



5/5/2022

Office of General Counsel

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# Enterprise Contracts: A Discussion

MINNESOTA STATE

# Presenters

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For purposes of this webinar Minnesota State contracts are referred to as Enterprise contracts. Non-Minnesota State contracts are referred to as External Umbrella contracts, although the external entities may title them differently.

This webinar is intended to be a general discussion of this topic and not a marketplace or procurement process training.



# Enterprise Contracts Are Our Future

- Minnesota State will enter into more enterprise-wide contracts.
  - Financial sustainability is important
  - Unified pricing – best price available to Minnesota State because of its size
  - Uniform terms - less work for individual campuses to support contract
  - Streamlines purchasing decision
  - Frees time for focus on mission
  - Reduce contract risk for campuses

# Longer Prep Time For Contracts

- Identifying common need and interest
- Solicitation for identifying vendor(s)
- Contract negotiation and vetting among our colleges and universities

# Enterprise Contracts Infrastructure

- Enterprise contracts are supervised centrally.
  - “Owner” campus/system office identified
  - Contract manager identified
- Supervisor of contract must establish a mechanism for campus feedback.
- Communication pathways need to be established and used.
  - Communication essential when there are problems sooner rather than later

# Enterprise Contracts Defined



# What is an Enterprise Contract?

- The System Office or a lead campus enters into a central Enterprise Contract.
- Minnesota State institutions including the System Office may purchase goods or services using the Enterprise Contract terms.
- Purchases are made using “Order Forms.”



# What Terms are in Enterprise Contracts?

- The Enterprise Contract will contain mostly “legal” terms governing topics such as liability, insurance, data management, and choice of forum.
- The Enterprise Contract may contain business terms, such as pricing schedules, delivery or transportation terms, installation requirements, etc..

# What is an Order Form?

- Order Forms are contracts used to purchase goods or services off an Enterprise Contract.
- An Order Form is not necessarily a basic form like an invoice.
- Order Forms go by a variety of names, including, but not limited to:
  - Scope of Work
  - Statement of Work
  - Joinder Agreement
  - Purchase Order
  - Addendum

# What Terms are in Order Forms?

- Order Forms contain mostly “business” terms, such as pricing and duties.
- Order Forms may contain “legal” terms such as term and termination of the Order Form.
- Order Forms terms should NOT conflict with or cancel out the terms of the Enterprise Contract.
- Order Forms are contracts and require legal review unless the Order Form is on a pre-approved template.

# Board Policy Applies to Both Enterprise Contracts and Order Forms

- Policy 5.14 Contracts and Procurement
- Procedure 5.14.2 Consultant, Professional or Technical Services
- Procedure 5.14.5 Purchasing

## Enterprise Contract

Contains mostly “legal” provisions (e.g. liability). May include pricing but not always.

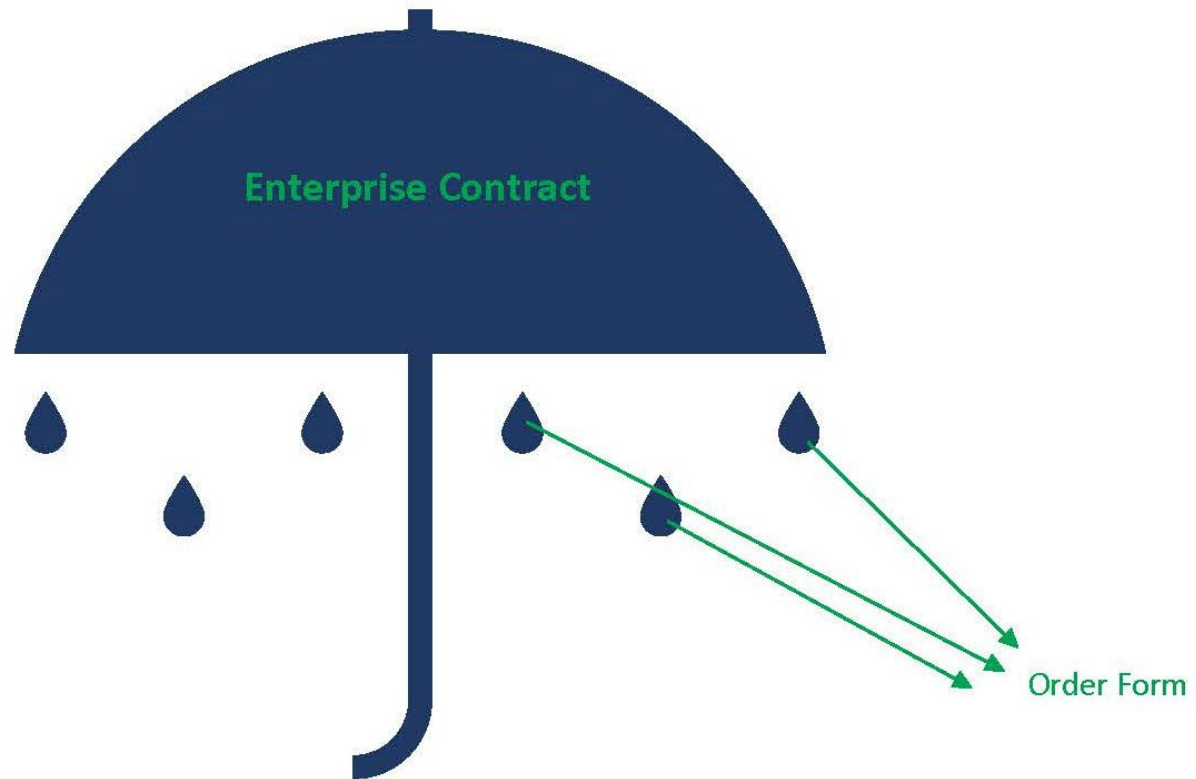
## Order Form\*

“Mechanism” for using the enterprise contract that addresses mostly “business” provisions specific to campus (e.g. price, duties specific to campus, duration). May also contain legal provisions.

\*Order forms can be called by numerous names such as purchase order, statement of work, work order, etc.



# Think of it Like an Umbrella



# Not all Contracts are Enterprise Contracts

- A contract with a vendor that multiple campuses do business with does not make it an Enterprise Contract.
- Sometimes vendors will entitle their contract “Master Services Agreement” for only one campus.
- An Enterprise Contract requires a set of central terms and a contractual mechanism to make subsequent purchases.
- An Enterprise Contract also requires a vendor’s approval and a lead contract manager on our end of the transaction.

# Multi-Campus Terms are Not Enterprise Contracts

- Multi-campus use contracts are NOT Enterprise Contracts.
- Every multi-campus contract is stand-alone. They are not connected to each other like Enterprise Contracts and Order Forms.
- Our Office will often negotiate common terms with specific third parties for campuses to use.
- Examples include pre-negotiated clinical affiliation agreements found on the OGC website.



# Examples

- System Office Enterprise Contracts (Internal)
- Lead Campus Enterprise Contracts (Internal)
- State of Minnesota “Master Contracts” (External)
  - Department of Administration (Admin)
  - Minnesota Information Technology (MNIT)
  - University of Minnesota
- Cooperative Purchasing Agreements (External)
  - Midwest Higher Education Compact (MHEC)
- Reminder: Vendor-Created Order Forms require legal review.

# System Enterprise Contracts (Minnesota State)



# Enterprise Contracts

- A contract negotiated by the system office or a group of campuses for optional or required use by all campuses within Minnesota State.
  - Campuses can subsequently enter into purchase orders or a similar mechanism in order to buy goods or services under the agreed upon terms.
- This means that one entity internal to Minnesota State, a designated lead campus, steering committee, or the System Office takes responsibility for, procurement and sourcing, negotiating, signing, and managing the requirements, conditions and terms of the contract.

# Why Create an Enterprise Contract?

- Pros
  - Leverages our size to get the best prices, value and most comprehensive services
  - Creates efficiency and reduces review and contract processing time
  - Creates efficiency and reduces demands for time on contract management responsibilities at the campus level
- Cons
  - Requires centralized contract management responsibility at a lead campus or the System Office if not already in place
  - Not every individual campus specific circumstance or concern may be addressed in each contract – some compromise may be necessary

# Lead Time

- Plan accordingly (procurement, negotiation, drafting, legal and other review(s))
- Hope for the best, plan for the worst
- Not every contract can be an emergency

# Creating a Minnesota State Enterprise Contract?

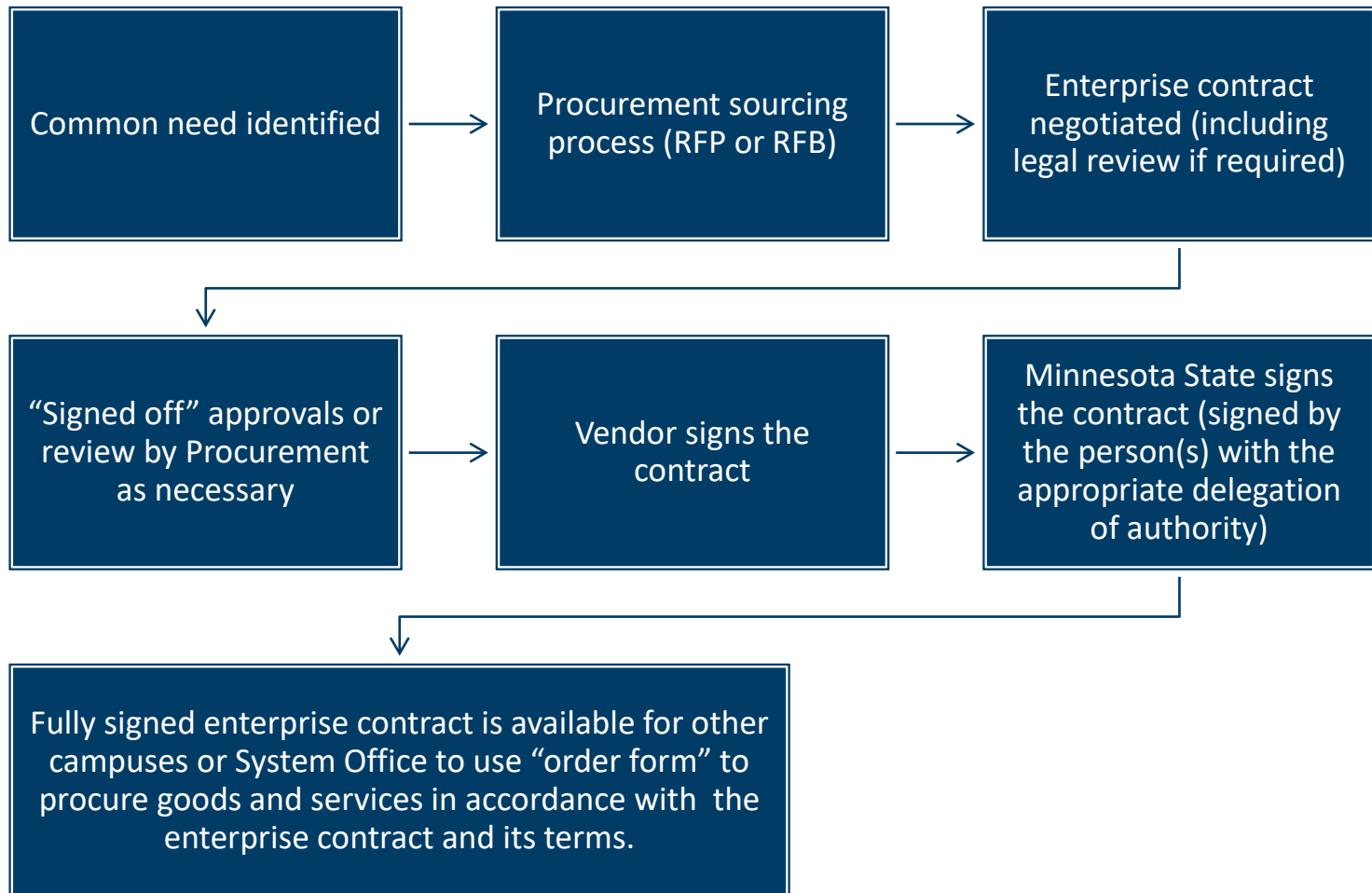
## Things to Consider

- Communication and thoughtful and intentional work on the front-end is important to creating a successful enterprise contract.
- Several campuses or the system office would identify a common need for goods, services, or both, as well as research what market rates may be for understanding costs and potential total contract and budget costs.
- The lead campus or the System Office would conduct a procurement sourcing process, such as an RFP or RFB.
- The enterprise contract would be negotiated by the System Office or the lead campus representatives.
  - This includes coordinating any legal sufficiency review and negotiation if necessary.

# Creating a Minnesota State Enterprise Contract? (2)

- “Signed off” approvals or review by Procurement, as necessary.
- Signature(s) by the person with the appropriate delegation of authority.
- Once the enterprise contract is signed by both the vendor and the lead campus/System Office (the parties), other campuses or System Office may use “order form” to procure goods and services in accordance with the enterprise contract and its terms.

# What the Process May Look Like





# Contract Management for Enterprise Contracts Internal to Minnesota State System

- The lead or Primary campus or System Office identifies an individual (or his/her successor) and takes responsibility for the contract and would maintain a line of communication with the vendor. Additionally, maintain point of contact within Minnesota State to address contract related issues and concerns, including total contract value during the contract duration.
  - Participating campuses should communicate regularly with each other

# Contract Management for Enterprise Contracts Internal to Minnesota State System (2)

- The campuses/System Office procuring via the Enterprise Contract would be responsible for keeping track of the individual purchase orders and encumbrances issued at its own campus/System Office.
- Consider term length carefully when putting out an RFP. In general, “Order Forms” cannot exceed the enterprise contract in duration of the length of the contract term or total encumbrance value if applicable.
- The lead campus or System Office would be responsible for soliciting for commonly needed goods and services in accordance with procurement and entering into a new enterprise contract at least every 5 years unless a longer term is approved by the VC-CFO.
- Communication between the contract supervisor and participating campuses is paramount.

# External Umbrella Contracts



# Board Policy Related to External Contracts

- **System Procedure 5.14.2**

- **Part 10. Intra-Agency and Inter-Agency Agreements, Joint Powers Agreements, and Master Contracts**

- Colleges and universities and the system office may enter into ... Minnesota Department of Administration master contracts, MN.IT Services master contracts, or Minnesota State Colleges and Universities master contracts without additional authorization from the board if such contracts or agreements do not exceed \$3,000,000

- **System Procedure 5.14.5**

- Bid solicitation is not required for purchases from Minnesota Department of Administration master contracts, MN.IT Services master contracts, Minnesota State Colleges and Universities master contracts, or through cooperative purchasing agreements listed on the system's official web site and authorized for use by the colleges and universities.

# External Contract Options



# Remember

- Use of external contracts only allows for bypass of the procurement compliance part of the process in Board Policy 5.14
- Substantive contract terms and provisions still need to be reviewed for both legal and business decisions, including risk
- Minnesota State is not a party to these contracts, so we do not have total control of their terms

# Pros & Cons of Using External Umbrella Contracts

## PROS

- May be faster and less time-consuming for a campus by avoiding the RFP process and higher limit for Board approval
- Wide variety of services and products may be instantly available
- Larger entities able to negotiate lowest possible pricing, even better than our system alone
- The external contract will generally contain more favorable terms than if negotiating with the supplier directly (e.g., no subcontractors without our approval, termination for non-appropriation, no waiver of sovereign immunity)

## CONS

- No control over expiration or renewal of master
- Sometimes require additional negotiation and addendum to meet Minnesota State requirements (e.g., accessibility, FERPA)
- Terms may not necessarily flow down to Minnesota State (e.g., limitation of liability or other warranties)
- Not every individual campus specific circumstance or concern may be addressed in each contract
- May not meet the legal requirements of Minnesota State (prevailing wage, workforce certificates if dollar threshold is met, data security)
- May create other risk (warranties, trying to combine a purchase from one umbrella contract with a separate services contract)



# When Using External Contracts, What Constitutes the “Contract”?

- The Umbrella Agreement (Minnesota State not a party, but incorporated by reference)
- The Order Form (Quote, SOW)
- A Purchasing Addendum or participating addendum or software addendum
- Any additional Statements of Work
- Any Service Level Agreements
- Any License Terms for Software
- Any other ordering document
- Other supporting materials – hardware specifications, published warranties, etc.
- ALL of this needs to be in Marketplace and sent for legal review together



# When Using External Contracts, What Constitutes the “Contract”?

- Part 1: The Umbrella contract itself and any exhibits
  - Minnesota State is generally not a party to this contract
  - E.g., MHEC contracts with Dell or Sourcewell contracts with US Foods
  - Minnesota State is a third party beneficiary as an eligible organization (make sure we are included in the definition)

Contract No.: MHEC-04152022

MASTER AGREEMENT  
BETWEEN  
MIDWESTERN HIGHER EDUCATION COMMISSION  
AND  
DELL MARKETING L.P.  
EFFECTIVE APRIL 15, 2022, through JUNE 30, 2025

THIS AGREEMENT, and amendments and supplements thereto, is made between the **Midwestern Higher Education Commission (hereinafter MHEC)** located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the **Eligible Organizations** located in the MHEC member states, and **Dell Marketing L.P.**, (hereinafter Dell or Supplier) One Dell Way, Round Rock TX, 78682. For purposes of this Master Agreement MHEC and Dell are referred to collectively as the “Parties” or individually as “Party”.

Sourcewell 

Solicitation Number: RFP #111621

CONTRACT

This Contract is between **Sourcewell**, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and **US Foods, Inc.**, 9399 W. Higgins Road, Suite 100, Rosemont, IL 60018 (Supplier).

# What Constitutes the “Contract”

- Part 2: A purchase order, order form, or other document joining or referencing the cooperative contract indicating what is being purchased
  - Will depend on what the umbrella agreement instructs
  - May simply be a purchase order referencing the cooperative contract
  - Or may have a sample order form attached

## 6. PARTICIPATING ENTITY USE AND PURCHASING

A. **ORDERS AND PAYMENT.** To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

## 5. Order Form:

“Order Form” means an order form, and all exhibits thereto, substantially in the form attached in the following Exhibits, that is mutually agreed upon in writing by Eligible Organization and Parchment for Services. Order Form shall reference MHEC contact number MHEC-01312021. Participating Exchange States may either agree to use the Parchment Exchange State Agreement, in substantially the form attached as Exhibit J, or Parchment and such Exchange State may agree to a state-specific services agreement, whereby Parchment will provide its Services to eligible schools within the Exchange State subject to an applicable Order Form for Services, that references the applicable pricing as set for in Exhibit A: Service List, and applicable Exhibits as noted below.

- A. Exhibit B: Parchment Award - District Records Services
- B. Exhibit C: Parchment Award Services
- C. Exhibit D: Parchment Receive Premium
- D. Exhibit E: Parchment Recruit
- E. Exhibit F: Parchment Exchange State Agreement



# What Constitutes the “Contract”

- Part 3: A Participating Addendum
  - An agreement between Minnesota state and the supplier/vendor
  - A way to include specially negotiated terms with the vendor or other special requirements (e.g., a minimum spend)
  - Also called purchasing addenda, specific member agreement (SMA)
  - Why legal counsel must be involved

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization’s state and/or institutional laws or regulations, the Eligible Organization and Dell may enter into an addendum to amend the terms and conditions of this Master Agreement to conform to the Eligible Organization’s state and/or institutional laws or regulations. Likewise, a Procuring Eligible Organization and Dell may enter into an addendum to supplement or modify this Master Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and Dell.



# What Constitutes the “Contract”

- Part 4: Other documents
  - Software licenses and/or terms and conditions
  - Service level agreements or other warranty documents

# Software Umbrella Contracts



# What do we mean by “Software”?

- Enterprise systems
  - D2L
  - NextGen
  - rSchoolToday
- Campus-specific products
  - Image Now
  - Salesforce
  - Oracle
  - Blackbaud
- Equipment with associated software
  - Dental equipment
  - Cash registers
- Downloadable / Cloud software
  - Microsoft Word
  - Adobe Photoshop
- IT Infrastructure
  - Virtual machines
  - Server software
  - Infrastructure-as-a-Service
  - Firewalls and other security applications
- Mobile or Desktop Apps
  - Dropbox
  - iPhone/Android Apps
- Websites
  - Facebook, Twitter, LinkedIn
- Web Services
  - Doodle Poll
  - Qualtrics

# Types of Software Umbrella Contracts

- Enterprise contracts or standing terms
  - The system negotiates the Terms of Service with a software vendor and campuses can purchase from a single contract
    - Some are mandatory (Office 365)
    - Others are optional (Salesforce, Blackbaud, etc.)
  - One campus negotiates a Terms of Service with a vendor and other campuses duplicate those terms. Each campus has its own contract.
- External umbrella contracts (cooperative contracts)
  - Buy directly from software manufacturer
    - Example: Sourcewell has a contract with Hyland Software. Without doing an RFP, Minnesota State could purchase Brainwire, a data extraction software, through this contract
  - Buy through an authorized reseller
    - Example: Sourcewell has a contract with the reseller SHI to obtain software at 4.5% off of list price. SHI is a reseller for over 335 third parties Without doing an RFP, Minnesota State could purchase Dragon speech recognition software (Nuance Software) through SHI.

# Using another Campus' Software Contract

- A signed contract in Marketplace does not guarantee that legal review or IT secure were completed.
  - Ask the campus who completed the contract who did the legal review
  - Send the documents to that same attorney
- Duplicating another College or University's contract does not eliminate the need for your institution to do an RFP.



# Software Umbrella Contract Requirements

- Only takes care of the procurement part of the process
  - System IT Security Review still needed
  - The Umbrella Contract's Terms still need to be reviewed for both legal and business decisions
  - Order Forms and SOW resulting from umbrella contracts operate as new contracts and require legal review if not on a Minnesota State template
- Keep an eye out for additional Terms of Use, EULA's, click-throughs, etc. These should be taken care of at the master contract level, and the vendor should not be asking you to sign additional terms other than the purchase order for the license.
- Otherwise similar to an enterprise contract for goods or services

# Contract Terminology: “Order Form” or “Work Order”

- Often used when a contract allows but does not require the purchase of a good or service.
- Frequently seen with software vendors who use a stock contract with all clients, but quantities, term and pricing will be specific to your institution on the Order Form
- You must treat ordering documents as a separate contract.
- Unless an order form is identical in terminology to an exhibit to an approved contract, it must be reviewed by system legal counsel in order to remove and include certain provisions in accordance with Minnesota law, and Federal law, and system policies.

# Contract Terminology:

## “Statement of Work (SOW)”

- Document(s) that are attached to the umbrella contract that list the specifics of the work, deliverables, locations, timelines, pricing, acceptance criteria and other requirements of a contractor in performing specific work.
- In the software context, an SOW is usually used for customization and or installation services.
  - E.g., a campus contract for a software license may have an SOW for the professional services piece of implementation and training.
  - Because SOW are usually services, they must be paid in arrears.
- SOWs can also be used in place of an order form or work order when placing an order against an existing contract.
  - E.g., the system office has a master contract for a wide variety of forensic services – a campus may use an SOW to engage a vendor for a specific project
- Must be reviewed by legal counsel and incorporated by reference into to the contract
- Like any contract, SOWs should be understandable to someone not involved in the project

# What Documents Constitute the Contract

- Example: ImageNow
  - May be purchased without an RFP through an external [contract between Sourcewell and Hyland](#)
    - Minnesota State is not a party to this contract, we are a 3<sup>rd</sup> party beneficiary
  - Any additional terms in a Participating Addendum, to be negotiated between the participating entity (us) and the Vendor (Hyland) – Section 6B of the contract
    - “Additional terms and conditions may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.”
  - An order form or other device used to actually place the order, referencing the Sourcewell/Hyland contract
  - Hyland’s license/EULA or SaaS agreement with Minnesota State for the software being purchased/licensed
  - Any other exhibits, SOW, addenda or documents

# Special Considerations with Software Resellers

- A reseller acts as the go-between between Minnesota State and a software publisher.
  - CDW-G
  - Dell
  - SHI
  - Carahsoft
- Sometimes Colleges and Universities purchase directly from a reseller, especially if no RFP is necessary or there is a single source exception
  - Example: A campus purchases a \$1500 seat license for a remote support tool through Carahsoft.
- Other times, Colleges and Universities use an external umbrella contract to substitute for an RFP and still purchase through a reseller.
  - Example: The system office purchases its VMWare-brand software from Dell through the Arrow Enterprise contract with MHEC. (Dell is an authorized reseller).

# Special Considerations with Software Resellers

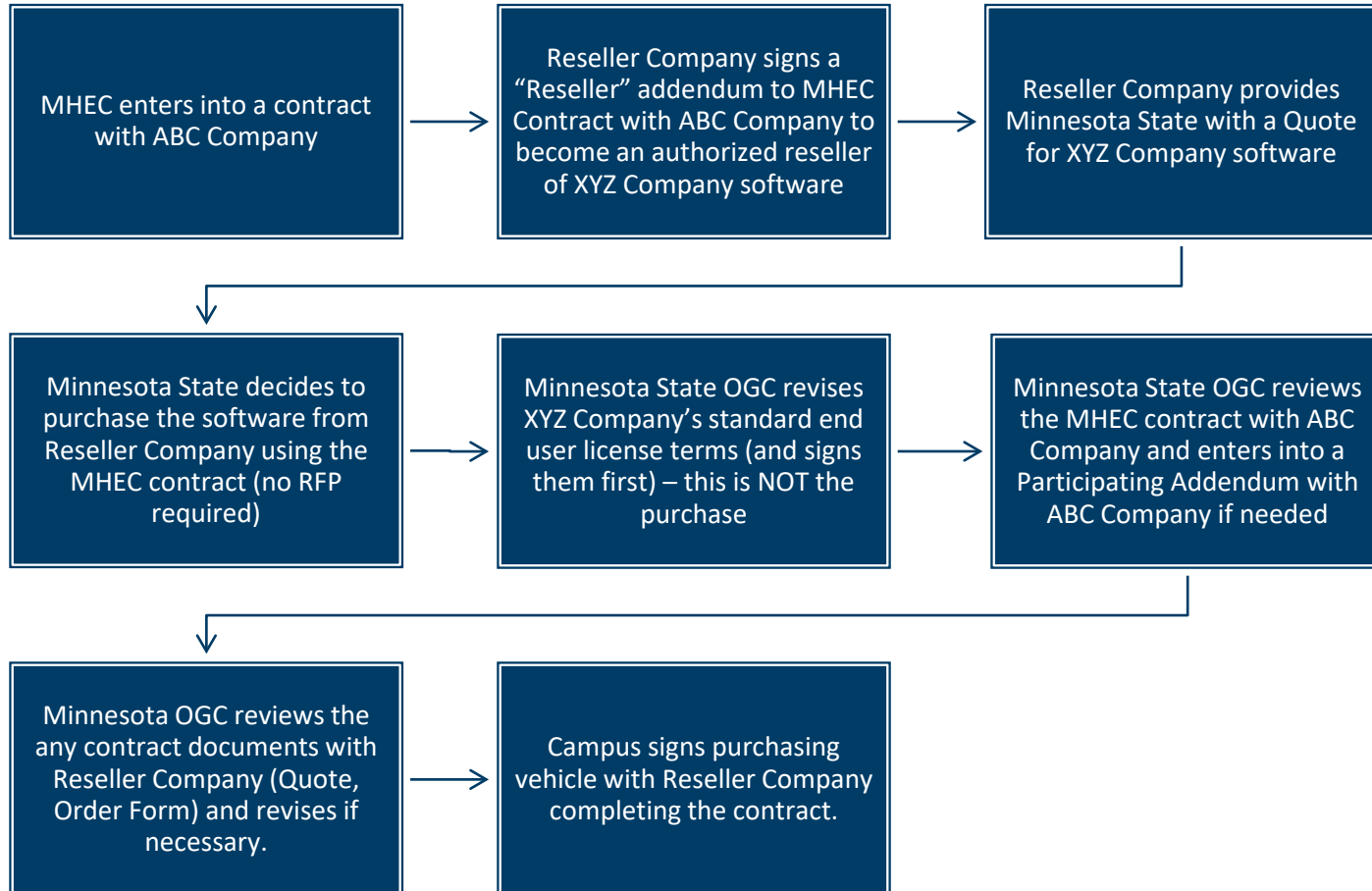
- The software being purchased will have a license for its use, and may also have Terms of Use, Terms and Conditions, or and End User License
  - These are all agreements that require legal review
- If you go through a reseller, you are not signing a contract with the publisher of the software. If the software's license or Ts and Cs needs revision, they will still need to be involved.
  - It can be complex to bind the software publisher when you do not have a contract with them

# Software Resellers and External Contracts

- Some external/cooperative contracts allow for purchase through a reseller
  - E.g., MHEC and Lenovo contract allows Resellers to sell Lenovo products
- The authorized reseller has to agree to the terms of the cooperative contract
  - Minnesota State's contract is with the Reseller

13. **Reseller:** refers to Resellers authorized by Vendor to resell Products and Services to Eligible Organizations in Member States, and which have agreed to the terms and conditions set forth herein, as evidenced by their execution of the form set forth herein as Attachment D. Vendor will certify and register Resellers by ensuring that when reselling to Eligible Organizations, Resellers adhere to terms no less material than those set forth in this Master Agreement. At any time during the term of this Master Agreement should MHEC protest the inclusion of a Reseller on this list for cause, Vendor will require that Reseller to undergo recertification. Vendor must maintain and provide a list of authorized Resellers to MHEC.

# Buying through a Reseller using an External Contract may look like





# Beware of Additional Terms in Order Forms



2000 Daniel Island Drive, Charleston SC 29492-7541

## Order Form

Site ID:  
Order Number:

Bill to:	Sold to:	Valid Until:
		Currency: USC
		Payment Terms: NT15

### Subscriptions

Price:	
Billed: Annual	
Contract term:	

### Services

Price:	
Billed: 50% Up Front/ 50% in 90 Days	

**New order totals:**

### General Terms

Enter text here to overwrite the above PO Number or add a note to the invoice: {{{xsl\_es\_signer1string(maxlen=35)}}

The fees and terms on this Order Form are valid until xxx/xx/xxxx. This Order Form is governed by the [Blackbaud Solutions Agreement](#) and applicable terms and conditions in the [Online Terms and Conditions Center](#), and by signing this Order Form You agree to these terms.

**Renewals:**

*Unless You notify Blackbaud in writing of Your desire to cancel at least forty-five (45) days prior to the start of the upcoming renewal term, Your Subscription shall renew for consecutive terms equal in length to the initial term. Renewal fees or Subscription pricing for renewal terms are subject to a reasonable adjustment.*

**Fees, Expenses and Payment:**

- Fees, Duties, and Taxes.** Fees for Solutions are set forth in this Order Form, exclusive of taxes. Unless Blackbaud has a current and valid tax exemption certificate on file, You will be responsible for all applicable taxes.
- Expenses.** If Blackbaud incurs reasonable travel and living expenses to perform Your Services, You are required to reimburse Blackbaud for such expenses pursuant to Blackbaud's then-current travel policy, available to You upon request.
- Invoices.** The initial invoice for Your Solutions is issued immediately following Order Form signature. All other invoices shall be issued as follows: (i) invoices for Services will be issued in accordance with the applicable SOW, (ii) pro forma invoices for upcoming Subscription renewals shall be sent to You at least sixty (60) days prior to the start of the renewal term; (iii) and unless terminated in compliance with the Suspension/ Acceptable Use Policy (Section 3(a) of the Blackbaud Solutions Agreement), final renewal invoices for Subscriptions will be issued at least thirty (30) days prior to the start of the renewal term.
- Payments and Late Payments.** Payment is due as stated in this Order Form. All payments are non-refundable except in the event of Our unsecured material default under this agreement. If You believe an invoice is inaccurate, You must notify Blackbaud in writing within thirty (30) days from the date of such invoice. Except for amounts subject to a good faith dispute, We may invoice You an interest rate allowable under applicable laws for any outstanding invoice not paid when due.

Our records indicate that You are Tax Exempt. You will not be charged sales tax on Your orders as long as Your exemption certificate has not expired. If it has expired, send the new certificate to: [SalesTaxExemptCertificates2@blackbaud.com](mailto:SalesTaxExemptCertificates2@blackbaud.com).

You acknowledge that certain aspects of Our Solutions interface with and share client content with partner applications purchased by You from third parties ("Partner Applications"). We make no warranty with respect to any Partner Applications, and We shall have no liability should client content become unavailable from such Partner Applications for any reason. Your use and remedies with respect to such Partner Applications shall be pursuant to the applicable third-party agreements in place between You and the third-party provider of the Partner Application.

**Scopes of Work**

The Professional and Consulting services charges listed on this Order Form are for this purchase only and are subject to the [Professional and Consulting Services General Terms](#). Information specific to the Professional and Consulting services project, or work, can be found in the applicable Statement(s) of Work (SOW).

**Project Contact Name:**

Enter text here to overwrite the above Project Contact Name: {{{projConName\_es\_signer1string}}}

**Project Contact Email:**


Enter text here to overwrite the above Project Contact Email: {{{projConEmail\_es\_signer1semail}}}

Blackbaud Confidential | 2000 Daniel Island Drive, Charleston, SC 29492 Page 2 of 3

### Signatures

IN WITNESS WHEREOF, the parties have caused this Order Form to be executed by their duly authorized representatives.

AGREED:

Client: <b>Bemidji State University Foundation</b>	Blackbaud, Inc.
By: {{{_es_signer1signature}}}	
Name: {{{_es_signer1fullname}}}	Name: Kevin Gregoire
Title: {{{_es_signer1title}}}	Title: President, Enterprise Business Unit
Date: {{{_es_signer1date}}}	Date: 12/4/2019

(\*Effective Date)

All proposed modifications, variations, edits, or additions to this Order Form are objected to and deemed material unless otherwise mutually agreed to in writing.

Blackbaud Confidential | 2000 Daniel Island Drive, Charleston, SC 29492 Page 3 of 3

# Order Form Links to Standard (Non-Negotiated) Terms

- **General Terms**

The fees and terms on this Order Form are valid until xx/xx/xxxx. This Order Form is governed by the [Blackbaud Solutions Agreement](#) and applicable terms and conditions in the [Online Terms and Conditions Center](#), and by signing this Order Form You agree to these terms.

- **Scopes of Work**

The Professional and Consulting services charges listed on this Order Form are for this purchase only and are subject to the [Professional and Consulting Services General Terms](#). Information specific to the Professional and Consulting services project, or work, can be found in the applicable Statement(s) of Work (SOW).

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### Renewals:

*Unless You notify Blackbaud in writing of Your desire to cancel at least forty-five (45) days prior to the start of the upcoming renewal term, Your Subscription shall renew for consecutive terms equal in length to the initial term. Renewal fees or Subscription pricing for renewal terms are subject to a reasonable adjustment.*

### Fees, Expenses and Payment:

- Fees, Duties, and Taxes. Fees for Solutions are set forth in this Order Form, exclusive of taxes. Unless Blackbaud has a current and valid tax exemption certificate on file, You will be responsible for all applicable taxes.
- Expenses. If Blackbaud incurs reasonable travel and living expenses to perform Your Services, You are required to reimburse Blackbaud for such expenses pursuant to Blackbaud's then-current travel policy, available to You upon request.
- Invoices. The initial invoice for Your Solutions is issued immediately following Order Form signature. All other invoices shall be issued as follows: (i) invoices for Services will be issued in accordance with the applicable SOW; (ii) pro forma invoices for upcoming Subscription renewals shall be sent to You at least sixty (60) days prior to the start of the renewal term; (iii) and unless terminated in compliance with the Suspension, Acceptable Use Policy (Section 3(a) of the Blackbaud Solutions Agreement), final renewal invoices for Subscriptions will be issued at least thirty (30) days prior to the start of the renewal term.
- Payments and Late Payments. Payment is due as stated in this Order Form. All payments are non-refundable except in the event of Our uncured material default under this agreement. If You believe an invoice is inaccurate, You must notify Blackbaud in writing within thirty (30) days from the date of such invoice. Except for amounts subject to a good faith dispute, We may invoice You an interest rate allowable under applicable laws for any outstanding invoice not paid when due.

Our records indicate that You are Tax Exempt. You will not be charged sales tax on Your orders as long as Your exemption certificate has not expired. If it has expired, send the new certificate to: SalesTaxExemptCertificates2@blackbaud.com.

You acknowledge that certain aspects of Our Solutions interface with and share client content with partner applications purchased by You from third parties ("Partner Applications"). We make no warranty with respect to any Partner Applications, and We shall have no liability should client content become unavailable from such Partner Applications for any reason. Your use and remedies with respect to such Partner Applications shall be pursuant to the applicable third-party agreements in place between You and the third-party provider of the Partner Application.

### Scopes of Work

The Professional and Consulting services charges listed on this Order Form are for this purchase only and are subject to the [Professional and Consulting Services General Terms](#). Information specific to the Professional and Consulting services project, or work, can be found in the applicable Statement(s) of Work (SOW).

### Project Contact Name:

Enter text here to overwrite the above Project Contact Name: {{projConName\_es\_signer1.string}}

### Project Contact Email:

Enter text here to overwrite the above Project Contact Email: {{projConEmail\_es\_signer1.isemail}}



# Beware of Additional Terms on Quotes

## Important Notes

### Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to [Tax\\_Department@del.com](mailto:Tax_Department@del.com) or [ARSalesTax@emc.com](mailto:ARSalesTax@emc.com), as applicable.

**Governing Terms:** This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at [www.dell.com/terms](http://www.dell.com/terms) or [www.dell.com/oemterms](http://www.dell.com/oemterms)), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

**Supplier Software Licenses and Services Descriptions:** Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on [www.Dell.com/eula](http://www.Dell.com/eula). Descriptions and terms for Supplier-branded standard services are stated at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) or for certain infrastructure products at [www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm](http://www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm).

**Offer-Specific, Third Party and Program Specific Terms:** Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on [www.dell.com/offerspecificterms](http://www.dell.com/offerspecificterms) ("Offer Specific Terms").

**In case of Resale only:** Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

**In case of Financing only:** If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

- If customer issues a purchase order for the quoted items, that constitutes a contract
- The quote is subject to a separate written agreement between the Supplier and Customer "to the extent applicable," or to Dell's standard terms of Sale



# Issues with Standard Terms in Order Forms

- Indemnification
- Confidentiality
- Negotiated Security Clauses
- Arbitration
- New York law; Texas law
- Constantly Updating
  
- Not just an issue with software contracts

# Contact Information

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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.

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