the Chief Financial Officer
13. Does the agreement contain an Indemnity clause	Discuss deletion of clause with the University Risk Manager
14. Have all GST implications been considered?	Discuss with Chief Financial Officer
15. Are there any space management considerations or physical risk (e.g. workplace health and safety) considerations relating to the agreement?	Discuss with Director, Asset Management Services
16. Is the agreement related to the leasing of property?	Seek approval of related agreement from General Manager, Strategic Infrastructure Developments, Capital and Commercial
17. Are there any human resource implications?	Discuss with Director, Human Resources
18. Are there any marketing implications (e.g. impact on University's reputation, positive or negative)?	Discuss with Director, Marketing and External Engagement
19. Has compliance with legislation or other relevant University policies and procedures been considered?	Discuss with Cost Centre Manager
20. Has the Agreement been signed by the non-University party?	Ensure agreement is executed by other party in first instance
21. Is this a subcontracting of services that USC is required to deliver under a head contract?	Seek approval from the Cost Centre Manager who has responsibility for the head contract to ensure the head contract is not infringed by any terms within the proposed subcontract
22. Does the agreement contain provisions impacting on the Intellectual Property rights and obligations of USC or USC staff or students (eg copyright, publishing, confidentiality, inventions, innovations, patents, trademarks, designs, plant breeding rights, circuit layouts)	Discuss with the Director, Office of Research or USC's Copyright Officer (as applicable)
23. Does the agreement involve any related parties or conflicts of interest?	Ensure appropriate disclosure is made
24. Has proper consideration been given to human rights and will the contract /agreement facilitate the University to act in a way that is compatible with the Human Rights Act 2019 (Qld)? Giving proper consideration to a human right in making a decision includes, but is not limited to— (a) identifying the human rights that may be affected by the decision; and (b) considering whether the decision would be compatible with human rights. If any human rights have been identified as potentially affected by the recommended decision, attach a Statement of Compatibility with Human Rights.	Seek advice from the Director, Governance and Risk Management and/or Legal Services

Note: If the execution of an agreement is likely to be rated as a Moderate, Significant or High risk to the University, a Risk Identification Form should be completed, as provided in the University's Risk Management Procedures and sent to the Chief Operating Officer for consideration before the agreement is finalised. To assess a risk rating, refer to the University's Risk Management - Procedures.

5. Use of standard University agreements and consultation with advising Cost Centres

5.1 Risk is also reduced significantly when an agreement contains standard terms and conditions to ensure all relevant matters are addressed, to aid interpretation and the relevant advising cost centres are consulted. The following resources outlined in Table Two: Standard University Agreements should be used wherever possible:

Table 2: Standard University agreements

TYPE OF AGREEMENT	AGREEMENT NAME/LOCATION	RESPONSIBLE COST CENTRE	ADVISING COST CENTRE
Procurement agreements for goods and services and consultancies	MyUSC> Working at USC – Finance and Purchasing > Purchasing > USC Procurement Agreements	Commissioning Cost Centre	Financial Services
External Research Grants and Research Agreements	External Research Grants - Academic Policy	Commissioning Cost Centre	Office of Research
University contracted consultancies	University Consultancy Work – Managerial Policy	Commissioning Cost Centre	Financial Services
Minor capital Works and maintenance contracts	MyUSC> Working at USC – Finance and Purchasing > Purchasing > USC Procurement Agreements	Asset Management Services	Asset Management Services
Major construction contracts	Capital and Commercial	Capital and Commercial	Capital and Commercial
IT contracts	Information Technology Services – Project Management Office	Information Technology Services	Information Technology Services
Agency agreements with international organisations	USC International	USC International	USC International
External Learning and Teaching grants and fellowships	MYUSC>Teaching > Grants and Awards	Commissioning Cost Centre	Centre for Support and Advancement of Learning Teaching
Contracts for the external delivery of non-award professional development or training services		Commissioning Cost Centre	Financial Services
External Research Grants	MYUSC> Research	Commissioning Cost Centre	Office of Research
External Education Grants (e.g. CASR)	Office of Engagement	Commissioning Cost Centre	Office of Engagement
Articulation Agreements	Various locations	Student Services and Engagement	Student Services and Engagement
WIL Placement Agreements	MYUSC>Supporting Students>Work Integrated Learning System (Sonia)	Commissioning Cost Centre	Technical Operations - Office of the Deputy Vice-Chancellor (Academic)

5.2 Any agreement including provisions for dealing with Intellectual Property must comply with the Intellectual Property – Governing Policy. Contact Director, Office of Research for further advice.

6. Legal advice on agreements

6.1 Legal advice must be sought where so recommended by the advising cost centre having regards to concerns such as:

- significant legal issues are involved (for instance where a guarantee or indemnity is given or if there is an exclusion or limitation of liability by the other party in respect of breaches of the agreement or for negligence)

- the agreement is complex or may be high risk to the University, for instance relating to intellectual property, research commercialisation or consultancy, agreements with an international component or where the other party has proposed non-standard or non-University mandated terms and conditions
- it is not clear whether the proposed agreement is legally binding or requires formalities for execution (such as execution under seal)
- in the case of high risk or complex agreements, the agreement terms and conditions have been developed or provided by the other party.

6.2 The University utilises a panel of preferred suppliers for legal advice on agreements. Details of the University's preferred suppliers can be obtained from Legal Services.

7. Role and responsibilities of the Agreement Manager

7.1 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.

7.2 The Agreement Manager is responsible for:

- managing the negotiation process for the agreement;
- ensuring that, in the case of an agreement for the supply of goods or services, the contracted goods and/or services are delivered in accordance with the terms of the agreement;
- ensuring compliance by the University and the other party with the terms and conditions of the agreement;
- assessing the risks related to the project before the contracting for services to determine the extent of monitoring appropriate to the agreement and to determine whether legal advice is required (for example in non-standard agreements);
- ensuring the agreement or has a clear understanding of how the agreement will be managed and monitored;
- recording and filing the agreement in the University's records management system in accordance with the University's Information Management Framework - Governing Policy and associated procedures;
- performance monitoring and review of the agreement, in accordance with the terms of the agreement, and in cooperation with the Advising Cost Centre;
- resolving issues or problems that arise during the term of the agreement;
- performance reporting to the Cost Centre Manager.

7.3 In relation to University Consultancies, External Research Grants and External Learning and Teaching Grants, the Centre for Support and Advancement of Learning and Teaching, Office of Research or Financial Services (as applicable), will assist the Agreement Manager with grant administration.

8. Authority to sign agreements on behalf the University

8.1 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.

8.2 All contracts, MOUs, deeds and agreements must be signed in accordance with the Delegations Framework – Governing Policy and the associated USC Delegations Manual. Specifically, Schedule C - Operational and Administrative Authorisations sets out positions with authority to sign agreements on behalf of the University. and the USC Financial Management Schedule sets out financial limitations for officers to commit to expenditure of funds.

9. Records management

9.1 The Agreement Manager is responsible for recording and filing contracts and/or MOUs in the University's records management system in accordance with the University's Information Management Framework – Governing Policy and associated Information and Records Management – Procedures.

9.2 An official file should be created at the commencement of negotiations for any agreement through the Cost Centre Records Liaison Officer and the file reference should be quoted on all documents relating to the agreement. All documentation must be attached to the official University file and managed within the University's record management system in accordance with the Information and Records Management – Procedures.

9.3 When an agreement is executed, the original is to be forwarded to Information Management Services by the Cost Centre's Records Liaison Officer for recording and managing in accordance with the University's Information and Records Management Procedures. University files containing original agreement documents are to be securely stored for the required legal period in accordance with the Information Management Framework – Governing Policy.

10. Agreement management

10.1 The following University databases should be updated after execution of the agreement where appropriate:

- Contractors and Consultants database for capital works and maintenance related services;
- Research database for research, associated consultancies and commercial services worldwide; and

- Standing Offer (SOA) and Preferred Supplier (PSA) Arrangements registered by Financial Services database of Preferred Supplier arrangements

10.2 Where the above database are not required, such as for general consultancies, a Cost Centre should maintain a database of its agreements to meet business needs, legal requirements and other compliance obligations.

10.3 The Agreement Manager should ensure that the agreement is monitored for performance, that all University obligations under the agreement are being met and that the agreement is reviewed prior to expiry.

10.4 The following details of the agreement must be recorded by the Agreement Manager:

- Official University file reference number;
- Names of the parties involved;
- Agreement Manager name and position;
- A record of any decisions by a USC employee, on behalf of USC, in relation to an Agreement by USC, whether made orally or in writing;
- Description of the goods and/or services provided (where applicable) or, in the case of MOUs, a description of the objectives of the agreement and the actions to be undertaken by the University;
- Known or estimated dollar value (where applicable);
- Period of the agreement, including review and extension options (as appropriate);
- Date of commencement (if applicable);
- Specified outcomes/benefits to be achieved for the University (optional);
- Negotiated variations to terms and conditions after signing of original agreement
- Letters of termination or extension.

END

Appendix 1: Agreement Checklist

Appendix 2: Finalising a University Agreement

RELATED DOCUMENTS

Delegations Framework - Governing Policy
Enterprise Risk Management - Governing Policy
External Research Grants - Academic Policy
Financial Management Practices - Operational Policy
Incoming Sponsorship - Operational Policy
Intellectual Property - Governing Policy
Intellectual Property: Commercialisation - Procedures
Intellectual Property: Commercialisation Revenue - Procedures
Intellectual Property: Student IP - Procedures
Intellectual Property: Transfer of Rights to Creators - Procedures
Learning and Teaching Grants, Awards and Fellowships - Academic Policy
Management of Contracts and Memoranda of Understanding (MOUs) - Governing Policy
Outside Work and Private Practice - Operational Policy
Outside Work and Private Practice - Procedures
Risk Management - Procedures
University Consultancy Work - Operational Policy
University Consultancy Work - Procedures

LINKED DOCUMENTS

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

RELATED LEGISLATION / STANDARDS

University of the Sunshine Coast Act 1998
Financial Accountability Act 2009 (Qld)
Queensland Procurement Policy
Human Rights Act 2019 (Qld)

usc.edu.au/policy