



April 14, 2022

Office of General Counsel

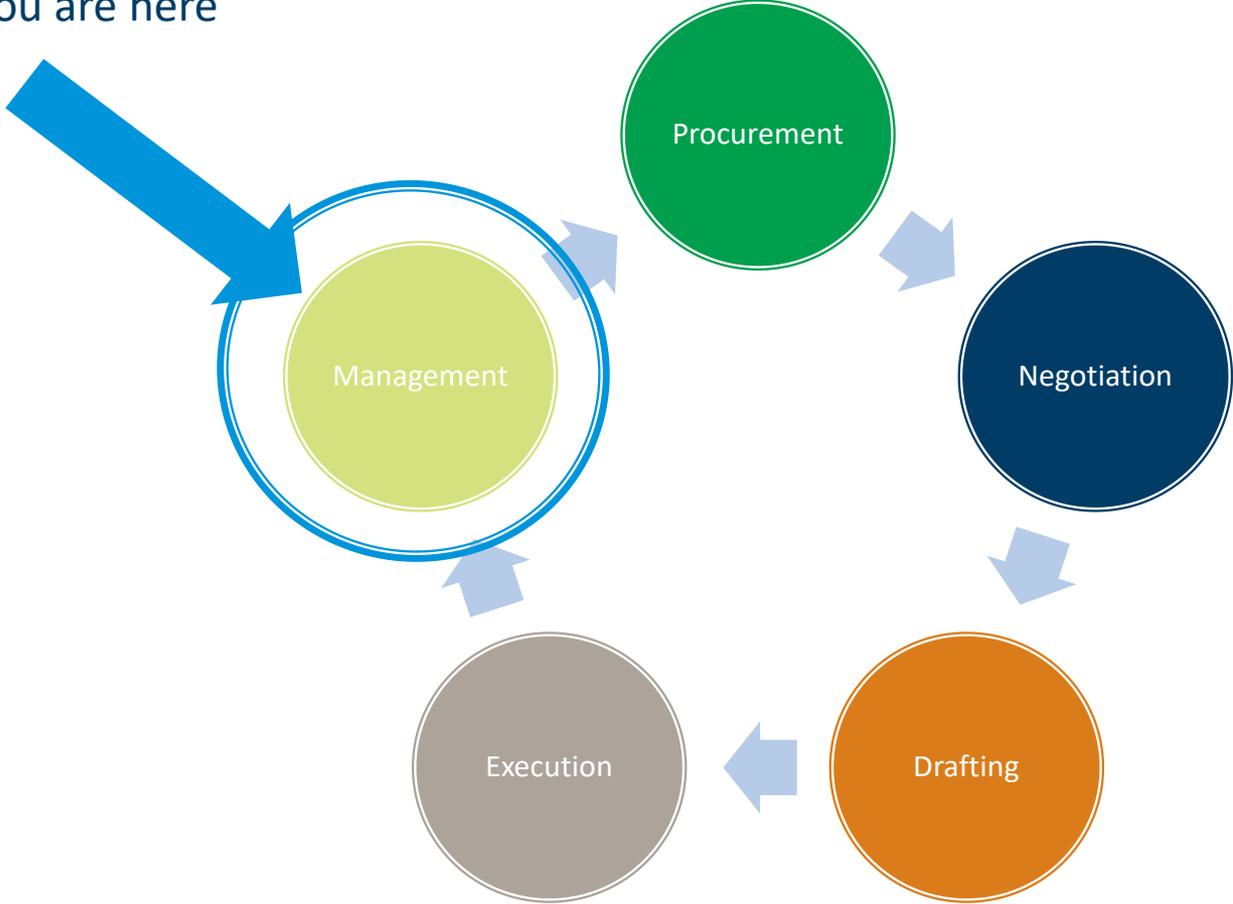
# Amending a Contract

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MINNESOTA STATE

# Contract Life Cycle

You are here



# Importance of Good Contracts

- Accurate contract language is important for contract enforcement
  - The law assumes that everything agreed to between the parties is contained in the “four corners” of the contract
  - Agreements outside the contract (oral promises or an email) will not be considered part of the contract
  - If a contract does not explicitly say what you want the other party to do, it may not be actionable (i.e., a breach of contract) if a vendor does not perform

# Breach of Contract

- A “breach” of contract is the failure, without an excuse, to perform any promise that forms all or part of a contract
- Consequences of a breach
  - Termination of the contract
  - Remedies as specified in the contract (service credits, price reduction, interest on late payments, liquidated damages)
  - Lawsuit
    - For damages (actual or punitive)
    - Specific performance (must fulfill the duties)

# Informal Deviations from a Contract

- A party may consent to the other party's breach without doing a full amendment
- For example, if a vendor promises to deliver a video of your campus on May 1, but they email to say it won't be ready until May 5, you can give them permission to be late
  - Called a "waiver" or "consent"
  - Doesn't modify the underlying agreement, but permits something that wouldn't ordinarily be allowed by the contract
  - Should also be in writing – Contact OGC for assistance

# What is an Amendment?

- A mutually-agreed upon change to a contract while the existing contract remains in place
- Is only an amendment if the contract has been signed
  - If a contract hasn't been signed by all the parties, you can return it to draft and make the changes
- Must be done before the contract expires
  - You cannot “amend” a dead contract

# Reasons to Amend a Contract

- Fix errors
- Addition or deletion of duties
- Extension of time
- Increase or decrease in quantity
- Change in price
- Name change, merger or other acquisition
- Address new circumstances (e.g., vaccine requirement)
- All of the above

# Typos in Contracts

- Typos might seem minor, but they can alter the meaning of an agreement
  - Names, numbers, dates, all need to be accurate to enforce a contract's terms
- In a paper contract, you could cross out the error and have both parties sign or initial the correction
  - With our e-signed contracts, an amendment is required
- Proofread carefully, use a second set of eyes, don't wait until the last minute to draft a contract

# What about Change Orders? Extensions? Renewals?

- A “change order” is the construction industry’s term for an amendment that affects the scope of work
  - Also commonly used term in software development and implementation contracts
  - May have its own process outlined in the contract (our Amendment Template may not be applicable)
- A “renewal” or an “extension” may be an option afforded in the existing contract to increase the period of time for which the contract remains valid
  - Generally the only term up for negotiation is the length
  - May be at the same price or a set percentage increase (or may require new negotiations)
  - Still needs to be in writing

# What is an Addendum, then?

- When parties want to add or modify terms before entering into a contract
  - A superseding Addendum is drafted
    - “the parties agree that if any of the following terms and conditions are in conflict with the terms and conditions of the Agreement the following terms and conditions will prevail”
  - Will reference the proposed contract and state how it is changed
  - May delete, modify, add, or supplement a proposed contract
- Most often used when signing a vendor’s contract form (e.g., software contract addendum)
- Needs to be signed and dated by representatives of both parties needed for validity at the same time the contract is signed
- Part of the original contract from the start
- Needs to be an attachment to the main contract

# Amendment vs. Addendum

- Use an amendment when making changes to a fully executed agreement
- Use an addendum when you want to include additional information or change boilerplate on an unexecuted agreement

# Amendment Requirements

- Treat amendments like new contracts and follow existing contract policies and practices
- Amendment should be a separate, signed document that references:
  - The title of the original contract
  - The parties
  - The signing date of the original contract
- Minnesota State's PT Contract Template (and most other agreements) require any changes to the contract to be in writing and signed:
  16. AMENDMENTS. Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
    - Is a good idea to put amendments in writing even if not required by the terms of the contract

# Use Caution in Drafting Amendments

- Make sure all cross-references in the amended contract are still valid
  - You can't refer to Paragraph 18 if it has been deleted or re-numbered
- Use care when noting exactly what section is being changed
  - Section I, subsection B, paragraph ii, subparagraph c
- If an amendment spends additional money, ensure encumbrances and approvals are in place.

# Managing Multiple Amendments

- Number each amendment, even if you don't anticipate a second amendment
  - Use consistent numbering scheme (i.e., 1, 2,3)
  - If voluminous amendments, consider adding an appendix with a complete list or table
- Keep amendments on file with the original agreement

# Amendments Must Follow Procurement Laws & Board Policy

- Contracts may not exceed 5 years in length without additional approval
  - A 3-year contract may not be amended for another 3-years without getting VC-CFO approval
- Contracts over \$50,000, including renewals, must be put out for public bid.
- If an amendment will bring your total contract value above \$100,000 or \$500,000 you will need to add additional language regarding a workforce certificate and/or equal pay certificate.

# Ways to Amend a Contract

Example #1: A College signed a one year contract (FY2022) and now wants to add a second year (FY2023)

**TERM OF CONTRACT.** This contract is effective on July 1, 2021 or upon the date the final required signature is obtained by Minnesota State, whichever occurs later, and shall remain in effect until June 30, 2022 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified to begin work by Minnesota State's authorized representative.



# Ways to Amend a Contract (2)

- **Method 1: Redlines and Strikethroughs**
  - Additions and deletions are shown visually, but underlining additions and striking through deleted text.

Paragraph 1, TERM OF CONTRACT is amended as follows: This contract amendment shall be effective on ~~July 1, 2021~~ July 1, 2022 or upon the date the final required signature is obtained by MINNESOTA STATE, whichever occurs later, and shall remain in effect until ~~June 30, 2022~~ June 30, 2023 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. **The CONTRACTOR understands that no work should begin under this ~~contract~~ amendment until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE's authorized representative.**

# Ways to Amend a Contract (3)

- **Method 2: Replace a Clause in Its Entirety**
  - State that at whole clause has been replaced and provide the new clause

“The parties hereby agree that the Original Contract’s Paragraph 1, Term of Contract, is deleted in its entirety and replaced with the following:

**TERM OF CONTRACT.** This contract is effective on July 1, 2022 or upon the date the final required signature is obtained by Minnesota State, whichever occurs later, and shall remain in effect until June 30, 2023 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified to begin work by Minnesota State’s authorized representative.”

# Ways to Amend a Contract (4)

- **Method 3: Describe the Amendment**
  - Describe what you want to change.

"The first sentence of Paragraph 1 is amended by modifying "2021" to "2022," and modifying "2022" to "2023."



# The OLD Amendment Template

- Used Method 1. It required users to indicate deletions with strike-outs and additions with underlines.

## Contract Amendment

***[INSTRUCTIONS: THE FOLLOWING IS A SAMPLE AMENDMENT. BE SURE TO CLEARLY INDICATE WHAT IS BEING ADDED/DELETED. STRIKE-OUT INFORMATION YOU WANT DELETED AND UNDERLINE THE INFORMATION YOU ADD AS FOUND IN REVISION 1. EXAMPLE BELOW. YOU WILL NEED TO MODIFY THIS FORM FOR YOUR NEEDS. DELETE THIS INSTRUCTION PARAGRAPH FROM YOUR FINAL DOCUMENT.]***

In this Amendment, deleted contract terms will be struck out and the added contract terms will be underlined.

**REVISION 1.** TERM OF CONTRACT is amended as follows:

This contract ~~amendment~~ shall be effective on *[INSERT FULL DATE (e.g., January 29, 2013)]* or upon the date the final required signature is obtained by MINNESOTA STATE, whichever occurs later, and shall remain in effect until *[INSERT FULL DATE (e.g., June 30, 2013)]* or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this ~~contract amendment~~ until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE's authorized representative.

**REVISION 2.** CONTRACTOR'S DUTIES is amended as follows:

***[INSERT CONTRACTOR'S DUTIES FROM ORIGINAL CONTRACT AND AMEND, ADD OR DELETE DELIVERABLES]***



# The NEW Amendment Template

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



Number	Name (MP Template)	Description	Updated
1	Grant Contract	Description	year
2	<b>Guest Lecturer/Presenter Agreement (Services)</b>	Transactions below \$3,000. This form is used to compensate guest speakers, including expense reimbursement. If the amount is over \$3,000, you must complete the Professional/Technical contract.	1/2022
3	<b>Hotel Contract (Hotel)</b>	This form is used to work with hotels in reserving space or catering with a hotel at its location	3/2021
4	<b>Professional/Technical Services Contract (Services)</b>	For a consultant, professional, or technical services-not construction. Attach Commissioner's Plan Expenses Reimbursement ( <b>Word/ PDF</b> ). See <b>Board Procedure 5.14.2</b> : \$50,000(RFP), \$100,000, 5 years, etc.	1/2022
5	<b>Professional/Technical Services Contract - AMENDMENT (Services)</b>	This form is used to amend the original P/T Contract	1/2022
6	<b>Services Contract (Services)</b>	Retainage/Insurance	
7	<b>Income Contract (Income)</b>		2/2022



# The NEW Amendment Template (2)

- Uses a combination of Methods 2 & 3. Some times you will delete the old contract's paragraph and re-state the entire paragraph. Other times you will describe the changes.
- Intended to be more user friendly.
- May still have kinks!



MINNESOTA STATE

Contract Number:   
P.O. Number:

*[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS.]*

## PROFESSIONAL/TECHNICAL SERVICES CONTRACT

AMENDMENT NO. *[Insert Amendment Number here; e.g. "1" or "3"]*

This amendment is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of *[Insert Name of College, University or System Office ("Minnesota State")]*, and *[INSERT CONTRACTOR'S LEGAL NAME AND FULL ADDRESS]* ("Contractor").

WHEREAS, Minnesota State and Contractor have entered into a Professional/Technical Services Contract and any addenda, exhibits, or amendments thereto (the "Original Contract"), identified below:

Original Contract	
Contractor's Full Legal Name:	<i>[Insert Name Here]</i>
Contract Title:	<i>[Professional/Technical Services Contract or Other Contract Name Here]</i>
Effective Date of Original Contract:	<i>[will usually be the date of the last signature]</i>

WHEREAS, the parties wish to amend the Original Contract as stated below:

NOW THEREFORE, the parties do hereby agree as follows:

*[THE REVISIONS BELOW ARE EXAMPLES. PLEASE DELETE ANY THAT DO NOT APPLY TO YOUR CONTRACT OR ADD ANY ADDITIONAL PROVISIONS AS NECESSARY.]*

1. **AMENDED CONTRACT TERM.** *[Delete this entire paragraph if there is no change to the length of the contract's length.]* The parties hereby agree that the Original Contract's Paragraph *[Insert Paragraph Number]*, Term of Contract shall be modified as follows:



# Amendment Template Live Examples

- Links will be posted to chat
  - To original contract
  - To previous amendments, if applicable
  - To blank amendment template for live editing
- Please log into SharePoint, links are restricted
- Links to completed amendment will be posted after the webinar
- Thanks to SCSU for offering up their real-life examples

# Example 1 – ASL Interpreter

- Original Contract for 4 months
- Original Contract cost \$60/hour up to 50 hours (\$3,000)
- University wants to extend the contract through June 2022
- And add up to 50 additional hours (\$6,000 total not to exceed)
- [2022 SCSU ASL Interpreter Contract.pdf](#)

NOW, THEREFORE, it is agreed:

1. **TERM OF CONTRACT.** This contract is effective on September 25, 2021 or upon the date the final required signature is obtained by MINNESOTA STATE, whichever occurs later, and shall remain in effect until January 31, 2022 or until all obligations set forth in this

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contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE'S authorized representative.

2. **CONTRACTOR'S DUTIES.** The CONTRACTOR will: provide ASL interpreting for webinars and online events (the Events). All Events will be organized by MINNESOTA STATE. Dates and times for the Events will be agreed upon by both parties. The Events will be held via an approved virtual conferencing platform. CONTRACTOR may be asked to connect prior to the start of the Events to allow for trouble shooting or to assure a proper connection has been made.
3. **CONSIDERATION AND TERMS OF PAYMENT.**
  - a. Consideration for all services performed and goods or materials supplied by the CONTRACTOR pursuant to this contract shall be paid by MINNESOTA STATE as follows:
    - i. Compensation of Sixty and 00/100 Dollars (\$60.00) per hour not to exceed 50 hours.



# Example 1 – ASL Interpreter (2)

- Try your hand at drafting an amendment here:
- [Editable Amendment 1.docx](#)



# Example 1 – ASL Interpreter (3)

- How'd you do?
- [Editable Amendment 1 - Filled In.docx](#)



# Example 2 – X-ray Scanning

## [2022 SCSU Medical Scanning Sample.pdf](#)

- Contract for X-ray interpretation
- For FY 2021
- \$32.50 per X-ray

1. **TERM OF CONTRACT.** This contract is effective on July 1, 2020 or upon the date the final required signature is obtained by MINNESOTA STATE, whichever occurs later, and

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shall remain in effect until June 30, 2021 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE'S authorized representative.

2. **CONTRACTOR'S DUTIES.** The CONTRACTOR will: provide chest x-ray and interpret the results for current MINNESOTA STATE students. MINNESOTA STATE student to go to CONTRACTOR's facility at 166 19th St S, Ste 100, Sartell, MN 56377. MINNESOTA STATE appointments to be agreed upon by both parties. CONTRACTOR will perform the necessary x-rays, interpret the results, and transmit the results to MINNESOTA STATE via facsimile. MINNESOTA STATE will diagnose and treat the student as result of the interpretation.



# Example 2 – X-Ray Scanning (2)

## [2022 SCSU Medical Scanning Amendment 1.pdf](#)

- Amended once to add FY 2022
- Price increase to \$57 an X-ray
- Used old amendment template

NOW THEREFORE, it is agreed:

### Contract Amendment

In this Amendment, deleted contract terms will be struck out and the added contract terms will be underlined.

**REVISION 1.** TERM OF CONTRACT is amended as follows:

This ~~contract amendment~~ shall be effective on July 1, 2020 ~~or upon the date the final required signature is obtained by MINNESOTA STATE, whichever occurs later~~, and shall remain in effect until June 30, ~~2021~~ 2022 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. ~~The CONTRACTOR understands that no work should begin under this contract amendment until all required signatures have been obtained and the CONTRACTOR is notified to begin work by MINNESOTA STATE's authorized representative.~~

**REVISION 2.** CONSIDERATION AND TERMS OF PAYMENT is amended as follows:

Page 1 of 3

MnSCU Professional/Technical Services Amendment  
MnSCU OGC Revised July 17, 2015

:\Sign Envelope ID: 9B0A71FA-EC4B-4DB7-8964-C2657FA4616A

- a. Consideration for all services performed and goods or materials supplied by the CONTRACTOR pursuant to this contract shall be paid by MINNESOTA STATE as follows:
  - i. Compensation of ~~Thirty Two and 50/100 Dollars (\$32.50)~~ Fifty Seven and 00/100 Dollars (\$57.00) per each x-ray and interpretation performed during the term of the contract. Estimated to be 20 x-rays for FY'22.

# Example 2 - X-Ray Scanning (3)

- Campus wants to add a third year
  - Price increases to \$65/X-Ray
  - Other Terms?
- 
- Try your hand at drafting the Amendment here:  
[Editable Amendment 2.docx](#)

# Example 2 - X-Ray Scanning (4)

- How'd you do?
- [Editable Amendment 2 - Filled In.docx](#)





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