

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

1. Purpose of procedures

1.1 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 includes each of Contracts, Deeds 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 Use of the University Seal – Governing Policy.

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

3.1 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, 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. The Agreement Manager (refer to section 7) must ensure the Contract Approval Cover Sheet is completed, signed and provided to the appropriately delegated officer with responsibility to execute the Agreement.

Table 1: Agreement risk assessment

RISK ASSESSMENT ISSUE

1. Has an Agreement Manager been appointed for this Agreement?
2. Is the Agreement necessary in order for the University to receive the intended benefits?

ACTION REQUIRED

- Appoint an Agreement Manager (refer to section 7)
- Consider necessity of entering into the Agreement if this lessens risk overall

APPROVAL AUTHORITY

Vice-Chancellor and President

RESPONSIBLE EXECUTIVE MEMBER

Vice-Chancellor and President

DESIGNATED OFFICER

Chief Operating Officer

FIRST APPROVED

29 April 2010

LAST AMENDED

13 June 2023

REVIEW DATE

10 February 2026

STATUS

Active

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 the 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 the Agreement
5. Are there conditions in the Agreement that the University may not be able to fulfil, or for which support or approval may be required from another Organisational Units?	Discuss the University's ability to meet Agreement's terms and conditions, with all relevant Organisational Unit Managers
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 and compliance under Agreement
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 Director, Governance and Risk Management
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 below
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 USC Legal Services
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, Facilities Management
16. Is the Agreement related to the leasing of property?	Discuss with Director, Facilities Management
17. Are there any human resource implications?	Discuss with Director, People and Culture
18. Are there any marketing implications (e.g. impact on University's reputation, positive or negative)?	Discuss with Director, Marketing
19. Has compliance with legislation or other relevant University policies and procedures been considered?	Discuss with Organisational Unit 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 the University is required to deliver under a head contract?	Seek approval from the Organisational Unit 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 the University or its staff or students (e.g. 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) and USC Legal Services
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 Agreement facilitate the University to act in a way that is compatible with the <i>Human Rights Act 2019</i> (Qld)?	Seek advice from the Director, Governance and Risk Management and/or USC Legal Services

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.

25. Is the Agreement related to the collection, storage, or transmission of personal information?

Seek advice from the Head, Information Governance and/or USC Legal Services.

Note: If the execution of an Agreement is likely to be rated as a Moderate or High risk to the University, a Risk Assessment should be completed, as provided in the University's Risk Management Procedures and sent to Governance and Risk Management for consideration before the Agreement is finalised. To assess a risk rating, refer to the University's Risk Tables.

5. Use of standard University agreements and consultation with advising Organisational Units

5.1 Risk is reduced significantly when a standard University Agreement is used as such Agreements contain standard terms and conditions to ensure all relevant matters are addressed from the University's perspective. However, even then the relevant advising Organisational Unit(s) must still be consulted. The following resources, available on MyUSC, outlined in Table Two: Standard University Agreements should be used wherever possible:

Table 2: Standard University agreements

TYPE OF AGREEMENT	RESPONSIBLE ORGANISATIONAL UNIT	ADVISING ORGANISATIONAL UNIT
Procurement agreements for goods and services and consultancies	Commissioning Organisational Unit	Financial Services
Externally Funded Research Grants and Funded Research Agreements	Office of Research	Office of Research
University contracted consultancies	Commissioning Organisational Unit	Financial Services
Minor capital Works and maintenance contracts	Facilities Management	Facilities Management
Major construction contracts	Capital and Commercial	Capital and Commercial
IT contracts	Information Technology	Information Technology
Agency agreements with international organisations	International Office	International Office
External Learning and Teaching grants and fellowships	Commissioning Organisational Unit	Centre for Support and Advancement of Learning Teaching
Contracts for the external delivery of non-award professional development or training services	Commissioning Organisational Unit	Financial Services
External Education Grants (e.g. CASR)	Commissioning Organisational Unit	Office of Engagement
Articulation Agreements	Student Services and Engagement	Student Services and Engagement
WIL Placement Agreements	Commissioning Organisational Unit	Academic Support Unit - Office of the Deputy Vice-Chancellor (Academic)
IP assignments	DVC(A)	DVC(A)
Undergraduate		

IP assignments Research related	DVC (R and I)	Office of Research
Externally unfunded research agreement	DVC(A)	Academic Support Unit
Data Disclosure agreements	Commissioning Organisational Unit	Office of Research (if research related) Head, Information Governance
Material Transfer Agreements	Technical Services	Academic Support Unit
Engagement Grants	Financial Services	Academic Support Unit

5.2 Any Agreement which includes provisions for dealing with Intellectual Property must comply with the *Intellectual Property – Governing Policy*. Contact Director, Office of Research and/or USC Legal Services for further advice.

5.3 Any Agreement that involves procuring services to obtain government relations advice or services relating to governments or political parties must obtain Government Relations approval.

6. Legal advice on Agreements

6.1 Having regard to the following concerns, Legal advice must be sought if:

- (a) 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); or
- (b) 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
- (c) it is not clear whether the proposed Agreement is legally binding or requires formalities for execution (such as execution under seal)
- (d) the Agreement's terms and conditions are not the University's standard terms and conditions and/or have been developed or provided by the other party.

6.2 The University utilises a panel of preferred suppliers for legal advice. Details of the University's preferred suppliers can be obtained from USC Legal Services. Generally, contact should not be made with a University panel law firm without first speaking to USC Legal Services.

7. Role and responsibilities of the Agreement Manager

7.1 The Organisational Unit 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 Agreement, including financial administration. The Agreement Manager will generally be a member of Executive or Senior Staff within the Organisational Unit seeking to undertake the consultancy agreement.

7.2 The Agreement Manager, in consultation with relevant Organisational Units and their policy and procedures, is responsible for:

- (a) managing the negotiation process for the Agreement;
- (b) ensuring that the contracted goods and/or services (as the case may be) are provided in accordance with the terms of the Agreement;
- (c) ensuring compliance by the University and the other party with the terms and conditions of the Agreement;
- (d) assessing the risks related to the relevant activity before the contracting for the goods and/or services to determine the extent of monitoring appropriate to the Agreement and to determine whether legal advice is required (as detailed above);
- (e) ensuring there is clear understanding of how the Agreement will be implemented, managed and monitored;
- (f) ensuring that Agreements which involve the delivery of projects comply with the University's Project Management Framework – Operational Policy, including governance and assurance requirements set out in that Policy;
- (g) recording and filing the Agreement and all associated information (including emails, drafts, and other negotiation documents) to evidence how and why the University is entering into the Agreement in the University's records management system in accordance with the University's Information Management Framework - Governing Policy and associated procedures;
- (h) performance monitoring and review of the Agreement, in accordance with the terms of the Agreement, and in cooperation with the advising Organisational Unit;

- (i) resolving issues or problems that arise during the term of the Agreement;
- (j) monitoring the Agreement's expiry date to ensure it can be renewed or extended as required or as appropriate, terminated (particularly relevant for Agreements with automatic renewal provisions); and
- (k) performance reporting to the Organisational Unit 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, the 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's Governance Framework – Governing Policy, Section 4.5.4, the Vice-Chancellor and President will ensure that Council is advised of any significant risks or issues relating to an Agreement.

8.2 All Agreements must be signed in accordance with the University's Delegations Framework – Governing Policy and the associated 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 Agreements and all associated information (including emails, drafts, and other negotiation documents) to evidence how and why the University is entering into the Agreement 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 must be created at the commencement of negotiations for any Agreement through Information Management Services and the file reference must be quoted on all documents relating to the Agreement. All documentation evidencing the negotiation and execution of the Agreement must be attached to the official University file and must be 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 must be forwarded to Information Management Services for recording and managing in accordance with the University's Information and Records Management - Procedures. Physical documentation forwarded to Information Management Services must be tagged with the records management system file or ID number for that document. University files containing original documents are to be securely stored reflecting both the term of the Agreement and 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:

- (a) Contractors and Consultants database for capital works and maintenance related services;
- (b) Research database for research, associated consultancies and commercial services worldwide; and
- (c) Standing Offer (SOA) and Preferred Supplier (PSA) Arrangements registered by Financial Services database of Preferred Supplier arrangements.

10.2 Where the above database is not required, such as for general consultancies, an Organisational Unit should maintain a database of its Agreements to meet business needs, legal requirements and other compliance obligations.

10.3 The Agreement Manager, in consultation with relevant Organisational Units and their policy and procedures, 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 in the appropriate record management system:

- (a) official University file reference number from the records management system;
- (b) names of the parties involved;
- (c) Agreement Manager name and position;
- (d) a record of any decisions by a University employee in relation to an Agreement, whether made orally or in writing;

- (e) a general description of the purpose of the Agreement (e.g. the goods and/or services to be 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;
- (f) known or estimated dollar value of the Agreement (where applicable);
- (g) period of the Agreement, including review and extension options (as appropriate);
- (h) date of commencement of the Agreement (if applicable);
- (i) specified outcomes/benefits to be achieved for the University (optional);
- (j) negotiated variations to terms and conditions after signing of the original Agreement; and
- (k) letters of termination or extension.

END

RELATED DOCUMENTS

- Delegations Framework - Governing Policy

- Enterprise Risk Management - Governing Policy
- Externally Funded Research - Academic Policy
- Financial Management Practices - 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 (Qld)
- Financial Accountability Act 2009 (Qld)
- Queensland Procurement Policy 2019
- Human Rights Act 2019 (Qld)