**GUIDELINES FOR ROSE LIBRARY DEED OF SALE/GIFT**

**Terms of Transfer**

This section outlines the specific terms for purchase or gift, transfer of physical property (ie. physical or digital Materials), and transfer or licensing of intellectual property (ie. copyright).

*1. Physical property*

For purchases, it is important to explain to Sellers that the payment clause “*within eight weeks of execution of Deed and related paperwork and receipt of material*” means all three of the following steps have been completed:

* Signing of Deed by both parties
* Completion of related paperwork needed to process payment (such as SIIF and ACH forms); Point of contact for payment paperwork: Accessioning and Collections Manager
* Receipt and inspection (ie. high-level verification) of material.

*4. Intellectual property*

Copyrights scenarios:

* Mixed rights holder
  + Third party copyright
  + Works for hire
* Single rights holder

Terms for copyright can be customized as appropriate. Based on review of material and discussions with Seller/Donor, the Curator will select appropriate option and update template accordingly:

* Option 1: Seller retains copyright and grants Emory a license. (Likeliest option in most cases)
* Option 2: Eventual transfer of all copyrights by seller/donor
* Option 3: Immediate transfer of all copyrights by seller

**Terms of Access and Use**

This section covers points related to how Material transferred to the Rose Library can be accessed and used by researchers and the Seller.

*5. Upon receipt, Emory will make the Materials available for public use without restriction in accordance with Library policies and procedures as amended from time to time.*

Upon receipt of Materials, the Rose Library will add said material to the accessioning queue. Materials are not available for use until they have been formally accessioned, and neither the Library nor the donor should publicize the transfer until the Materials have been accessioned and are available for use. The Rose Library makes every attempt to make Materials available in a timely manner.

The Rose Library collects material in order to promote research and use by the broadest range of users, including students, scholars, journalists, genealogists, artists, and other interested parties. Use, in this context is not limited to, but may mean any of the following:

* Use and consultation of material in the Rose Library Reading Room
* Providing researchers photocopies or allowing them to photograph Materials for personal study
* Display or Exhibition in Library spaces or online
* Loans of material, or copies thereof, to other institutions or organizations (the Rose Library requires institutions and organizations that receive loans of material to maintain appropriate conditions for display of the material).
* Promotional material for the Library or Emory University in print or online
* Reports, such as the Rose Library annual report
* Instruction and Educational Purposes

A Seller or Donor may want to place certain restrictions on the use of materials in your collection for a designated period of time. As noted in the deed, all such restrictions should be specific, reasonable, equitable, and time-bound. More information about restrictions is available in the Restrictions and Conditions section of this document.

*6. Emory will provide the Seller or their designee with reasonable access to the Materials in accordance with Library policies and procedures as amended from time to time.*

* Emory Libraries will provide Donor/Seller access to Materials or copies of Materials in accordance with our policies. This may include providing photocopies to Donors free of charge, providing Donors access to their collection even if it has not been opened to researchers, or providing Donors access to otherwise restricted Materials. Current Rose policy allows up to 100 copies to be made for donors free of charge.

**Rights and Responsibilities**

This section lays out the rights and responsibilities of all parties entering into this agreement, including the stewardship responsibilities of the Rose Library, and the roles each party plays in protecting the Seller’s intellectual property and meeting legal obligations around managing and disseminating copyrighted material.

The Rose Library’s main responsibilities in entering into this agreement are to properly care for your collection and to promote its responsible use. These two goals, *preservation* and *accessibility*, are central to the mission of the Library and inform all of our decisions about how we manage our collections.

*7. Emory will provide a suitable depository for the Materials in print and digital formats…*

* We pledge to provide a suitable depository for the Material in print and digital formats, and maintain it in good order. This means that we will make every reasonable effort to store the material in suitable boxes and storage spaces and that we follow professional standards and best practices for how we organize the material.
* We will transfer any born-digital files (i.e.: records that were created as computer files such as Word documents or digital images) to the repository in a way that preserves the authenticity and integrity of digital files and ensures that we do not make any changes to the records as we transfer of store them.
* To ensure long-term preservation of and access to collection material, the Rose Library may make copies or other reproductions of material or migrate files into new formats, now known or later developed, for preservation and to enable or promote their use. This may mean, for example, scanning and item that is too brittle or fragile to be used by a researcher and then keeping and maintaining that digital copy, or making a digital copy of an audio cassette.

*8. Emory reserves the right to de-accession or otherwise dispose of any Materials which are determined to have no permanent value or historical interest, to be surplus to the needs of the Emory University Libraries, which are duplicated elsewhere in the collection or the Libraries, or which the Libraries cannot adequately house…*

* The Rose Library also commits to appropriate disposition of material that we do not retain as part of the collection. Sometimes material that is transferred as part of a collection duplicates other items in our holdings, does not have long-term research value, or is removed at the request of the donor or seller. When removing material from a collection, or removing a collection in its entirety, the Rose Library is responsible for acting in accordance with our policy on deaccessioning, professional best practice as outlined in the Society of American Archivists Guidelines on Deaccessioning and Reappraisal, and any conditions set forward in the Deed. Any material that we discard from a collection is held in a locked bin before being securely shred so all information is protected throughout the discard process.

*9. Emory reserves the right to store acquired digital content and digitized copies of Materials in their entirety for preservation purposes…*

* As part of the Rose Library's digital preservation and stewardship processes, we generally make a complete copy of a computer hard drive or other form of media to store in its entirety for preservation purposes. This copy, called a disk image, is the best way to ensure the long-term preservation of the files on a hard drive, however it may capture things like deleted files or log files (files that may indicate what activities have happened on a computer). Emory reserves the right to store copies of all digital (born-digital or digitized) content for preservation purposes, but will not make deleted files or log files available to researchers without the permission of the donor.

*10. Emory will refer all requests for permission to publish items in the Materials for which Seller holds or controls copyright to the Seller or their designee:*

* The Rose Library makes all reasonable efforts to assist the copyright holder in protecting and managing their intellectual property. If we receive a request for permission to publish material that we think is in copyright, we will refer those requests to the likely copyright holder to grant or deny.

*11. The Seller or their designee shall use all reasonable efforts to respond to questions from researchers and other persons for permission to publish items in the Materials for which Seller holds or controls copyright.*

* As a Library, we make every effort to promote broad and responsible use of our collections, and we request that the Donor/Seller assist in this by being responsive to our researchers and responding to publication requests in a timely manner.

*12. If Seller considers selling any additional or future Materials, the Seller agrees that Emory will have exclusive right to negotiate with Seller concerning such acquisition for six months, subject to terms and conditions...*

* This clause can be added to a deed that we sign with a Seller who is still actively producing work. It states that the Seller will provide the Rose Library with a specified period of time where we have the exclusive right to negotiate with the Seller over a sale price for additional Material.

**Representations and Warranties**

*14. Seller agrees to indemnify Emory and its employees and agents from and against any claims, allegations of wrongdoing, damages, or expenses, including reasonable attorneys’ fees not to exceed amount paid for Materials, arising out of any breach of Seller’s representations and warranties.*

Rationale provided by Office of General Counsel:

Emory has to rely on assurances provided by the seller/donor as to many matters, especially as to ownership of the materials being conveyed to Emory.  Our willingness to make a purchase or receive a gift is premised on our expectation that all those assurances are true and accurate.  If those assurances end up being inaccurate, Emory can end up with a variety of legal problems.  For example, if someone other than the seller/donor claims to own some or all of the materials being conveyed to Emory, Emory would be caught in the middle of an ownership dispute; our right to continue holding and using the materials could be called into question, and our investment in curating and exhibiting the materials could be jeopardized.   Unfortunately, such problems can arise even if the seller/donor was acting in complete good faith, i.e., if the seller/donor was unaware of the potential problem at the time of the transaction.  Because of these kinds of risks, it is very common in legal settings for the party that is making an assurance to “stand behind” that assurance, so to speak, by indemnifying the party that will rely on the assurance.  The basic idea is that if assurances provided in the agreement prove to be incorrect or are challenged in some way, the seller/donor will take responsibility for that.

Indemnification clause to be included based on assessment of risk by Curator in consultation with Director related to the following factors of:

Tangible/Physical property

Creator/Provenance (individual, family, organization)

Types of materials (personal, organizational, official, any state or federal)

Relationship of donor to creator

Clear chain of custody

Intellectual property

literary, artistic, and creative works

works for hire

third party copyright holders

* Generally for purchases, there will be a lower threshold for risk and indemnification clause will be warranted.

**A. Description of Materials**

This section should contain a broad description of the materials included in the collection and be completed by the curator. The more detail provided in this section, the easier it is for Collection Services staff to complete the accession record, especially if the collection has been shipped directly to the LSC and archivists are accessioning remotely.

Ideally it will consist of:

* Volume/estimated volume
  + An estimate of linear footage is most helpful since that is how we record extent in accession records, finding aids, and shelf lists.
* List of record types included
  + Be specific. Terms such as "manuscript materials" are less helpful than terms such as "correspondence," "writings," "drafts," "research files," "teaching files," "photographs," etc. It is especially important to include information about the presence of born digital and audiovisual media. Collection Services can provide glossaries for both born digital and audiovisual material to help identify items on site.
* Inclusive dates, if known
* Any materials or topics of special importance

Examples:

* Additions to the records of the Council of Intown Neighborhoods and Schools records consist of 0.5 linear feet of binders of minutes, agendas, newsletters, and planning materials from 1997-2010
* Papers of Trinidadian American actor, dancer, and artist, Geoffrey Holder, and African American dancer, Carmen de Lavallade, include 155 linear feet of art portfolios, awards and honors, correspondence, ephemera, family papers, memorabilia, photographs, printed material, and scripts from circa 1900-2018.
* Papers of R.F. Foster consists of 50 linear feet of files related to Foster's major books, including a two-volume biography of W.B. Yeats, original notes and drafts of these book manuscripts, correspondence, both personal and literary, and draft material related to book reviews, essays, talks, and conference papers. There are also Foster's pocket diaries and a small collection of his undergraduate notes and research papers, as well as some childhood school reports. Material ranges from circa 1974 to 2015.
* Additions to the Rita Ann Higgins papers consist of 20 linear feet of correspondence, diaries, writings by Higgins, printed material, photographs, audiovisual material, and born digital material, from circa 2012-2017.

**B. Restrictions and Other Conditions**

This section enumerates any donor imposed restrictions that apply to the collection. This section should only include restrictions on physical access or reuse of material. Copyright and intellectual property retention/disposition should be discussed in Terms of Transfer. Restrictions must be identified by donors. Archivists will only impose restrictions on collections for preservation reasons or in accordance with statutes such as the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA).

Restrictions should be:

* Specific:
  + Record types or documents must be listed and details provided in any cases where the donor's restriction is broader than the archivist may assume. For example, restrictions on financial records will be applied to such records as bank statements, checks, financial reports, etc. If the donor means to include any documents that contain financial information, such as an appointment letter that includes a salary figure, be sure this field clearly states the donor's intent.
* Reasonable:
  + Restrictions must conform to institutional policy. Archivists cannot examine every item in a collection and will focus efforts to identify restricted material on the areas of the collection where they are most likely to occur. Donors should understand that we will make a good faith effort to locate and restrict documents in question, but we may occasionally overlook something. Staff will quickly address any mistakes that are brought to our attention. Additionally, the Rose Library will not restrict information that is already public. Questions about "reasonableness" should be directed to the Head of Collection Services.
* Equitable:
  + A restriction placed on collection material must apply equally to all researchers. Restrictions should not permit donors or Rose Library staff to selectively grant access to researchers.
* Timebound:
  + Restrictions must have an agreed upon end date recorded in the deed. The Rose Library will not accept collections with permanent restrictions. Typical restrictions are roughly 25 years or less from the creation of the record or execution of the deed. Material can also be restricted until the death of the individual whose privacy is in question. The goal is identify a period of time that will protect privacy without unduly hindering access. Longer restrictions can be considered on a case by case basis. Any material that cannot be opened eventually should remain in the custody of the donor.

Donors should be discouraged from writing in restrictions without speaking to Rose Library staff first. Whenever possible, Library staff should be responsible for crafting restrictions so that we can ensure the language is clear and conforms to the guidelines in this document.

Examples:

* Correspondence: Young has provided a list of correspondents, mostly fellow writers, whose correspondence can be opened upon receipt by the Rose Library (see attached). The remainder of the correspondence will remain closed for 10 years.
* Manuscript of Colson Whitehead’s first, unpublished, novel *The Colossus of New York* is closed to researchers for 10 years.
* Financial records (records of a purely financial nature such as credit card statements or tax forms. Does not apply to other types of records such as contracts or permissions agreements where limited financial information may be present) should be removed from the collection and returned to the donor if identified by Rose Library staff

**C. Disposition of Surplus Materials** (optional for deed of sale)

Donors should indicate whether they would like the Rose Library to return surplus material such as duplicates or materials that fall outside the scope of the collection. You may also wish to offer this option to donors from whom we are purchasing collections. For purchased collections, if there is no preference marked in this section, the Library will dispose of material at staff discretion. Materials that we discard are securely shredded by Emory University's shredding service.

**Signatures**

All purchases and gifts: Rose Library Director signature required.