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Office Of General Counsel

Minnesota State Template: Guest Lecturer/Presenter

Mary Al Balber

Assistant General Counsel

MINNESOTA STATE

Contract Basics



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

Call It What You Want...It's Still a Contract

- Grant
- Nondisclosure Agreement
- Memorandum of Understanding (MOU)
- Terms of Service
- End User License Agreement (EULA)
- License
- Terms and Conditions
- Memorandum of Agreement(MOA)
- Facilities Use Agreement
- Consortium
- Operating Agreement
- Affiliation Agreement
- Joint Powers Agreement
- Lease
- Clinical Agreement
- “Click” Agreements
- Statement of Work
- Terms of Use
- Inter-Agency Agreement
- Letter of Engagement
- Ticket
- Purchase Order
- Quote



Contract Definition & Elements Summary

A contract is any agreement between the system office, college or university and another party which is enforceable at law. This is true whether or not it is titled “Contract.” You can call it anything you like, but if it involves the exchange of promises that the system office, college or university must fulfill or money that the system office, college or university must pay to a third party, then it is a contract, and you must use one of the approved forms or get legal review.

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 & 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.

Board Policies, Procedures and Guidelines



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.

Risk



Areas of Risk When Developing a Contract

- Strategic risks
- Operational risks
- Reputational risks
- Compliance risks



Who Accepts Risk?

Entering into a contract entails accepting risk.

- Always keep this in mind.
- Determine who has the authority to agree to take on any risk(s).
- It is often the role of the Contract Supervisor to analyze the business risk of a contract and make a determination whether to proceed. Others may need to be consulted or informed before making a determination.

Business Risk Questions

- Could this cause reputational harm?
- Are the terms of the contract in the best interest of Minnesota State?
- What is the potential harm if something goes wrong?
- How will we address harm to minimize future risk?
- How much risk will Minnesota State carry versus risk the vendor will carry?
- Is there a potential for physical harm to individuals involved?
- Could we lose money? How much?

Strategic Risk Questions

- Does the contract contribute to our goals of student success, equity and inclusion, and financial sustainability?
- Does this contract make sense from a substantive point of view?
- Does the contract represent the best use of resources?

Operational Risk Questions

- Are the deliverables and other significant performance indicators (i.e., time of performance, product standard) specifically defined so that we could establish breach if we are dissatisfied?
- Has the contract supervisor performed a “what can go wrong?” analysis?
- Does the contract unreasonably shift risk or liability to the school?
- Can an existing contract at another campus be leveraged rather than a new contract executed?
- Do the terms proposed match the RFP?

Reputational Risk Questions

- Does the contract have the potential for unanticipated and unintended consequences?
- Does the contract give another party access to or control over our social media sites?
- Are we creating an appearance of endorsing a questionable vendor?

Compliance Risk Questions

- Does the contract involve student or employee personally identifiable data?
- Does the contract have intellectual property aspects?
- Does the contract require pre-payment?

Risk Mitigation

How can you mitigate the potential business risks?

- Insurance
- Contract language and provisions - clearly written
- Contract supervisor oversight during contract term
- Timely communication and documentation when problems arise
- Do not enter into the contract

Guest Lecturer/Presenter Template



Lead Time

- Plan accordingly
- Not every contract can be an emergency



When Can You Use It

- The total amount of contract, including compensation and travel reimbursement, is under \$3,000

AND

- Intellectual property or other risk is considered low



When You Should Not Use It

The total amount of the contract, including compensation and travel reimbursement, is over \$3,000

OR

If intellectual property or other risk is considered elevated

Instead use the professional/technical services contract template



Updated Guest Lecturer/Presenter Template



What's New

- Updated format
- Enhanced instructions
- Added “Term” and “Duties” section
- Removed “Publicity” section and added “Use of Name”
- Added “Control of Production and Warranty” section
- Added “Authorized Representative” section
- Added “Survival” section

Where Can You Find The Updated Template?

- Marketplace
- Finance Webpage “[Minnesota State Forms and Contract Templates](#)”

Helpful Tips

- Use the most recent version of the contract template
- If presenter 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



MINNESOTA STATE

30 East 7th Street, Suite 350
St. Paul, MN 55101-7804

651-201-1800
888-667-2848

www.MinnState.edu

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