



# Guidance Notes

## Executing Written Agreements by the University

### Purpose of these Guidance Notes

This document provides guidance regarding the different common types of agreements and how those agreements may be signed for and on behalf of the University.

### Content of these Guidance Notes

1. Terminology
2. Basic checklist for documenting agreements
  - 2.1 Who can authorise the agreement – financial and other delegations
  - 2.2 Who are the parties and are they correctly named
  - 2.3 Dates on the agreement
  - 2.4 How many copies are required
  - 2.5 What process is required for record keeping
  - 2.6 Summary
3. Formalities for signing Simple Written Agreements
4. Formalities for signing Deeds

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### 1. TERMINOLOGY

**Agreement** is any understanding or arrangement reached between two or more parties. It can be written or oral and may, or may not, be intended to be legally binding.

**Contract** is a legally binding agreement between two or more parties that requires an exchange of consideration.



**Consideration** is a legal term that is used to refer to the benefit that each party to a contract receives or provides. For example, in a basic contract for services one party (the supplier) agrees to provide services (the supplier's consideration) and the other party (the buyer) agrees to pay for those services (the buyer's consideration). Without consideration a contract is not enforceable, i.e. if a supplier promises to supply services for no consideration (i.e. for free) then an enforceable contract is not created.

**Counterpart** is a copy of a written agreement, usually signed by one party. Where a document is executed 'in counterparts' usually the parties have each signed their own separate copies, which when combined comprise a single agreement.

**Deed** is a special form of written agreement to create a legally binding relationship between two or more parties but does not require any consideration. Deeds must be in writing, and under law certain written agreements must be documented as Deeds, for example certain real estate transactions, wills and powers of attorney.

**Legally binding agreement** means an agreement between two or more the parties that is (or is intended to be) enforceable by law.

**Non-binding agreement** means an agreement between two or more parties that records an intention, but not an obligation, to do something. These agreements are not enforceable at law (i.e. if the agreement is broken there are limited or no legal consequences). Common examples include non-binding 'Memorandum of Understanding' (aka MoU) and 'Statements of Intent'.

**Written agreement** is any type of agreement that is in written form, including electronic and paper based documents.

## 2. BASIC CHECKLIST

### 2.1 *Who can authorise and sign a written agreement?*

All written agreements must be signed in accordance with the University's delegations ([www.adelaide.edu.au/governance/delegations/](http://www.adelaide.edu.au/governance/delegations/)).

As a general rule:

- Contract signatories are usually determined by the financial value of the contract and relevant budget holder;
- Non-binding agreements such as MOUs are usually signed by the relevant DVC but check the delegations; and
- Deeds are usually signed under Power of Attorney by an authorised Attorney (see list [here](#)).

### 2.2 *Who are the parties?*

Always check the names of the parties.

- If another party is Australian, ensure that the correct ABN and registered address are included.
- Always include the full legal name of each party at the beginning of a written agreement. If you are not sure, please consult Legal Services.



### 2.3 ***Date the written agreement***

- All written agreements must be dated, usually on the first page or immediately under the execution block.
- If there is no space for a date, insert the date when signed by the University representative next to the signature block. This date may be different from the date other parties sign.

### 2.4 ***Witnessing a signature***

- Most written agreements (other than deeds) do not need to be witnessed to be valid. Since COVID-19 most University agreement templates have been amended to remove the requirement for witnessing.
- All deeds must be witnessed unless otherwise approved by Legal Services.
- To witness is to observe or see something happen so, (unless an electronic signature is 'witnessed' using a formal system such as DocuSign), a witness must be physically present and watching the signatory sign the agreement.
- The University does not accept witnessing of documents by seeing a person sign over Zoom/Teams.
- All witnesses must be at least 18 years of age.
- Witnesses should not be another party to the agreement.

### 2.5 ***Number of copies***

- Where written agreements are signed electronically only one copy is needed, and may be exchanged with the other party electronically.
- If a written agreement is to be executed in counterparts, one University counterpart copy is acceptable.
- If a written agreement is executed in wet ink and NOT executed in counterparts, one original per party should be executed so that each party can hold an original (i.e. if there are two parties execute two originals).
- If additional copies are required (for example to lodge with government departments) then either execute the number of copies required or request Legal Services to produce certified copies.
- If only one fully executed copy of a written agreement is produced the University must either hold the original or a certified copy of the original (see Legal Services for assistance).

### 2.6 ***Record Keeping***

- All executed written agreements (other than employment agreements) must be registered as a Legal Document in the University's approved contracts register, Content Manager.
- Further information is available at [Records Services](#) | [University Library](#) | [University of Adelaide](#)



## 2.7 **Do Not:**

- Back date a written agreement – the date of the document will usually be the date the last party signs it.
- Destroy any original signed agreements - all written agreements must be lodged with Record Services to manage under the University's Information Management Policy and the *State Records Act 1997* (SA).

## 3. SIGNING CONTRACTS AND OTHER AGREEMENTS

### 3.1 **Electronic signatures**

- The University accepts the execution of written agreements by electronic signature **EXCEPT FOR:**
  - any contract with a total value of more than \$2 million (as set out in the [Electronic Signatures Guideline](#)). If in doubt contact Legal Services;
  - Deeds, Powers of Attorney, Wills (see Deeds below);
  - any document that is required to be witnessed (other than where using DocuSign);
  - any document which must be signed by applying the University's seal;
  - any document requiring assessment of stamp duty or other government filing (e.g. land transfers).
- Under South Australian legislation (*Electronic Communications Act 2000*) the parties must agree to the use of electronic signatures. University templates comply with that requirement but it is good practice to check written agreements provided by other parties.

For more information about electronic signatures please see the [Electronic Signatures Guideline](#).

### 3.2 **Counterparts**

Signed counterparts may be exchanged on separate pages (i.e. the University may sign on a page separate to other parties). Scanned counterparts may be exchanged for contracts but not Deeds.

### 3.3 **Do Not:**

- Sign a document electronically if it needs to be witnessed – seek guidance from Legal Services.
- Sign as a witness or ask someone to witness your signature unless you are in the same room at the time of signature.
- Ask another signatory, another party to the Agreement, or someone you have asked to apply your electronic signature to be a witness for your signature.

## 4. SIGNING DEEDS

### 4.1 **Deed or Contract?**

It is usually clear when a written agreement is intended to be in the form of a deed, as the document will refer to itself as a deed in the heading, and words such as:



- Executed and Delivered as a Deed;
- Executed as a Deed; or
- Signed Sealed and Delivered as a Deed

will usually be found immediately above or within the execution block.

If you are not sure, please contact Legal Services for guidance.

#### 4.2 **Electronic signatures:**

- In South Australia deeds **cannot** be signed by the University electronically. While the rules are different for different states in Australia, the University applies South Australian law to electronic signatures.
- Note that companies CAN execute deeds electronically, but the University is not a company.
- If you see an execution block for the University that says “*Executed in accordance with section 127*” (or) “*110A of the Corporations Act*” it is not correct for the University. Please seek guidance from Legal Services.

#### 4.3 **Forms of execution**

- When the University executes a deed it must be in hard copy by ‘wet ink’ either:
  - using the common seal of the University in accordance with the University rules;OR
  - by a person authorised under Power of Attorney by the University having the appropriate delegation. The list of authorised attorneys is available here.
- The method of execution (i.e. under seal or by Power of Attorney) must be set out in the execution block.
- For administrative ease, it is preferable to execute Deeds using a Power of Attorney.

#### 4.4 **Witnesses**

All deeds must be witnessed. See section 2.4 for guidance.

#### 4.5 **Counterparts**

Deeds may be signed in counterpart provided that there is a clause in the deed permitting it, e.g. “This Deed may be executed in separate counterparts, and all those counterparts together constitute one Deed”.

## OFFICE OF THE GENERAL COUNSEL OCTOBER 2023

### Further Enquiries

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