

UC Policy Library

Memoranda of Understanding Policy

Last Modified	January 2020
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Approval Authority	Vice-Chancellor
Contact Officer	University Registrar – Vice-Chancellor's Office

Introduction

Two distinct types of agreement (binding and non-binding) exist that determine the type of relationships that the University of Canterbury may enter into with another party; be that a school, university, government body or private entity. This policy establishes the criteria with which each agreement should be chosen.

Definitions

Binding Agreement – a legally binding arrangement that is recorded in writing, signed by a University employee with appropriate delegated authority, and which commits the University to an enforceable agreement.

Non-binding Agreement – a Memorandum of Understanding or a non-binding verbal or written agreement that does **not** commit the University to a legally binding contract and enforceable relations with another party.

Policy Statement

1. Memoranda of Agreement / Binding Agreements

- 1.1. Binding Agreements should be used to record a relationship or agreement where the University wishes to be bound by an enforceable agreement. It may be described as an Agreement or, alternatively, an Agreement to Supply particular named services, etc. It should never be called a Memorandum of Understanding, Heads of Agreement, or other such term. The template can be

found via the following [link \(University International Relationships Office intranet webpages\) \(staff only\)](#).

- 1.2. [Appendix One](#) sets out the steps for developing a Binding Agreement.
- 1.3. Binding agreements must be entered into with the authority of the Vice-Chancellor or his delegate. Binding agreements should be presented to the Senior Management Team (SMT) for information by the SMT member responsible for that agreement.
- 1.4. Signing a binding agreement without the appropriate delegated authority may expose the individual to personal legal liability for which the University and its insurers will not indemnify that individual.
- 1.5. The original signed version of the agreement should be lodged with the [Information and Records Management Team \(University Information and Records Management website\)](#).

Note: this applies to any agreements signed after 1 September 2010.

2. Memoranda of Understanding / Non-Binding Agreements

- 2.1. Memoranda of Understanding should be used to record a relationship or agreement where the University does not wish to be legally bound to another party. The template can be found via the following [link \(University International Relationships Office intranet website\) \(staff only\)](#).
- 2.2. [Appendix One](#) sets out the steps for developing a Memorandum of Understanding.
- 2.3. Any Memorandum must clearly record that the parties do not intend to create legal obligations nor be bound by the terms of the Memorandum.
- 2.4. Any staff member entering into discussions with an external organisation that may lead to an agreement (binding or nonbinding) is encouraged to seek support from the [Office of the Registrar \(University Office of the Registrar intranet website\) \(staff only\)](#) (extn. 95115).
- 2.5. Signing a Memorandum of Understanding without the appropriate delegated authority may expose the individual to personal legal liability for which the University and its insurers will not indemnify that individual.
- 2.6. Although the University should not be exposed to binding legal relations, on entry into a Memorandum of Understanding with another party in accordance with this policy, any individual who is contemplating negotiating or entering the University into a Memorandum of Understanding must ensure they have appropriate delegated authority to be able to negotiate and/or enter the University into any such proposed arrangement before they commence negotiations and/or reach agreement.

- 2.7. The original signed version of the agreement should be lodged with the [Information and Records Management Team \(University Information and Records Management website\)](#).

Note: this applies to any agreements signed after 1 September 2010.

3. General

- 3.1. Where possible, all agreements that are entered into on behalf of the University should be documented in writing.
- 3.2. The term “Heads of Agreement” should be avoided to minimise the risk of the University being bound into a contractual relationship unintentionally. Only two types of agreement should be used, as detailed above.
- 3.3. All Heads of Department/School should, as part of their induction to the role, be provided with this document by the Pro-Vice-Chancellor or Director, and be given the opportunity to discuss any issues requiring clarification.

Related Documents and Information

Legislation

- [Public Records Act 2005 \(New Zealand Legislation website\)](#)

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- [International Links Policy \(PDF, 215KB\)](#)
- [Student Exchange Agreements Policy and Procedures \(PDF, 839KB\)](#)

UC Website and Intranet

- [How to set up an international partnership \(International Relationships Office intranet website\) \(staff only\)](#)
- [Information and Records Management Team \(University Information and Records Management website\)](#)
- [Office of the Registrar Contacts \(Office of the Registrar intranet website\) \(staff only\)](#)
- [UC Delegations of Authority Schedule 2006-16 \(PDF, 434KB\) \(University Governance website\)](#)

This policy was created in September 2010 after seeking legal advice. It supersedes the previously named Memorandum of Understanding Policy.

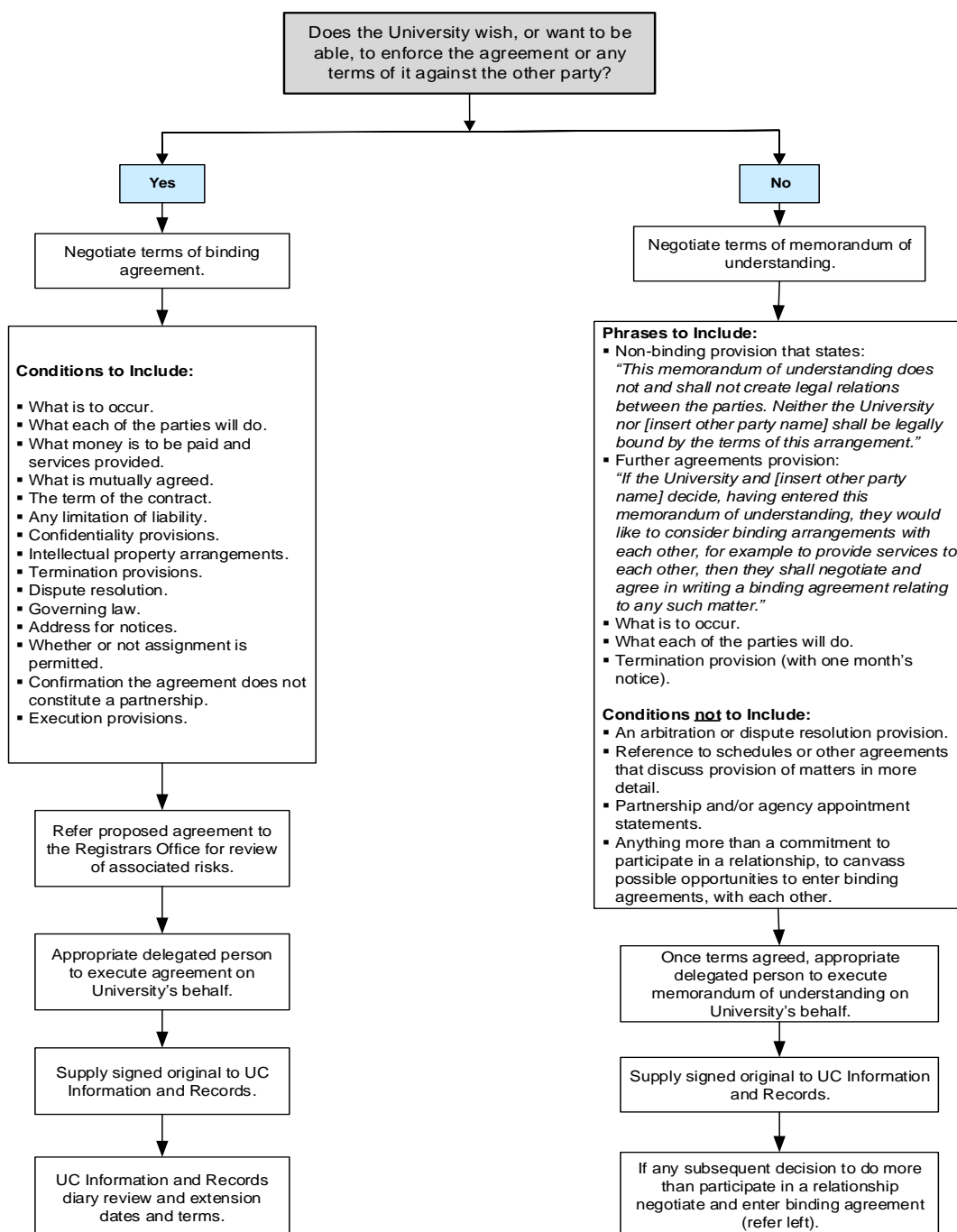
Appendices

- [Appendix One](#): Steps to Binding and Non-Binding Agreements
- [Appendix Two](#): Information to consider to acknowledge and mitigate risks

Document History and Version Control Table			
Version	Action	Approval Authority	Action Date
<i>For document history and versioning prior to 2013 contact ucpolicy@canterbury.ac.nz</i>			
1.00	Converted document onto new template and updated hyperlinks.	Policy Unit	Oct 2013
1.01	Hyperlinks updated.	Policy Unit	Aug 2014
1.02	Review date pushed out.	Policy Unit	Sep 2014
1.03	AA changed from Chair, SMT to Vice-Chancellor.	Policy Unit	May 2015
1.04	Review date pushed out to reflect wider changes.	Policy Unit	July 2015
1.05	CO changed from University Registrar to Deputy Registrar.	Policy Unit	Nov 2015
2.00	Scheduled review by Contact Officer.	Approval Authority	Mar 2016
3.00	Scheduled review by Contact Officer, minor changes to policy content and additional step added in Appendix 1.	Vice Chancellor	May 2019
3.01	Minor editorial changes.	Policy Unit	June 2019
3.02	CO changed from Deputy Registrar to University Registrar.	Policy Unit	Jan 2020

This document remains in force until it is updated.

Appendix One: Steps to Binding and Non-Binding Agreements



Important Note: If you are asked to sign a binding agreement **or** memorandum of understanding you must ensure you have appropriate delegated authority to do so. If you do **not** you may expose yourself to personal legal liability that the University and its insurers will not indemnify you for.

Appendix Two: Information to Consider to Acknowledge and Mitigate Risks

Legal advice from MDS Law (August 2010)

“... even in New Zealand, simply placing the label “MOU” on a document will not of itself render the document binding or non-binding. Rather, it is the content of it, and intention behind it, that is critical.

Accordingly, a document called an MOU that contains the content of an agreement (i.e. as recommended in the flow chart) would be binding.

The crux of it all seems, to us at least, to be that of risk – from a risk perspective, labelling the agreements in the manner we suggested would tend to minimise risk from the University's perspective.

Notwithstanding that, provided whoever is responsible for sign off on a particular document bears the requirements of a non-binding or binding agreement in mind when they execute it, it is open to them to really call the agreement in question whatever they want to. From our perspective, the more prescribed and accurate the better.”