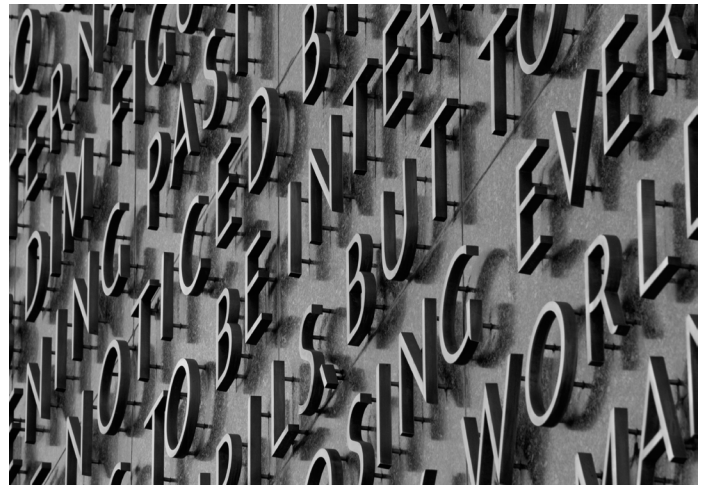


University of California, Berkeley Guide to Contracting





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This guide is also available online at <http://bcbp.berkeley.edu/contracting-berkeley>.

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Introduction

The **University of California, Berkeley Guide to Contracting** (Guide) is designed to assist campus personnel (administrators, staff, faculty, and researchers) understand the general process of creating, managing, and terminating legally binding contracts.

The University of California, Berkeley (Berkeley), uses a wide range of agreements (such as purchase orders, gift letters, grants, Memoranda of Understanding, or other “contracts”) to conduct business in support of Berkeley’s mission of teaching, research, and public service. For the purpose of this Guide, “contract” is used to refer to all such agreements. This Guide includes important information about the campus offices that are authorized to develop and execute such agreements on behalf of The Regents of the University of California (“contracting offices”). The Guide is available on the [Business Contracts and Brand Protection](#) (BCBP) website, and will be edited as needed to incorporate important updates.

Section 1. Before Starting a Contract defines the term “contract;” assists the reader in determining whether a contract is needed; and explains who is authorized to create, amend, or terminate a legally binding Berkeley contract.

Section 2. Benefits and Risks outlines the benefits of having a properly executed written Berkeley contract and the risks of not having one.

Section 3. Contract Types and Key Considerations provides an overview of the types of contracts generally executed at Berkeley. It also provides a list of key considerations to evaluate prior to entering into a contract with an outside party.

Section 4. Creating and Executing a Contract helps the reader identify the appropriate contracting office for the unit’s specific needs, using an online decision tree. It then guides the reader through the process of creating and “executing” a written contract. Without the mandatory executing step, Berkeley is vulnerable to challenges caused by contracts that are not legally binding.

Section 5. Managing, Amending, and Terminating a Contract gives an overview of how to manage a contract day-to-day to meet the university’s obligations and ensure the university receives what it is due under the terms of the contract. This section will also help the reader determine whether a contract needs to be amended or terminated (i.e., ended), and how.

The **Appendix** includes a list of the university’s contracting offices, reference materials, acronyms, website links, and an index.

If you have questions about this Guide, please email bcbp@berkeley.edu.

We hope you find this Guide helpful!

Contracting at Berkeley Working Group

Acknowledgments

In February 2013, Business Contracts and Brand Protection (BCBP), Sponsored Projects Office (SPO), Industry Alliances Office (IAO), Office of Legal Affairs (OLA), and Risk Services formed the initial Contracting at Berkeley Working Group (CBWG) with the goal of clarifying contracting responsibilities and the contracting process at Berkeley. Special thanks to former University of California Office of the President Policy Director Nancy Capell for her contributions during the working group's early days.

The Guide is an output of the work of CBWG. It has been under development for two years, as over two dozen representatives from a variety of Berkeley contracting units have joined the working group to help CBWG reach its goal. While many units help to develop and execute contracts at Berkeley, BCBP, SPO, IAO, and Supply Chain Management (SCM) are the four main units that handle the majority of the contract work associated with research, the exchange of goods and services, and purchasing. One of the main goals of the CBWG working group has been to clarify the roles and responsibilities of each of these four contracting offices as they relate to Berkeley contracting.

We would like to thank former Associate Vice Chancellor Ron Coley and Associate Vice Chancellor and Chief Financial Officer Rosemarie Rae for their leadership, sponsorship, and support. We also wish to thank the CBWG members for their tireless dedication and instrumental role in the development of this Guide.

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Table of Contents

Introduction	3
Acknowledgments	4
1. Before Starting a Contract	7
What is a contract?	7
When to create a contract	7
Who is authorized to create, amend, or terminate a contract at Berkeley?	7
2. Benefits and Risks	8
Benefits of having a written contract	8
Risks of not having a written contract	8
3. Types of Contracts and Key Considerations	9
Types of Contracts	9
Key Considerations	10
4. Creating and Executing a Contract	13
Identifying the appropriate Contracting Office	13
Contacting the Contracting Office	13
Drafting a contract	13
Reviewing and approving a contract	14
Executing a Contract	14
5. Managing, Amending, and Terminating a Contract	15
Day-to-day contract management	15
Amending or updating a contract	15
Terminating a contract	15
Sample contract management responsibilities	16
Appendix	18
Contracting Offices	19
Business Contracts and Brand Protection (BCBP)	20
Cal Performances	24
Construction & Design (formerly Capital Projects)	25
Human Resources	26
Intellectual Property & Industrial Research Alliances Office (IPIRA)	29
Media Relations (Office of Public Affairs)	31
Real Estate Development & Portfolio	32
Sponsored Projects Office	33
Supply Chain Management (SCM)	36
Consultants (Subject Matter Experts)	38
Office of Legal Affairs	39
Risk Services	40
Information Security and Policy	41
Privacy Office	41
Additional Reference	42
University of California Forms	43
Parties and Signatures	43
Sample of Terms and Conditions (both recommended and required)	44
Unrelated Business Income Tax (UBIT)	47
Acronyms	48
Website Links	49
Index	53



1. Before Starting a Contract

What is a contract?

For the purposes of this Guide, a contract is any written agreement between The Regents of the University of California (The Regents) and one or more parties that is enforceable by law.

When to create a contract

Any campus personnel or unit (e.g., department, school, college, research lab, administrative office, etc.) who engages in a transaction with an outside party (e.g., individual, agency, company, organization, etc.) on behalf of The Regents needs to have a written contract.

A campus unit that enters into a contract with an external party generally does so with one or more goals in mind, for example:

- Purchase, exchange, or receive funding for a good or service
- Train students, faculty, or staff
- Perform research activities
- Generate revenue
- Exchange ideas
- Provide a public service to the larger community
- Pave the way for future projects
- Fulfill a bid process requirement

Who is authorized to create, amend, or terminate a contract at Berkeley?

Only campus contracting officers with specific delegated authority to negotiate and execute (sign) contracts on behalf of The Regents are authorized to create, amend, or terminate a Berkeley contract. Each contracting office has a specific area of responsibility. Personnel in these offices are knowledgeable of the university's policies and the state and federal regulations that govern each agreement. More information about the authorized contracting offices is available in the [“Managing, Amending, or Terminating a Contract”](#) section of this Guide.

Campus faculty, researchers, and staff are responsible for contacting the appropriate contracting office and providing the office's contact with the scope of work, payment terms, and other important information related to the terms of the desired contract.

Important: It is important to note that, only contracting officers are authorized to sign contracts on behalf of the university (i.e., The Regents), or to bind the university in any manner. If an unauthorized individual enters into an agreement, such individual may face personal adverse consequences for signing the agreement. Therefore, the first step in the contracting process is always to consult with the appropriate university contracting office.

2. Benefits and Risks

Benefits of having a written contract

Although some oral contracts are recognized in the law, the university operates under written contracts. Having a written contract that is fully executed (i.e., signed by all parties) before performance commences is considered to be a best practice. There are several important reasons to have a written contract.

- A carefully and clearly written contract can provide some or all of the following benefits:
- Clarifies and provides evidence of the roles, intent, and relationship of the parties.
- Spells out each party's obligations and expectations about key elements of the transaction.
- Assigns consequences for departures from expectations or failure to abide by the terms.
- Details important information regarding the contract's enforcement requirements.
- Helps prevent disputes between the parties.
- Provides a framework for resolving potential future conflicts.
- Helps inform how the project is to be managed once the work has begun.
- Lays out incoming and/or outgoing payment terms so everyone is clear about
 - (a) the costs of performing the work,
 - (b) the payment schedule and reimbursement method, and
 - (c) whether payment is contingent upon a particular milestone or deliverable.

In addition to these benefits, the negotiation, drafting, and review process that leads to a contract being satisfactory to all parties can help identify areas of potential difficulty in the relationship. Moreover, it can give all parties an opportunity to clarify the terms of their agreement and provide confidence that everyone understands the terms when the contract is signed on each party's behalf.

Important: Once a written contract is fully executed, units must remember to notify their contracting office immediately if a contract term is not met, or if a contract provision or condition has changed. If needed, the unit's concern will be referred to the Office of Legal Affairs for assistance.

Risks of not having a written contract

There are many risks associated with performing, paying for, or accepting work (sometimes in the form of receipt of goods and/or services) without a written, fully executed contract. These risks include, but are not limited to:

- Litigation due to incomplete or inadequate performance
- Lack of payment, goods, or services (either to or by the university)
- Potential loss of (a) intellectual property rights, (b) right to data, (c) the ability to conduct follow-on research, or (d) professional certification
- Harm to the reputation of the university or its personnel
- Delays in processing contract-related financial transactions, such as vendor payments
- Application of the university's [Deficit Resolution Policy](#) if unallowable costs cause a deficit
- Possibility of placing future funding in jeopardy

3. Types of Contracts and Key Considerations

Types of Contracts

Binding contracts

Important: If the essential elements of a contract are present, the type or title of the contract is not important. Regardless of the contract type, a properly executed (i.e., signed by a delegated authority) document will create legally binding (i.e., enforceable) obligations. Said differently, binding contracts create obligations that are enforceable by law.

Some common types of binding contracts include:

- Click-through Agreements
- Gifts
- Grants and Contracts
- Letter Agreements
- Letter of Intent (LOI) or Deal Memo (DM)
- Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU)
- Purchase Orders

Click-Through Agreements

“Click-through” agreements (aka shrink wrap) are generally used in online transactions, such as licensing downloadable software. Most click-through agreements require acceptance of the agreement’s terms by clicking a button that indicates acceptance of terms before the user can access a service or product.

Important: Click-through agreements are contracts. Individuals who accept click-through agreements without delegated signature authority may face personal consequences. To find out who has signature authority at Berkeley to “sign” a click-through agreement, go to the [Delegations of Authority](#) webpage in the [Office of the Chancellor Compliance Services](#) website.

Gifts

A “gift” is defined as a philanthropic donation to a researcher, a department, or some other entity or activity. Some funding comes to the campus in the form of a gift. Gifts are processed through [University Relations](#) or the departmental or college Development Office.

Grants and Contracts

A “grant” benefits the university by supporting activities that relate to the university’s mission of teaching, research, and public service.

A “contract” is issued by a sponsor and it benefits the sponsor who acquires property or services from the university through the agreement.

Letter Agreements

Despite its innocuous sounding name, a letter from one party to another that contains the essential elements of a contract and is countersigned by the recipient to indicate acceptance of its terms is sometimes called a “letter agreement.” Such letter agreements are contracts and must be signed by the appropriate contracting office with delegated signature authority.

Letter of Intent or Deal Memo

A letter of intent or deal memo is an interim agreement that summarizes the main points of a proposed deal, spells out a course of action to be taken, or both.

Memoranda of Agreement, Understanding, or Intent

A memorandum of agreement, understanding, or intent expresses mutual agreement on a matter between two or more parties. A memorandum must identify the subject matter, parties involved, and objectives; summarize the terms of the agreement; and be signed by the parties.

Purchase Orders

A contractual relationship can be established even if all parties do not sign the contract. For example, a purchase order delivered to another party and accepted by performance (i.e., the work is performed) creates a legal contract.

Important: If campus personnel or a campus unit receives a quotation, statement of work, invoice or other document committing the university to receiving services or goods, the personnel or unit should contact Supply Chain Management immediately, before accepting any goods or beginning any services. If a campus personnel or unit receives a purchase order from an outside party because the university is providing a good or service, the personnel or unit should contact their unit's contracting officer before performing any work.

The University of California's purchase order forms contain standard terms and conditions that ordinarily apply to all purchase orders issued by Supply Chain Management. Many businesses, however, attempt to substitute their own standard terms and conditions. These terms and conditions are not approved, and they can and should be rejected or negotiated by Supply Chain Management as they may create significant obligations including, but not limited to, financial, time, and risk.

Non-Binding Agreements

Most agreements, unless carefully and successfully drafted by the responsible contracting office to be non-binding, are legally enforceable. On rare occasions, a non-binding document is an option worth considering; for example, to set out the main components of a complex transaction under negotiation, or if needed and adequate to obtain preliminary approvals, financing, etc. However, in the long run, it is generally more efficient and less risky to develop a complete and final contract.

Important: Never attempt to draft a non-binding agreement without guidance from the appropriate campus contracting office. Do not sign an agreement provided to you by a non-contracting office or an outside entity. If you need or wish to create or accept a non-binding (or binding) document, always seek assistance from the appropriate contracting office.

Key Considerations

Prior to entering into a contract with an outside party, a number of key questions must be considered:

Can standard university-approved forms be used to facilitate the contract?

With the exception of SPO and IAO, attorneys from the Offices of Legal Affairs (OLA) and/or General Counsel (OGC) review and approve language in many of the respective offices' standard forms. Using third-party forms will usually increase the contract negotiation time and may delay contract execution (i.e., signature). Standard forms must be approved by OLA, OGC, SPO, or IAO.

Will the university be providing or receiving funding?

Contracting offices BCBP, IAO, or SPO generally handle incoming fund contracts. Generally speaking, outgoing funding contracts are handled by SPO if they relate to sub-awards to project partners, and by SCM if they relate to procurement of goods and services. When goods and/or services are commercially available from a supplier, the contract must be competitively bid, per advice from the Office of General Counsel.

Will the university be entering into an agreement for the purchase of sale of goods and/or services?

If yes, the university contracting party must ensure that (a) the good or service does not compete with an existing agreement; (b) activities are consistent with the campus mission and goals; and (c) no commitments are made for items outside of the Berkeley contracting party's control. If this service or good is available commercially from several different parties, the best practice is to complete a competitive solicitation process for purchases and revenue-generating agreements. In some cases, competitive solicitation is required by California statute. For additional information, please refer to the Supply Chain Management's [Solicitation and Selection Guidance presentation](#).

Does an outside party intend or desire to list the university as a reference or a customer, or use its trademarks to imply an association or affiliation?

This is typically not allowed. (See [California State Education Code 92000-92001](#) for more information. However, if yes, it is important to understand (a) how the outside party intends to use the trademarks; (b) whether such use supports the campus' mission, goals, socially responsible activities, and equity and inclusion guidelines; and (c) what are the risks, benefits, and protections that accompany the potential partnership. These types of requests must be reviewed by the Office of Business Contracts and Brand Protection, which has the delegated authority for use of University of California, Berkeley name and trademarks.

Is there a potential conflict of interest?

Conflict exists by virtue of a relationship that could result in an undue influence on the employee's professional judgment. Per the Office of the Chancellor's Compliance Services [Conflict of Interest](#) webpage, a conflict of interest exists whenever an employee's personal, professional, commercial, or financial interests or activities outside of the university have the possibility (whether potential, real, or perceived) of

- compromising the employee's judgment;
- biasing the nature or direction of scholarship;
- influencing the employee's decision or behavior with respect to teaching, student affairs, promotions and appointments, use of campus resources, interaction with human subjects, or other matters of interest to the university; or
- resulting in personal or a family member's gain or advancement at the expense of the university.

Has Return on Investment (ROI) been calculated and is it sufficient to warrant the agreement?

ROI includes personnel time needed to handle the contract's management, such as financial transactions (e.g., invoicing), reporting, and ensuring all obligations are met by the university and by other contracting parties, etc.

Will the performance of the agreement take place in the U.S. or internationally?

International contracts tend to be more complex. There could be significant issues if performance occurs abroad.



If the university is compensated for a service, is the transaction in line with University of California Regulation 4?

[University of California Regulation 4](#) for Special Services to Individuals and Organizations imposes restrictions on the university's ability to provide services to industry. Services of a "purely commercial character" may be performed if there is no satisfactory available alternative in the private sector. Unique or special facilities may be made available to external users on a fee-for-service basis. If the service has research, educational, or training value to the university, the transaction is consistent with Regulation 4.

Will any sensitive data (e.g., student, personal, financial, medical, etc.) be shared?

Any data sharing must comply with Federal law, California law, and university policy. See the Berkeley [Selected Privacy and Confidentiality Regulations](#) webpage for more information.

Is the university adequately protected from risk?

If risk is unavoidable, are approved mitigation plans in place? Units may review general guidance on the [Risk Services](#) website.

Are key contract dates and related terms clearly outlined?

A beginning and an end contract date must be included. A reasonable way out of the agreement should also be included in case the contract needs to be terminated prior to the contract's end date. An option for renewal should be considered if the Berkeley contracting party believes contract renewal may be needed or desired.

Is there a clearly defined Scope of Work (SOW)?

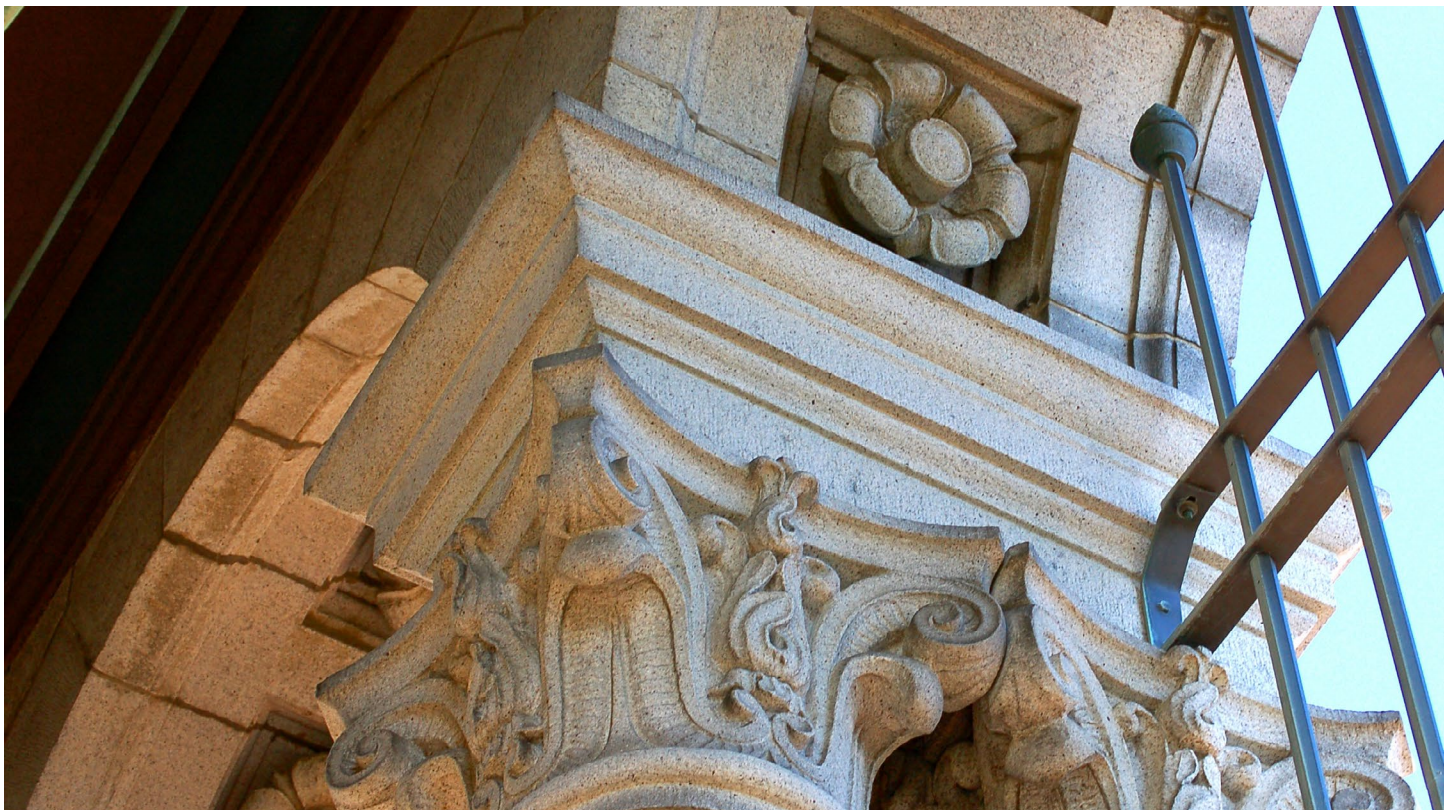
The SOW should adequately describe each party's responsibilities and include key dates and milestones, payment schedule, progress report requirement and frequency, etc.

Are the terms governing ownership and rights in compliance with university policies?

Berkeley research that is funded by extramural sponsors may result in inventions and other forms of intellectual property with corresponding rights. The [Intellectual Property and Related Matters](#) section of the University of California Contract and Grant Manual describes ownership and administration of these rights.

Does the contract include clearly outlined (and realistic) obligations and responsibilities, as well as a mechanism to address potential conflict?

These may include notice, defined meetings of the parties, mediation, arbitration, litigation, and/or termination.



4. Creating and Executing a Contract

Identifying the appropriate Contracting Office

After establishing that a contract is needed, the next and most important step is to identify and contact the campus contracting office authorized to draft and execute the contract.

Answer the [Contracting Office Decision Tree](#) questions to find out which contracting office to contact.

The **Contracting Office Decision Tree** will guide the unit through a series of yes or no questions to help identify the appropriate contracting office for the unit's need from among the four main contracting offices on campus: SPO, IAO, BCBP, or SCM.

Contacting the Contracting Office

After identifying the appropriate contracting office, the unit may reference the corresponding "[Contracting Offices](#)" section of [the Appendix](#)" for the office's description, contact information, and types of contracting services it provides. The unit may email or call the office directly, or submit a request to get the contracting process started via the office's intake system.

Note: Some units have an internal contact who handles contracts, such as a departmental contract coordinator, departmental administrator, or designated Campus Shared Services (CSS) representative. Those units should first reach out to their internal contact, who in turn should be able to determine or confirm the unit's contract need and contact the appropriate contracting office for help. (Units without an internal contracting contact should reach out to their contracting office directly or, if familiar with the office's intake process, submit requests through the appropriate contracting intake system.)

Most Berkeley contracts are handled by one of the following four offices:

- [Business Contracts and Brand Protection](#) (BCBP)
- [Sponsored Projects Office](#) (SPO)
- [Industry Alliances Office](#) (IAO)
- [Supply Chain Management](#) (SCM, formerly known as Procurement)

However, there are many additional offices with contract execution authority, depending on contract need. Details about all Berkeley contracting offices are available in the "[Contracting Offices](#)" section of [the Appendix](#).

Subawards: Units who wish to set up an outgoing subaward, or a subcontract under a sponsored project, may contact IAO for agreements with for-profit entities or SPO for agreements with all other entities.

Drafting a contract

In preparation for the contract drafting stage, units will be asked to provide the campus contracting office with a clear description of the scope of work to be performed, associated costs, milestones or deliverables, and any particular issues that might impact performance. The quality and completeness of this information is very important, as it will enable the contracting office to most effectively represent Berkeley's interests. During the process, the contracting office may require from the unit additional information or documentation needed to draft the contract.

Reviewing and approving a contract

In some cases, before the contracting office finishes drafting the contract and in order for it to be executed, on- and off-campus Subject Matter Experts (SMEs) may need to review and approve the draft, based on the specifications of the contract.

Although SMEs from these offices do not have delegated signature authority to enter into a contract on behalf of The Regents, they do play an important role in reviewing contracts and mitigating risk. Four key offices are:

- Office of Legal Affairs
- Risk Services
- Information Security
- Privacy Office

Units may reference the “[Consultants \(SMEs\)](#)” section of the [Appendix](#) for office descriptions, contact information, and types of contracting services each office provides.

Executing a Contract

After a contract has been reviewed and approved, it must be executed (i.e., signed).

Important: *The contract must be executed by an authorized signer (i.e., a person with delegated authority or signature authority) in order for it to be “executed,” and therefore legally binding. UC contracts executed without proper authority are not legally enforceable.*

Under some circumstances, the contracting office may sign first; in others, the outside party signature may need to be obtained first. Some campus contracting offices will obtain the other party’s signature(s). In the case of BCBP, the reviewed and approved contract will be returned to the unit, so that the unit’s staff can obtain the other party’s signature.

Once the contract is fully executed (signed by all parties), the contracting office will notify the unit. Depending on the contracting office, unit, or other party needs, one or more of the parties will receive either an original and fully signed contract or an electronic copy of the document.

Click-Through Agreements: Like any other legally binding contract, click-through agreements are also subject to the same execution requirements as other contracts. If the signer (or “clicker”) is not authorized to act on behalf of The Regents, the contract is void and unenforceable, and the unauthorized individual is making a false representation of authority in order to use, access, or enjoy the benefits of a service.

Signature Authority: The authority of officers is typically found in governing documents of the organization or in resolutions of its governing board. At the University of California, certain officers are authorized to sign contracts on behalf of The Regents, and to delegate signature authority in certain limited ways. Delegations of signature authority have been made, for example, to specific personnel in the offices of Supply Chain Management, Business Contracts and Brand Protection, Sponsored Projects, Industry Alliances, and Contract & Grant Accounting.

For more information regarding delegated signature authority, units may reference the Office of the Chancellor Compliance Services [Delegations of Authority](#) webpage.



5. Managing, Amending, and Terminating a Contract

Day-to-day contract management

Once a contract has been fully executed, it is the unit's responsibility to read and understand the terms and conditions of the contract and to manage contract obligations according to these requirements. Doing so includes, but is not limited to project administration, implementation, fund management, payment issuance, revenue collection, invoicing, timely reporting to required parties (e.g., outside parties, sponsors), seeking amendment or termination of a contract when needed, etc. In addition, the unit must maintain contract records in accordance with the University of California's [Records Retention and Disposition Policy](#).

Important: Failure to perform to the specifications of a contract could result in a material contract breach, void the contract, legal action, or other serious consequences.

Amending or updating a contract

Important: After the contract is implemented, units must notify their contracting office immediately if any of the factors affecting the contract change.

Contracts should be reviewed regularly to determine if an amendment is needed. Existing contracts may need to be amended (i.e., updated or changed) if there has been a change that affects the contract, or the contract no longer meets business or policy compliance requirements.

In some cases, units have a master agreement with a party that is renewed annually. In other cases, the original agreement may be five or more years old, and new laws, policies, and university practices may be in place, which require the contract to be reviewed and amended. If this is the case, the unit must contact the appropriate contracting office immediately, so they can review and update the contract as needed to ensure compliance with current norms.

Terminating a contract

There are several reasons to terminate an existing contract. The main reason is failure to perform based on the requirements of the contract (i.e., breach). Breach may include payment issues, lack of insurance, failure to perform services as set forth in the contract, or any other factor. As units manage their contracts, they must contact the Office of Legal Affairs and the appropriate contracting office immediately for guidance on next steps if they notice that milestones are not being completed according to the contract's Statement of Work requirements.

Other reasons to terminate a contract include:

- All parties mutually agree to end the contract.
- The university wishes to exercise a contract's "termination for convenience." (Termination for convenience is not a condition that is typically exercised, but it is good to include in contracts as it allows the university to end the contract at will.)
- An outdated agreement must be updated and it is easier to terminate the master contract and enter into a new one.
- Another party acquires the external contracting party's business or organization. In this case, the university usually has the right to either terminate or allow the contract to be "assigned" to the new party.

Sample contract management responsibilities

The following section outlines some of the main unit contract management responsibilities.

Sponsored Projects Office (SPO) and Industry Alliances Office (IAO)

Units whose contracts are processed by SPO and/or IAO (as pre-award and non-financial post-award offices) are expected to be primarily responsible for managing their own contracts. Principal investigators, project directors, department chairs and deans, and unit directors sign a statement at the proposal stage indicating that, should the proposal be funded, they agree to manage the awarded contract according to university requirements and sponsor expectations.

To activate the fund for the project and establish a project budget, units must work closely with Contract and Grants Accounting (CGA). CGA also works directly with the units to invoice, provide required financial and effort reports, and close out the fund established for the contract when the project period ends.

If modifications are required to what is written in the contract before the project ends, SPO and/or IAO should be notified as soon as possible. Although project personnel are expected and encouraged to interact with the sponsor on programmatic issues, unit representatives should never discuss any contractual terms with a sponsor without the involvement of SPO and/or IAO.

Units that experience, or anticipate experiencing, contract-related problems or conflicts with a sponsor should always contact SPO and/or IAO in advance for assistance.

Business Contracts and Brand Protection (BCBP)

If BCBP reviews and signs an agreement, the unit requesting that agreement is responsible for contract management including, but not limited to the following:

- Maintaining the original document (or electronic version) in accordance with records retention policy
- Obtaining the other party's or parties' signature(s)
- Returning a signed original, copy, or electronic version to the other party
- Invoicing, accounts receivable, processing, or depositing any payments received
(See [Accounts Receivable Operating Guidelines](#) on the Controller's Office website for more information.)
- Keeping any documents that might be needed for an audit or Public Records Act (PRA) request
- Keeping track of Unrelated Business Income Tax (UBIT), and whether or not reporting needs to occur (See the [Unrelated Business Income Taxes](#) (UBIT) in the Controller's Office website for more information. Units which are uncertain if their revenue-generating project falls under UBIT should answer the [UBIT Non-Financial Questionnaire](#).)
- Ensuring compliance with any applicable university obligations, such as:
 - Confidentiality
 - Performance
 - Payments
 - Obtaining a certificate of insurance for the other party
(to be sent by Risk Management, if required)
 - Use of university names, logos, and other trademarks
(in collaboration with BCBP, if usage rights have been granted)
- Partnering on contract related activities with the other party, including:
 - Scheduling meetings or updates
 - Planning for expiration or renewal of the agreement

Supply Chain Management (SCM)

If SCM reviews and signs an agreement, the unit requesting the agreement is responsible for contract management, including but not limited to the following:

- Maintaining the original document (or electronic version) in accordance with records retention policy. Note: SCM is responsible for maintaining all contracts over \$4,999.
- Invoicing, accounts receivable, processing, or depositing any payments received (See [Accounts Receivable Operating Guidelines](#) in the Controller's Office website for more information.)
- Keeping any documents that might be needed for an audit or Public Records Act (PRA) requests
- Ensuring compliance with any applicable university obligations, such as:
 - Confidentiality
 - Performance
 - Payments
 - Obtaining a certificate of insurance for the external party
- Planning for future expiration or renewal of agreements through communication with SCM

No matter which contracting office develops a contract, if the contracting unit experiences a problem with the other party's performance or the obligations of the agreement, the unit should immediately contact the [Office of Legal Affairs](#).



Appendix



Contracting Offices

Business Contracts and Brand Protection (BCBP)

Description

The Office of Business Contracts and Brand Protection (BCBP) processes a wide variety of contracts. Once a unit identifies a business or service opportunity, negotiates the business terms, compiles the necessary documentation, and initiates the contracting process in the Business Contracts Management System (BCMS), a BCBP Contract Specialist is assigned to process the request. The specialist reviews the agreement and coordinates the negotiation of certain terms, engaging Subject Matter Experts (SMEs) as needed. When approved by BCBP, the agreement is returned to the unit to obtain the other party's signature. Following receipt of the partly-signed contract, BCBP countersigns and returns it to the unit for contract management.

Important: All applicable compliance obligations, such as those relating to the care of human or animal subjects for research purposes are the responsibility of the unit.

Types of Contracts

The Office of Business Contracts and Brand Protection handles the following types of contracts:

Affiliation Agreement (See also Student Placement Agreement.)

An Affiliation Agreement is an agreement between the university and another institution, usually a nonprofit, that is created when the parties jointly operate a shared, ongoing program. Affiliation agreements include an ongoing governance mechanism and require approval from the Board of Regents. Examples include jointly operated medical residency programs, clinics, and laboratories.

Amendment

An Amendment is an agreement that modifies a pre-existing agreement already in effect between the parties. For example, the parties to a service agreement that will expire on a certain date may wish to execute an amendment to extend the term of their original agreement. BCBP handles amendments, including extensions, for the types of contracts listed in the BCBP section of the Guide.

Business Contract

A Business Contract is a generic term for an agreement with an outside entity that is intended to accomplish a university business objective or govern a business activity that generates revenue for the university.

Confidentiality Agreement (Non-Disclosure Agreement)

A Confidentiality Agreement is an agreement between parties to keep certain information confidential (sometimes also referred to as a "non-disclosure agreement"). Confidentiality agreements are usually associated with a primary undertaking governed by a separate agreement. BCBP handles confidentiality agreements that are associated with the types of contracts listed in this BCBP Contracting Office section of the Guide. IAO handles confidentiality agreements associated with industry-sponsored research as well as for proposals submitted to SPO.

Important: Confidentiality Agreements often include terms regarding rights to intellectual property that the person being asked to sign does not have the delegated authority to accept. Read more about signature authority under the [Executing a Contract section of this Guide](#).

Contact Information

Office of Business Contracts and Brand Protection
University of California, Berkeley
2150 Kittredge, Suite 502, #1928
Berkeley, CA 94720-1928
bcbp@berkeley.edu
510 664-7151
<http://bcbp.berkeley.edu>

Education or Research Related Service Agreement

This type of agreement is an agreement under which the university provides certain education or research-related services to an outside party (e.g., providing training to teachers in a school district or providing testing services to a governmental or non-governmental agency). Multiple campus contracting offices play a role in these types of agreements, including BCBP. Determining which office on campus handles each type of education or research related service agreement can be a challenge. The [Contracting Office Decision Tree](#) was created to assist units in determining the most appropriate office to handle each type of agreement request.

Fee for Service

A Fee for Service agreement is an agreement with an outside entity under which the outside party is permitted to use unique university facilities on a fee-for-service basis. Test results generated under these agreements are exclusively owned by the outside entity, and the agreement must comply with APM-020 [University of California Regulation 4](#).

Instruction Agreement (also Executive Training or Program Delivery Agreement)

An Instruction Agreement is an agreement with an outside party under which the university provides a class or seminar or other educational instruction to the other party, using pre-existing educational materials (e.g., Executive Training Agreements and Program Delivery Agreements).

Note: If the university will create new educational materials as part of performing the agreement, or if the instruction is provided to university students on-campus for credit, SPO or IAO will likely handle the agreement depending on the type of outside party (i.e., government, non-profit, or private).

License Agreements

A License Agreement is an agreement between the university and an external party under which the owner (or “licensor”) gives another party or parties (“licensees”) the right (“license”) to use something the licensor owns or controls, such as intellectual property. The Office of Technology Licensing (OTL) handles licenses for university inventions and for some copyrightable materials. BCBP handles certain copyright and trademark license agreements.

Copyright License Agreement

For a copyright license to be handled by BCBP the work must already exist (i.e., it will not be created under the agreement) and The Regents must have sufficient rights in or ownership of the work in order to enter into the agreement. In addition, credit should be given in the work that utilizes university copyrighted material, such as: “© year UC Regents. All rights reserved.”

Some examples of copyright license agreements include:

Content Copyright License (reprint of licensed work)

This type of agreement governs the terms under which a party may reprint all or part of a copyrighted work in a book, abstract, etc. The license is generally revocable, non-exclusive, non-transferrable, and remains in effect until the term of the copyrightable work in which it is reprinted expires. Permission language must be included.

Map Copyright License

The Berkeley campus map that is available on the Berkeley website homepage was created specifically for Berkeley and is copyrighted to The Regents. Use of this map is granted via an appropriate copyright license agreement.

Video Footage or Photography License

The campus maintains extensive archives of video footage and still photography. The campus may grant a license for use of these assets, as long as copyright ownership can be determined to be held by The Regents. In some instances, and if a trademark is recognizable in the footage or photo, the license may grant permission for use of both copyright and trademark.

Trademark License Agreement

If a trademark is being used, appropriate trademark notice must appear: “®” for federally registered trademarks, and “™” for common law trademarks. The following are examples of trademark license agreements:

Letter of Understanding (LOU)

This type of agreement allows (i.e., licenses) the use of [university’s trademarks](#), including its landmarks, when Berkeley trademarks are used as set dressing or as costumes in a commercial film, television, or other media production. Filming on campus may require permits and permission from the Office of Real Estate Services (for commercial productions) or Media Relations (for documentary or educational productions).

Limited License Agreement

The campus works with the Collegiate Licensing Company (CLC) to vet companies wishing to apply campus trademarks to retail products. Sometimes, however, the campus does not have a licensee who can supply exactly what is required, such as a specialty fabric or some sort of commemorative medallion. In that case, BCBP can execute a limited license agreement for either the one-time creation of a product, or for the creation of a product for a limited period of time only (e.g., three to six months).

Retail License Agreement

As noted above, CLC vets applicants who wish to obtain a retail license agreement for a wide variety of goods and services. A retail license agreement includes an annual minimum guarantee, royalty rate, and other terms and conditions, and it is generally valid for a one-year term with an option or options for renewal. Licensees must also sign and agree to uphold the systemwide University of California [Code of Conduct for Trademark Licensees](#), which helps to ensure fair treatment of workers throughout the supply chain, and join the Fair Labor Association (FLA), a non-governmental organization which, along with the Worker Rights Consortium (WRC), assist the University of California (UC) in monitoring compliance to the Code. The Retail Licensing Program is managed by Intercollegiate Athletics (IA), which liaises with CLC. BCBP does not have direct responsibility for this activity, but it helps to support the social responsibility (e.g., labor standards of the supply chain manufacturing UC-logoed goods) activities associated with the program.

Social Media and Application Agreement

This type of agreement grants use of campus trademarks in Berkeley-related social media and applications (i.e., “apps”). Non-retail applications must be vetted by BCBP and the Office of Public Affairs, as well as by other campus units if needed, and must provide a public benefit. Licenses are typically granted for one year, with the possibility of renewal. Berkeley sometimes issues “hybrid” licenses granting both copyright (for university developed content) and trademark permission in one single agreement.

Memorandum of Understanding (for exchange of students)

A Memorandum of Understanding provides terms and conditions for the exchange of students between Berkeley and another scholarly institution.

Sponsorship Agreement

Under a Sponsorship Agreement, an entity (i.e., sponsor) provides goods, services, and/or a financial contribution in return for approved recognition of the sponsor in various campus media.

Student Placement Agreement

A Student Placement Agreement is an agreement that establishes a relationship between the university and another educational or public service organization related to a shared educational or public service goal. Berkeley typically executes these types of agreements with hospitals, rehabilitation centers, elementary and secondary schools, or educational or research organizations. The agreements provide UC students with internship placement opportunities and other similar learning and teaching experiences, while receiving academic credit. Although these agreements are sometimes referred to as “Affiliation Agreements” (see above), they are more appropriately entitled Student Placement Agreements. In general, unless the facility in which Berkeley is placing a student demands an agreement, the university prefers to memorialize student academic placement agreements in a non-binding manner.

Student Training (no academic credit)

A Student Training agreement is an agreement with an outside organization under which students enrolled in university programs obtain training or work experience off campus, but typically not for academic credit.

Student Teacher Training

A Student Teacher Training agreement is an agreement under which university students are assigned to various student teaching positions in local school districts for specific periods of time.

Waiver or Permission

A Waiver or Permission is an agreement in which a party relinquishes a known right or grants another party permission to exercise a specified right or rights in exchange for something in return from the other party. (This agreement could be in the form of a license.)



Cal Performances

Description

Cal Performances is responsible for developing and administering various Berkeley agreements including performance, co-presenting, and performance commissioning agreements. These services or performances are typically presented in Zellerbach Auditorium, Hearst Greek Theatre, Wheeler Auditorium, Hertz Hall, Zellerbach Playhouse and other venues as appropriate.

The performance agreements may include artist's fees, hotel and transportation accommodations, artist rider technical needs, publicity, recording, and other requirements.

Types of Contracts

Co-Presenting Agreements

Co-Presenting Agreements are agreements between Berkeley and off campus individuals, groups, or entities who rent and use Cal Performances' assigned venues, such as Zellerbach Playhouse, Zellerbach Auditorium, Wheeler Hall, and Hearst Greek Theatre. These agreements are defined by the Cal Performances Handbook, Policy of Use. Typically, fees for rental venues are established at market rate of similar value, and all reimbursable performance expenses are recovered.

Performance Agreements

Berkeley executes various performance agreement contracts either with the artists directly, or with the artist's management, agent, or tour producer. The performance fee can range from \$100 to \$800,000 for single or multiple day services. All performance agreements define the terms and conditions needed to meet the performance requirements and are negotiated for the most favorable terms. Performance artistic riders are typically edited, then attached to the university agreements and the Director of Cal Performances, Associate Director of Cal Performances, and Cal Performances General Manager hold Berkeley signing authority delegation for these agreements.



Contact Information

Cal Performances

101 Zellerbach Hall #4800

University of California

Berkeley, CA 94720-4800

events@calperformances.org

510 642-0212

<http://calperformances.org>

Performance Commissioning Agreements

Performance Commissioning Agreements are needed when Cal Performances, producers, universities, or similar fine arts organizations require a new performance work to be commissioned with composers, authors, or librettists. In these cases, the agreement either resides solely with Cal Performances or collectively with other commissioners who share the creative costs.

Construction & Design (formerly Capital Projects)

Description

The Real Estate Division's Construction & Design Contract Administration unit is responsible for the formation and administration of agreements for professional, architectural and construction services on the Berkeley campus. These services are provided in compliance with UC systemwide and Berkeley campus policies and procedures in addition to applicable local, state, federal, and international laws, rules, and regulations. Related activities include the development and execution of capital projects, such as new construction, retrofitting, restoration, and landscape. Contracts are processed and executed for architects, engineers, and related professional services, as well as the many and various construction contractors needed to implement capital work on the Berkeley campus.

Construction, development, and design can be a complex area. For additional information, please consult the [University of California Facilities Manual](#).

Types of Contracts

The Real Estate Division's Construction & Design Contract Administration unit handles the following types of agreements:

Construction Services Agreements

Construction Services Agreements executed include Brief Forms for work valued at less than \$100,000, and long form contracts, CM at Risks, Design-Builds, Multiple Primes, and other type of agreements for any university construction, whether it is new or for maintenance, that has a total cost of more than \$100,000.

Important: Only Construction & Design may execute a contract to build or perform other campus improvements.

Executive Design Professional Agreements

An Executive Design Professional Agreement is used to contract with executive architects and executive engineers who are licensed within the state of California. This type of agreement is typically used when design services will exceed \$100,000.

Professional Services Agreements – Design and Engineering

A Professional Services Agreement is needed when hiring consultants to perform architectural, landscape, engineering, environmental, land surveying, construction project management, and other facility related services.

Contact Information

Contract Administration
Construction & Design, Real Estate Division
1936 University Ave, 2nd floor
Berkeley, CA 94704-7027
admin-cp@berkeley.edu
510 643-5579
<http://realestate.berkeley.edu/>

Human Resources

Description

Human Resources reviews and advises on employment contracts for non-represented Personnel Policies for Staff Members (PPSM) titles.

Contract Support

Campus units may consider filling a need for temporary services through the use of an employment or vendor contract. Prior to requesting assistance from Human Resources to create such a contract, units should review carefully the differences between vendor contracts and employment contracts included on the Human Resources [Contracts: Vendor or Employee](#) webpage. This webpage assists units in selecting the most appropriate option for the unit's service needs by providing information about the different service types and how to choose a vendor or employment contract.

Important: Before hiring an employee on an employment contract, units must first consult with the unit's HR Business Partner or Recruiter.

Key considerations include:

- Only non-represented titles can have employment contracts.
- The job must be classified.
- Employment contracts must have an end date.
- Employment contracts are drafted for the hiring manager by the HR Business Partner in response to a negotiated agreement, and are situation specific.
- Employment contracts must meet specific legal, contractual, and policy requirements.

Details of Employment contracts may be found at Berkeley HR [Contract for Employment](#).

Contact Information

Human Resources
University of California, Berkeley
2199 Addison Street, Room 192
Berkeley, CA 94720-3540
askeru@berkeley.edu
510 642-7053
<http://hrweb.berkeley.edu/>



Intellectual Property & Industrial Research Alliances Office (IPIRA)

IPIRA consists of two peer units: the **Industry Alliances Office** (IAO) and the **Office of Technology Licensing** (OTL). Generally speaking, IAO manages agreements for all incoming intellectual property and agreements for industry funded research activity. OTL manages agreements for outgoing intellectual property rights and outgoing transfers of tangible research materials. OTL obtains patents covering university inventions and licenses patent rights, and certain copyrights to the private sector for commercial development.

Industry Alliances Office (IAO)

Description

The Industry Alliances Office is the IPIRA unit responsible for all industry-sponsored research activities and handles the types of contracts as shown below. IAO also negotiates and signs confidentiality agreements and agreements for research materials, data, and software provided to UC researchers by third parties. IAO advises the campus community on ways to work with industry and how to initiate and structure relationships with companies.

Contact Information

Industry Alliances Office
2150 Shattuck Ave. 10th floor
Berkeley, CA 94704-1610
iao@berkeley.edu
510 642-5766
<http://ipira.berkeley.edu>

Contact Information

Intellectual Property and Industry Research Alliances
2150 Shattuck Ave., Suite 510
Berkeley, CA 94704-1620
ipira@berkeley.edu
510 642-5766
<http://ipira.berkeley.edu>

Types of Contracts

The Industry Alliances Office handles the following types of contracts:

Amendments

An Amendment is an agreement that modifies or extends the term of an agreement issued by IAO that is already in effect between the parties.

California Marketing Board Agreements

These agreements for work sponsored by the California Marketing Boards were created by the California Department of Agriculture as a way of supporting the California agricultural economy. The various boards are made up of growers of each commodity, such as olives, avocados, raisins, and grapes. The boards fund research performed by Berkeley campus researchers in the College of Natural Resources. Since agricultural industry groups fund the research, IAO manages these agreements.

Clinical Research

A Clinical Research Agreement is an agreement in which research is performed in a clinical setting. The research protocol may be designed by a sponsor or by the UC researcher and, since it involves human subjects, it will require an Institutional Review Board (IRB) review. Visit the Research Administration Office for [Protection of Human Subjects](#) webpage for additional information.

Confidentiality Agreement (also known as a Non-Disclosure Agreement or NDA)

A Confidentiality Agreement is an agreement between parties to keep certain information confidential. Confidentiality agreements often include provisions regarding the ownership of intellectual property. Please note that often the person who is being asked to sign the agreement does not have the delegated authority to sign such an agreement. IAO handles NDAs for information provided by a third party to UC Berkeley and vice versa. Confidentiality agreements are usually associated with a primary undertaking that is, or will be, governed by a separate agreement. IAO also handles confidentiality agreements that support activities for agreements ultimately handled by SPO.

Data Use Agreements (DUA)

A Data Use Agreement is a type of Material Transfer Agreement that is used for the transfer of research data from a provider institution or company to another for research purposes. Data Use Agreements must be reviewed and signed by the IAO. In reviewing DUAs, IAO ensures compliance of human subjects review requirements or export control provisions as needed. Some Data Use Agreements contain conditions and restrictions that require negotiation, while others are in place for tracking purposes only and can be completed in a short period of time.

Industry Affiliate Program Agreements

UC Berkeley has a wide range of industry affiliate programs across many disciplines. These programs facilitate interactions between industry and teams of campus researchers working in a similar area of interest. Members contribute to the support and research activities of an affiliate center and in return are invited to meetings or presentations, receive copies of reports or publications, and have the opportunity to recruit students as employees. Members may have rights to intellectual property created under the funding of the program, but the rights are shared among members.

Industry Collaboration Agreements

Many researchers work with companies as part of a collaboration. Some collaborations are funded, others not. IAO manages all collaborations between industry and university and ensures that in a Collaboration Agreement, the intellectual property terms and publication rights are consistent with UC policies.

Industry Sponsored Research Agreements (SRAs)

Companies sponsor research with university researchers under industry Sponsored Research Agreements. These agreements are expected to generate intellectual property (IP) and publishable research. SRAs have a specific scope of work and budget and usually the company sponsor will expect certain rights to the IP created in performance of the research. Under the terms of an industry SRA, UC owns the IP created and protects the right of the researchers to publish results. IAO has signature authority for Industry Sponsored Research Agreements.

Master Research Agreements

Companies who sponsor research with university researchers may plan to do so on a regular basis and ask the university to negotiate a Master Research Agreement. The terms of a Master Research Agreement will be like those of a standard Research Agreement. Work performed under a Master Agreement will usually be described in a separate Implementing letter or Task Order, although some companies simply use the same agreement for each project. IAO negotiates and signs Master Research Agreements and the individual research project agreements.

Material Transfer Agreement (MTA) – In-bound

A Material Transfer Agreement is used for the transfer of materials (e.g., biological materials, chemicals, software, data, etc.) from a provider institution or company to another for research purposes. IAO manages MTAs for materials coming in to Berkeley from outside the university (MTAs for outgoing materials are managed by the Office of Technology Licensing). Incoming MTAs must be reviewed and signed by IAO. IAO ensures compliance with animal use, environment, health and safety, and human subjects review requirements as needed. Some MTAs contain conditions and restrictions that require negotiation, while others are in place for tracking purposes only and can be completed in a short period of time. Data Use and Software Licenses are sometimes referred to as a Material Transfer Agreements.

Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Agreements

The government of the United States has made commercialization of university research a high priority and, to that end, has established two programs to allow small businesses to enhance their technological potential through research with a university partner. The SBIR and STTR programs provide an incentive to companies to more easily commercialize university-created technologies. IAO manages the proposals to the government for these programs, since these agreements involve industry partners. If a proposal is chosen for funding by one of the eleven federal agencies participating in the program, IAO will negotiate and complete the research agreement with the industry partner.

Software License Agreements (SLA)

A Software Licensing Agreement is an agreement with a software developer or a software company for software that will be used by a single campus investigator or research group to perform a research project. SLAs are similar to Data Use and Material Transfer Agreements in that these agreements allow third party research resources to be provided to campus researchers. Typically, an SLA handled by IAO is unlike those handled by Supply Chain Management in that the agreement is not a seat license or license for commercially available software. License agreements to use university copyrightable software are managed by OTL.

Visiting Industrial Fellows (VIF) Agreement

Visiting Industrial Fellows Agreements are agreements between UC Berkeley and a for-profit entity wishing to assign one of its employees to work at Berkeley on a project funded by the company with a campus research team or to perform a company project. The Visiting Industrial Fellows Agreement governs the terms and conditions of the visit and includes the visitor's obligation to sign the UC Patent Acknowledgment. The main purpose of the Visiting Industrial Fellows Agreement and the Patent Acknowledgment is to prevent a conflict of obligations under sponsored research agreements and allow the University of California to capture the benefits from research performed on the Berkeley campus that was paid for by through campus funding or the use of UC resources. Companies often provide a gift to the university to support the VIF.

Office of Technology Licensing (OTL)

Description

The Office of Technology Licensing is the IPIRA unit that catalyzes the translation of Berkeley discoveries to benefit the public through management of IP rights. OTL obtains patent rights and licenses both patents and copyrights to companies that bring inventions and discoveries to the point of practical application by commercializing products and services. OTL supports Berkeley's vast research enterprise by assisting the units with these matters, and promotes entrepreneurship by mentoring, supporting, and licensing rights to startup companies.

Contact Information

Office of Technology Licensing

2150 Shattuck Avenue, 5th floor

Berkeley, CA 94704-1620

otl@berkeley.edu

510 643-7201

<http://ipira.berkeley.edu/>

Types of Contracts

The Office of Technology Licensing handles the following types of contracts:

Confidential Disclosure Agreement (CDA, also known as a Non-Disclosure Agreement or NDA)

OTL handles CDAs for confidential information that is being disclosed to a third party. As the authorized signatory, OTL puts in place CDAs/NDAs on behalf of the University.

Intellectual Property (IP) Rights Management

OTL performs the following actions related to IP Rights Management:

- Obtains IP rights assignments, which convey ownership for patents and certain copyrights.
- Files and prosecutes patents on behalf of the University of California by executing Power of Attorney agreements with law firms in the U.S. and internationally. (Prosecution proceeds under the direction of IP managers in the OTL at every stage.)
- Provides instructions or agreements on patent issuance and maintenance, and payment of related fees.
- Enters into inter-institutional agreements with co-owners pertaining to IP rights management.
- Supports the Office of the General Counsel at the UC Office of the President with legal actions pertaining to IP rights, such as infringement and interference.
- Coordinates modifications to the UC patent acknowledgement in consultation with the UC Office of the General Counsel.
- Supports the Industry Alliances Office and other units on campus with IP clauses in research and collaboration agreements, visitor agreements, grant applications, strategic alliances and new ventures, and private capital terms.

Intellectual Property (IP) Rights Out-Licensing

OTL handles patent, copyright (including software), and tangible material license agreements in which University IP rights are conveyed to a licensee or company, including letter agreements, option agreements, license agreements, confidentiality agreements, stock purchase, shareholders, equity options or warrants in startup companies, settlements, etc.

Licenses to Sponsors of Research

OTL issues IP licenses to the federal government, pursuant to federal statutes, and administers rights and protections to other sponsors, such as the Howard Hughes Medical Institute and to corporate sponsors of research.

Material Transfer Agreements – Out-Bound

A Material Transfer Agreement (MTA) is a bailment agreement that transfers tangible materials from Berkeley to another research institution or company under the university's "personal property" rights to another, for specified research purposes. OTL manages MTAs (bailment agreements) for materials being sent out of Berkeley (MTAs for incoming materials are managed by the Industry Alliances Office or IAO).

Visitor Agreements

In consultation with the Sponsored Projects Office and the UC Office of the President's Policy and Campus Services office, OTL manages certain agreements when university personnel visit another institution while still employed by the University and agreements with visitors who perform research at Berkeley.

Media Relations (Office of Public Affairs)

Description

The Office of Media Relations issues campus press releases, fields daily media calls regarding campus news and policy issues, tracks media coverage, and hosts press conferences conveying major campus developments. Media Relations also vets requests and prepares release forms for documentary and educational video production by outside companies filming on campus.

Types of Contracts

- University of California, Berkeley Educational Documentary Location Release
- Campus Video License Release Form for Documentary Video Production

Contact Information

Office of Media Relations
2200 Bancroft Way
Berkeley, CA 94720-4204
Roxanne Makasdjian, Manager –
Broadcast Communications
roxannem@berkeley.edu
510 642-6051
<http://www.berkeley.edu/news/media>



Real Estate Development & Portfolio (REDP)

Description

Real Estate Development & Portfolio (REDP) is a unit of the university's Real Estate division that is responsible for negotiating the financial and business terms of Berkeley's real estate activities. REDP administers commercial leases for campus units that need off-campus space and for non-campus entities that want to lease campus space. REDP negotiates, drafts, reviews, and executes a variety of real estate agreements, such as leases, license agreements, extensions, amendments, and facility use-permits for use of off-campus space.

Contact Information

Real Estate Development & Portfolio
A&E Building, 2nd floor
Berkeley, CA 94720-1382
510 643-2066

<http://realestate.berkeley.edu/real-estate-development-portfolio>

Types of Contracts

Real Estate Development & Portfolio handles the following types of agreements:

Filming License Agreement

(Commercial Print Ads, TV Commercials, Feature Films & Corporate Marketing Videos)

REDP oversees all logistical and contractual arrangements for commercial filming activity and serves as the primary liaison between the production company and any campus unit hosting the film crew. Each request is evaluated on a case by case basis, with subsequent approval based on the type of production and the university's ability to accommodate the film crew's needs and requirements.

The university requires the production company to sign a Filming License Agreement, provide a Certificate of Insurance naming "The Regents of the University of California" as additional insured and pay a location fee, which is negotiated by REDP in advance of each shoot.

If the university's name, trademarks, or landmarks are used, permission must be granted via a Letter of Understanding issued by the [Business Contracts and Brand Protection Office](#).

Facility Use Permit

A Facility Use Permit is a short-form license for a very limited use of a facility, such as an off-site classroom rental, use of meeting space, or rental of an athletic facility. REDP reviews and executes Facility Use Permits for use of off-campus property by university units, excluding the following Travel and Entertainment contracts, which are handled by SCM:

- Contracts for overnight occupancy at hotels or conference facilities
- Contracts for off-site events that include the serving of food, beverages, or other catered items, such as departmental conferences, retreats or picnics

Facility Use Permits for use of university property by outside entities are handled by the campus building overseeing the facility. See the REDP Facility Use Permits webpage for additional information.

Lease

A Lease is an agreement in which the landlord agrees to give the tenant the exclusive right to occupy real property (usually for a specific term) and, in exchange, the tenant agrees to give the landlord some sort of consideration ("rent"). A lease transfers to the tenant a leasehold interest in the real property and, unless otherwise provided in the lease, a lease is transferable and irrevocable. Leases are used for the rental of commercial office, retail, or lab space; or for residential housing contracts for UC researchers or scholars.

License

A License grants permission by the owner to an individual or an entity to use real property for a specific stated purpose, such as off-site academic research on public or private land, or shared office or workstation space. Unlike a lease, a license does not transfer an interest in the real property. It is personal to the licensee only and any attempt to transfer the license terminates it. A license is usually revocable and can be either exclusive or non-exclusive.

Sponsored Projects Office (SPO)

Description

The Sponsored Projects Office (SPO) processes all proposals and incoming grants and contracts (agreements) from government sponsors (federal, state, or local) and non-profit organizations. These agreements may support basic or applied research as well as professional or occupational instruction related to one or more of the university's core academic areas. SPO also processes service agreements that involve the use of university facilities, resources, or the expertise of university personnel to create original or publishable outcomes.

The types of contracts processed by the Sponsored Projects Office in support of the above activities are determined in large part by the needs of the sponsor supporting the work. Although SPO posts examples of [Sponsored Projects' Model Agreements](#) containing the University's preferred terms and conditions, the sponsor determines the agreement type and initial contract requirements. SPO then negotiates the final terms and conditions of the agreement with the sponsor on behalf of the University and the Principal Investigator (PI).

The [Proposal Development](#) section of the SPO website includes helpful information about developing a proposal. The [Information for Principal Investigators](#) (PIs) section of the SPO website includes key information for PIs about preparing and submitting proposals.

Types of Contracts

The Following is a list of the most common types of governmental and non-profit sponsor agreements processed by SPO:

Cooperative Agreements

A Cooperative Agreement is a support mechanism that is very similar to a grant. This type of agreement is typically used when the sponsor plans to have substantial federal scientific or programmatic involvement in the sponsored project. Substantial involvement means that before, during, and after the award the sponsor's scientific or program staff may work with University project personnel to assist, guide, coordinate, or participate in project activities.

“Flow Through” Agreements

Flow Through agreements occur when a sponsor issues a grant, contract, or cooperative agreement to an outside entity and the entity subsequently issues a subagreement to Berkeley. The terms of the original award then “flow through” to the university. In such cases, SPO is responsible for negotiating the terms of the subcontract or subagreement on behalf of the university to ensure that appropriate terms for institutions of higher education have been applied and that the project being supported is in compliance with University rules and regulations. When the original source of funding is clearly a federal agency, the subagreement is subject to federal A-133 audit, and SPO also makes certain that the agreement is established in compliance with federal Office of Management and Budget (OMB) circular guidelines.

Grants and Contracts

A “grant” benefits the University by supporting activities that relate to the university's mission of teaching, research, and public service. A “contract” is issued by a sponsor and it benefits the sponsor who acquires property or services from the university through the agreement. Both grants and contracts require that the funds be used to accomplish specific objectives, i.e., the funds are restricted for a particular purpose, within an approved project period without substantial programmatic involvement by the sponsor. Grants and contracts typically require the recipient to provide technical and financial reports. In general, there are greater performance expectations associated with contracts, including project milestones and detailed deliverables (e.g., reports) that are tied to payments.

Contact Information

Sponsored Projects Office

University of California, Berkeley

2150 Shattuck Avenue, Suite 300, #5940

Berkeley, CA 94704-5940

For email, see SPO Directory on webpage below

510 642-0120

<http://www.spo.berkeley.edu>

Intra-University Transactions (IUTs)

An Intra-University Transaction (IUT) is the award mechanism used by the Lawrence Berkeley National Lab (LBNL) to award Department of Energy or other federal funds received by the Lab to UC Berkeley. The terms and conditions of an IUT are governed by the policies of a master memorandum agreement between the University of California and LBNL.

Memorandum of Understanding or Collaboration Agreement

Researchers often collaborate or share research tools with other scientists or institutions without receiving funding. For many unfunded collaborations, a written agreement is beneficial or necessary to set out expectations, terms, and requirements to protect the interests of the investigators and the participating organizations. Such agreements may also involve use of university property and space, faculty and student time, protocol for human and animal subjects that must be approved by university officials and compliance committees, etc.

A Memorandum of Understanding, or MOU, is one example of this type of agreement. MOUs take many forms and may be referred to by other titles, such as Memorandum of Agreement or Collaboration Agreement.

Important: Regardless of the label, unfunded collaborations can carry the same obligations as funded contracts, so faculty and staff should not enter into such agreements without prior review by SPO.

Multiple Campus Awards (MCAs)

A Multiple Campus Award (MCA) is the type of transaction used to transfer funds between two campuses within the University of California system in support of a collaborative sponsored activity. Such transactions are not considered “subagreements” because the funds awarded to one campus within the University of California system are being transferred to another campus within the same system. A standard MCA format developed by the University of California Office of the President (UCOP) is used to award funds from one campus to another. The MCA includes and flows down the terms and conditions of the prime award to other participating UC campuses.

No Cost Extension or Supplement Requests

When circumstances prevent a Principal Investigator (PI) from achieving project objectives by the award expiration date and awarded funds are still available, a No Cost Extension (NCE) request should be processed through SPO. If approved, this request will allow the PI more time to complete the scope of work without requesting additional funds from the sponsor. After the sponsor notifies SPO that the NCE has been approved, SPO will process a modification to the agreement with the sponsor, if required.

Requests for supplemental funds or more time to complete a project must also be processed through SPO to ensure that that university records reflect any additional spending authority authorized by the sponsor. After the sponsor notifies SPO that the supplement has been approved, SPO will process a modification to the agreement and notify Contracts and Grants Accounting (CGA) that supplemental funds have been received.

Outgoing Subagreements

A Subaward is an agreement with a third-party organization performing a significant portion of a UC Berkeley sponsored project or program. (Note: A subaward is not a vendor or contractor relationship agreement.) The subrecipient is expected to be involved in programmatic decision-making and to comply with all compliance requirements of the prime award. At the request of the PI, SPO establishes and negotiates all such outgoing subagreements under SPO-processed awards and contracts.

Important: PIs interested in establishing a subagreement with the third party must submit a request to SPO after the prime award has been funded.

Teaming Agreement

A Teaming agreement is used when two or more parties want to collaborate in producing a proposal in response to a solicitation. All parties agree in advance how they will work together and that they will work together if the award is made. Prior to submitting a proposal to a governmental or non-profit sponsor, the Berkeley interested parties must contact SPO for consultation. Should a non-disclosure agreement (NDA) also be required of the participating parties, SPO will collaborate with the Industry Alliance Office to negotiate this aspect of the agreement.

Visitor Agreement

The employer of a visiting fellow or other visitor to campus sometimes requires an agreement that specifies the terms of the visitor's participation in research on campus, often addressing issues, such as intellectual property rights. Prior to the visitor participating in any sponsored research activities set up through SPO, the Berkeley party or parties must contact SPO for consultation about the terms of the visiting agreement.



Supply Chain Management (SCM)

Description

Supply Chain Management (SCM) supports the academic and research mission of the university by delivering best value business and procurement contracts, transactions, and advice while protecting the university through compliance with UC policy and applicable local, state, and federal laws and regulations. Supply Chain Management has delegated the authority for low dollar purchases of common unrestricted goods and services under \$5,000 to delegated users in BearBuy.

Important: Purchases that require the university to accept terms and conditions or return a signed agreement by the supplier are not included in the low dollar delegation, regardless of the dollar value of the agreement.

Types of Contracts

Supply Chain Management handles the following types of contracts:

Catering Agreements

A Catering agreement is an agreement with an outside entity for food, beverages, or other catering goods and services for university employees or guests. These agreements require specialized language and insurance based on the size and scope of the entertainment activity and are subject to [Materiel Management](#) and [Business Meetings and Entertainment](#) policy requirements.

Charter Transportation Services (Buses, Airplanes, etc.)

A Charter Transportation Services is an agreement with an outside entity for chartered transportation on buses, shuttles, airplanes, or boats. These agreements require specialized language and insurance coverage appropriate to the type of vehicle being chartered and the size and composition of the university parties receiving transportation.

Cloud Computing Services

A Cloud Computing Services agreement is an agreement with an outside individual or entity for cloud computing services to meet university business needs. (See also the section titled, “Software License, Software as Services, and Software Support” on the next page). This template includes specialized language for accessibility, including data ownership, data and information security, and performance standards.

Confidentiality Agreement (Non-Disclosure Agreement)

A Confidentiality Agreement is an agreement between parties to keep certain information confidential (also referred to as a non-disclosure agreement). It often includes provisions regarding the ownership of intellectual property that the person being asked to sign the does not have the delegated authority to execute. Confidentiality agreements are usually associated with a primary undertaking that is, or will be, governed by a separate agreement.

Flow-Through Agreements

When a sponsor issues an award to a non-profit or for-profit entity and this prime recipient subsequently issues a subagreement to Berkeley, SPO/IAO negotiates the “flow down” terms and conditions of both the incoming award as well as any outgoing subagreements under the award. SCM is responsible for abiding by these terms and conditions. The Principal Investigator named on the agreement is responsible for incoming funds from governmental and non-profit entities, and IAO is responsible for establishing awards from for-profit groups as well as Small Business Innovation Research (SBIR) and Small Business Technology Transfer Agreement (STTR) awards from the federal agencies. The responsible office is the point of contact for any questions about the terms and conditions related to these transactions.

Contact Information

Supply Chain Management
University of California, Berkeley
1995 University Ave, Ste. 325
Berkeley, CA 94704
bearbuyhelp@berkeley.edu
Phone: 510 664-9000, Option1, 2, 1
<http://supplychain.berkeley.edu>

Health Insurance Portability and Accountability Act (HIPAA) Business Associates Agreement

A HIPAA Business Associates Agreement is an agreement with an outside individual or entity that is executed when a supplier will create, receive, maintain, or transmit protected health information according to the requirements of HIPAA.

Hotel, Restaurant, and Charter Agreements

Hotel and conference center agreements are a specialized and limited use of third party facilities for meetings, conferences, retreats, and lodging. These agreements typically involve food or beverage service, or overnight occupancy. These agreements are subject to several University of California policies depending on the scope of services, including [Materiel Management](#), [Business Meetings and Entertainment](#), and [Travel Regulations](#) policy.

Independent Consultant Agreement

An Independent Consultant Agreement is an agreement with an outside individual or entity for consulting services to provide expert advice and recommendations to satisfy university business objectives and activities. The services provided must be advisory in nature and provide a recommended course of action or personal expertise.

Lease Agreement

A Lease is an agreement with an outside entity for the lease of goods with or without an option to purchase at the end of the lease.

Professional Services Agreement

A Professional Services Agreement is an agreement with an outside individual or entity for professional services to meet university business needs. Professional services are usually defined as requiring a professional license and the service provider is able to obtain Errors and Omissions insurance for the services being performed. Examples of professional services include legal counsel and medical services.

Purchase of Common Goods and Services

A Purchase of Common Goods and Services agreement is an agreement with an outside entity for the purchase of goods or services to meet university business needs.

Software License, Software as Services, and Software Support

Software License, Service, or Support agreements are agreements with an outside individual or entity for software licenses, rights to use software, and hosted support services to meet university business needs. A Click-Through agreement is a type of software agreement. Licenses and agreements to use software and software services require specialized language for software services, including data ownership and protection.

Strategic Sourcing Agreement

A Strategic Sourcing Agreement is an agreement with an outside entity for the purchase of goods and or services for a specific period of time across more than one unit or campus. No dollar amounts are guaranteed for purchase.



Consultants (Subject Matter Experts)

Office of Legal Affairs

Description

The Office of the Chancellor's Office of Legal Affairs provides advice and assistance in negotiating and reviewing various Berkeley contracts.

Services Provided

The Office of Legal Affairs (OLA) assists campus offices to draft complex or novel contracts. OLA also supports the contracting offices that have delegated contracting authority in analyzing, documenting, and describing the resolution of legal issues that arise as part of the contracting process. Occasionally, OLA is designated by senior campus leadership, or by a contracting office, to be the lead office for the drafting of complex or novel agreements in partnership with the office holding signature authority.

OLA also drafts non-binding documents that memorialize understandings between UC and non-UC parties, but do not impose binding obligations upon signatories. Such agreements could describe informal arrangements between UC and other academic institutions, governmental entities, or private companies.

Upon request, OLA will also review un-executed contracts to confirm that the agreements are consistent with university policy and law and reflect the business terms agreed to by the contracting office.

Important: OLA's approval is required when offices with contracting authority use Office of the President form documents for an agreement that, when completed, deviates substantively from the terms set forth in the original UC forms.

OLA has delegated authority to sign agreements that provide for delivery of legal services to the campus. OLA is the only campus office that has delegated authority to sign legal services agreements with attorneys.

When to contact the Office of Legal Affairs

When a party to a contract is failing to meet its obligations to the campus, or a campus unit is accused of failing to meet its obligations under a contract, the office that manages the contract should contact OLA immediately for advice and potential assistance in resolving disputes.

Contact Information

Office of Legal Affairs

200 California Hall

Berkeley, CA 94720-1500

olalegal@berkeley.edu

510 642-7122

<http://chancellor.berkeley.edu/about/offices/legal-affairs>

Risk Services

Description

In accordance with the Regents' Business & Finance Bulletin BUS-63 on [Insurance Requirements and Certificates of Insurance](#), the Office of the Chancellor's Office of Risk Services reviews and approves the insurance and indemnification language in campus contracts..

Services Provided

- Inclusion of standard insurance and indemnification language
- Review of non-standard language proposed by the other party
- Review of certificates of insurance to ensure compliance with agreements

Importance of Insurance and Indemnification

Although the vast majority of Berkeley contracts are fulfilled without problems, when a problem arises it can cost millions of dollars to fix. For this reason, the University of California requires that insurance and indemnification language be included in every contract.

Indemnification language spells out who will be responsible for a problem. Insurance language spells out what types and amounts of insurance are necessary to guarantee that the other party has the financial means needed to pay for its responsibilities under the indemnification language.

Important Risk-related Contract Terms

The following list highlights three important risk-related contract terms. Failure to abide by the terms of a contract may result in the campus unit and/or the university suffering substantial preventable economic losses.

- Negligence is the failure to take reasonable steps to prevent harm to others.
- Liability is the obligation to pay for a financial loss.
- Indemnification is the reimbursement required for a financial loss.

Policies

Contracting is governed by various Berkeley policies. For more information on specific policies, please visit the [Campuswide Policies and Procedures](#) website.

When to contact Risk Services

Contact Risk Services anytime the other party to a contract proposes insurance or indemnification language different from the university's standard language.

Contact Information

Risk Services Office
2130 Center Street, Suite 200
Berkeley, CA 94720-4208
risk@berkeley.edu
510 642-5141
<http://riskservices.berkeley.edu>

Information Security and Policy

Description

The Information Security and Policy (ISP) unit helps the campus appropriately protect institutional information and IT resources. In addition, ISP provides advice and resources to the contracting offices to help ensure that contracts with outside entities also include appropriate protection of campus institutional information and IT resources.

Confidentiality: Personal and Financial Information

The university must ensure that outside entities manage and protect university information and IT resources in accordance with policy and applicable legal requirements. Sensitive, personally identifiable information and data subject to privacy or data security regulations require special care. Agreements involving such higher risk data often require assistance from privacy and security experts and the involvement of campus counsel. In some instances, it will be necessary to retain outside counsel specializing in privacy and data security law.

Contact Information

Information Security
2195 Hearst Avenue
Berkeley, CA 94720-4878
security@berkeley.edu
510 664-4660
<http://security.berkeley.edu>

Privacy Office

Description

The Privacy Office provides advice and assistance in evaluating privacy risks in agreements, typically arising around the collection, use, and sharing of information about individuals.

Types of Contracts

Agreements that present novel legal questions under applicable privacy regulations, entail controversial privacy practices, or call for practices that are in conflict with UC privacy policies or standards that may require the involvement of campus or outside counsel. The Privacy Office, Information Security and Policy unit, and campus counsel have jointly established a program to assist campus units with those high-risk agreements.

Contact Information

Privacy Office
343 Mulford Hall
Berkeley, CA 94720-1120
privacyoffice@berkeley.edu
510 664-7775
<http://privacy.berkeley.edu>



Additional Reference

University of California Forms

The terms and conditions for incoming and outgoing funding transactions should be written with the best interests of the university and its personnel in mind. The Office of the President and campus contracting offices have developed forms that already contain the terms and conditions that the university finds acceptable. Because these forms protect the interests of the university and save time and effort, Berkeley units and personnel are asked to use these forms whenever possible to establish a contracting relationship between parties.

For example, units should always use the University Purchase Order form to purchase goods and services, and avoid using vendor agreements, regardless of vendor insistence. Tailoring vendor forms to University of California standards is a time-consuming process and will typically cause delays.

Units can access appropriate University forms for various agreement purposes on the following websites: [UCOP Procurement Services](#), [Berkeley Supply Chain Management](#), and [Industry Alliances Office \(IAO\)](#).

Important: Sometimes using a university form to establish a contract is not appropriate. For example, government and non-profit sponsors typically have a specific contractual format that the university must use. However, even in these cases, the Sponsored Projects Office and other contracting offices will insist on terms and conditions appropriate for the university. SPO negotiates with the sponsor at the time of the award to ensure that the university can accept the sponsor's terms and makes every attempt to create a mutually agreeable contract. Sometimes, however, it is necessary for the university to turn down an agreement opportunity if it violates university policy.

When working with industry, it is possible that the company sponsor will require the university to start with the sponsor's agreement form, or it may agree to use the university's standard agreement for industry-sponsored research. In many cases, the parties have already discussed the project and how the company will work with the university's investigator. The end result may be a hybrid of both parties' agreements that is satisfactory to both the university and the other party.

Parties and Signatures

The Parties

A party is a person or group of persons that compose a single entity, which can be identified as one for the purposes of the law. There can be multiple parties to an agreement: The Regents of the University of California (The Regents) and one or more external entities with whom the contract is made. The entire UC system is one legal party. For convenience, a contract may also identify a unit (e.g., a specific department or school) that is responsible for the work. Institutional contracts should be in the correct legal name of the entity (i.e., the correct corporate name, not the name of a unit or division). At the University of California, The Regents of the University of California is the correct corporate name; individual units, such as schools and departments, are not. The contracting party may be identified as "The Regents of the University of California, on behalf of its Berkeley campus/Department/School/College/ORU of _____" to identify the responsible entity within the University.

Notary Public

In some instances, the other party may require a notarized signature. Information on notaries public who work on the Berkeley campus and who provide free service for university business may be found on the [Risk Services Campus Notaries](#) webpage. Only the delegated authority or someone authorized to sign an agreement should seek the services of a notary public, if re-quired by one of the contracting parties.

Sample of Required Terms and Conditions

(This is a sample of Terms and Conditions required by university contracting offices.)

The various contracting offices described in this Guide are responsible for negotiating the terms and conditions of contracts with outside entities. It is not appropriate for campus administrators outside of these offices, or the individuals involved in carrying out the activities specified in the contract, to engage in negotiations without the involvement of the appropriate contracting office. Units should never engage in negotiations over “legal terms.” Acceptable university terms and conditions have already been reviewed and approved in advance by the appropriate campus authority. However, all parties involved should understand the terms and conditions that are included in university contracts. While some terms and conditions are standard, the contracting offices have some flexibility to customize or substitute certain terms and conditions, depending on the circumstances.

Important: As a general rule, campus agreements include indemnification, insurance, an effective date, term and termination, and trademark use language to safeguard the university and mitigate risk. Using a university-created agreement form (when appropriate) will expedite approval and signature, as many university-created agreements have already been reviewed and pre-approved by the Office of Legal Affairs and/or the Office of General Counsel. Note: For sponsored projects handled by SPO, the sponsor’s agreement template, rather than a university contract template, is typically the starting point for negotiations.

Effective Date

The effective date is usually found at the very beginning of an agreement. It is often the date of the last signature, but may be an “as of” date, if agreed upon by both parties.

Force Majeure

If any party fails to timely perform its obligations under this Agreement as a result of acts of God, labor disputes, strikes, actions of governmental authority, acts of terrorism, wars, judicial orders or other causes beyond the reasonable control of the party obligated to perform, then that party’s performance shall be excused for the duration of such force majeure event.

Governing Law

For University of California contracts, California law is the preferred governance instrument. Silence on the question may be appropriate in some instances. The University of California ordinarily does not agree to submit to jurisdiction (i.e., to appear in court) in remote locations.

Indemnification

Under Regents’ Business & Finance Bulletin BUS-63 on [Insurance Requirements and Certificates of Insurance](#), all contracts or agreements must contain a provision to defend, indemnify and hold harmless the University from loss, injury, or damage caused by or resulting from the other party’s negligent or intentional acts arising out of the performance of the contract. Phrased simply, indemnification is reimbursement for a loss. The university’s standard indemnification language is:

[OTHER PARTY] shall defend, indemnify and hold THE REGENTS OF THE University of California (“THE REGENTS”), its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys’ fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of [OTHER PARTY], its officers, agents or employees.

Important: The Regents prohibit the university from accepting third-party liability without prior approval by The Regents.

Insurance

Under Regents’ Business & Finance Bulletin BUS-63 on [Insurance Requirements and Certificates of Insurance](#), the university requires various types and amounts of insurance for contracts and agreements. These minimums vary depending on the scope of work. The indemnification and insurance language must be finalized prior to commencement of work.

Important: When students are placed in an outside facility to acquire practical experience toward their degree, the university does not insure the students, as they are not employees.

The university's minimum standard insurance requirements for contractors and outside users of university facilities are as follows:

Commercial General Liability

- \$1 million Each Occurrence
- \$2 million Aggregate
- \$2 million Products Completed Operations
- \$100,000 Fire Damage (any one fire)
- \$5,000 Medical Expense (any one person)

Commercial Auto Liability

(applicable if the other party is driving onto campus or driving university community members)

\$1 million combined Single Limit

Workers' Compensation

(applicable if the other party has employees)

Statutory Limits

Employers' Liability

(applicable if the other party has employees)

\$1 million

Important: The other party must issue a Certificate of Insurance showing proof of these coverages and naming "The Regents of the University of California" as an additional insured.

There are separate insurance requirements for health-related vendors, transportation vendors, and construction vendors. Additional insurance may be required depending on the contract's scope of work. For examples, if a vendor is handling sensitive electronic data, the university will want the vendor to have cyber liability coverage, and if the vendor is bringing minors onto campus for an overnight stay, the university will want the vendor to have abuse and molestation coverage.

Payment

Payment terms should be clear and achievable. All payments received by the university must be made payable to "The Regents of the University of California." "UC Regents" is also acceptable. This section should state how payment is to be made (e.g., check, wire transfer, etc.), when (e.g., at pre-determined milestones, monthly, etc.), and the dollar amount of each payment.

Performance

It is important that each party understands its obligations. One of the best ways to facilitate this understanding is to clearly define the deliverables in a Scope of Work (SOW) that is included in the contract.

When the university receives funds through the Sponsored Projects Office (SPO) or the Industry Alliances Office (IAO), it is crucial that the terms and conditions of the contract/award support the success of the sponsored activity, while managing the risk to the university as well as the Berkeley personnel involved in the activity. Before setting up an award, SPO and IAO personnel will review all terms and conditions to ensure that university policy will be followed and that any other risk issues have been eliminated, mitigated, or accepted by the PI and/or the responsible unit.

Time for performance should be specified (i.e., each deliverable should have a due date). As payment may be linked to deliverables, it is important that the deliverables be reasonable and attainable. Failure to perform as required may result in penalties or even termination of the agreement.

Recitals or "whereas" clauses

These statements are usually found at the beginning of the first page of the contract. They provide the framework for the agreement and lay out its purpose.

Remedies

A contract may include language about remedies (i.e., what can be done in the event of a breach of contract or failure to perform any term of a contract without a legitimate legal excuse). The remedies should be appropriate and fair to all parties.

Representation

A representation is a statement of fact(s) or circumstance(s) relating to the contract before or at the time of making the contract.

Term

It is important to have an ending date in the agreement. Otherwise, the agreement could be considered to still be in effect many years after all work has ended. The best practice recommendation of BCBP and SCM is to choose a reasonable ending date and allow for mutually agreed upon renewal periods through an amendment. Units are advised to refrain from automatic renewal or evergreen contracts as unit requirements may change year to year. An automatic renewal or evergreen contract may lock the unit into an agreement or prevent them from seeking a new provider.

Termination

Should the other party fail to perform as agreed, it may be necessary to terminate the agreement. This provision spells out the reasons for a termination, such as breach of contract or failure to perform as agreed, and provides a way to remedy the problem. If a party fails to perform as agreed, this clause provides the university a way to end the agreement.

Third-Party Liability

The university does not assume liability for other parties, such as independent contractors and consultants who are not named parties to the agreement and are not under the university's control.

University Terms and Conditions (Procurement T&Cs)

Many of the university's terms and conditions have been mandated by the Office of the President and, except in rare instances, are non-negotiable.

Use of University of California Name and Trademarks

The use of University of California name and trademarks is restricted both by law and policy. Many agreements created by the outside party will not contain a clause on this topic. If that is the case, such a clause should be added, since the University's name and trademarks (also known as or referred to as "brand") are among its intellectual property and have great value. The university's name and trademarks can be leveraged for a variety of purposes and therefore may not be used as part of a client list, which could be considered to be an endorsement, appear on a third party website, or in print or electronic marketing materials without express written permission, and subject to review and approval by the appropriate delegated authority.

Waiver

Any failure of the university to enforce any of the terms or conditions of this Agreement shall not constitute a waiver and shall not affect or impair such terms or conditions in any way, nor shall it impair the right of university to avail itself of such remedies it may have available for any breach of this Agreement.

Warranties

There are two common forms of warranties. An **express** warranty is a warranty clearly stated in writing. An **implied** warranty is a warranty that is not written, but to which the product user may be entitled.

Unrelated Business Income Tax (UBIT)

The University of California businesses or individuals can generate liability for income tax. The income tax that is being referred to is the Unrelated Business Income Tax or UBIT. By definition, three elements must be present for an activity to be considered unrelated to the University's tax-exempt purposes of education and research and thereby subject to UBIT. The activity must be

- a trade or business,
- “regularly carried on,” and
- not substantially related to the University's exempt purpose.

It is the unit's responsibility to determine if its activity is subject to UBIT. If a unit suspects that a new or existing activity may be subject to UBIT, it is the responsibility of the unit to complete the [Nonfinancial Questionnaire \(NFQ\)](#) PDF form located at the [Controller's Office Unrelated Business Income Taxes \(UBIT\)](#) website. Each unit head should review and approve the NFQ. The completed and reviewed NFQ should then be directly sent to the Financial Accounting & Controls Office to the attention of the General Accounting Office's (GAO) Campus Tax Coordinator at gao@berkeley.edu. It is crucial to note that an NFQ provides the basis for establishing the tax status of an activity.

For additional information, see the [Policy on Unrelated Business Income and Expenses](#), [UBIT Nonfinancial Questionnaire](#), and [UBIT Nonfinancial Questionnaire Instructions](#) on the UCOP website.



Acronyms

BAA	Business Associates Agreement
BCBP	Business Contracts and Brand Protection
CDA	Confidential Disclosure Agreement
CGA	Contracts and Grants Accounting
HIPAA	Health Insurance Portability and Accountability Act HR
Human Resources	
IAO	Industry Alliance Office
IPIRA	Intellectual Property and Industry Research Alliances
IRB	Institutional Review Board
IUT	Intra-University Transfer
LBNL	Lawrence Berkeley National Laboratory
MCA	Multiple Campus Award
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OGC	Office of General Counsel
OLA	Office of Legal Affairs
OMR	Office of Media Relations
ORU	Organized Research Unit
OTL	Office of Technology Licensing
PRA	Public Records Act
RES	Real Estate Services
ROI	Return on Investment
SBIR	Small Business Innovation Research
SCM	Supply Chain Management (formerly Procurement)
SME	Subject Matter Expert
SOW	Scope of Work
SPO	Sponsored Projects Office
SRA	(Industry) Sponsored Research Agreement
STTR	Small Business Technology Transfer Agreement
T&C	Terms and Conditions
T&E	Travel and Entertainment
UBIT	Unrelated Business Taxes Income
UCC	Uniform Commercial Code
UCOP	University of California Office of the President

Website Links

Business Contracts and Brand Protection (BCBP)

Office of Business Contracts and Brand Protection

<http://bcbp.berkeley.edu/>

Guide to Contracting

<http://bcbp.berkeley.edu/contracting-berkeley>

Contracting Office Decision Tree

<http://bcbp.berkeley.edu/contracting-berkeley>

Supply Chain Management Solicitation and Selection Guidance presentation

http://bcbp.berkeley.edu/sites/default/files/Solicitation%20and%20Selection%20Guidance_final%20%281%29.pdf

University Trademarks

<http://bcbp.berkeley.edu/brand-protection/trademarks>

Cal Performances

<http://calperformances.org>

Campuswide Policies and Procedures

Campuswide Policies and Procedures

<http://campuspol.chance.berkeley.edu>

Policy on Deficit Resolution

<http://campuspol.berkeley.edu/Home/PolicyDetails.cfm?pid=395&urldesc=Deficit%20Resolution>

Controller's Office

Accounts Receivable Operating Guidelines

<http://controller.berkeley.edu/departments/accounts-receivable/billing-non-student-receivables>

UBIT Non-Financial Questionnaire

http://www.ucop.edu/financial-accounting/_files/ubit-nonfin-questionnaire.pdf

Unrelated Business Income Taxes (UBIT)

<http://controller.berkeley.edu/unrelated-business-income-taxes-ubit>

Human Resources

Contracts: Vendor or Employee

<http://hrweb.berkeley.edu/employment/hiring/contracts-vendor-employee>

Contract for Employment

<http://hrweb.berkeley.edu/guides/managing-hr/recruiting-staff/employment/temporary-student/contract>

Office of Legal Affairs

Office of Legal Affairs

<http://chancellor.berkeley.edu/about/offices/legal-affairs>

Office of Intellectual Property & Industry Research Alliances (IPIRA)

Office of Intellectual Property & Industry Research Alliances

<http://ipira.berkeley.edu>

Industry Alliances Office (IAO)

<http://ipira.berkeley.edu/industry-alliances-office>

Office of Technology Licensing (OTL)

<http://ipira.berkeley.edu/office-technology-licensing>

Office of the Chancellor Compliance Services

Office of the Chancellor Compliance Services

<http://compliance.berkeley.edu>

Conflict of Interest

<http://compliance.berkeley.edu/conflict-of-interest>

Delegations of Authority

<http://compliance.berkeley.edu/delegations-current>

Office of Legal Affairs

<http://chancellor.berkeley.edu/about/offices/legal-affairs>

Office of Risk Services

<http://riskservices.berkeley.edu>

Office of Risk Services Campus Notaries

<http://riskservices.berkeley.edu/campus-notaries>

Privacy Office

<http://privacy.berkeley.edu>

Real Estate Development & Portfolio

Construction & Design (formerly Capital Projects)

<http://realestate.berkeley.edu/construction-design>

Real Estate Development & Portfolio

<http://realestate.berkeley.edu/real-estate-development-portfolio>

Facility Use Permits

<http://www.cp.berkeley.edu/reso/fups.htm>

Research Administration and Compliance

Research Administration and Compliance

<http://rac.berkeley.edu>

Office for Protection of Human Subjects

<http://cphs.berkeley.edu/contact.html>

Office of the Chief Information Officer Information Security

Information Security and Policy

<http://security.berkeley.edu>

Information Security Selected Privacy and Confidentiality Regulations

<https://security.berkeley.edu/content/selected-privacy-and-confidentiality-regulations>

Sponsored Projects Office (SPO)

Sponsored Projects Office

www.spo.berkeley.edu

Information for Principal Investigators (PIs)

<http://www.spo.berkeley.edu/pi.html>

Proposal Development

<http://www.spo.berkeley.edu/guide/whocanhelp.html>

Sponsored Projects' Model Agreements, examples of

<http://www.spo.berkeley.edu/forms/models.html>

State of California Education Code 92000-92001

State of California Education Code 92000-92001

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=91001-92000&file=92000-92001>

Supply Chain Management (SCM)

Supply Chain Management

<http://supplychain.berkeley.edu>

University of California, Berkeley

Deficit Resolution Policy

<http://campuspol.chance.berkeley.edu/policies/deficitresolution.pdf>

University of California Office of the President (UCOP)

Code of Conduct for Trademark Licensees

<http://www.ucop.edu/sustainability/programs-initiatives/social-sustainability/code-of-conduct-for-trademark-licensees.html>

Facilities Manual

<http://www.ucop.edu/construction-services/facilities-manual/?Refresh=0.291342176446>

Policy BFB BUS-43 Material Agreement

<http://policy.ucop.edu/doc/3220485/BFB%20BUS-43>

University of California Regulation 4

Academic Appointees: Special Services to Individuals and Organizations

http://www.ucop.edu/academic-personnel-programs/_files/apm/apm-o2o.pdf

Policy BFB BUS-63 Insurance Requirements and Certificates of Insurance

<http://policy.ucop.edu/doc/3520339/BFB-BUS-63>

Policy BFB BUS-79 Expenditures for Business Meetings, Entertainment, and Other Occasions

<http://policy.ucop.edu/doc/3420364/BFB-BUS-79>

Policy BFB-G-28 Travel Regulations

<http://policy.ucop.edu/doc/3420365/BFB-G-28>

Policy BFB RMP-2 Records Retention and Disposition

<http://policy.ucop.edu/doc/7020454/BFB-RMP-2>

Policy Search

<http://policy.ucop.edu/index.html>

Procurement Services

<http://www.ucop.edu/procurement-services/policies-forms/index.html>

Intellectual Property and Related Matters

<http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter11/index.html>

Unrelated Business Income Taxes (UBIT) Non-Financial Questionnaire

http://www.ucop.edu/financial-accounting/_files/ubit-nonfin-questionnaire.pdf

Unrelated Business Income Taxes (UBIT) Non-Financial Questionnaire Instructions

http://www.ucop.edu/financial-accounting/_files/ubit-nonfin-questionnaire-instructions.pdf

University Relations

University Relations

<http://www.urel.berkeley.edu>

Index

References are to page numbers.

A

Acronyms. See p. 48

Affiliation Agreement. See BCBP, p. 20

Amendment. See BCBP, p. 16; IAO, p.27

B

Binding Contracts. See p. 9

Business Contract. See BCBP, p. 20-23

Business Contracts and Brand Protection. See BCBP, p. 20-23

C

California Marketing Board Agreement. See IAO, p. 27

Click-Through Agreements, 9

Clinical Research. See IAO, p. 28

Cloud Computing Services. See SCM, p. 36

Confidentiality Agreement (Non-Disclosure Agreement). See BCBP, p. 20; IAO, p. 28; OTL, p. 30; SCM, p. 36; p. 41

Considerations Prior to Entering into a Contract. See p. 7

Construction and Design. See p. 25

Construction Services Agreement. See Construction and Design, p. 25

Contract, definition of. See p. 7

Contract Management Responsibilities. See p. 15-17

Contract Types. See p. 9-10; also look under individual contracting units for contracts specific to each office

Contracting at Berkeley. See p. 7

Contracting Units. See Contracting Units, p. 16

Cooperative Agreements. See SPO, p. 33

Co-Presenting Agreements. See Cal Performances, p. 24

Copyright (License) Agreement. See BCBP, p. 21

D

Data Use Agreement. See IAO, p. 28

Delegated Authority – who can sign? See Contracting Basics, p. 7

Documentary Filming. See OMR, p. 31

E

Education or Research Related Service Agreement. See BCBP, p. 21

Effective Date. See p. 44

Employee Contracts. See Human Resources, p. 26

Executive Design Professional Agreements. See Construction and Design, p. 25

Executive Training Agreement. See BCBP, p. 21 (also Instruction Agreement)

Extension (no-cost) Requests. See SPO, p. 34

F

Facility Use Permit. See RES, p. 32

Federal “Flow Through” Agreements. See SPO, p. 33

Federal Grant and Contract Agreements. See SPO, p. 33

Fee for Service. See BCBP, p. 21

Filming

- Documentary. See Office of Media Relations, p. 31
- Commercial. See BCBP (License Agreement), p. 21;
 - Real Estate Services (filming on campus and permits), p. 32

Flow-Through Agreements. See SCM, p. 36

Force Majeure. See p. 44

Forms, Preference for Use of UC forms. See Contracting in the UC Environment, p. 43

G

Gifts. See p. 9

Governing Law. See p. 44

H

HIPAA (Business Associates Agreement). See SCM, p. 37

Hotel and Charter Agreements. See SCM, p. 37

Human Resources. See p. 26

I

Independent Consultant Agreement. See SCM, p. 37

Indemnification. See p. 44

Industry Affiliate Program Agreement. See IAO, p. 28

Industry Alliance Offices. See p. 27

Industry Collaboration Agreement. See IAO, p. 28

Industry Sponsored Research Agreement. See IAO, p. 28

Insurance Requirements. See p. 44-45

Instruction Agreement. See BCBP, p. 21 (also Executive Training Agreement)

Intellectual Property Rights Management. See OTL, p. 30

Intellectual Property Out-Licensing. See OTL, p. 30

Intra-University Transactions. See SPO, p. 34

J

K

L

Lease

- Equipment. See SCM, p. 37
- Property. See RES, p. 32

Letter Agreements. See p. 9

Letter of Intent (Deal Memo). See p. 9

Letter of Understanding (Trademark). See BCBP, p. 22

Liability. See p. 45

License Agreement. See BCBP, p. 21

License (for property). See RES, p. 32

M

Master Research Agreement. See IAO, p. 28

Material Transfer Agreement (in-bound). See IAO, p. 29

Material Transfer Agreement (out-going). See OTL, p. 30

Memorandum of Agreement. See p. 10

Memorandum of Understanding. See p. 10; BCBP, p. 22; SPO, p. 34

Multiple Campus Awards. See SPO, p. 34

N

Negligence. See p. 40

No-Cost Extension/Supplement Requests. See SPO, p. 34

Non-Binding Agreements. See p. 10

O

Office of Intellectual Property and Industry Alliances (IPIRA). See p. 27

Office of Legal Affairs. See p. 39

Office of Media Relations. See p. 21

Office of Risk Services. See p. 40

Outgoing Sub-agreements. See SPO, p. 34

P

Parties. See Contracting Basics, p. 43

Payment. See p. 45

Performance Agreements. See Cal Performances, p. 24

Performance Commissioning Agreements. See Cal Performances, p. 24

Policies. See Risk Services, p. 40

Professional Services Agreement.

- Facilities or Construction related. See Construction and Design, p. 25
- For University business needs. See SCM, p. 37

Purchase Orders. See p. 10

Purchases of Common Goods and Services. See SCM, p. 37

Q

R

Real Estate Services. See p. 32

Recitals or “Whereas” Clauses. See p. 45

Records Retention Policy. See p. 15

Regulation 4 (special services by faculty to individuals and organizations). See Considerations, p. 12

Remedies. See p. 46

Representation. See p. 46

Review of insurance and indemnification language. See Risk Services, p. 40

Risk of Performing Without a Contract. See p. 8

Risk Services. See p. 40

S

Selected Terms and Conditions. See p. 44-46

Signature Authority. See p. 14

Small Business Innovation Research (SBIR) Program Agreement. See IAO, p. 29

Small Business Technology Transfer (STTR) Program Agreement. See IAO, p. 29

Software License Agreement

- For a single research group or project. See IAO, p. 29
- For larger University business needs. See SCM, p. 37

Sponsored Projects Office. See p. 33

Sponsorship Agreement. See BCBP, p. 22

Sourcing Agreement. See SCM, p. 37

Student Placement Agreement. See BCBP, p. 23

Student Training (no academic credit). See BCBP, p. 23

Supplemental Requests (no-cost). See SPO, p. 34

Supply Chain Management. See p. 36-37

T

Teacher Training. See BCBP, p. 21

Teaming Agreement. See SPO, p. 35

Term. See p. 46

Termination. See p. 46

Trademark License Agreement. See p. 21

Third-Party Liability. See p. 46

U

Unrelated Business Income Tax (UBIT). See p. 16, 47

University Terms and Conditions. See p. 46

Use of University of California Name and Trademarks. See p. 46

V

Visiting Industrial Fellows Agreement. See IAO, p. 29

Visitor Agreement. See SPO, p. 36

W

Waiver/Permission. See BCBP, p. 23; p. 46

Warranties. See p. 46

X

Y

Z



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