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<b>SUBJECT</b>	Considerations for Contracts for Learning Technology
<b>SUBMITTED TO</b>	Learning and Research Committee
<b>MEETING DATE</b>	November 19, 2021
<b>SESSION CLASSIFICATION</b>	Recommended session criteria from Board Meetings Policy: OPEN
<b>REQUEST</b>	For information only - No action requested
<b>LEAD EXECUTIVE</b>	Andrew Szeri, Provost and Vice-President Academic, UBC Vancouver
<b>SUPPORTED BY</b>	Ananya Mukherjee Reed, Provost and Vice-President Academic, UBC Okanagan Hubert Lai, Q.C., University Counsel Peter Smailes, Vice-President Finance & Operations

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### EXECUTIVE SUMMARY

This briefing is in response to the request by the Committee Chair regarding the due diligence steps that are taken when UBC enters into significant contracts with learning and teaching technology firms. The following were cited as recent examples of such contracts:

1. Proctorio;
2. Canvas; and
3. Amazon Web Services.

The Proctorio agreement was for the purchase of goods or services. The principles that apply to the purchase of goods and services by UBC are set out in the Purchasing Policy (FM2), which can be found here: [https://universitycounsel-2015.sites.olt.ubc.ca/files/2019/08/Purchasing-Policy\\_FM2.pdf](https://universitycounsel-2015.sites.olt.ubc.ca/files/2019/08/Purchasing-Policy_FM2.pdf).

The Proctorio agreement was executed under Signing Resolution #15 (Supply Management), a copy of which can be found here: <https://universitycounsel-2015.sites.olt.ubc.ca/files/2019/09/Resolution-15-Supply-Management.pdf>.

The Canvas agreement was also for the purchase of goods or services. The Canvas purchase was handled through Supply Management just as the Proctorio was but, because the value of the contract exceeded the limits of Signing Resolution #15, at the end of their process, they forwarded it for execution under Signing Resolution #1 (General Commitments and Agreements), a copy of which can be found here: <https://universitycounsel-2015.sites.olt.ubc.ca/files/2019/09/Resolution-1-General-Commitments-and-Agreements.pdf>.

The Amazon Web Services agreement was not a pure purchase of goods or services. The primary objective of the agreement was to establish a collaborative relationship to support a variety of research initiatives. It was therefore outside of the mandate of Supply Management and was therefore advanced by the contract proponent for execution under Signing Resolution #1.

### Role of Proponent Units and Review/Signing Process

The proponent unit for the Proctorio and Canvas agreements was Teaching & Learning Technologies group. The proponent unit for the Amazon Web Services agreements was the Cloud Innovation Centre.

When an academic or administrative unit is considering entering into a relationship with another party, the head of the unit is responsible for determining whether and how the proposed relationship will support the strategic and operational objectives of the unit (and more broadly of UBC) and assessing the terms that will govern the proposed relationship.

If the head of the unit wishes to advance the proposed agreement, the head will review the Board Signing Resolution to determine who is authorized to execute the proposed agreement. For example, Signing Resolution #14 authorizes Department Heads to sign contracts of employment on behalf of UBC with Teaching Assistant and Signing Resolution #15 authorizes the Director of Supply Management and various others within Supply Management to execute contracts on behalf of UBC for the acquisition of goods and services. General contracts and agreements that are not covered by any of the more specific Signing Resolutions can be executed on behalf of UBC by certain very senior UBC administrators under Signing Resolution #1.

The head of the unit will then submit the proposed agreement to the individuals who are authorized to execute it. The head of the unit is responsible for including a recommendation, rationale, or any other materials that are necessary to satisfy the authorized signatory(ies).

In the case of agreements executed under Signing Resolution #1:

1. The senior administrators who sign the agreements often do not have direct knowledge about the subject matter of the agreements and often do not have line authority over the proponent unit. Therefore, before executing agreements under Signing Resolution #1, senior administrators almost always require that the head of the unit first execute a Request for Contract Review Form (“RFCR Form”). The complete RFCR Form can be found here: <https://universitycounsel.ubc.ca/files/2021/04/Request-for-Contract-Review-and-Indemnity-Approval-Form-April-2021.pdf>. The RFCR Form has explicit language to remind heads of unit that the responsibility for assessing the academic/financial/operational viability of agreements rests with the unit.
2. In the RFCR Form, the head of the unit confirms that:
  - a. the unit, including the finance director where appropriate, has reviewed the agreement;
  - b. the unit is responsible for meeting all of the obligations outlined in the agreement; and
  - c. the head of the unit recommends that the agreement be executed on behalf of UBC.
3. Although it has always been implicit as part of the recommendation noted above, the RFCR Form was amended in the spring of 2021 to also include an explicit confirmation by the head of the unit that:
  - a. the head of the unit has considered whether the agreement is precedent-setting or involves sensitive issues and confirms that any elements that might reasonably trigger such concerns are specifically highlighted in the RFCR Form.

For all agreements, regardless of which Signing Resolution was applicable, once the agreement is executed, the proponent unit is responsible for ensuring that the unit meets all of the obligations assigned to UBC under the agreement.

### **Safeguards**

The Signing Resolutions contain language requiring agreements that are “precedent-setting” or that involve “sensitive issues” to be brought to the Board of Governors for approval. This puts the onus on the proponent units and the signing officers who are relying on the proponent units to address their minds to the issue of whether a commitment is sensitive or precedent-setting.

The Signing Resolutions also contain language that enables any Governor to request that any agreement be brought to the Board of Governors for before it is executed. This language is intended to address those very rare situations where a controversial matter might have hit the media or has otherwise come to the attention of a Governor who believes that direct Board review of the contract is warranted (even if the proponent unit has not yet made that determination).

The judgement that is called for by the “precedent-setting” and “sensitive issues” language is being applied by many heads of proponent units and signing officers across UBC to tens of thousands of contracts per year.

In addition, UBC’s standard RFP documents require all vendors to comply with the *Freedom of Information and Protection of Privacy Act* as well as UBC’s Information Security Standards and set out specific options for meeting requirements regarding the storage of personal information outside of Canada. UBC’s Information Security Standards can be found here: <https://cio.ubc.ca/information-security/policy-standards-resources>. Since the establishment of the cross-portfolio PrISM (Privacy and Information Security Management) program approximately four years ago, UBC has built a team within Safety & Risk Services to undertake privacy impact assessments of contracts for the purchase of software or services that involve the collection/storage/use/disclosure of personal information. This team consists of approximately a half dozen analysts who are well-equipped to undertake these assessments objectively and professionally in accordance with the *Freedom of Information and Protection of Privacy Act* and is independent of Supply Management and the proponent units. UBC is now recognized as having among the best privacy impact assessment programs in British Columbia.

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