

## Terminology that Indicates Binding or Non-Binding Agreements

When writing award language and supporting work plans you are cautioned to use either the non-binding language or the binding language, depending upon the intent of the agreement. These words and phrases are to be used exclusively and not intermingled. The use of binding language can indicate to APHIS, recipients, and or the representing lawyers the enforceability of the award terms.

### **Words/Phrases for Binding Agreements**

article  
agreed  
agreements, undertakings  
authoritative, authentic  
be entitled to  
bound to (or by)  
clause  
commitment  
constitute an obligation  
continue in force  
Crown  
disagreements  
done  
enter into force  
mutually agreed  
obligations  
Parties  
rights  
shall, undertake to, agree to  
undertake  
undertakings, agreements

### **Words/Phrases for Non- Binding Agreements**

part, paragraph  
accepted, approved, decided, consented  
arrangements, understandings  
having equal validity  
enjoy  
covered by  
paragraph  
arrangement  
continue to apply to  
continue to have effect  
Governments, Participants, Signatories  
dispute  
signed  
come into operation, come into effect  
jointly decided  
conditions, terms, duties  
Governments, Participants  
benefits  
should, decide  
carry out  
understandings, arrangements

### Disclaimer Statement:

All provisions contained in this document are expressly non-binding, are set out for discussion purposes only and are part of the ongoing discussions between USDA - Animal and Plant Health Inspection Service and \_\_\_\_\_.

There is no legal or other commitment made by any participant as to any of the provisions in this document unless and until the necessary internal approvals have been given and a formal written understanding has been signed by authorized signatories of all participants.

### Criteria to Determine International Binding and Non-Binding Agreements

Criteria	International Agreements Binding	International Arrangements Non-Binding
Type of "party" (Cooperator)	A "party" must be a state, a state agency, or an intergovernmental organization	A "party" may include any international participant
Intention to be legally binding	Yes	No
Intention to have Political or moral weight	Yes	Yes or No
Governed by International Law	Yes	No
Significance of the arrangement	Major - consider entire context, expectations, and intent of the parties. Politically significant. Involves substantial funds that extend beyond the fiscal year. Involves continuing and/or substantial cooperation in a particular program. Usually involves multiple agreements.	Minor - consider entire context, expectations, and intent of the parties. No political significance. Does not involve substantial funds. Does not involve continuing and/or substantial cooperation in a particular program. Involves individual agreements.
Specificity, including objective criteria for determining enforceability	Requires precision and specificity in language setting forth the undertakings of the parties	Vague language setting forth the undertakings of the participants
Necessity for two or more parties	Yes	No
Form - style, final clauses, signatures, or entry into force dates	Usually follows customary form. Intent to be legally bound	No intent to be legally bound
Title of the Agreement	Decision made by Department of State on basis of substance of arrangement, rather than on its denomination as an international agreement, MOU, or any other name	Do not use the term "agreement." Use cooperative arrangement.
Extensions and/or Revisions to agreement	Must go through original approval process	Must go through original approval process
Disclosure to Congress of concluded agreements	Required	Not required