



April 19, 2021

Office of General Counsel

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# **NEW: Continuing Education and Customized Training (CE/CT) Professional/Technical Consultant Contract Template**

**Mary Al Balber, Assistant General Counsel**

# Upcoming Training

## April 29, 2021 at 10 a.m.

### Intellectual Property and Ownership and Licenses, Oh My!

**What:** Assistant General Counsel Sarah McGee will present on which intellectual property clause is appropriate for which contracts in Marketplace. This training will specifically focus on which of the three Marketplace options for the “Ownership of Intellectual Property” question is right for a variety of types of contracts. The training will cover the basics of copyright law, copyright licenses, and the meanings of each of the three clause language options in Marketplace. This training will have interactive exercises to test your skills.

**Who:** Anyone who has any involvement with contracts.

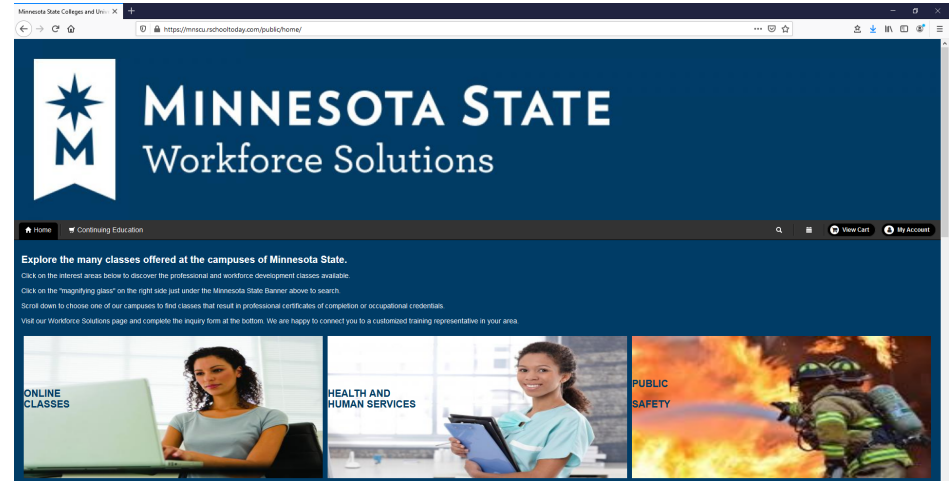
More information can be found on the [Office of General Counsel’s webpage](#).

# Session Overview

- Contract basics
- Board Policies, Procedures and Guidelines
- Using system template agreements
  - Where to find them - Finance Webpage “[Minnesota State Forms and Contract Templates](#)”
  - What to do if not an approved template
- NEW in 2021-- Contract template specific for use by Workforce Solutions- Continuing Education/Customized Training when hiring consultant to provide training
- Attorney Client Privilege, Employee Code of Conduct and Helpful Tips
- Resources

NOTE: This is a general CE/CT contract session and not a Marketplace training session

# Minnesota State Workforce Solutions Continuing Education/ Customized Training



Access the webpage [here](https://mnsc.uschooltoday.com/public/home/)

# Lead Time

- Plan accordingly (procurement, negotiation, drafting, legal and other review, “I forgot”, etc..)
- Hope for the best, plan for the worst
- Not every contract can be an emergency



# What Is A Contract?

A contract is: a legally binding document between two or more parties that defines the rights and obligations of the parties and sets “ground rules”

- **Offer** – a promise to do or not do something (“I’ll wash your car for \$10”)
- **Acceptance** – promise or performance (“I agree to pay \$10”)
- **Consideration** – the value or inducement to perform (the value received and given-the money and the washing of the car)
- Agreed to by someone with authority
- Intra-agency (i.e. two colleges) is not a contract

# Why Do I Need A Written Contract?

- Services, unlike goods, are not governed by Uniform Commercial Code (UCC)
- Clarity, completeness, and common understanding are essential
- Supersedes previous oral discussions or “how we’ve always done it”
- After a contract is signed, if wish to change it, conversations or e-mails to change the contract are not sufficient. Changes to contracts (amendments) must be in writing and signed by the parties.



# Why Do I Need A Written Contract? (2)

- Contract must be signed **before** the parties begin performing duties under the contract.
  - Good practice and required by law
- Well-written contracts are preventative care
  - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract or litigation later





# Minnesota lawmakers blast agency heads for sloppy contracting

Special hearing follows disclosure of contract violations at Department of Human Services.

By Glenn Howatt and Chris Serres Star Tribune staff writers |

NOVEMBER 14, 2019 — 5:08AM

**GALLERY**  GRID

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# **Board Policies, Procedures and Guidelines**

# Minnesota State Board Policies and Procedures

## Applicable Minnesota State Board System Procedures:

- Policy 5.14 Contracts and Procurement
- Procedure 5.14.2 Consultant, Professional or Technical Services
- Procedure 5.14.5 Purchasing
- Board Policy 7.7 Gifts and Grants Acceptance

# Minnesota State Board Policies and Procedures (2)

## Important: Board Policy 5.14, Subd. 3

- Subpart C. Board approval required for
  - Any procurement, lease agreement, or professional/technical/consulting service contract with a value in excess of \$1,000,000 or contract amendment that would increase the total value of a contract to more than \$1,000,000 must be approved in advance by the Board.

## Important: Equity in Purchasing and Procurement

- Board Policy 5.14, part 8

# Board Policy 5.14 Contracts, Procurements, and Supplier Diversity

## Part 4. Subpart B. Contract form approval

Any contracts or other legally binding agreements, including grant agreements, or memorandums of understanding/agreement that create legally binding obligations and responsibilities, that do not adhere to system approved contract templates must be approved in advance by the Office of General Counsel or Attorney General's Office.

# Procedure 5.14.2 Consultant, Professional or Technical Services, and Income Contracts

## Part 4. Encumbrance

Funds must be encumbered prior to making an obligation. An authorized employee shall certify that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. College, university, and system office administration must assure proper authorization is on file for employees charged with encumbering funds. An expenditure or obligation authorized or incurred prior to encumbering funds is in violation of state law and ineligible for payment until made valid and is in violation of Minn. Stat. § 16A15, Subd. 3. An employee authorizing or making the payment, or taking part in it, may be liable to the State for the amount paid. A knowing violation of Minn. Stat. § 16A.15, Subd. 3, is just cause for the employee's removal. The State cannot agree to indemnify third parties or hold them harmless (Minn. Stat. § 16A.138; Minn. Const. Art. XI, Sec. 1).

# Procedure 5.14.2 Consultant, Professional or Technical Services, and Income Contracts (2)

## Part 5. Prepayment

Minn. Stat. § 16A.41, Subd. 1, generally prohibits the system office and the colleges and universities from paying in advance, except under the circumstances described in Minn. Stat. § 16A.065.

# Guideline 5.14.2.1 Guest Lecturer or Presenter

## Part 2. Guideline Requirements.

When bringing a guest lecturer or presenter to campus, colleges and universities shall use the template Professional/Technical Services Contract for:

- All guest lecturer or presenter transactions involving more than \$3,000 in compensation, including travel reimbursement, and/or
- If intellectual property or other risk is considered elevated.



# Guideline 5.14.2.1 Guest Lecturer or Presenter (2)

## Part 2. Guideline Requirements.

For transactions below \$3,000 in compensation, including travel reimbursement, and when intellectual property or other risk is considered low:

- Campuses may utilize the template Guest Lecturer/Presenter Agreement, or
- Under the authority in System Procedure 5.14.2 Consultant, Professional or Technical Services, campuses may develop procedures for guest lecturer agreements via a purchase order after ensuring adequate risk mitigation.

# Minnesota State Standard Contract Templates

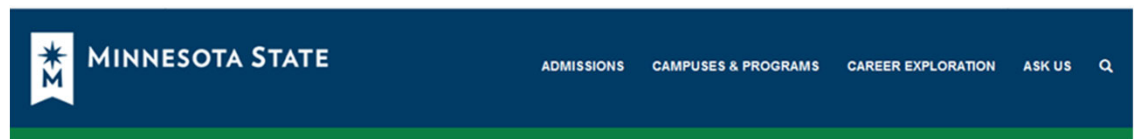
## Required Unless Other Form is Approved by AGO or OGC

- Required by System Procedure 5.14.2 Consultant, Professional or Technical Services Part 3, Contract Preparation
  - Contracts must be prepared on forms approved by the system office to assure that they include all state required contract language. Any modification of forms approved by the system office or the use of a non-system office form requires review by the system legal counsel and approval of the vice chancellor-chief financial officer. System legal counsel includes either the Minnesota State Colleges and Universities General Counsel or the Minnesota Attorney General's Office.



# Minnesota State Standard Contract Templates

- All Minnesota State standard contract templates can be accessed on the [Finance webpage](#).
- Not sure what template to use? The Office of General Counsel has developed an helpful [FAQ](#). It can be found on the [Office of General Counsel's webpage](#).



## Minnesota State Forms and Contract Templates

Minnesota State is a public entity and enters into a high volume of [contracts](#) each year. Many of these contracts can be accommodated on the approved Minnesota State standard contract forms.

This page contains most of the standard templates which relate to contract matters. These forms have been approved by the Office of General Counsel and comply with Minnesota State policies and procedures. Any contract that is not on a Minnesota State standard contract form must be reviewed and approved by system legal counsel.

If you are looking for a document that is not listed, you may want to look at the [forms](#) library or you may contact us at: [Sourcing@MinnState.edu](mailto:Sourcing@MinnState.edu).

Thank you for visiting!

> Clinical Agreement
> Design & Construction
> Goods & Services
> Facilities & Lease Agreements
> Soliciting Proposals
> Other

# Minnesota State Standard Contract Template- Income Contract for Customized Training

- The Income Contract for Customized Training is number eight (8) under “Goods & Services”.

MINNESOTA STATE

ADMISSIONS    CAMPUSES & PROGRAMS    CAREER EXPLORATION    ASK US    Q

> Design & Construction

▼ Goods & Services

Strategic Sourcing is a disciplined, efficient and modern approach to the way Minnesota State purchases more than \$700 million in goods and services. Our mission is to provide oversight and facilitation of all colleges and university purchasing processes to ensure accountability and responsibility in purchasing [policies and system procedures](#). We accomplish this by leveraging the buying power of the enterprise-wide system.

**Point of Contacts:**  
 Subject Matter: Michael Noble-Olson, [Sourcing@Minnstate.edu](mailto:Sourcing@Minnstate.edu)  
 Office of General Counsel: Heidi Slegers, [Heidi.Slegers@MinnState.edu](mailto:Heidi.Slegers@MinnState.edu)

Number	Name (MP Template)	Description	Updated
1	Grant Contract	Description	year
2	Guest Lecturer/Presenter Agreement (Services)	Transactions below \$3,000. This form is used to compensate guest speakers, including expense reimbursement. If the amount is over \$3,000, you must complete the Professional/Technical contract.	08/2020
3	Hotel Contract (Hotel)	This form is used to work with hotels in reserving space or catering with a hotel at its location	3/2021
4	Professional/Technical Services Contract (Services)	Agreement amounts: up to \$100,000, over \$50,000 RFPs, and Under 5 years. This form is for transactions in compensation for consultant, professional, or technical services for a short-term basis - does not include construction activities. Please include the <a href="#">Commissioner's Plan Expenses Reimbursement form</a> .	2/2021
5	Professional/Technical Services Contract - AMENDMENT (Services)	This form is used to amend the original P/T Contract4/2015	
6	Services Contract (Services)	Retainage/Insurance	
7	Income Contract (Income)		
8	Income Contract for Customized Training (not in MP)		
9	Maintenance/Service Master Contract		
10			

# Not A Minnesota State Form Or Template?

- College/university must review for essential elements, prohibited provisions, practicality and business decisions
- Don't assume that a provision suggested by a party can't be changed or modified
- If other party wants to use its contract form, consult with Minnesota State Office of General Counsel or the Attorney General's Office for legal review and possible negotiation and recommended changes, or drafting addendum or amendment
- Avoid "We'll sign yours, if you'll sign ours."

# Who Is Training Whom?

## Outside Party Training Our People:

- Technical/professional procurement
- All the normal rules for contract solicitations apply

## Minnesota State Institution Conducting the Training and Getting Paid:

- More likely the case
- Start with the customized training income contract form on the [Minnesota State Finance webpage](#)

# NEW-Continuing Education And Customized Training (CE/CT) Contract Template



MINNESOTA STATE

[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN RED AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS. THIS FORM IS TO BE USED WHEN THE COLLEGE OR UNIVERSITY IS HIRING AN INDEPENDENT CONTRACTOR TO PROVIDE CE/CT TRAINING ON ITS BEHALF. THIS FORM IS NOT TO BE USED INSTEAD OF THE CE/CT INCOME CONTRACT TEMPLATE. THE FORMS ARE DIFFERENT AND HAVE DIFFERENT PURPOSES.]

Contract Number:   
P.O. Number:

STATE OF MINNESOTA  
MINNESOTA STATE COLLEGES AND UNIVERSITIES  
[INSERT NAME OF COLLEGE/UNIVERSITY]

## CONTINUING EDUCATION AND CUSTOMIZED TRAINING (CE/CT) CONTRACT

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of  [INSERT NAME OF COLLEGE/UNIVERSITY] (hereinafter MINNESOTA STATE) located at  [INSERT CAMPUS ADDRESS], and , [INSERT CONTRACTOR'S LEGAL NAME AND FULL ADDRESS. DO NOT ONLY USE A PO BOX] an independent contractor, not an employee of the State of Minnesota (hereinafter CONTRACTOR).

WHEREAS, MINNESOTA STATE, pursuant to Minnesota Statutes Chapter 136F, is empowered to procure from time to time certain professional/technical services, and

WHEREAS, MINNESOTA STATE is in need of professional/technical services in the form of Continuing Education/Customized Training (CE/CT), and

WHEREAS, the CONTRACTOR represents that he / she has not received an early separation incentive under Minnesota State Colleges and Universities Board Policy 4.11, Board Early Separation Incentive Program (BESI), during the one-year post-separation period prior to the effective date of this contract.

NOW, THEREFORE, it is agreed:

### 1. TERM OF CONTRACT.

This contract is effective upon the date the final required signature is obtained by MINNESOTA STATE, and shall remain in effect until  [INSERT FULL DATE (e.g., June 15, 2023) Date Should Be At Least Two Weeks After Training Ends to Allow for Payment and Final Deliverables] or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE'S authorized representative.

### 2. CONTRACTOR'S DUTIES. The CONTRACTOR will:

#### a. [CHECK ONE BOX in sub-section a]

Provide a customized training program ("the Training") as follows:

- Training topic:
- Training audience:  [e.g., employees designated by Name of Company Receiving Services]
- Number of attendees:
- Number and duration of Training sessions:
- Training dates and times:
- Training location:

OR

Provide training ("the Training") on the topic of  on date(s), time(s), and location(s) as mutually agreed upon between CONTRACTOR and  [Insert Name of Company Receiving Services]. CONTRACTOR will communicate the date(s), time(s), and location(s) of the Training to MINNESOTA STATE in writing at least [fourteen (14) days OR insert other amount of time] before the Training takes place.



MINNESOTA STATE

# When to Use What Template?

## Income Contract for Customized Training

- Used by Continuing Education/Customized Training programs to contract with a company, government, or other party for Minnesota State to offer training for the employees of a third party, either on site or at a campus.
  - e.g., a campus is providing Microsoft Word training at Walmart – use this contract with Walmart.

## Continuing Education and Customized Training (CE/CT) Contract

- Used by Continuing Education/Customized Training programs to hire an individual, consultant, or company to provide training to a third party.
  - e.g., a campus agrees to provide training to ABC Company for OSHA compliance, and then uses this contract to hire a consultant to provide the training.





# When to Use What Template? (2)

## Income Contract for Customized Training

- Used this template when Minnesota State is providing training to another party

## Continuing Education and Customized Training (CE/CT) Contract (New Template)

- Use this template when Minnesota State is hiring an individual/company to provide training to a third party

# Test Your Knowledge

Minnesota State has been asked by the local telemarketing company, Don't Call Us We Will Call You, to provide telephone etiquette training to 30 employees. Minnesota State has agreed to provide the telephone etiquette training on site at Don't Call Us We Will Call You. Minnesota State employee, Pat, is going to draft the contract. What Minnesota State standard template should Pat use?



# Answer

Pat should use the Minnesota State standard  
Income Contract for Customized Training template

## Test Your Knowledge (2)

Minnesota State will be contracting with Number Crunchers Accounting to provide Microsoft Excel training to 10 Number Crunchers Accounting staff. Minnesota State is going to hire 123 Company to provide the Microsoft Excel training to Number Crunchers Accounting. Minnesota State employee, Chris, has been asked to draft the contract. What Minnesota State standard template should Chris use?

# Answer (2)

## Chris will need to draft two contracts.

1. Chris should use the **Minnesota State Income Contract for Customized Training** to contract with Number Crunchers Accounting for Minnesota State to provide training.
2. Chris will then need to use the standard **Continuing Education and Customized Training (CE/CT) Contract** for the contract between Minnesota State and 123 Company. 123 Company will provide the training to Number Crunchers on behalf of Minnesota State.

# What Minnesota State Standard Template Should I Use?

The Office of General Counsel has developed an FAQ to help you determine what Minnesota State standard template to use. It can be found on the Office of General Counsel's webpage.

- [Minnesota State Standard Contract Templates- FAQ](#)
- You can also access past training materials and other resources on [the Office of General Counsel's webpage](#).

# Decision Making And Accountability

- Who has the big picture view of all contracting actions?
- Who is the campus contract supervisor responsible for timely addressing problems, unsatisfactory work, possible breach or termination?
- Who evaluates vendor performance and takes action?

# Attorney Client Privilege And Communication

**Legal advice provided by AGO and OGC is generally protected by attorney/client privilege, work product**

- Privilege belongs to the Board of Trustees, Chancellor as governing authorities of the system
  - Staff do not have authority on their own to share privileged information, communication with others.
  - Consult with legal counsel before forwarding emails, documents to others.
  - If you are contacted by an outside attorney or agency DO NOT communicate with them – forward to the OGC.

**Do not hesitate to call the OGC; you are not charged for our advice.**



# Employee Code Of Conduct

## Why is Employee Ethical Behavior Important?

- We are obligated to comply with the law
- Violations can result in
  - Criminal penalties
  - Employment sanctions – including termination
- Minnesota State’s Employee Code of Conduct is a compilation of various existing statutes and policies that govern employee conduct.
  - Minnesota State System Procedure 1C.0.1 – Employee Code of Conduct
  - [Frequently Asked Questions about Minnesota State Employee Code of Conduct](#)

# Helpful Tips

- Use the most recent version of the contract template
- If contractor/consultant is an employee of another campus or system office consult your human resources office for appropriate forms to use for sharing personnel
- Consider any risk involved and contact Risk Management as necessary
- Be as specific as possible when filling out the duties
- Be sure to remove all red instructional text before finalizing the contract
- Proofread your contract before sending for signature



# Helpful Tips (2)

- Have the appropriate person/company sign the contract
  - If the contract is with an individual, then the individual must sign
  - If a company or organization is providing a presenter(s), the contract should be with the company, or entity, not the individual presenter, and signature must be by the company, and payment made to the company, not individual presenter
  - Be sure person signing for Minnesota State has proper delegation of authority to sign
    - Check before you sign
- Remember: Minnesota State Board Policies, Procedures and Guidelines apply to all contracts where Minnesota State is a party.



# Lead Time

- Plan accordingly (procurement, negotiation, drafting, legal and other review, “I forgot”, etc..)
- Hope for the best, plan for the worst
- Not every contract can be an emergency



# Office of General Counsel Contract Resources

All past contract trainings can be accessed on the contracts area of the [Office of General Counsel's webpage](#) along with additional resources.

## ▼ Past Training Resources

March 11, 2021

- [Special Considerations for Software Contracts](#)

November 2020 Contracts Training Series

- [Contract Law and Practice Overview](#)
- [Procurement](#)
  - [Test Your Knowledge](#)
  - [Answer Key](#)
- [Contract Negotiation](#)
- [Contract Drafting](#)
- [Contract Management/Performance](#)
- [Marketplace](#)
- [Form & Execution, Software Contracts and How You Can Help](#)
- [Risk Management/Insurance](#)

October 27, 2020

- [Guest Lecturer Presenter Training Session](#)



# Office of General Counsel Resources

- The Office of General Counsel has resources related to multiple legal topics posted on our [webpage](#).
- Past Office of General Counsel webinars can be found on the [OGC webinars webpage](#).

The screenshot shows the Minnesota State website header with the logo and navigation links: ADMISSIONS, CAMPUSES & PROGRAMS, CAREER EXPLORATION, ASK US, and a search icon. Below the header is a dark blue navigation bar with a dropdown menu for 'Current Webinar Series 2020-2021'. The main content area lists several webinar series with their dates and topics:

- September 10, 2020  
[Politics and Speech on Campus](#)
- October 8, 2020  
[International Program Issues, Student Data Protection Issues, and COVID-19](#)
- November 16, 2020 - November 20, 2020  
Contracts Training Series
  - [Contract Law and Practice Overview](#)
  - [Procurement](#)
    - [Test Your Knowledge](#)
    - [Answer Key](#)
  - [Contract Negotiation](#)
  - [Contract Drafting](#)
  - [Contract Management/Performance](#)
  - [Marketplace](#)
  - [Form & Execution, Software Contracts and How You Can Help](#)
  - [Risk Management/Insurance](#)
- December 10, 2020  
[Crisis Management](#)
- January 14, 2021  
[A General Overview of the Minnesota Government Data Practices Act and the Family Educational Rights and Privacy Act](#)
- February 11, 2021  
[Customized Training](#)

On the right side of the screenshot, there is a vertical navigation menu with the following items: Contracts, Copyrights, Data Privacy, Elections, and Student Affairs.

# Contact Information

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651-201-1752

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Additional information and resources can be found [on the Office of General Counsel's Webpage.](#)



# MINNESOTA STATE

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[MinnState.edu](http://MinnState.edu)

This document is available in alternative formats to individuals with disabilities.  
To request an alternate format, contact Human Resources at 651-201-1664.  
Individuals with hearing or speech disabilities may contact us via their preferred Telecommunications Relay Service.  
Minnesota State is an affirmative action, equal opportunity employer and educator.