



November 18, 2021

Office of General Counsel

Facility Use and Lease Agreements

Mary Al Balber

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MINNESOTA STATE

Next Month's (Bonus) Presentation December 2, 2021

The Facts About HIPAA

Assistant General Counsel Daniel McCabe will discuss: 1) the basics of HIPAA and how it applies to Minnesota State; 2) common HIPAA misconceptions; 3) what campuses need to do if they add HIPAA covered functions.

For more information email Amanda Bohnhoff at
Amanda.Bohnhoff@minnstate.edu



Next Month's Presentation

December 9, 2021

Crisis Management

Presented by Gary Cunningham, General Counsel and Noelle Hawton, Chief Marketing and Communications Officer

For a complete listing of the Fall and Spring Second Thursday topics, please visit the [Office of General Counsel's website](#).

For more information email Amanda Bohnhoff at Amanda.Bohnhoff@minnstate.edu



Session Overview

- Why Good Contracts Are Necessary
- Compliance
 - Board Policies and System Procedures
- Using system template agreements
 - Where to find them
 - **Facility Use vs. Lease Agreements** – which template to use
 - What to do if not an approved template
- Critical 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 (2)

- More:
 - Legal review – how you can help
 - What remains important
 - Ethics and conflict of interest
- Contacts and Resources

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



Lead Time

- Plan accordingly—expect the best and plan for the worst.
- Have signed contracts in place in plenty of time to be able to successfully perform the work.
- Use System templates and forms.
 - Resist changing footer.
- Allow time for negotiation.
- Read Agreement.
- 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 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 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

GALLERY  GRID

< 1/7 >



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, 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
 - [Procedure 6.7.2 - Campus as Lessor](#)
 - [Procedure 6.7.3 - Campus as Lessee](#)

Minnesota State Board Policies and System 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.

Minnesota State Standard Contract Templates


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 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.

Facilities Division webpage

Facilities

The Facilities Unit provides campus support for diverse and complex services relating to the buildings, land and overall environment of the 54 campuses, which includes planning, acquiring, disposing of, financing, constructing, and managing campus land and improvements. The staff ensures colleges and universities have the right space at the right time and that students, faculty, staff, and visitors are kept safe, warm and dry. Sub-units include:

- 
- [Capital Development](#)
 - [Design and Construction](#)
 - [Insurance/Risk Management](#)
 - [Public Safety and Compliance](#)

Click here for [on-campus facilities contacts](#).

> Announcements

> Capital Budget Request

> Capital Improvement Projects

> Contract Templates

> Solicitations

Finance Home

Facilities

Financial Planning

Financial Reporting

Procurement

Tax



Capital Development

Capital Development

Capital Development is responsible for the sustainable financing (capital budget, revenue fund), capital planning and transactional work (real estate, energy, space use) necessary for our colleges and universities.

> Capital Budget

> Capital Planning

> Revenue Fund

> Real Estate

> Space Use and Building Conditions

> Sustainability

Finance Home

Facilities

Financial Planning

Financial Reporting

Procurement

Tax



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.

Thank you for visiting!

> Clinical Agreement

> Design & Construction

> Goods & Services

> Facilities & Lease Agreements

> Sourcing / Soliciting Proposals

> Other



Facilities Use and Lease Agreement Templates

Facilities & 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 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. ([Facilities Use FAQ, April 2018](#))

Easement and Licenses are interests in land most often requested by municipal or utility companies across or on our campuses. An easement or license should be used whenever a person or entity requests the placement of utilities (electrical, gas, stormwater, sewer), road right of way, wetlands, etc. on our campuses. Our standard easement agreement is revocable.

Point of Contacts:

Subject Matter: Paul Harrington at Paul.Harrington@MinnState.edu

Office of General Counsel: Mary Al Balber, MaryAl.Balber@MinnState.edu

Number	Name	Description	Updated
1	Facilities Use Agreement	Instructions General Use, On Campus	5/2018
2	Facilities Use Agreement Minnesota State	Instructions State Agencies, On Campus Only	5/2018
3	Facilities Use Agreement Minnesota State	Instructions University of Minnesota on Minnesota State Campus Only	5/2018
4	Facilities Use Agreement Multi-facilities	Instructions On Campus Only	5/2018
5	Facilities Use Agreement Campus-to-Campus	To be used between Minnesota State Campuses; Short Term (less than 1 year)	06/2018
6	Facilities Use Agreement Off-Campus	Instructions Off-Campus	05/2018
7	Lease Agreement	Campus-to-Campus	12/2012
8	Lease Agreement	Minnesota State as Landlord	12/2012
9	Lease Agreement	Minnesota State as Tenant with Leasehold Improvements	12/2012
10	Lease Agreement	Minnesota State as Tenant without Leasehold Improvements	12/2012
11	Lease Agreement	Transfer of Ownership	
12	License Agreement	in lieu of easement	
13	Standard Easement Agreement		



Facility Use and Lease Agreements

The pre-approved templates and instructions can be found on the [Minnesota State Forms and Contract Templates webpage](#)- **Bookmark this page!**

- 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 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.
 - [Facilities Use FAQ, April 2018](#)
- 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](#)



Facility Use Agreement Template

General Use, On Campus—use by others

This Facilities Use Agreement - On-Campus Only, replaces the formerly titled “Occupancy Agreement.” 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.
- USE THE OTHER TEMPLATES FOR INTER-AGENCY, UNIV OF MN, AND OTHERS FOUND ON CONTRACT WEBPAGE, IF APPLICABLE
- **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**

INSTRUCTIONS FOR MINNESOTA STATE FACILITIES USE AGREEMENT – ON-CAMPUS ONLY -- GENERAL PURPOSE

Use

This Facilities Use Agreement - On-Campus Only, replaces the formerly titled "Occupancy Agreement." 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 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).

<http://www.minnstate.edu/board/procedure/607p2.html>

Related Documents: Checklist 6.7.2.1 Leasing and Use of Minnesota State Facilities

<http://www.minnstate.edu/board/procedure/6-07p2g1.pdf>

Document Details

Agreement Numbering – Use "F" (for "Facilities") followed by the three digit campus ID, the last two digits of the fiscal year that the agreement starts, and sequential numbering based on the order the agreement was started.

- (example: F-203-1801 refers to the first agreement at Alexandria Technical College in FY18)
- If more than one agreement is starting at the same time, use the largest agreement (in square footage) as the first number

Approval authority

Check signature authority.

College and university presidents and the Director, Capital Development, Real Estate Services, may enter into real estate agreements that are valued at \$100,000 or less and for five (5) years or less in length (including all renewal options), using Minnesota State standard forms. Facilities Use Agreement – On-Campus Only, is for shorter-term or sporadic use lasting less than one year use only. The College or University shall maintain copies of all Agreements. Agreements may be provided to system office at the discretion of a College or University or upon request from the system office.

Special Notes

- **Not a Lease.** The agreement is not a lease and is not designed to create a landlord – tenant relationship, and should not be used when a lease is more appropriate.
- **Insurance.** User of space is required to provide evidence and maintain adequate insurance. If in doubt, contact System Office Real Estate Services, 651.201.1775 or 651.201.1539, or the Director of Risk Management at 651.201.1778.
- **Encumbrance.** If the campus expends funds to prepare the space for a User, the campus must encumber the funds for that purpose

Instructions for Completion of Minnesota State approved template:

- **Instructions for completing the *Facilities Use Agreement - On-Campus Only* template are in italics and brackets. Please complete every field and delete all instructions, including the brackets.**
- Any modification of forms approved by the System Office or the use of a non-system office form requires 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 or the Minnesota Attorney General's Office. Real Estate Services is located within Facilities in the System Office - Finance Division.
- **Questions.** Users with questions about this agreement should contact the System Office Real Estate Services, 651.201.1775 or 651.201.1539.

End of document ■



MINNESOTA STATE

FACILITIES USE AGREEMENT

ON-CAMPUS ONLY

THIS FACILITIES USE AGREEMENT is between the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of [insert campus name and address] ("Minnesota State") and [insert name, legal entity and legal address here] ("Licensee").

1. **FACILITIES.** For purposes of this Agreement, "Facilities" shall mean:

[Identify Building Location, and Describe the Room Number and square footage]

Parking will be available to Licensee at the following location: [describe or identify parking areas and any restrictions].

2. **GRANT OF LICENSE.** Minnesota State grants to Licensee a license to use the Facilities solely for the following purpose(s):

[insert specific description of use]

The estimated number of people expected to participate or attend is: [insert number].

Licensee acknowledges and agrees that Minnesota State, its agents, employees, invitees, licensees and students may use any portion of the Facilities for any purpose whatsoever and at any time during the term of the Agreement, provided that such use shall not unreasonably disturb Licensee's use of the Facilities as provided in this Agreement. Licensee shall use the Facilities in accordance with the terms and conditions of this Agreement, all



Facility Use Agreement Template- on campus only

F.Y. _____ Cost Center _____ Obj. Code _____ Amount _____ Vendor # _____ P.O. # _____



THIS FACILITIES USE AGREEMENT is between the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of [insert campus name and address] ("Minnesota State") and [insert name, legal entity and legal address here] ("Licensee").

1. FACILITIES. For purposes of this Agreement, "Facilities" shall mean:

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Parking will be available to Licensee at the following location: [describe or identify parking areas and any restrictions].

2. GRANT OF LICENSE. Minnesota State grants to Licensee a license to use the Facilities solely for the following purpose(s):

[insert specific description of use]

The estimated number of people expected to participate or attend is: [insert number].

Licensee acknowledges and agrees that Minnesota State, its agents, employees, invitees, licensees and students may use any portion of the Facilities for any purpose whatsoever and at any time during the term of the Agreement,

provided that such use shall not unreasonably disturb Licensee's use of the Facilities as provided in this Agreement. Licensee shall use the Facilities in accordance with the terms and conditions of this Agreement, all Minnesota State policies and procedures including all federal, State and local laws, ordinances, rules and regulations.

The parties agree that this agreement does not create a landlord-tenant relationship between them. Minnesota State is permitting Licensee to use the Facilities according to the terms of this Agreement. It is specifically understood that the permission to use the Facilities and the period of use are not exclusive to Licensee, and Minnesota State shall have the right to enter and use the Facilities at all reasonable times for purposes of inspecting the same or for such other purposes as may be required by Minnesota State.

3. TERM AND TIME OF USE. Licensee may use the Facilities during the following dates and times:

[insert specific dates and times]

4. FEE. For its use of the Facilities, Licensee agrees to pay to Minnesota State a fee of INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS (e.g. One Hundred Twenty and 00/100 Dollars (\$120.00)). IF NONE, INSERT "Zero Dollars (\$0.00)">\$_____, which amount shall be payable in advance when Licensee signs this Agreement and delivers it to Minnesota State. Except as set forth in paragraph 17, if the Minnesota State cancels this Agreement prior to Licensee's use of the Facilities, Minnesota State will refund the fee to Licensee.

5. NOTICE AND CONTRACT ADMINISTRATION.

All notices, requests, and other communications between Licensee and Minnesota State that are required or that Licensee and Minnesota State elect to deliver shall be deemed sufficiently given or rendered if in writing and delivered to either party personally, by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, (return receipt required) addressed as follows:

COLLEGE/UNIVERSITY: _____
Contact Name and Title: _____
Address: _____
Licensee: _____

Contact Name and Title: _____
Address: _____

6. MAINTENANCE OF FACILITIES. Licensee agrees to maintain the Facilities in a clean and sanitary condition. After Licensee finishes using the Facilities, Minnesota State will inspect the Facilities and make any repairs or replace any missing or destroyed property, as it deems appropriate. Minnesota State will then submit an invoice to Licensee for the repairs or replacement of missing items, which Licensee agrees to pay within thirty (30) days. However, if the cost of repairs or replacement is estimated to exceed \$500, Minnesota State shall be entitled to obtain payment of such amount from Licensee in advance. This provision will survive the termination of this Facilities Use Agreement.

7. RULES AND REGULATIONS. Licensee agrees to honor and abide by all rules and regulations set forth by Minnesota State during its occupancy of the Facilities.

8. LICENSEE'S INSURANCE. Licensee shall not occupy the Space under this Agreement until Licensee has obtained, at its sole expense, general liability and property damage insurance requirements as described below and naming both Minnesota State Colleges and Universities and [insert university or college name and address] as additional insured, and has provided a certificate of insurance to Minnesota State and said insurance has been approved by Minnesota State/State of Minnesota. All policies shall remain in force and effect throughout the term of this Agreement. If this Agreement is signed by Licensee less than thirty (30) days prior to the event, Licensee shall submit such evidence of insurance upon the signing of this Agreement. **No occupancy or use by Licensee may take place until satisfactory evidence of insurance coverage is provided to Minnesota State.**

GENERAL INSURANCE REQUIREMENTS

POLICY REQUIREMENTS

1. Workers' Compensation Insurance
 - A. Statutory Compensation Coverage
 - B. Coverage B – Employers Liability with limits of not less than:
 - \$100,000 Bodily Injury by Disease per Employee
 - \$500,000 Bodily Injury by Disease Aggregate
 - \$100,000 Bodily Injury by Accident
2. General Liability Insurance
 - A. Minimum Limits of Liability:
 - \$2,000,000 – Per Occurrence

Facility Use Agreement

Template- on campus only (2)

\$2,000,000 – Annual Aggregate
 \$2,000,000 – Annual Aggregate applying to Products/Completed Operations

B. Coverages:

- Premises and Operations Bodily Injury and Property Damage
- Personal & Advertising Injury
- Blanket Contractual
- Products and Completed Operations
- Other; if applicable, please list _____
- State of Minnesota or Minnesota State Colleges and Universities named as Additional Insured

Additional Insurance Conditions

- Licensee's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the Licensee's performance under this Agreement.
 - Licensee agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Licensee's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota
 - Licensee is responsible for payment of Agreement related insurance premiums and deductibles.
 - If Licensee is self-insured, a Certification of Self-Insurance must be attached.
 - Licensee's policy(ies) shall include legal defense fees in addition to the liability policy limits.
 - Licensee shall obtain insurance policy(ies) from insurance company(ies) having an "AM Best" rating of A- (minus), Financial Size Category of VII or better, and authorized to do business in the State of Minnesota.
 - An Umbrella or Excess Liability insurance policy may be used to supplement the Licensee's policy limits to satisfy the full policy limits required by the Agreement.
9. **LIABILITY AND HOLD HARMLESS.** Licensee shall indemnify and hold Minnesota State harmless for any suits, actions or claims, whether formal or informal, direct or indirect, for injury, death, property damage or loss, including loss as a result of theft or misappropriation, made by or on behalf of any person or persons, firm or corporation arising out of or relating to the conduct, management or use of the Facilities by Licensee or arising out of any work or thing done in or about the Facilities or structures or equipment in

the Facilities when such has been authorized by Licensee, except as such injury, death or property damage or loss is attributable solely to Minnesota State's negligence as determined by a court of law. This provision will survive the termination of this Agreement.

10. **MINNESOTA DATA PRACTICES ACT.** 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.
11. **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE.** Licensee agrees that in occupying the Facilities, it is responsible for complying with the Americans with Disabilities Act, 42 U. S. C. section 12101, et seq., and any regulations promulgated pursuant to the Act. Minnesota State IS NOT responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services, or other areas covered by the ADA.
12. **AUDIT.** The books, records, documents, and accounting practices and procedures of Licensee relevant to this agreement shall be subject to examination by Minnesota State, and either the Minnesota Legislative Auditor or Minnesota State Auditor for a period of six (6) years following the termination of this Agreement.
13. **NO ASSIGNMENT; AMENDMENTS.** Licensee shall neither assign nor transfer any rights or obligations under this agreement without the prior written consent of Minnesota State. All amendments to this agreement shall be in writing and executed by a duly authorized representative of each party.
14. **CANCELLATION.** This agreement may be canceled by either party at any time, for any reason, upon ten (10) days written notice to the other party.
15. **NON-WAIVER.** No waiver by any party of a default or non-performance by the other party shall be deemed a waiver of any subsequent default or non-performance.
16. **SECURITY.** Licensee hereby assumes all responsibility for security throughout its use of the Facilities.
17. **DEFAULT.** In the event of any default by Licensee under the terms of this Agreement, Minnesota State may immediately terminate this Agreement and retain the license fee, in addition to any other remedies at law or in equity to which the Minnesota State may be entitled. The parties agree that the amount of damages in the event of a breach are uncertain, and the license fee is a reasonable estimate of such damages.

18. **GOVERNING LAW and VENUE.** This Agreement, including all exhibits, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. 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.
19. **ENTIRE AGREEMENT.** This Agreement is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.
20. **OTHER PROVISIONS** (Attach additional pages as necessary): Please see Addendum to the Facilities Use Agreement attached and incorporated into this agreement. *[if no other provisions or an Addendum, write "NONE"]*

SIGNATURE BLOCK IS ON NEXT PAGE

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed intending to be bound thereby.

APPROVED:

1. **LICENSEE:** Click here to enter text
 Licensee certifies that the appropriate person(s) have executed the Agreement on behalf of Licensee as required by applicable articles, bylaws, resolutions, or ordinances.

By (authorized signature)
Title
Date

3. **VERIFIED AS TO ENCUMBRANCE** (if applicable)

By (authorized signature)
Title
Date

2. **MINNESOTA STATE:** STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES ON

4. **AS TO FORM AND EXECUTION**

By (authorized signature)



Facilities Agreement Template

Off Campus and Owned by Third Party

This Facilities Use Agreement - Off-Campus Facilities Only 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.

- 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](#)

Facilities Agreement Template- Off Campus & Owned by Others

F.Y.	Cost Center	Obj. Code	Amount	Vendor#	P.O.#



FACILITIES USE AGREEMENT OFF-CAMPUS FACILITIES ONLY

THIS FACILITIES USE AGREEMENT is between the *[insert legal name of Owner/Licensor]* ("Licensor"), *[insert LICENSOR legal address including city and state. This may or may not be different from location of the space]* and the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities, on behalf of *[insert COLLEGE / UNIVERSITY NAME and address]* ("Minnesota State").

1. **PERMITTED USE.** Licensor agrees to allow Minnesota State use of the following (hereinafter defined as the "Space"):

Location: *[Insert Full Address, including any suite or room numbers]*
See **Exhibit A** for sketch/map identifying location

Date and Time: *[Insert Date(s) / Time (start and end) -- include set up and take down times]*

Description of Activity or Event: *[Insert Description of Activity or Event – Describe in detail what will be happening during the College / University's use]*

(Attach additional pages as necessary)

2. **FEF.** For its use of the Space, Minnesota State agrees to pay to Licensor a fee of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS (e.g. One Hundred Twenty and 00/100 Dollars (\$120.00). IF NONE, INSERT "Zero Dollars (\$0.00)]* (\$_____) which shall be payable in arrears within thirty (30) days of Minnesota State's receipt of Licensor's invoice, in the amount of \$_____, *[insert when payment shall be made – for example, 7 days after event, monthly, or similar].* Prepayment by Minnesota State is prohibited by Minnesota Statute.

3. **TERM OF AGREEMENT; CANCELLATION.** This agreement shall be effective as of *[insert start date-month, day, year]* or the date when the final required signature is obtained by Minnesota State, and shall remain in effect until *[insert end date-month, day, year]*. This agreement may be canceled by either party at any time, for any reason, upon 30 *[thirty]* days written notice to the other party. Licensor expressly understands and agrees that this agreement is not intended to and does not create a landlord-tenant relationship between the parties.

4. **AUTHORIZED REPRESENTATIVES.** *[complete each area below]*

All notices, requests, and other communications between Licensor and Minnesota State that are required or that Licensor or Minnesota State elect to deliver shall be deemed sufficiently given or rendered if in writing and delivered to either party personally, by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, (return receipt required) addressed as follows:

Minnesota State's authorized agent:
Name/Title:
Address:
Telephone:

With a copy to: Minnesota State
ATTN: Real Estate Services
30 E. 7th Street, Suite 350
St. Paul, MN 55101

Licensor's authorized agent:
Name:
Address:
Telephone:

5. **MAINTENANCE OF SPACE.** Minnesota State agrees to maintain the Space in a reasonably clean and sanitary condition. Licensor shall provide the following:

- all utilities reasonably required to use the Space, including heating, cooling, and electricity;
- parking consisting of *[describe]*
- building security customarily provided by Licensor; Minnesota State may provide additional security at its own expense;
- janitorial services;

- any necessary keys or access codes;
- other: *[insert if applicable the use of freight elevators or any other needed services or "none"]*.

Licensor shall allow Minnesota State to place temporary signs directing students and other attendees to its event.

6. **BUILDING HOURS.** The building hours are *[insert details]*. Minnesota State may access the space during the specified hours.

7. **RULES AND REGULATIONS.** Minnesota State agrees to comply with the building rules and regulations attached as **Exhibit C** during its use of the Space which are not inconsistent with this agreement, Minnesota State board policies and applicable laws.

8. **LIABILITY.** Each party shall be responsible for its own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the other party's acts and omissions and the results thereof. The State's and Minnesota State's liability under this Agreement is governed by the Minnesota Tort Claims Act, Minnesota Statutes §3.736 and other applicable laws.

9. **INSURANCE.** Minnesota State maintains commercial general liability insurance in compliance with the Tort Claims limits set forth in Minn. Stat. §3.736, subd. 4, as amended. Minnesota State shall name Licensor as an additional insured upon request. Minnesota State shall maintain this coverage at its sole expense during its use of the Space. For purposes of this Agreement, Licensor shall maintain applicable insurance coverage consistent with the coverages outlined on **Exhibit B**, attached hereto and made a part of this Facilities Use Agreement. Licensor shall maintain coverages at its sole expense during the term of this Agreement. Minnesota State and Licensor shall provide each other with certificates of insurance, upon request. Coverage afforded under these policies shall not be cancelled without at least thirty (30) days advance written notice to the certificate holder. Each party, at its sole expense, shall provide and maintain workers' compensation insurance as such party may be required to obtain by law. Minnesota State is self-insured for workers' compensation purposes, and any such insurance extends only to employees of Minnesota State, not to students.

10. **MINNESOTA DATA PRACTICES ACT.** Minnesota State and Licensor agree to comply with the terms of the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13, with regard to data related to this Agreement.



Facilities Agreement Template- Off Campus & Owned by Others (2)

11. **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE.** Licensor is responsible for complying with the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq., and any regulations promulgated pursuant to the Act.
12. **AUDIT.** The books, records, documents, and accounting procedures and practices of the Licensor relevant to this contract shall be subject to examination by Minnesota State and the Legislative Auditor for a minimum of six (6) years from the end of the agreement.
13. **ASSIGNMENT; AMENDMENTS.** Neither party shall assign nor transfer any rights or obligations under this agreement without the prior written consent of the other party. All amendments to this agreement shall be in writing and executed by a duly authorized representative of each party.
14. **BREACH.** In the event that Licensor breaches this Agreement, Minnesota State shall have the right to immediately terminate this Agreement, as well as any other remedy available at law or equity.
15. **GOVERNING LAW; VENUE.** This Agreement, including all exhibits, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. 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.
16. **ENTIRE AGREEMENT.** This Agreement (including all exhibits, as shown below intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.
 - Agreement
 - **EXHIBIT A,** Facilities sketch/map identifying Location
 - **EXHIBIT B,** General Insurance Requirements
 - **EXHIBIT C,** Rules (if applicable)
 - **Any Subsequent amendments, addendum properly executed by the parties.**
17. **SPECIAL PROVISIONS.** [If none, write *NONE*]:

SIGNATURE BLOCK IS ON NEXT PAGE

Signature Page for Facilities Use Agreement – Off-Campus Facilities Only

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed intending to be bound thereby.

APPROVED:

1. LICENSOR: [insert legal name]
Licensor certifies that the appropriate person(s) have executed the Agreement on behalf of Licensor as required by applicable articles, bylaws, resolutions, or ordinances.

2. Minnesota State: STATE OF MINNESOTA BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES, ON BEHALF OF [insert College/University Name]

By (authorized signature)
Title
Date

By (authorized signature)
Title
Date

3. AS TO ENCUMBRANCE:

By (authorized signature)
Title
Date

4. AS TO FORM AND EXECUTION:

By (authorized signature)
Title
Date

Lease Agreement

Generally for **longer-term** use and possession of land or facilities (longer than one year) either on or off-campus.



Minnesota State Lease Agreement Templates

- Campus-to-Campus
- Minnesota State as Landlord
- Minnesota State as Tenant with Leasehold Improvements
- Minnesota State as Tenant without Leasehold Improvements
- Transfer of Ownership





MINNESOTA STATE

LEASE AGREEMENT– MINNESOTA STATE AS LANDLORD

TOTAL AMOUNT: [*\$ Insert total lease amount over term*]

THIS LEASE AGREEMENT is made by and between State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities on behalf of [*insert College or University name/campus*], located at [*insert College/University's legal address*], hereafter referred to as MINNESOTA STATE or LANDLORD, and [*insert Tenant's legal name*], a [*insert legal entity type, such as a Minnesota non-profit or municipal corporation or individual*], located at [*insert Tenant's legal address*], hereafter referred to as TENANT.

WHEREAS, the Board of Trustees of Minnesota State Colleges and Universities is empowered by Minn. Stat. §136F.06, to govern Board-related property, and

WHEREAS, MINNESOTA STATE has under its control [*insert building/land or space name*] located [*insert address and any identifying location information*], and has space in that building, and

WHEREAS, TENANT intends to use the space for [*insert intended use/purpose of space*]

NOW THEREFORE, MINNESOTA STATE and TENANT, in consideration of the rents, covenants, and considerations hereinafter specified, do hereby agree each with the other as follows.

1. LEASED PREMISES.

MINNESOTA STATE grants and TENANT accepts the lease of the following described Leased Premises located in the City of [*insert City*], County of [*insert County*], Minnesota: more particularly described as:

Approximately [*insert number*] of usable square feet of space in [*insert complete address of property*], as shown on the floor plan or survey on attached Exhibit [*insert exhibit letter*] described below:

Address/Room No. / Location	Square Feet	Use
[<i>insert address/room no</i>]	[<i>insert sq. footage</i>]	[<i>insert usage</i>]

Not A Minnesota State Standard Contract Templates?

- 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).

Parties To A Contract

- Ensure the “Lessee” physical address is listed. Do not list a post office box in lieu of a street address. Verify and ensure the legal names of a campus or system office and the other party 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
- No longer than five years per Minnesota State Board policy
- Avoid automatic renewal provisions- be clear in drafting

Termination/ Cancellation

- Templates have different notice time periods to cancel (10, 30 day and more). Read, know and understand before signing. Adjust time period if needed.
- Preferred
 - Provide written notice of termination to authorized representative of other party.
- Negotiate over how much notice must be given
 - What works for you?
 - Don't assume--Read contract

FEE: Consideration And Payment

- 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 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. “

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.
 - “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.”

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
- 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
- Finance and the Office of General Counsel review for statutory/policy/procedure and best practices
- Rely on campus leadership and managers to bid, negotiate, evaluate risk, (including reputational risk) 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.

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 concerns, risks, performance and takes action?

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.

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 subject of the contract. Limit use of highly technical terms and jargon when possible.
- Lessee's/Tenants legal name, full address (not a PO Box), phone, email, fax
 - Verify current information
- Contact person(2) for other party, name, title, address, phone, fax, 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".

What Remains Important

- 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
- Dates should be clearly identified. Use full dates (ex. “June 3, 2019”) whenever possible. Add time/hours of use if applicable.
- Has “facility use” started prior to execution of contract?
 - If the work or obligation 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 (2)

- Procedure for renewal clearly identified and understood?
 - Avoid “automatic renewals” or trigger periods to terminate or extend. Minnesota State contracts cannot extend beyond 5 years without additional authorizations. 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 (3)

- 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 (4)

- 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 (5)

- 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.

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



Employee Ethics

Three basic principles in the ethics code for state employees:

- State/system resources are not to be used for private purposes;
- Gifts/favors given for duties performed by employee generally are prohibited;
- Conflicts of interest must be avoided when acting on behalf of the state.

Minn. Stat. § 43A.38



Lead Time (Louder for the ones in back)

- Plan accordingly—expect the best and plan for the worst.
- Have signed contracts in place in plenty of time to be able to successfully perform the work.
- Use System templates and forms.
 - Resist changing footer.
- Allow time for negotiation.
- Read Agreement.
- Not every contract can be an emergency.

Contacts and Resources

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Office of General Counsel

<https://www.minnstate.edu/system/ogc/index.html>

Contract Templates

<https://www.minnstate.edu/system/templates/index.html>



Minnesota State Contact Information

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Visit the [Office of General Counsel's webpage](#) for more information and resources



Questions and Answers

Please chat in your questions

Feedback

Please provide feedback of today's webinar as well as ideas for future webinars. You can provide your feedback [here](#).





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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.