



Office of Research

&

Office of Global Affairs

In Joint Cooperation

**INTERNATIONAL MEMORANDUM OF
UNDERSTANDING (MOU)
BASIC GUIDE**

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1. Purpose and Scope

This basic guide is provided for UC Davis faculty and staff planning to seek a new, or renew an existing, International Memorandum of Understanding, including Agreements of Cooperation and Working Agreements, with foreign institutions. The guide was written to assist faculty and staff members in avoiding difficulties often encountered during the international MOU process.

2. Definitions

Memorandum of Understanding (MOU) – an over-arching and ordinarily non-legally binding document indicating an intention to undertake collaboration with a foreign institution. An MOU is a writing that describes a very broad concept of mutual understanding, goals, and plans shared by the parties. Therefore, an MOU is a general agreement that lists areas of possible joint activities, without creating financial obligations or committing resources. The purpose of an MOU is to acknowledge an ongoing and strategic relationship between institutions that is intended to be long term, and/or to support a grant application.

Specific types of MOUs and Agreements

- A. **Agreement of Cooperation** - To facilitate academic and educational cooperation between institutions. An AOC refers to a general agreement to collaborate or cooperate and apply to the whole campus and are signed by the Chancellor, or the Provost in the Chancellor's absence. An AOC is executed at the institutional level.
- B. **Working Agreement** - Are signed by the college or school dean or a designate within the department or unit who is responsible for ensuring any resource commitment is available as outlined within the text of the Working Agreement. These agreements usually sets out the specific terms and key academic and administrative arrangements for an academic exchange of faculty and/or students. The Working Agreement may form an appendix to an AOC.

Note: A "Working Agreement" is primarily "academic" exchange focused. A working agreement under the auspices of an AOC **should not** be used when the subject matter of the agreement is "research". Please contact the International Contracts Specialist at the Office of Research listed in 4.6 below for further discussion.

- C. **Research MOU** – Used to establish general or specific research links between the institutions and to strengthen research collaboration. May be used to support a funded grant proposal in some instances.

- 1) **General Research MOU:** Used to establish a broad

research relationship with another institution with the goal of exploring and identifying research collaborations with the intent to subsequently enter into more specific legally binding and funded research agreements.

- 2) **Specific Research MOU:** Used when a collaborative research area has already been identified, or narrowed, and both institutions want to document their intent to collaborate in a research area with one another. This is often the first step in the process of developing and subsequently entering into legally binding funded research agreements.

3. Pre-MOU Considerations

UC Davis' reputation in the international community depends in part on the nature and strength of our partnerships. Before discussing collaboration with a foreign institution, the issues below should be considered. Moreover, when considering an academic agreement, UC Davis faculty and staff should strive to partner with international institutions of higher learning that are top tier institutions, exemplified by a ranking in the Shanghai Jiao Tong top 200, Times Higher Education, or QS World University rankings.

The following factors should also be considered prior to entering an MOU:

3.1 *AOC/Working Agreement Considerations*

- Academic, teaching, mentoring and/or research connections already existing with UC Davis
- Sufficient UC Davis student interest with the partner institution
- Excellent student support services
- High quality programs that have a natural synergy with UC Davis programs
- A potential for increased student enrolment into UC Davis programs from the partner institution
- Pathways from UC Davis' Global Affairs programs
- Is entering into the relationship prohibited by law? (The Office of Global Affairs, in conjunction with the Office of Research's compliance office, can assist in determining this.)
- Is the partner relationship a sustainable one?

3.2 **Research MOU Considerations**

- Does the MOU facilitate productive, high impact, international research collaboration involving a critical mass of researchers?
- Does it result in increased international research funding and research outputs?
- Does it make sense from a business perspective?
- Ability to showcase UC Davis research and researchers?
- Enhance the profile and visibility of UC Davis as a world-leading research intensive university?

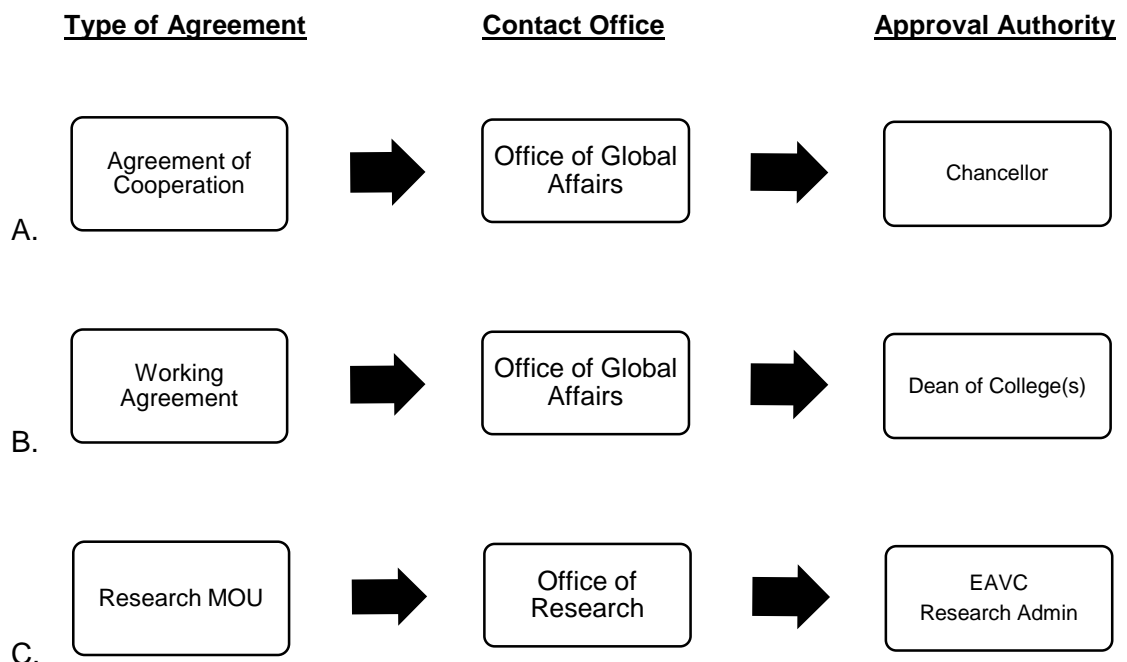
4. Procedures

4.1 Initiating an MOU

The UC Davis faculty or staff member must coordinate with their Dean, Chair, and/or Center Director as soon as they realize an interest in establishing an International MOU. Once the coordination has occurred, the faculty or staff should contact the office designated in *Figure 4.1* below. The sooner in the process the designated office is contacted, the greater the likelihood the faculty or staff member will have in achieving their MOU goals.

4.1.1 Key Administrators

- **Agreements of Cooperation**
Associate Vice Provost of International Programs, Office of Global Affairs
- **Working Agreements**
Associate Vice Provost of International Programs, Office of Global Affairs
- **Research MOUs**
Executive Associate Vice Chancellor of Research Administration, Office of Research



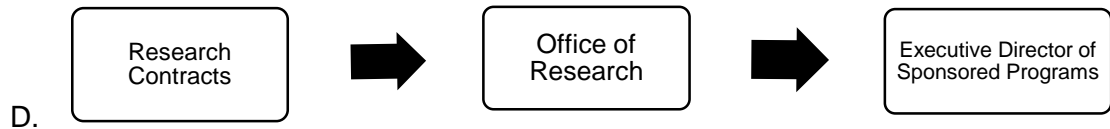


Figure 4.1 Contact Office & Lowest Level Approval Authority

4.2 Drafting the MOU

AOC and Working Agreement templates are available from the Office of Global Affairs. Research focused MOU templates are available from the Office of Research by contacting the International Contracts Specialist.

Please keep in mind that while MOUs are non-binding documents and lack the standard terms and conditions that protect both parties during the performance of the project, there are generally accepted international norms as to what is properly included in an MOU. MOUs are not intended to set out detailed contractual terms governing the conduct of a project, but are used to establish a working relationship with a partner organization.

Research MOUs typically discuss subjects including, but not limited to, the scope of the project, confidential information, publication, intellectual property rights, notice, termination and amendment procedures. Omitting these generally accepted sections in an MOU sends the wrong message to our international counterparts. One of the goals of the MOU is to obtain agreement to create more specific legal documents in response to the specific activities generated by the MOUs.

Faculty are strongly encouraged to follow the templates provided. For Research MOUs, please send a draft copy to the Office of Research, International Contracts Specialist, for review **before** sending the MOU to the international institution. Once the form and content are agreed on here at UC Davis, then the MOU may be sent to the international institution for their review and negotiation of terms. Negotiation of terms can be a time consuming process and may take weeks, months, or even years to complete. You should plan accordingly, as your priority may be different than others.

When a foreign institution provides an initial draft MOU to UC Davis for consideration, please immediately send a copy of the MOU to the appropriate contact office. The MOU terms must be reviewed and a negotiation strategy devised. It is unlikely that an MOU sent to UC Davis by a foreign institution will initially contain terms entirely agreeable to the authorized signatory without modification of those terms. For Research MOU's, please **DO NOT NEGOTIATE TERMS** without the assistance and input of the Office of Research.

4.3 Approval Authority

International MOUs contemplating primarily research activity will be coordinated with the Office of Research. MOUs primarily contemplating academic activity (such as exchange of personnel and/or students) require coordination with the Office of Global Affairs. If MOUs incorporate both significant academic and research activity, coordination is required with both offices.

The **lowest level approval authority** for International MOU's is as follows:

- A. Agreement of Cooperation – Chancellor or Provost
- B. Working Agreement – Dean of College(s)
- C. Research MOU – Executive Associate Vice Chancellor of Research Administration

Please note: The higher the approval authority needed or sought, the more staffing requirements exist, and the longer it will take to negotiate, achieve a final agreement, and obtain approval. The faculty or staff member requesting the MOU/AOC/Working Agreement should plan for the additional time required.

4.4 Execution

Once the MOU is drafted, negotiated, and a final version is agreed upon by both sides, it is time to execute the MOU. All international MOUs are executed by the signing and mutual exchange of an MOU document. The UC Davis faculty or staff member proposing the MOU, and an administrator from the appropriate office, will coordinate arrangements for signing and exchange of the final document with the international institution.

Researchers (faculty, staff, and students) are NOT legally authorized to sign and execute agreements with international organizations or agencies for their research. Such agreements require review by the Office of Research and are signed on behalf of The Regents of the University of California by duly authorized persons.

4.5 Records

All International MOUs are to be maintained and filed in the contact office responsible for such agreements. College Deans are strongly encouraged to provide a copy of all international Working Agreements to the Office of Global Affairs to ensure UC Davis is aware of all duly executed international agreements. If a Working Agreement is created under the umbrella of an already existing AOC, then a copy of the Working Agreement must be provided to the Office of Global Affairs.

4.6 Further Information

For further information about international MOUs, please contact:

- **Research MOUs**

Carl L. Reed II, J.D.
International Contracts Specialist
Office of Research
Telephone: (530) 752-9482
Email: carreed@ucdavis.edu

- **AOC's and Working Agreements**

Parvin A. Damania
Administrative Assistant
Office of Global Affairs
Telephone: (530) 754-9707
Email: padamania@ucdavis.edu

Also, please visit the following websites for additional information:

Office of Research at <http://research.ucdavis.edu>

Office of Global Affairs at <http://uoip.ucdavis.edu>

5. Compliance Issues

Please be aware that certain types of collaborative relationships, research activities, and country affiliations may be restricted or limited by law or policy despite promising academic possibilities. As a United States institution, UC Davis is required to comply with the laws and regulations issued by the government related to the export of both goods and services. The U.S. government controls the export of certain technologies, software and hardware for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons.

Export control laws regulate the transfer of items, technology, software and services. They **apply to all activities with foreign persons and foreign countries**, not just sponsored research projects and not just activities which involve the transfer of technology or information to a foreign destination.

Export controls may restrict: (1) the ability of foreign nationals (students, researchers or collaborators) to participate in research; (2) the ability of UC Davis personnel to provide services (including training in the use of equipment)

to foreign nationals; (3) the ability to send equipment, spare/replacement parts, technology or software to foreign countries; and the ability to collaborate with researchers in foreign countries.

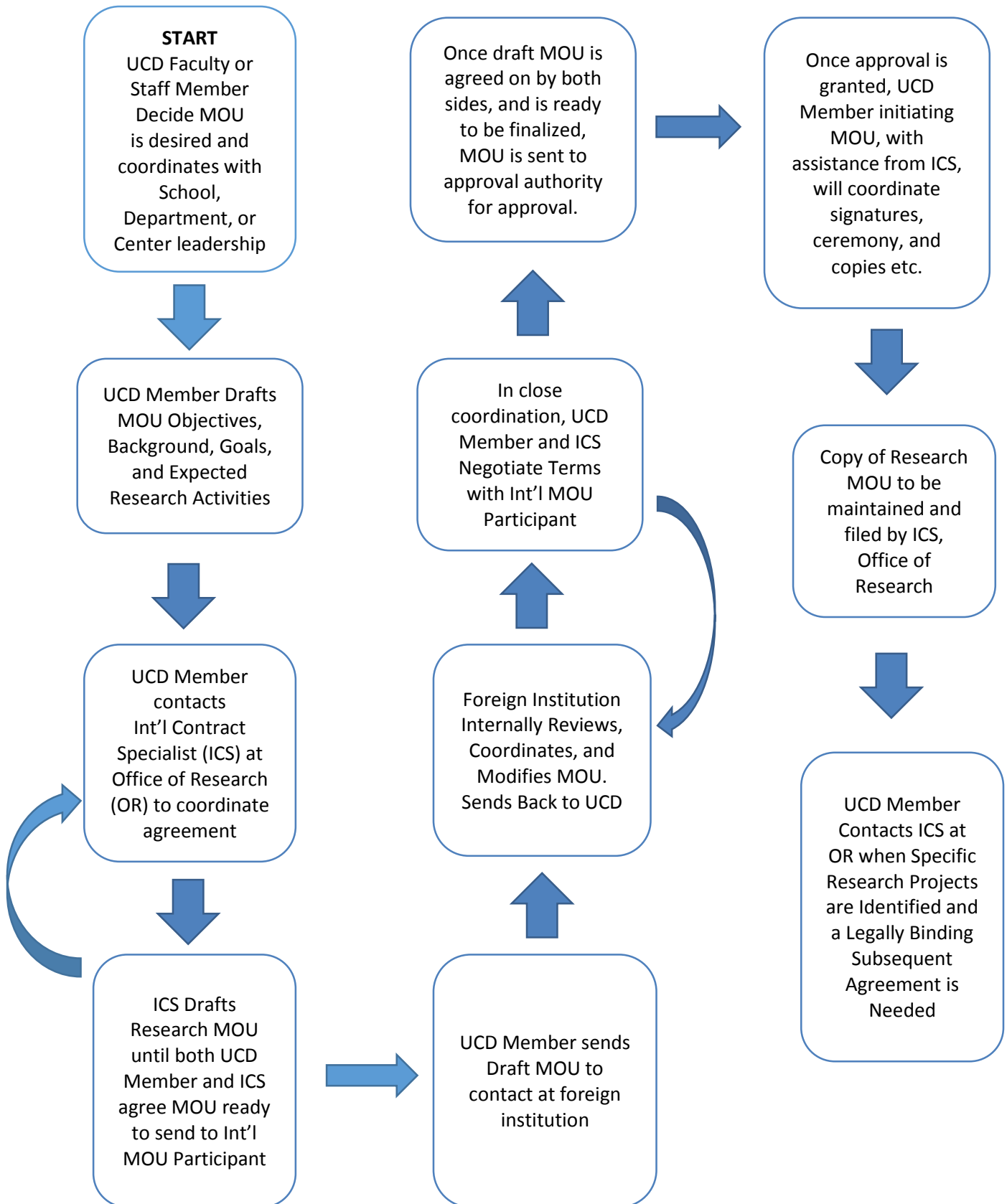
Every UC Davis researcher is expected to be aware of the export control issues related to her/his work and to use the available resources to ensure compliance. If you have questions, advice is available through the Research Compliance and Integrity office in the Office of Research.

6. Conclusion

UC Davis' practice on non-binding documents may differ from that of our international partners. For example, the mere fact that a document is called a "Memorandum of Understanding" does not mean that the document automatically is considered non-binding. Ambiguity as to whether or not a document is legally binding should be avoided. When negotiating a nonbinding instrument, both/all sides should confirm their understanding that the instrument does not give rise to binding obligations. UC Davis' practice is to put the non-binding nature of the MOU in writing, but even then, some MOU terms may still be binding.

Moreover, certain formal, stylistic, and linguistic features tend to be associated with agreements binding under foreign country and international law, while other features tend to reflect an intention on the part of the participants to produce an arrangement of a purely over-arching and symbolic nature. Individuals in the Office of Research and the Office of Global Affairs are experienced in recognizing and avoiding these international MOU pitfalls. As such, we strongly encourage faculty and staff members considering initiating an MOU to contact the appropriate office at the earliest opportunity.

Appendix A: Research MOU Flow Chart



Note: This process could take weeks, months or even years depending on the complexity of the agreement. Please plan accordingly for the amount of time needed.

Appendix B: Choice of Language in International MOUs

To be avoided:

The following table shows those words and phrases that should be avoided in an MOU in all circumstances. Use the alternatives provided to help avoid legal implications.

| Do Not Use | Use Instead |
|-------------------|------------------|
| shall | will |
| enter into force | come into effect |
| continue in force | remain in effect |
| terms/conditions | provisions |

To be discouraged:

The following table shows those words and phrases that may be used in an MOU, but are discouraged. To help avoid legal implications, use the alternatives provided.

| Use Discouraged | Use Instead |
|--------------------------|-----------------------------|
| agree | concur |
| agreements/undertakings | arrangements/understandings |
| undertakes | intends |
| agree(s) to | will |
| party/parties | participant(s) |
| be entitled to | enjoy |
| commitments | arrangements |
| obligations | responsibilities |
| constitute an obligation | continue to apply |
| rights | benefits |

With respect to the title of a non-binding document, one should avoid using the term “agreement”. While the use of a title such as “Memorandum of Understanding” is common for non-binding documents, it is cautioned that simply calling a document a “Memorandum of Understanding” does not automatically denote the document is non-binding under international law.

- One is advised to avoid using the term “Parties” in non-binding documents. Rather, it is encouraged to use other terms such as “Participants”.
- With respect to the actions to be taken, it is advised to avoid terms such as “shall”, “agree”, or “undertake”. In many cases, it is urged to use the terms “should” or “intend to” or “expect

to” be utilized in a non-binding document.

- Further, it is advised to avoid use of the term “entry into force” but rather use the terms that the document “is to come into operation” or that “activities are to commence” for the “participants”.
- Avoid the use of jurat clauses that state: “Done at” or “Concluded at”.
- While non-binding documents may be translated into different language versions, it is advised that non-binding documents do not mention or reference the “equal authenticity” of different language versions.
- Finally, depending on the circumstances, it is advised for a non-binding document to include a disclaimer in the text of the document expressly providing that it is not legally binding under international law.