

## MEMORANDUM

To: Library staff  
From: Jeffrey MacKie-Mason, University librarian  
Date: [DATE]  
Re: Procedures for negotiating and executing contracts with third parties

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This memorandum provides guidance to Library staff regarding the general processes and authority for executing all workplace contracts involving third parties or outside vendors. It is expected that all Library staff adhere to these procedures.

The processes set forth in this memo do not override campus principles for negotiation and execution of business contracts, but rather clarify who from the Library must be involved in the agreement's preparation prior to its submission to / execution by a campus representative with designated signing authority. Complete campus procedures and rules for contracting may be found at: <https://bcbp.berkeley.edu/>.

Procedures in this memorandum are organized by type of contract. For each category of contract listed below, we identify the processes and responsible parties during the following contract phases: (1) pre-approval, (2) drafting, (3) negotiation, (4) execution (signature), and (5) document retention. If you do not find a specific contract category relevant to your needs, follow the procedures set forth in the "Miscellaneous Service or Purchase Contracts."

**This memo will be kept evergreen and updated as needed.** If you have any questions about procedural information in this memorandum, please contact Library Business Services (LBS) at [lbspurch@lists.berkeley.edu](mailto:lbspurch@lists.berkeley.edu).

# PROCEDURES

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## I. General Principles

1. To the extent your contract drafting, negotiation, or execution process involves another person or department as specified below, you must provide other departments with **at least 6 weeks minimum of lead time** for provision of their support or review.
2. **The originating department / proposer is responsible for submitting the contract** through Library Business Services (LBS) for review and subsequent execution by (campus) Business Contracts & Brand Protection (BCBP), or to the University Librarian (UL) depending on the type of contract and as specified below.
3. Note that (campus) BCBP involvement in review and signature adds additional turnaround time. Please plan accordingly.

## II. (Special Collections / In-Kind) Deeds of Gift and Asset Purchases

### 1. Compliance preparation

- a. When receiving any in-kind gifts / collections, you must comply with the procedural requirements set forth in [campus policy](#). Before embarking upon the Drafting phase for in-kind gift agreements (step 2), begin to assemble this campus-required documentation (e.g. appraisals, acknowledgement letters, etc.). Once the deed of gift process is complete, you will be submitting all of these forms and documents as a packet to the Library Development Office (LDO) for transmission to University Development and Alumni Relations (UDAR), as described further below.

## 2. Drafting

- a. **For single/several item in-kind gifts (e.g. gift of a published book; gift of published map):** Use of LDO's "Deed of Gift" form is permitted if desired. Please obtain the current version from LDO. Otherwise, proceed through OSCS using counsel-vetted templates.
- b. **For collections of materials or additions to collections:**
  - i. Use of counsel-vetted templates is required. Please obtain the appropriate and current drafts from the Office of Scholarly Communication Services (OSCS). OSCS will recommend a particular draft based on the specific rights issues at stake for a proposed collection.<sup>1</sup>
  - ii. Involve OSCS from the start in explanations to donor / seller and in discussions of rights, including rights selection issues like:
    1. Copyright (including rights retention with license vs. copyright transfer)
    2. License grant-backs to donor / seller
    3. Use by library & third parties
    4. Commercial uses
    5. Creative Commons licensing
    6. Public domain status
    7. Third-party copyright ownership
    8. Digitization
    9. Privacy
    10. Ethics
    11. Access

## 3. Negotiating / Revising

- a. Negotiation is the responsibility of initiating department or individual(s).
- b. Involve OSCS to the extent donor / seller requests modifications from the template regarding any of the above rights issues.
- c. Involve Library IT / DLP if the donor *requires* digitization, or if the donation is a digital collection (either partly or completely).
- d. Counsel review will be sought as needed (as determined by OSCS).

## 4. Executing

- a. **For single item in-kind gifts:** LDO form requires signature by donor but no counter-signature by university representative.
- b. **For collections / additions to collections:**
  - i. In-kind/special collections *deeds of gift* must be signed by the UL or UDAR as there presently is no Delegation of Authority for department heads to sign gift agreements.
  - ii. Special collections *asset purchase agreements* in limited circumstances (specified in the Delegation of Authority memo [here](#)), and *only when no changes have been made to the template agreement*, can be signed by certain department heads (e.g. director of The Bancroft). Otherwise, the

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<sup>1</sup> There is a separate template for the creation and/or gift of oral histories. However, the process of coordinating with and obtaining the template agreement from OSCS does not change.

UL must sign the gift or asset purchase agreement in accordance with the aforementioned Delegation of Authority memo.

- iii. Final review of all agreements prior to execution, by OSCS, is required if any changes were made that propose deviation from the template provided.
- iv. When submitting for execution, include [cover sheet / checklist](#) indicating all necessary departments have reviewed.

#### 5. Documentation

- a. Distribute to LDO along with other campus-required documentation (for LDO to submit to UDAR).
- b. For retention: In addition to routine departmental procedures for documenting and storing agreements (in accordance with University policy), send a copy of all fully-executed gift agreements to [schol-comm@berkeley.edu](mailto:schol-comm@berkeley.edu), and a copy of fully-executed asset purchase agreements to *both* [schol-comm@berkeley.edu](mailto:schol-comm@berkeley.edu) and [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu). These will be retained in campus-approved secure formats and locations.

### III. (Non-Special Collections) Collections Acquisition & Licensing

#### 1. Pre-Approval

- a. The pathway for pre-approval depends on whether the proposed resource is to be purchased/licensed at [Tier 1](#) (UC-wide), [Tier 2](#) (4+ UC campuses), or [Tier 3](#) (UCB only). Follow the pre-approval [instructions on this page](#) based on the applicable tier.
- b. Approval plans generally have contracts associated with them and certainly we have pre-setup ebook licensing with approval and some firm order providers. If a selector desires to set up a purchase with a publisher or vendor we have not acquired resources from before it is very important to speak with Acquisitions. New publishers /vendors must be set up with LBS vendor file before we can conduct business with them. (More information in Selector Liaison Manual [Foreign language plans](#); [approval plans in general](#)).
- c. Additional specifics for Tier 3 (UCB only): All purchase order requests for licensed digital content must be placed through [Electronic Resource Order Request Form](#). The Acquisitions License Coordinator reviews the order request form and triages based on whether the resource request is a new vendor agreement or amendment to existing license. The Acquisitions License Coordinator also assesses funding available and overall viability of continuing forward with acquisition and license process. Licensing Coordinator then assigns license to Licensing team member to work on license review and making sure the license adheres to model licensing parameters.

#### 2. Drafting

- a. The Library licensing team is comprised of specific individuals assigned to handle licensing under guidance and direction of Licensing Team coordinator (AUL for Scholarly Resources). The Licensing Team will use vendor-supplied or

pre-approved templates where appropriate, and comply with Library-approved principles and negotiation steps.

- b. Specifics for Tier 3 (UCB only):
  - i. Work with Acquisitions on establishing new vendors or setting instructions with current vendors.
  - ii. Subscription Agents: Acquisitions utilizes predominately two subscription agents (EBSCO and Harrosowitz) in order to procure serials titles that are not a part of the CDL negotiated big publisher deals or transformative agreements. In some cases serials are ordered directly from the publisher.
3. **Negotiating**
  - a. Negotiation is the responsibility of the Licensing Team. The team may consult as needed with a subject specialist or disability liaison.
  - b. Licensing Team members involve OSCS for legal expertise to the extent there is a request or need for modifications from pre-approved language in the model license.
  - c. Licensing Team members may also consult Library IT in the negotiation process for their technical and accessibility expertise if new/different forms of authentication (other than IP) are required or requested, and to ensure that the vendor supports WCAG 2.0 AA compliance (as reflected in vendor VPAT forms).
  - d. Counsel review will occur as needed (as determined by OSCS).
4. **Executing**
  - a. Licenses that are ready for signature are prepared by the license coordinator and sent to the University Librarian, who has [signing authority](#).
  - b. The University Librarian has delegated this signing authority to specific positions within the Library in [limited circumstances specified in this memo](#). These limited circumstances allow non-University Librarian signatures only when no changes have been made to pre-approved forms.
  - c. When submitting for execution, include [acquisitions cover sheet](#) (which embeds information necessary for serials processing and a summary of issues for the University Librarian).
5. **Documentation**
  - a. In addition to routine departmental procedures for documenting and storing agreements (in accordance with University policy), a copy of a fully-executed agreement will be stored in the Acquisitions license repository. The longer term plan is for this data to be migrated, stored and “implemented” in Alma. Licensing terms will be available to staff and users.
  - b. Final signed copies of Tier 1 CDL licenses are available from a secure CDL repository platform.

## IV. Third-Party / Vendor Digitization/Hosting

### 1. Pre-Approval

- a. Before pursuing any contracts for third-party / vendor digitization/hosting, contact the Library Digital Lifecycle program (email: [digitalinitiatives@berkeley.edu](mailto:digitalinitiatives@berkeley.edu)). DLP will coordinate with the vendor on behalf of the requestor on third-party / vendor digitization/hosting, working closely with the appropriate AUL / Cabinet Member, OSCS (on rights and policy issues), and requestor.
- b. Note: Additional pre-approval / proposal procedures will be put forward later and this memo will be updated accordingly.

### 2. Drafting

- a. DLP will begin by consulting with OSCS, which will recommend an appropriate template if one has not been provided by the vendor.
- b. All information policy / rights terms must comply with the Library's [Third-Party Vendor Agreements policy](#)<sup>2</sup>. DLP will consult with OSCS re: all rights and information policy aspects of agreements, including issues like:
  1. Copyright
  2. How materials will be used by library and users / third parties
  3. Rights retention vs. transfer
  4. License grant-backs to donor / seller
  5. Commercial uses
  6. Creative Commons licensing
  7. Public domain
  8. Third party copyright ownership
  9. Digitization (in consultation with DLP)
  10. Privacy
  11. Ethics
  12. Access (in consultation with DLP)
- c. DLP will coordinate and determine all technological and digital specifications including digital publishing and digital preservation, in consultation with the requestor.

### 3. Negotiating

- a. Responsibility of DLP in coordination with the requestor.
- b. DLP involves OSCS to extent there is any subsequent request from donor / seller for modifications regarding rights issues.
- c. Counsel review as needed (as determined by OSCS)

### 4. Executing

- a. Final review required by OSCS if any changes made to rights issues.
- b. DLP will submit to LBS for review and subsequent execution by BCBP or UL.
- c. When submitting for execution, include [cover sheet / checklist](#) indicating all necessary departments have reviewed.

### 5. Documentation

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<sup>2</sup> As of 17 Feb 2023, this policy is awaiting vetting by DLP.

- a. DLP will send a copy of all fully-executed agreements to [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu), the requestor, the relevant AUL/Cabinet member, and OSCS.

## V. Library Publishing of Books, Memorabilia, Journals

### 1. Drafting

- a. Initial draft of the publishing contract should be provided by publisher and transmitted by initiator / requestor to OSCS for review. Alternatively, the requestor should discuss parameters with OSCS and obtain an appropriate first draft from OSCS.
- b. Regardless of who provides the first draft, requestor should consult with OSCS regarding all rights and information policy aspects of agreements, including issues like:
  - i. Copyright
  - ii. How materials will be used by library and users / third parties
  - iii. Rights retention vs. transfer
  - iv. License grant-backs to donor / seller
  - v. Commercial uses
  - vi. Creative Commons licensing
  - vii. Public domain
  - viii. Third party copyright ownership
  - ix. Digitization (in consultation with and approval from DLP)
  - x. Privacy
  - xi. Ethics
  - xii. Access (in consultation with and approval from DLP)
- c. Requestor should consult with and get approval from Library IT on the technical and digital preservation terms of the agreement.

### 2. Negotiating

- a. Responsibility of initiating department or individual(s).
- b. Involve OSCS to extent that there is a request from donor / seller for modifications regarding rights issues.
- c. Counsel review as needed (as determined by OSCS).

### 3. Executing

- a. Final review required by OSCS on rights issues if a publisher's first draft is used, or if any changes are made from an OSCS-provided draft.
- b. Submit to LBS for review and subsequent execution by BCBP or UL. There is presently no Delegated Authority within the Library for persons other than the UL to sign publishing agreements.
  - i. If submitting to UL for execution, include [cover sheet / checklist](#) indicating all necessary departments have reviewed.

### 4. Documentation

- a. In addition to your routine departmental procedures for documenting and storing agreements (in accordance with University policy), send a copy of all fully-executed agreements to [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu).

## VI. Grants

### 1. Pre-Approval

- a. Confer with relevant AUL or UL prior to pursuing grant application. If your grant implicates service needs from other departments (such as Library IT, Preservation/Conservation, Communications, etc.) be sure to include those departments in your conversations with your AUL or the UL.
- b. To the extent the grant is for digitization of collection materials or is a digital initiative, follow pre-approval processes set forth for digitization by contacting DLP ([digitalinitiatives@library.berkeley.edu](mailto:digitalinitiatives@library.berkeley.edu)).

### 2. Drafting

- a. Initiating department bears all responsibility for drafting and coordination, including:
  - i. Consulting with Library Business Services' Lib Awards / Grants representative ([libaward@lists.berkeley.edu](mailto:libaward@lists.berkeley.edu))
  - ii. Coordinating provision of relevant materials to [Sponsored Projects Office](#)
  - iii. Coordinating request for Exception to Principal Investigator Status as needed with Library Business Services
  - iv. Coordinating request for reduction or waiver of indirect cost recovery with Library Business Services and UL
  - v. Securing review of written materials by University Librarian
- b. Consult with OSCS regarding all rights and information policy aspects of project, including issues like:
  - i. Copyright
  - ii. Licensing
  - iii. Privacy
  - iv. Ethics
  - v. Online or electronic access (OSCS will consult with Library IT as needed)

### 3. Submission

- a. Responsibility of initiating department or individual(s), working in cooperation as needed with LBS, LDO, and the University Librarian.

## VII. Software & Hardware

### 1. Pre-Approval

- a. Confer with relevant AUL / Cabinet member prior to purchasing any hardware or software
- b. Once approved, submit a request to Library IT (email: [helpbox@library.berkeley.edu](mailto:helpbox@library.berkeley.edu)) with the details and costs of the hardware/software and funding source.

### 2. Drafting

- a. If the request is for the vendor to provide hardware/software services onsite, Library IT will consult and work with LBS.



- b. If the request is for Library IT to purchase, install, maintain and integrate software/hardware, Library IT will work closely with the requestor and/or the AUL/Cabinet member to determine the feasibility of the quote.
3. **Negotiating**
    - a. Responsibility of Library IT in consultation with LBS, with communication to the requestor.
  4. **Execution**
    - a. Final review by Library IT in consultation with AUL for Digital Initiatives and Information Technology.
    - b. If a signature is required, AUL for Digital Initiatives and Information Technology will submit to UL for approval.
    - c. Library IT will submit to LBS for procurement.
  5. **Documentation**
    - a. Library IT and LBS keep full copies of any software/hardware that requires an agreement.

## VIII. Miscellaneous Service or Purchase Contracts

**Unless the service agreement may be categorized more specifically above, follow these procedures for all other service agreements between the Library and a third party for the Library to provide or receive services.**

1. **Pre-Approval**
  - a. Confer with relevant AUL or UL prior to pursuing any other type of service or purchase agreement.
  - b. If the agreement is for the Library to grant a license (i.e. “permissions”) for use of Regents-copyrighted materials, no pre-approval needed.
2. **Drafting**
  - a. If the request is for a **vendor to provide services to the Library**, contact Library Business Services (LBS) purchasing unit at [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu). Depending on the size of the purchase and nature of the request it may be subject to competitive bidding. A Request for Proposal, Quote or Information (RFP/RFQ/RFI) may be required. LBS will work directly with campus [procurement](#) in determining such a need. Confer with OSCS to the extent any rights issues are involved. Confer with LHRD for any agreements requiring labor from a third party.
  - b. If the request is for the Library to **provide services to a third party at a fee**, contact LBS to discuss the type of arrangement and fee. Depending on the nature of the agreement and type of fee, LBS will determine the appropriate campus authority to consult. For services provided to non-UC clients, the [BCBP](#) will be the authority. Confer with OSCS to the extent any rights issues are involved. Confer with Library Human Resources Department (LHRD) for any agreements requiring labor from a third party.
  - c. If the request is for the Library to **grant a license (i.e. permissions)** for use of Regents-copyrighted materials, the entire transaction is handled through OSCS

using counsel-vetted forms and pursuant to [processes established by the University Librarian](#).

### **3. Negotiating**

- a. Confer with LBS to assess whether LBS or initiating party will take negotiating lead and on what parts of the agreement. Typically, the Library subject matter expert negotiates the statement/scope of work (SOW) and campus procurement negotiates the terms and conditions of the contract.
- b. Confer with OSCS to the extent that any modifications are proposed to rights issues. OSCS will confer with counsel as needed on rights issues.
- c. LBS will confer with counsel as needed on all other contract issues.
- d. Confer with Library IT to the extent that any requirements are defined for technology or digital access.

### **4. Execution**

- a. Submit documentation to LBS for review and subsequent execution by BCBP, except as to licenses (“permissions”) for Regents-copyrighted materials (which are handled by OSCS).

### **5. Documentation**

- a. In addition to your routine departmental procedures for documenting and storing agreements (in accordance with University policy), send a copy of all fully-executed agreements to [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu).

## **Appendix**

### **1. Authority to Execute Agreements**

- a. [Contracting on Behalf of the University](#)
- b. [Current Delegations of Authority](#)
  - i. University Librarian Delegations of Authority:
    1. [Execute purchase contracts, subcontracts, and standard purchase orders for materials, goods and services to be supplied to the University](#)
    2. [Execute Agreements Related to Copyrightable Materials](#)
    3. [Authority to Approve Honorarium Payments to Non-University Personnel](#)

### **2. Guides on Contracting Process**

- a. [UC Berkeley Guide to Contracting](#)
- b. [Business Contracts FAQs](#)

### **3. Departmental Contacts**

- a. Library Business Services (LBS): [LBSPurchase@lists.berkeley.edu](mailto:LBSPurchase@lists.berkeley.edu)
- b. Library IT (LIT): [helpbox@library.berkeley.edu](mailto:helpbox@library.berkeley.edu)
- c. Digital Lifecycle Program (DLP): [digitalinitiatives@berkeley.edu](mailto:digitalinitiatives@berkeley.edu)
- d. Office of Scholarly Communication Services (OSCS): [schol-comm@berkeley.edu](mailto:schol-comm@berkeley.edu)
- e. Library Human Resources Department (LHRD): [hrd@library.berkeley.edu](mailto:hrd@library.berkeley.edu)