

Business Contracts and Brand Protection – Our protocol checklist for reviewing your Agreement

bcbp.berkeley.edu

Dept: BCMS	Enter request and upload contract and all documents into BCMS (agreements, amendments, attachments); enter departmental approval
Authority	Is this subject matter within BCBP jurisdiction - e.g., involves receipt of funding, student placement, executive education, event sponsorship, professional services? See bcbp.berkeley.edu for guidance
Agreement type	Is this an agreement, amendment or other? Obtain any pertinent related agreements
Date	Is the agreement dated? Include the "Effective Date" in the first line. If in the past, confirm that all UC obligations have been met beginning as of the Effective Date
Party/ies	Confirm the identity of the party/ies to the agreement. One of the parties should be The Regents of the University of California. It may be written as "The Regents...on behalf of <unit name>"
Background	Are there any policy issues that require certain findings before the University is authorized to enter the contract or to provide the services, such as a finding that the services serve a public interest
Obligations	What are the mutual promises or obligations, i.e., the essence of a contract? If assessed to not be a contract, contact the requesting unit for clarification
Audits	Make sure UC gets reports and/or the ability to audit if appropriate (depends on the other party's obligations)
Clarity check	Look for inconsistencies and ambiguity, e.g., obligations to "cooperate" or "coordinate"
Precedent	Is it similar to previously-approved contracts? If so, review those agreements, looking for inconsistencies
Duration	Is the duration of the contract clear? Need a start date and end date, with clear termination and extension provisions
Payment	Are the amount and method of payment clear? Payment is always made to "The Regents..." either by check or wire transfer to a named account

Representation / Warranties / Certifications	Review representations, certifications and warranties for good sense, logical consistency, and conformance with UC policy and procedure. Obtain background confirmations as necessary.
Risk allocation	Ensure that risk allocation and management provisions are in line with UC policy: insurance for all parties; indemnification (cannot include assumption of third party liability); liability limitation/disclaimers
Confidentiality	Confidentiality provisions must be viewed in the context of the California Public Records Act
IP rights	Analyze provisions allocating ownership and use of intellectual property (copyrights and patentable discoveries). The use of University names, marks and logos to be forbidden without prior consent
Data security and privacy	Data protection, especially data related to student (FERPA) or patient records (HIPAA), must be covered in any contract that could give rise to such data. Determine if "Appendix DS" is required
Dispute resolution	Is there a disputes resolution provision? Informal appeal is helpful. Is there mediation or arbitration?
Contact information	Is the notice/contact information current and correct?
Boiler plate issues	Review all for fairness, completeness and consistency (* Boiler plate issues: <i>Counterparts; Compliance with law; Due authority representation; Assignment; Severability; Entire agreement; Amendments/modifications to be in writing; Waiver; Independent contractors</i>)
Governing law and jurisdiction	We prefer to construe contracts using California law, applied in a California court
Signatory	Does the signature block refer to the correct parties to the agreement?
Supporting documents	Are all Appendices and Exhibits in place?
Dept: <input type="checkbox"/> Contract Management	Manage the contract and serve as the office of record for the agreement. See bcbp.berkeley.edu for guidance

* 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. [Wikipedia](http://en.wikipedia.org/wiki/Party_(law)) 12/21/14