

Authority to sign agreements and MOUs

The University of California's standing orders control and establish the authority to sign on behalf of UC.¹ The authority is initially given to the UC President, who then, through official re-delegation, authorizes additional people depending on the nature of the agreement.² UCSD's Policy and Records Administration maintains the records of formal delegations that have been made pursuant to this authority.

If you don't have a formal delegation, you do not have any authority to sign UCSD's contracts. If you do have a delegation, your authority to sign is authorized by and constrained to that delegation.

In the legal world, Memorandum of Understanding (MOU) agreements were historically non-binding agreements and that continues to be what UCSD expects when we discuss MOUs.³ However, courts will disregard the caption of any document and focus on the contents and purpose of the document. So a grant can be labeled as an "MOU", but it is still a grant if its terms fit that definition. A significant portion of the documents labeled as MOUs that the business offices see are actually binding agreements, including but not limited to the following:

- 1) Unfunded collaboration agreements
- 2) UCSD-funded research awards (outgoing)
- 3) Subawards (outgoing)
- 4) Grants (incoming)
- 5) Material transfer agreements
- 6) Equipment loan agreements
- 7) Service agreements

¹ <http://regents.universityofcalifornia.edu/governance/standing-orders/so1004.html>

² Standing order 100.4(dd)

Except as otherwise specifically provided in the Bylaws and Standing Orders, the

² Standing order 100.4(dd)

President is authorized to execute on behalf of the Corporation all contracts and other documents necessary in the exercise of the President's duties, including documents to solicit and accept pledges, gifts, and grants, except that specific authorization by resolution of the Board shall be required for documents which ...

³ <http://blink.ucsd.edu/research/preparing-proposals/sponsors/industry/agreements.html>

In practice, it acts more as a letter of intent since the usual purpose in the research community is to indicate a common interest in pursuing similar research goals. Cases where the parties want to have a document which states their intentions to focus their efforts to pursue a common research goal; however such intentions have not progressed to the point where the parties are prepared to make a more formal commitment.

At SIO, documents asserted to be MOUs are routed to the C&G office for review. That office triages those documents based on their content; the focus is not on the label “MOU” but rather on the actual type of agreement. Where the intent is truly to create an MOU, C&G can remove the types of terms and conditions that make a document a binding contract.

Other kinds of non-MOU agreements can be identified by their non-aspirational terms and conditions. In short, if there is a specific commitment made which could theoretically be enforced in court, the agreement is a binding agreement and should be labeled according to the type of agreement it is. Examples of such terms are:

- 1) Commitment of effort by a PI
- 2) Commitment of UCSD’s materials, data or other resources (or access to any of these) or either party committing to provide to the other equipment, software, training, etc.
- 3) Payment of money or provision of financial or non-financial support by one party to the other, including establishing financial responsibility (for maintenance, spare parts, customs/duties) (sometimes *but not necessarily* including some specific amounts – it is the obligation that matters, not the specificity)
- 4) Requirements where any of the above content is obligated to be used by UCSD while the other party is obligated to do specific things or bring similar effort to the project in exchange.
- 5) Specific SOW/responsibilities for the specific project
- 6) Specific deliverables and/or a specific timeline for performance of obligations (this can generally be seen any time there's a specific SOW)
- 7) Insurance requirements
- 8) Indemnification
- 9) Specific Intellectual Property (IP) requirements/disposition language
- 10) Resolving or clarifying ownership of equipment, IP, data, or other items.
- 11) Publication review, approval, acknowledgement, disclaimer, etc
- 12) Confidentiality
- 13) Compliance obligations or an agreement to abide by various policies including health and safety standards, animal protocol obligations, etc
- 14) Arrangements for security and reporting of risk/loss as required by UCSD Risk Management
- 15) Terms surrounding the use of name or trademark.
- 16) Governing law language
- 17) Dispute resolution
- 18) Force majeure or excusable delays clause
- 19) Export control language

Some of the above terms signal a specific kind of binding agreement; C&G will be able to work with you help figure out the most appropriate form of agreement for your intended collaboration.

Sometimes, there is a need for an agreement to be treated as both an MOU and an Unfunded Collaboration Agreement, such as where politics requires a prominent official to sign but where binding contract terms are also present. C&G will negotiate, prepare, and co-sign such agreements as the Authorized Organization Representative.

SIO C&G will work with the main campus Office of International Affairs on any agreement where the partner is an international party, and will also help identify additional necessary approvals for the involvement of post-docs or students in an unfunded project.

Regardless of the type of agreement, SIO C&G should be your first stop when you are presented with an official document or asked to commit the University to participation in any project.