

Information on MOUs (Memorandum of Understanding)

- [Purpose of a Memorandum of Understanding \(MOU\)](#)
- [What should \(and should not\) be included in an MOU](#)
- [Who can sign an MOU?](#)
- [Confidentiality Agreements](#)
- [Central Filing of MOUs](#)
- [Assistance with MOUs](#)
- [Top](#)

Purpose of a Memorandum of Understanding (MOU)

The role of Memorandums of Understanding (MOUs) in the university's relationships with outside parties is often misunderstood. It is often looked at as a way of documenting an agreement between the university and another party 'without a contract'. It is thought that if something is called an MOU then it isn't a contract and doesn't have to follow the normal contracting processes (including, but not limited to, procurement policies and the [Signing Authority Policy](#), which governs who may sign a contract on behalf of the University).

The reality is that a document's status as a 'contract' doesn't depend on what you call it, but rather what it contains. If a document called a MOU contains legally binding commitments then it is a contract and should be treated as such. It should be noted that it is not necessary for money to be exchanged for a contract to be formed. A promise to do (or not do) something in exchange for another party doing (or not doing) something can be a contract as long as the promises of each party are sufficiently clear. As long as the promises being exchanged are considered valuable to the parties involved, a contract is formed.

A good example of this is a mutual non-disclosure agreement (NDA) where both parties agree to exchange confidential information and to not disclose the confidential information of the other party without permission. A NDA is a legally enforceable contract despite no money changing hands. Instead each party has provided something to the other party that it (the other party) considers valuable.

If a MOU isn't a contract, then what is it? The purpose of a 'true' MOU is to allow parties to create some formality around their relationship without incurring any legally binding commitments. The parties may not yet be ready to enter into a formal contract or they may just want to coordinate certain activities without taking on any responsibilities to the other party or parties.

In this respect MOUs are very similar (if not identical in many cases) to a Letter of Intent (LOI). Its purpose is to outline the intended goals of the parties, typically in very broad language. It is

usually with the intention of eventually reaching an agreement on a project, collaboration, etc. that will be subject to a formal, legally binding contract.

What should (and should not) be included in an MOU

MOUs generally serve as a roadmap for the parties involved. As such it should be written in a way that conveys to someone reading it that the parties have decided to work together towards a common goal but are not yet ready (or do not plan) to enter into a formal contract respecting that goal. They usually contain forward-looking language that contemplates discussions between the parties that they hope will lead to an initiative (or initiatives) that can be documented in a formal contract.

It should clearly state that the MOU is not intended to be legally binding and that any specific projects or initiatives that result from the discussions facilitated will be outlined in separate, legally binding agreements. The MOU should contain a statement that the parties may, but are not obligated to, incur any costs or expend any resources in relation to the MOU.

An MOU should not contain any specific commitments, be it related spending any money, use of resources, providing indemnification, sharing of intellectual property or confidentiality. The issue of confidentiality will be addressed specifically below, but any commitments that are intended to be binding and enforceable should be addressed in separate, legally binding agreements. If an MOU does contain these sorts of commitments it becomes a contract, at least in relation to those specific commitments, and will have to comply with applicable University policies as noted above.

Who can sign an MOU?

As a 'true' MOU is not a legally binding agreement it does not have to be signed in accordance with the Signing Authority Policy. The proper person(s) to sign an MOU will depend on the nature and scope of the proposed collaboration as well as the other party involved. MOUs that apply to a particular College or School are typically signed by the Dean or Executive Director while those affecting the entire institution are often signed by the President, AVPs and/or the University Secretary. Care should be taken to ensure that the proposed MOU is not legally binding (and therefore subject to the [Signing Authority Policy](#)) before it is signed.

Confidentiality Agreements

In some cases the discussions that are intended to flow from a MOU will involve the confidential information of one or more parties. Many MOUs contain simple statements that the parties agree not to disclose any confidential information that they receive during the activities covered by the MOU. This language is typically sufficient where the information being shared, while not intended to be made public, would not cause any real harm or damage to any of the parties if it were to become public. This is because the clause in the MOU stating that it is not legally enforceable will apply to the confidentiality clause(s) of the MOU.

In cases where there is sensitive confidential information being shared the parties should enter

into a separate, legally binding confidentiality agreement. This will add some complexity to the process of creating the MOU, but is a necessary step to ensure that valuable confidential information is properly protected from unauthorized use or disclosure.

Central Filing of MOUs

All completed MOUs, whether focused on the entire university or limited to one or more colleges, schools, centres or other units, are to be filed centrally with the President's Office. This will help to ensure that senior administration is aware of the relationships being formed by the MOUs. It will also allow others looking at entering into an MOU with a particular organization to determine if one is already in place with another unit on campus

Assistance with MOUs

A basic draft MOU is available which contains clauses addressing some of the areas discussed above. It is meant as a guide and portions can be removed or added as appropriate for the circumstances. As there are many different situations where an MOU might be used it isn't possible to prepare a single document that will apply in every case. Please contact the Legal Office if you have any questions about a proposed MOU.

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