



# Facilities Use Agreements- Here's What You Need to Know

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# Session Overview- Grab Your Popcorn!

Here's What You Need to Know:

- » Why Good Contracts Are Necessary
- » Compliance
  - Board Policies and System Procedures
- » Using system template agreements
  - Where to find them
  - Six (6) Facility Use Agreements—What's the difference?
  - Facility Use vs. Lease Agreements – Longer than a year? (Lease)
  - What to do if not an approved template
- » Need to know contract terms: parties to contract, term and termination, payment/consideration, liability, data privacy, governing law and venue, insurance and more!
- » Pay attention to insurance changes, liability, decision making and accountability.

# Session Overview Continued- Get More Popcorn!

- » More:
  - What remains important ( 6 slides of helpful guidance!)
  - Contacts and Resources (keep handy)
- » NOTE: This is a general contract session and not a Marketplace training session

# Lead Time (Louder for the ones in back)

- » Plan accordingly—expect the best and plan for the worst.
- » Use System templates and forms.
  - Resist changing footer.
- » Read Agreement.
- » Have signed contracts in place in plenty of time to allow for use of space and have insurance in place.
- » Allow time for negotiation.
- » 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/universities) is not a contract but very useful to avoid misunderstandings and track funds. (There’s a Facility Use Agreement for Campus to Campus).

# Why Do I Need A Written Contract?

- » Services, unlike goods, are not governed by Uniform Commercial Code (UCC);
- » Clarity, completeness, and common understanding is essential;
- » Supersedes previous oral discussions or “how we’ve always done it”;
- » After contract 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;
- » Contract must be signed before (!) the parties begin performing duties or using facility space under the contract - Good practice and state law requires.
- » Good Contracts are Preventative Care
  - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract and/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

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# A Document By Any Other Name Is 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)
- » Affiliation Agreement
- » Joint Powers Agreement
- » Real Estate-Lease, License, Use or Purchase Agreement
- » Clinical Agreement
- » “Click” Agreements
- » Statement of Work
- » Terms of Use
- » Inter-Agency Agreement
- » Letter of Engagement



# Minnesota State Board Policies and System Procedures

- » Policy 5.14 Contracts, Procurement and Supplier Diversity
  - Procedure 5.14.2 Consultant, Professional or Technical Services and Income Contracts
- » Contain definitions, policies and procedures for use of facilities as either Lessor or Lessee
- » System Procedure 6.7.2: - Leasing College or University Property for Non-College and University Activities
  - Checklist 6.7.2.1 - Leasing and Use of Minnesota State Facilities (pdf)
- » Related Documents: System Procedure 6.7.3 - Use of Non-College and University Facilities (College or University as Lessee/Tenant)
- » Checklist 6.7.3.1 - Leasing and Using Off-Campus Facilities (pdf)

# Minnesota State Board Policies and System Procedures (2)

- » Important: Board Policy 5.14, Part 5.
  - Subpart C. Board approval required:
    - The board must approve in advance:  
Contracts with a TCV of \$3,000,000 or greater or contract amendments, renewals, extensions, or options to renew such contract that would increase the TCV of a contract to \$3,000,000 or greater.

# Minnesota State Standard Contract Templates

- » The pre-approved templates and instructions can be found on the [Minnesota State Forms and Contract Templates webpage](#)- Bookmark this page!
- » Required Unless Other Form is Approved by Attorney General's Office (AGO) or Office of General Counsel (OGC)
- » Required by System Procedure 5.14.2 Consultant, Professional or Technical Services, and Income Contracts Part 4, Contract Preparation
  - Contracts must be prepared on forms approved by the system office to ensure 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 the review by 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's Office or the Minnesota Attorney General's Office.

# Minnesota State Standard Contract Templates



## 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

> Sourcing / Soliciting Proposals

> Other



# Facility Use Agreement Templates with Instructions (being updated for 2024)\*

1. Facility Use Agreement- On-Campus-General Purpose
2. Facility Use Agreement- On-Campus-with State Agencies or Boards
3. Facility Use Agreement- On-Campus- With University of Minnesota
4. Facility Use Agreement- On-Campus-Multi-facilities
5. Facility Use Agreement-On-Campus-Campus to Campus
6. Facility Use Agreement-Off-Campus-Owned by Third Party

\* Not a Lease. The agreements here are not a lease and are not designed to create a landlord – tenant relationship and should not be used when a lease is more appropriate.

# The Difference of Facility Use and Lease Agreements

- » The Minnesota State system operates approximately 28 million square feet throughout the state of Minnesota. As a general rule, use of college or university facilities by a third party requires a written agreement governing such use. Likewise, a written agreement is required whenever a college or university seeks to use or lease property off campus.
- » Facilities Use Agreements are primarily designed for short term use and possession of land or facilities (one year and less) either on or off-campus.
- » Lease Agreements are primarily designed for longer-term use and possession of land or facilities (longer than one year) either on or off-campus.
- » Read instructions for the applicable contract before drafting contract.

# Who Is Using Whose Facilities?

## Outside Party using Campus site:

- » One time, short-term or intermittent
- » Start with the appropriate Facility Use Agreement form on the [Minnesota State website](#)

## Minnesota State Institution Using a third party owned facility:

- » Start with the appropriate Facility Use Agreement form on the [Minnesota State website](#)

# 1. Facility Use Agreement-On Campus- General Purpose

- » The Agreement is to be used when parties unrelated to the college or university want to use on-campus facilities for short-term or sporadic use lasting less than one year. An Agreement should be executed and in place prior to a third party using a campus facility.
  - Limitations
    - Do not use the general on campus only agreement for other state agencies, the University of Minnesota, local or federal users of space on campus.
    - Do not use if a term of over one year is contemplated, for the latter, use a Minnesota State as Landlord Lease Agreement or contact Real Estate Services for assistance.
    - Do not use this agreement between campuses.
  - System Procedure 6.7.2: [Use of College and University Facilities \(College or University as Lessor /Landlord\)](#).
  - Related Documents: [Checklist 6.7.2.1 Leasing and Use of Minnesota State Facilities](#)



## 2. Facility Use Agreement- On Campus-State Agencies or Boards

- » To be used only when state agencies or boards (unrelated to Minnesota State) wish to use a Minnesota State facility for shorter-term or sporadic use and lasting less than one year. An Agreement must be executed and in place prior to a state agency or board use of a campus facility. Sample users: DEED, DNR, MNDOT, Board of Water and Soil, Dept. of Education, Office of Higher Education etc.
- » Do not use for University of Minnesota, local/municipal or federal users.
- » Do not use if a term of over one year is contemplated- use a Minn. State as Landlord Lease Agreement or contact Real Estate Services for assistance.
- » If State Agency or Board offers an Addendum or wants to change the contract, contact OGC or AGO.

# 3. Facility Use Agreement- On Campus-With University of Minnesota

- » The Agreement is to be used only when the University of Minnesota uses a Minnesota State on-campus facility for shorter-term or sporadic use lasting less than one year. The template has been specially negotiated and approved by both parties. An Agreement should be executed and in place prior to the University of Minnesota using a campus facility.
- » If the UMN sends an Addendum with Additional Terms to the Agreement, contact OGC or AG Office for review. If UMN requests Minnesota State to sign “their” template for using Minnesota State on-campus facilities, send this agreement to them instead.
- » Limitations: Specifically drafted for use only with the University of Minnesota (UMN) occupants, including the UMN extension. The UMN Foundations are separate legal entities and are distinct from the UMN. A standard on-campus Facilities Use Agreement can be used for UMN Foundations
- » System Procedure 6.7.2 [Use of College and University Facilities \(College or University as Lessor\)](#).
  - Related Documents
    - [Checklist 6.7.2.1 Leasing and Use of Minnesota State Facilities](#)

# 4. Facility Use Agreement-On Campus-Multi-Facilities

- » To be used when third parties not related to Minnesota State want to use multiple on-campus facilities for shorter-term or sporadic use lasting less than one year, such as for residential camps. An Agreement should be executed and in place prior to a third party using multiple campus facilities. These agreements are most commonly used for summer sport camps where there is use of residential, athletic and food facilities. This agreement is meant for programs that are operated by a separate legal entity (e.g. soccer associations, football, dance club) that wish to use multiple campus facilities.
- » A separate legal entity that is sponsoring the program should be the contract licensee and responsible for providing insurance. This agreement is not intended to be used for programs that are sponsored and actively run by the college or university. Faculty or staff that organize the event are not a substitute for a separate legal entity taking contract responsibility if that entity is responsible for providing the program.

## 5. Facility Use Agreement- On Campus- Minnesota State Campus to Campus

- » To be used to document relationships and sharing facility usage among our colleges and universities. This form should not be used for agreements with private parties, state agencies, school districts or boards, or with the University of Minnesota.
- » Unless all signatories to the document are employees of the Minnesota State Colleges and Universities system, the agreement shall be invalid and unenforceable.
- » For purposes of this agreement, the “HOST Campus” is the campus providing the facilities to be used, and the “GUEST Campus” is the campus using the facilities.

# 6. Facility Use Agreement- Off Campus- Owned by Third Party

- » This Facilities Use Agreement - Off-Campus Facilities is designed for short-term (from 1 day to a semester) use of an off-campus facility owned by a third party. Examples: when a campus holds class(es) at a high school, community center, conference center, or other special purpose facility located off-campus. Make sure you are contracting with the owner or property manager if using another site and clarify role, if appropriate.
  - Limitations
    - This agreement is intended for use in an off-campus location for short term (less than 1 year) use. This agreement can be offered when the property owner does not have a formal document they use for occupancy/use of space.
  - System Procedure 6.7.3: [Use Of Non-college and University Facilities \(College Or University As Lessee/Tenant\)](#).
  - Related Documents: Checklist 6.7.3.1 - [Leasing and Using Off-Campus Facilities](#) (pdf)

# Need to Know Difference: Lease Agreement

- » Generally, for longer-term use and possession of land or facilities (longer than one year) either on or off-campus.
- » Lease templates are available on Finance Forms and Templates webpage.
- » Policy 6.7 - [Real Estate Transactions and Management](#)
- » System Procedure 6.7.1 - [Acquisition and Disposition Of Real Estate](#)
- » System Procedure 6.7.2 - [Leasing College or University Property for Non-College and University Activities](#)
  - Checklist 6.7.2.1 - [Leasing and Use of Minnesota State Facilities](#) (pdf)
- » System Procedure 6.7.3 - [Use of Non-College and University Facilities \(College or University as Lessee/Tenant\)](#)
  - Checklist 6.7.3.1 - [Leasing and Using Off-Campus Facilities](#) (pdf)

# Not A Minnesota State Standard Contract 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."

# Caution

- » In general, watch out for contract provisions that require the college or university to adopt policies of the Lessee/other party or take on new responsibilities unless authorized by the Office of General Counsel (OGC) or Attorney General's Office (AGO).
- » In general, watch out for proposed use or Lease by others which may impact the college/university tax exempt status due to general obligation bonds. Contact System Director of Real Estate with any questions.
- » Watch out for any Conflict of Interest or Ethics issues as to the relationships with those your are contracting with.



# Parties To A Contract

- » Ensure the “Licensee” physical address is listed. Do not list a post office box in lieu of a street address. Verify and ensure the legal names of the other party and the campus or system office are used.
- » Be consistent with terms, e.g. use the same name for the other party throughout the document.
- » Make sure you are contracting with the owner or property manager if using another site and clarify role, if appropriate.

# Term Of Agreement

- » Have a fixed time period with beginning (effective) and end (termination) dates.
  - Include specific dates and time period for each day of use.
  - Pay attention if access is needed in advance or after for the “day(s) of use” and if applicable, revise dates accordingly.
- » Facility Use Agreements are generally for shorter terms and less than a year.
- » Avoid automatic renewal provisions and avoid complicated ways to reschedule dates if needed- be clear in drafting.

# Consideration And Payment (Fee)

- » Include rate of use (daily or total, etc.), how much for the services listed in the duties or consideration and terms of payment.
  - Follow any campus policies for fees as applicable. Be consistent in rates/fees to avoid criticism or favoritism.
  - One dollar is nominal fee (consideration).
- » Include in your agreement any clear budget breakdown for use of property or equipment if applicable.
  - Technology costs, catering costs, etc. if billing costs separately.

# What To Pay Particular Attention To

- » Space to be used, (equipment, catering, etc...);
- » Liability;
- » Government Data Practices Act;
- » Insurance;
- » Jurisdiction and Venue; and
- » Entire Agreement or “other provisions”
  - Include any exhibits such as insurance, completed space/map, etc.

# LIABILITY- Review Your Contract

- » Liability provisions in the contract templates vary and may depend upon who is using whose facility and for how long.
  - Contact OGC or AG office if there are proposed changes
- » Contract template language may require the other party (not Minn. State) to indemnify and hold harmless.
- » If asked, the STATE cannot indemnify other parties under Article XI, section 1 of the Minnesota Constitution and Minn. Stat. § § 16A.138 and 16A.15, subd. 3.
- » Never agree to indemnify anyone for anything.

# LIABILITY- Review Your Contract (2)

- » Some templates may include liability “compromise” language.
  - “MINNESOTA STATE and TENANT agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. MINNESOTA STATE'S liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law. “
  - Contact OGC or AGO if questions about changing any liability language in a template.

# Government Data Practices Act

- » Minnesota Government Data Practices Act (MGDPA) applies and is not dependent on who owns the facility or property being used by the other.
- » Good news: Each template has specific language included to comply with the law.
  - Licensee agrees to comply with the terms of the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13, in handling all data related to this Agreement.

# Governing Law And Venue

- » Minnesota State contracts provide that Minnesota law governs the contract and interpretation.
- » If other party is outside Minnesota or is another state, tribal or federal entity and wants its law to apply, Minnesota State Office of General Counsel and the Attorney General's Office can assist in negotiating or providing additional contract language.
  - Sample: “Notwithstanding the foregoing, this agreement shall not be construed to deprive the State of Minnesota of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations applying to the agreement as afforded by the State of Minnesota law.”
- » Venue for litigation of a contract (preferred)
  - “Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey, County, Minnesota.”



# Need to Know: Got Or Need Insurance?

- » Appropriate insurance provisions are included in Minnesota State standard contract templates,
  - However, if activity or risk is unusual, may require additional insurance requirements- ASK ahead of signing.
- » External Contracts should have any insurance provisions reviewed by Minnesota State Risk Management
  - Contact: Keswic Joiner, Minnesota State Director of Risk Management (651-201-1778) or the Department of Administration's Risk Management Office (651-201-2591)

# Contract Management

- » Delegated to campuses with system office assistance.
- » Rely on campus leadership and managers to negotiate, evaluate risk, (including reputational and casualty risks) and execute high value engagements.
- » Campus makes business decisions and manages contract for entire agreement term.
  - If not sure, ask for guidance from appropriate decision makers.
  - Finance and the Office of General Counsel review for statutory/policy/procedure and best practices.

# Decision Making And Accountability

- » Who has the big picture view of all contracting actions?
- » Who makes the decision for use of campus space, fees, etc.?
- » Who is the campus contract supervisor responsible for timely addressing problems, unsatisfactory work or issues related to use, possible breach or termination?
- » Who evaluates concerns, risks, performance and takes action?

# Confirm Authorized Signatures

- » Must have delegated authority to sign contracts to legally bind college/university;
- » [System Procedure 1A.2.2](#)
- » All required signatures from both parties for contract to be effective.
  - College/university is last to sign.
  - Review contract again before signing to ensure no changes have been made.
- » When System Vice Chancellor for Finance and Facilities Approval is Required
  - Required where the overall value is greater than \$100,000 or is expected to last longer than five (5) years, including all options to renew. The Vice-Chancellor for Finance and Facilities signs all easements and licenses or may delegate that authority as appropriate.

# Who To Call For Legal Services

- » President determines internal process, who on campus is authorized to seek legal advice.
- » Legal counsel may need to contact others on campus for information, etc.
  - Generally, advice is given only to administrators in order to protect attorney/client privilege.
- » Callers are directed to other appropriate resources as needed – e.g. Facilities, Academic and Student Affairs, Risk Management, IT Security.

# 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.

# What Remains Important Before You Finalize And Sign!

- » Description of facility/goods/services to be provided by college/university
  - Clear and understandable description of the dates, location, use, expected number of others to attend, access etc.. In the contract. Limit use of highly technical terms and jargon when possible.
- » Licensee's legal name, full address (not a PO Box), phone, email, fax
  - Verify current information
- » Contact person(s) for other party, name, title, address, phone, email
  - Verify current information, especially if anything differs from the second item above.
- » Date contract is to begin
  - This may or may not be the date the contract is signed, however standard Minnesota State contracts state "whichever occurs later." Do not allow access or use of space until the contract is "effective" and any insurance requirement in place.

# What Remains Important (2)

- » Date contract ends.
  - This refers to the date the contract would normally end unless terminated earlier for any reason. Please read your contract for termination date. (Resuscitation of dead contracts problems).
- » Other important dates (rescheduled availability options)
- » Dates should be clearly identified. Use full dates (ex. “June 3, 2023”) whenever possible. Add time/hours of use if applicable.
- » Has “facility use” started prior to execution of contract?
  - If the work or obligation to provide space has already started prior to the execution of the contract, complete the Minn. Stat. 16.A form found on the contract website. By law, contracts must be in place prior to Minnesota State taking on an obligation.



# What Remains Important (3)

- » Procedure for renewal clearly identified and understood?
  - Avoid “automatic renewals” or trigger periods to terminate or extend. Agreeing to “auto renew” may require additional contract management/monitoring. Best practice is to have a definite terminate date.
- » Clear description of amounts of money or other consideration for contract
  - Partial payment should be stated with due dates; tied to other amounts (e.g. Access, catering, equipment) should be stated in clear terms.
- » Rights, obligations, duties of every party clearly listed
  - Each party’s responsibilities identified in understandable wording.

# What Remains Important (4)

- » Time and place for access and use of facility.
  - If use of facility or access extends over a period of time, include dates if necessary.
- » If insurance is required, types and levels of coverage listed.
  - The Minnesota State Director of Risk Management and the State of Minnesota Risk Management office should be consulted if there are questions about the levels of coverage and/or carriers. Risk analysis – business, program, operational and reputational risks.
- » Assignment by either party must be approved in advance in writing.

# What Remains Important (5)

- » Has the contract been modified or required clauses deleted without AGO or OGC review?
  - Use most current template directly from Finance website each time you draft to avoid use of outdated forms. Ensure no changes are made. If there are changes by the third party, contact system legal counsel.
- » Avoid I'll sign yours if you sign ours!
- » Spelling, formatting, grammar, punctuation, math, and general appearance of document are professional and accurate.
  - Minnesota State is one of the largest higher education systems in the U.S. Your work product should reflect the professionalism expected of a college or university and which you will provide to others.

# What Remains Important (6)

- » Indemnification, attorney's fees, waiver of liability, waiver of statutes of limitations, clauses.
  - These types of clauses are not allowable because of state constitutional restrictions. Notify other party that these must be deleted.
  - AFTER attempting to have these deleted, if the other party refuses to agree, contact the system legal counsel (OGC or AGO) for further assistance.
- » Governed by laws of the State of Minnesota
  - Minnesota State colleges/universities/system office may not agree to be governed by the laws of another state. Contact OGC/AGO if other party wants different law to control.
- » Venue for suits in court located in Ramsey County
  - Contact OGC or AGO if other party is requesting mediation and arbitration clauses
- » Confidentiality provisions
  - Minnesota State cannot agree to keep information confidential if it is subject to public disclosure under the Minnesota Government Data Practices Act.

# Contacts and Resources

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» **Webpages:**

- [Office of General Counsel](#)
- [Contract Templates](#)

# Contact Information

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