SESSION OVERVIEW

- What’s a contract? Why is it needed?
- Accessing Minnesota State contract templates with updates
- Board Policies and Procedures
- Professional Technical/ Services Contracts
  - Encumbrance, Payment, Data privacy, Liability, Indemnification (No!), Insurance, Intellectual Property, Delegation of Authority and more!
- Grant Contracts
- Software Contract
- Clinical Affiliation Agreements
- Facilities and Construction Related Contract Resources
- Campus Service Cooperative
  - E-Procurement aka Minnesota State Marketplace
- Helping your lawyer help you
- What remains important
- Employee Code of Conduct
- RESOURCES and CONTACTS
WHAT IS A CONTRACT?

- **A contract is**: a legally binding document 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)
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.
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
EXAMPLES OF NON CONTRACTS

- Letters of intent;
- Verbal and “hand shake” agreements;
- Unauthorized deals or unauthorized signers;
- Jumping the gun or taking action before a written agreement;
- Gifts;
- Good Intentions.
PROFESSIONAL TECHNICAL (P/T) VS. SERVICE CONTRACT

P/T Contract
- P/T services are intellectual in character. They include analysis, planning, consultation, evaluation, recommendations, reports, etc.
- P/T contract example: consulting services

Service Contract
- Service Contract examples: linen, elevator maintenance, equipment maintenance, snow removal, lawn car, window washing, security, sign language, food service, etc.
WHEN DO I USE A PURCHASE ORDER AND WHEN DO I USE A CONTRACT?

Purchase Order (PO)
- For off the shelf items that don’t involve services. Question to ask: can this item be returned and resold? If yes, it’s a Purchase Order.
- Consult your business office if you have questions!

Contract
- For services
- Intellectual Property
- Data
- Real Estate
MINNESOTA STATE BOARD POLICIES AND PROCEDURES

- Minnesota State Board Policies and Contract and Procurement Procedures:
  - Policy 5.14 Contracts and Procurement
  - Procedure 5.14.2 Consultant, Professional or Technical Services
  - Procedure 5.14.5 Purchasing
  - Board Policy 7.7 Gifts and Grants Acceptance

- IMPORTANT: Board Policy 5.14 Subd. 3 changes:
  - Subpart C. Board approval required
  - 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.
APPROVED FORMS

- Required unless other form approved by AGO or OGC

- 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 the 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.
ACCESS APPROVED CONTRACT TEMPLATES HERE! (YOUR FIRST STOP FOR A CONTRACT --BOOKMARK!)

- MnSCU Finance Contracts website
  - [http://www.mnscu.edu/system/csc/sourcing/forms/index.html](http://www.mnscu.edu/system/csc/sourcing/forms/index.html)

**Contract Forms**
All forms and templates have moved. Bookmark the new location or you may access the forms on SharePoint. (Log-in Instructions: You will need to append "@mnscu.edu" to your StarID as part of your user name, such that it looks like xx1234xx@mnscu.edu. The password is the regular password associated with your StarID)

If you have questions, comments or need help, please email us at sourcing@so.mnscu.edu.
COMMON LEGAL ISSUES FOR EXTERNAL CONTRACTS

- Intellectual Property
- Liability
- Lack of an audit clause
- Interest Rate
- Jurisdiction
- Data
- Indemnification
- Insurance
- Pre-payment
- Dispute Resolution—arbitration, mediation
- Indefinite Termination Dates and Automatic Renewals
CONTRACT MANAGER AND MANAGEMENT

- Understand your campus contract process for reviews, approval, and contract management.
- The person responsible for...
  - Knowing the duties and deliverable timelines;
  - Developing a contract administration plan;
  - Monitoring and reporting contract performance;
  - Monitoring the contract budget;
  - Negotiating contract changes and resolving disputes;
  - Closing the contract upon completion or termination.
- Contract Management should remain ongoing for the duration of the contract to ensure work is satisfactory, and the contract is being adhered to.
  - If work is unsatisfactory, consider termination according to the contract terms. Consult AG Office or OGC for guidance before terminating a contract.
LEAD TIME

- Plan accordingly—expect the best and plan for the worst.
- Use System templates and forms.
- Allow time for negotiation.
- Answer questions, WHO, WHAT, WHEN, WHERE, HOW MUCH.
- Pay attention to contract end dates, especially if wanting to amend the contract! “Amend before end.”
- Not every contract can be an emergency.
LEGAL REVIEW - HOW YOU CAN HELP

- Before Submitting Contract for Review
  - Ask if contractor will sign our standard contract form instead of using their form
    - If contractor will not use our form be sure they are open to changes in their contract—take it or leave it agreements can be problematic
    - Let them know that as a government entity, there may be some things we cannot agree to
  - Ensure all data is accurately entered into contract
  - Check spelling and grammar
  - Know if private data is involved and how it will be used
  - Read the contract and communicate any academic, risk or business concerns
  - Know who is involved with the contract and who can answer questions about the contract
- PROVIDE THIS INFORMATION TO AGO OR OGC when seeking review
LEGAL REVIEW- HOW YOU CAN HELP

- Submitting Contract for Review
  - Be sure to send **all** documents to legal counsel
    - Some contracts are made up of multiple documents- be sure to send them all
      - attachments, exhibits, terms of service, terms of use, privacy policy, letters of intent, memoranda of understanding, offer letters, affiliation, resolutions, confidentiality agreements, leases, licenses, grant or gift agreements, etc.
  - Submit document for review far in advance of deadline- communicate any timeline issues
  - Specify any concerns the college/university has about the contract—review for academic, program and business issues before submitting for review
  - If possible, submit the document(s) to be reviewed in Word format to allow for making changes to the proposed contract
WHAT YOU CAN DO TO HELP

- It’s a two way street: Ask not only what your lawyer can do for you, but what you can do for your lawyer to help you
- Practice preventative law when possible
- Include current facts, any past history, impressions or concerns about those involved, other factors that may affect the situation
- Disclose who else you have talked to about the situation (including any other attorneys)
- If you don’t know the attorney, explain your title/role at the college/university
- Give the attorney the complete story
- Follow through with what the attorney asks you to do. Consult with attorney if problems develop or circumstances change.
- Gather requested information and do not share with anyone other than the attorney requesting the information.
- If there are “other facts” that may impact a business relationship, decisions, compensation or “how something will work,” let the attorney know.
- Consider if you need to consult others within Minnesota State (other campuses and system office staff and those in Minnesota State familiar with the subject matter).
- Refer calls, correspondence from “opposing” counsel to AGO/OGC
PREPAYMENT

If not listed below, prepayment is not allowed.

- Software or software maintenance contracts;
- Sole source maintenance agreements;
- Exhibit booth space and boat slip rental;
- Subscription fees for newspapers or magazines;
- Registration fees where advance payment is required or there is a discount for advance payment;
- Library of Congress services.

MN Statute 16A.065 prohibits the system office and the colleges and universities from paying in advance.

See:

- Minn. Stat. § 16A.41, Subd. 1
- Minn. Stat. § 16A.065
- Board Policy 5.14.5 Part 6
CONTRACT TRIGGER AMOUNTS

- Contracts Over $500,000
- Equal Pay
- Contracts Over $100,000
- Affirmative Action
- Contracts Over $50,000
- RFP
NEW: The Women’s Economic Security Act (WESA) now requires Equal Pay Certificates for large state contractors with contracts over $500,000. This requirement now applies to all solicitations on or after August 1, 2014. The Equal Pay Certificate, and the existing Workforce Certificate of Compliance, are both administered by the Minnesota Department of Human Rights (MDHR). RFP and Prof./Technical Contract language revised to include requirements.

Remains important: For all contracts estimated to be in excess of $100,000, all responding vendors are required to complete Exhibit B, the Human Rights Certification Information and Affirmative Action Data Page, and submit it with the response. All responding vendors shall comply with the applicable provisions of the Minnesota Affirmative Action law, Minnesota Statutes §363.A36. Failure to comply shall be grounds for rejection.

(Contact OGC or AGO if questions of applicability or non-Minnesota vendor applicability.)
ENCUMBRANCE** MN. STAT. 16A .15 SUBD. 3 & MINNESOTA STATE PROCEDURE 5.14.2 PART 4

- Funds must be encumbered prior to making an obligation.
  - Has work begun prior to contract’s full execution? That is not allowed per Minnesota law. No signed contract without encumbrance.
- Process an MS16A.15 Form, found at: [http://www.minnstate.edu/system/finance//contracts-purchasing/docs/16a.15_form.doc](http://www.minnstate.edu/system/finance//contracts-purchasing/docs/16a.15_form.doc)
- An authorized employee must certify that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. College, university, and system office administration must assure proper authorization is on file for employees charged with encumbering funds.
- An expenditure or obligation authorized or incurred prior to encumbering funds is in violation of state law and ineligible for payment until made valid and is in violation of Minnesota Statutes Ch. 16A15, Subd. 3.
- Statutes and Minnesota State policy: An employee authorizing or making the payment, or taking part in it, may be liable to the state for the amount paid. A knowing violation of Minnesota Statutes Ch. 16A.15, Subd. 3, is just cause for the employee's removal.
GOT OR NEED INSURANCE?

- Appropriate insurance provisions are included in many 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
- RFP Updated insurance instructions and requirements

**Insurance Requirements**

- Instruction: The insurance requirements below generally represented the minimums. Depending upon the type of work and the risk involved, other types of insurance may be necessary (e.g.-Cyber Insurance).

- Contact: Minnesota State Director of Risk Management (651-201-1778) or the Department of Administration’s Risk Management Office (651-201-2591)
DATA PRACTICES ACT

- "The requirements of [Minnesota Statutes § 13.05, subd. 11](https://www.revisor.mn.gov/statutes/text/13A/chap13Sec05.html) apply to this contract. The CONTRACTOR and Minnesota State must comply with the Minnesota Government Data Practices Act, [Minnesota Statutes Chapter 13](https://www.revisor.mn.gov/statutes/text/13A/chap13.html), as it applies to all data provided by Minnesota State in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONTRACTOR in accordance with this contract. The civil remedies of [Minnesota Statute §13.08](https://www.revisor.mn.gov/statutes/text/13/chap13Sec08.html) apply to the release of the data referred to in this clause by either the CONTRACTOR or Minnesota State. In the event the CONTRACTOR receives a request to release the data referred to in this clause, the CONTRACTOR must immediately notify Minnesota State. Minnesota State will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released."

- **Updated Instruction:** If the services provided by Contractor include access to, storage, or transmission of education records, education data, or private personnel data, contact the Office of General Counsel for additional contract provisions regarding data security. If you have any other privacy concerns about this contract, please contact the Office of General Counsel.

- Don't delete or revise data practices language included in the template. If you have questions, please seek guidance from OGC or AG Office.
MEMBER: FERPA MAY APPLY

- If the services provided by contractor include access to, storage, or transmission of education records or education data, contact the Office of General Counsel for additional contract provisions regarding data security.
  - Sarah McGee, Assistant General Counsel
    (651) 201-1410
    sarah.mcgee@so.mnscu.edu
CONFIDENTIALITY CLAUSES
PROPOSED BY OTHER PARTY

- May be overbroad:
  - Can’t agree to keep *everything* confidential
  - Alternative language available if needed

- Often, a CONTRACTOR will ask that Minnesota State promise to maintain the confidentiality of CONTRACTOR’s materials or even the terms of the contract itself.

- We can’t do that unless the materials in question are classified as private, confidential or protected nonpublic under the Data Practices Act.

- “Trade Secret Information” may also be withheld from disclosure. It is defined in Minn. Stat. § 13.37, subd. 1 (b): "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use."
INTELLECTUAL PROPERTY OWNERSHIP

- By law, the creator is usually the owner.
- Board Policy approaches ownership differently. Policy 3.26, Part 4 sets forth basic ownership categories and default expectations:
  1. Institutional works
  2. Scholarly works
  3. Personal works
  4. Students works
- It may be impossible to identify ownership after contract is completed or intellectual property created. Get agreements in place early.
MODIFICATIONS OF BASIC IP OWNERSHIP RIGHTS

- If there is no agreement, ownership is determined by a number of factors present in the situation.
- This result may be surprising / unsatisfactory.
- Modification may produce more desirable results.
- A written agreement is the desired way to modify policy-driven result (Board Policy 3.26, Part 4, Subpart B). These may include:
  - Joint Creation & Ownership Agreements
  - Specially Commissioned Work Agreement
  - Sponsored Research agreements
  - IP Assignments
  - License Agreements
Policy 3.26 – Intellectual Property
  • Procedure 3.26.1 Patent Inquiry Procedure
Policy 3.27 – Copyrights
  • Procedure 3.27.1 Copyright Clearance.
  • Employees and students are responsible for clearing copyright of materials before use.
  • Copyright FAQs
    http://www.copyright.mnscu.edu/faq/faqs_permission.html
  • Copyright Permission Request Form & Letter
    • http://www.copyright.mnscu.edu/forms/index.html
INTELLECTUAL PROPERTY RESOURCES

- Minnesota State Copyright Website:
  - http://copyright.mnscu.edu

- Minnesota State Intellectual Property Website:
  - http://intellectualproperty.mnscu.edu

- Minnesota State IP Tools & Forms
  - http://copyright.mnscu.edu/forms/index.html
INDEMNIFICATION AND LIABILITY (ALWAYS IMPORTANT)

- Be alert for sections in other parties’ contracts headed: Hold Harmless; Indemnification; Limitations on Liability; or Liabilities.
  - **Indemnification**: a provision in the contract in which one party agrees to pay damages or claims that the other party may be required to pay to another.
  - **Hold Harmless**: a type of indemnity provision or clause that would require one party to fully protect the other party from a claim asserted by another. This may also include payment of costs and/or attorneys fees.
  
- Colleges and universities prohibited by law from agreeing to indemnify the other party to a contract (reference: [Minnesota Constitution article XI, section 1](#) and [Minnesota Statutes section 16A.138](#)). Minnesota Statutes prohibit insurance of an obligation without an encumbrance and the Minnesota Constitution provides that no money is to be paid out without an appropriation.
The State Single Source Policy can be found at:


Minn. Stat. 16C.02, Subd. 18: “Single source” means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Single source justification is not required for interagency agreements.

The burden of proof is on the agency to justify single source procurements.

Documentation of the basis for a single source determination shall be retained in the contract file.

The documentation is public information.

An agency may be required to justify its single source procurement in cases of audits, vendor protests, media or legislative inquiries and litigation.

RESOURCE CONTACT: Mike Nordby, Finance Project Specialist [Michael.Nordby@so.mnscu.edu](mailto:Michael.Nordby@so.mnscu.edu), (651) 201-1694
What is Unrelated Business Income Tax (UBIT)?

- **Internal Revenue Code section 513(a)** defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related to the exercise or performance of an organization's exempt purpose or function. Therefore Minnesota State Colleges and Universities, even though a tax exempt entity, is subject to income tax requirements.
CONTRACTS THAT RESULT IN INCOME TO MINNESOTA STATE
POTENTIAL FOR UNRELATED BUSINESS INCOME REPORTING & TAX

- Minnesota Vikings Training Camp (UNRELATED to Minnesota State Colleges & Universities educational mission)
- Sponsorships (a variety of forms);
  - Qualified sponsorships are not UBIT (basically business name/contact information, logo, and/or recognized slogan without qualitative statements or an inducement to purchase); where there are qualitative statements or an inducement to purchase the IRS considers it advertising income and unrelated business income.
- Athletic Sponsorship
  - Stadium signage/banners
  - Web site advertising for sponsors
  - Athletic game day program/media advertising
  - Gold/Silver sponsorship levels which include advertising opportunities
  - Corporate Naming Rights (Verizon Stadium)
- Pizza parlor offers campus free pizzas in exchange for advertising on campus
- Exclusive Beverage Contracts (Coke or Pepsi campuses) and other exclusive relationships
- Food/Dining Service Agreements (catering income/public use, signing bonuses)
- Bookstores (various income including signing bonuses and public use)
- Banking service or campus card agreements (income for new student accounts and signing bonuses)
- Income from rental of real estate (rooms/storage, etc.)
  - Non-student summer rentals
  - Weddings on campus
  - Local businesses rental of buildings/space for corporate events (holiday party)
  - Rentals where there is catering, tech services, or other services provided
  - Rentals of computer rooms, media rooms, or other rentals where equipment is more than 50%
- Crop Income
- Cell tower rental agreements or fiber optic rental agreements
- Research (income) contracts
- Royalty contracts
- Various business/campus partnerships (unrelated to education)
TAXES

- Where to find more information?
  - [http://www.minnstate.edu/system/finance/taxinformation/index.html](http://www.minnstate.edu/system/finance/taxinformation/index.html)

- Who to contact for help?
  Steve Gednalske
  System Director, Tax & Financial Services
  [steven.gednalske@so.mnscu.edu](mailto:steven.gednalske@so.mnscu.edu)
  651-201-1657
DELEGATION OF AUTHORITY

- Black’s Law Dictionary defines ‘Delegation’ as ‘the act of entrusting another with authority or empowering another to act as an agent or representative.

- **Board Policy 1A.2.2**
  - “As used in this procedure, a "delegation of authority" is the formal conveyance from one person to another of the authority to bind Minnesota State Colleges and Universities, the system office or a college or university to a legally enforceable obligation. Any such transfers of powers and duties of the Board and the chancellor are therefore significant actions requiring great care and scrutiny.”

- Process and forms on Finance website
  [http://www.mnscu.edu/system/csc/sourcing/forms/index.html](http://www.mnscu.edu/system/csc/sourcing/forms/index.html)

- Ask: Does the person signing the contract have written delegated authority to legally bind the college/university? If not sure, check with your campus business office or administrator.
DELEGATION OF AUTHORITY- WHO HAS IT?

- Board of Trustees
  - [Minnesota Statutes §136F.06](#)
  - [M.S. 15.06, Subd. 6](#)

- Chancellor
  - [Minnesota Statutes §136F.06](#)
  - [M.S. 15.06, Subd. 6](#)
  - [Minnesota State Colleges and Universities Board Policy 1A.3, Part 4](#)

- Others delegated by the Chancellor e.g. Presidents
WHAT REMAINS IMPORTANT BEFORE YOU FINALIZE AND SIGN!

- Description of goods/services to be received by C/U/system office?
  - Clear and understandable description of the subject of the contract. Limit use of highly technical terms and jargon when possible.

- Contractor’s legal name, full address (not a P.O. Box), phone, email, fax?
  - Verify current information.

- Contact person(s) for contractor, name, address, phone, fax, email address?
  - Verify current information, especially if anything differs from (2).

- 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 begin work until the contract is “effective.”
WHAT REMAINS IMPORTANT (cont.)

- **Date contract ends?**
  - This refers to 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 (deadlines, mileposts, reports due, etc.)?**
  - Dates should be clearly identified. Use full dates (ex: “June 3, 2012”) whenever possible.

- **Have funds been encumbered 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 contracts website. By law, contracts must be in place prior to Minnesota State taking on an obligation.

- **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.
WHAT REMAINS IMPORTANT (cont.)

- Clear description of amounts of money or other consideration for contract?
  - Partial payments should be stated with due dates; amount tied to other amounts (e.g., deliverables, percentages) should be stated in clear terms.

- Rights, obligations, duties of every party clearly listed?
  - Each party’s responsibilities identified in understandable wording.

- Time and place for performance of work or services?
  - If performance of work or service extends over a period of time, include due 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.
WHAT REMAINS IMPORTANT (cont.)

- Indemnification, liquidated damages, attorney’s fees, waiver of contractor’s liability, waiver of statutes of limitations, pre-payment for services clauses.
  - These types of clauses are not allowable because of state constitutional restrictions. Notify contractor that these must be deleted.
  - AFTER attempting to have these deleted, if contractor refuses to comply, contact System Legal Counsel (OGC or Attorney General’s Office) 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?

- Confidentiality provisions?
  - Minnesota State cannot agree to keep information confidential if it is subject to public disclosure under the Minnesota Government Data Practices Act.
Assignment by either party must be approved in advance in writing.

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 contractor, contact our 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.
FORM AND EXECUTION

- “FORM” means the legal or technical manner or order to be observed in legal instruments or judicial proceedings, or in the construction of legal documents or processes.”

- “EXECUTION” includes performance of all acts necessary to render an instrument complete and of every act required to give instrument validity or to carry it into effect...Where form is not observed, a nullity of the act is inferred.”

- Form and execution process is NOT the same as legal review.
A contract amendment is used when the parties to a contract wish to modify the terms of an existing contract. Any changes to an existing contract should be made in writing and signed by the authorized representative of each party.

Amendments must be fully executed BEFORE the termination date of the underlying contract.

Same requirements apply to amendments- if they are not on the approved form seek legal review.
ELECTRONIC SIGNATURE

- **Minnesota State Board Procedure 5.25.1**
- Direct your questions about electronic signature to:
  
  Michael Noble-Olson
  
  Acquisition Management Specialist
  
  michael.noble-olson@so.mnscu.edu
  
  651-201-1445
Part 1. Authority. Pursuant to Minnesota Statutes §136F.80, the Board of Trustees has the authority to apply for, receive and accept on behalf of the state and for the benefit of state colleges or universities any federal, state or private gift or grants. Each gift or grant must be consistent with the college, university or system mission.

Part 2. Responsibility. Each college and university president is authorized on behalf of the board to accept gifts and grants made to the institution, other than gifts or grants of real property. All private gifts and grants over $100,000 shall be reported to the chancellor as detailed in Part 4 of this policy. In accordance with policy 5.14 Contracts and Procurements all private grants exceeding $3,000,000 must be approved by the board.

Also in accordance with policy 5.14 Contracts and Procurements, any grant agreements that do not adhere to system approved contract templates must be approved in advance by the office of general counsel or attorney general’s office.

The chancellor is authorized on behalf of the board to accept gifts and grants made to the system office.

All gifts and grants of real property shall be approved by the chancellor and are subject to Policy 6.7.

All gifts and grants must be recorded in the Minnesota State Colleges and Universities financial system.
7.7 GIFT AND GRANTS ACCEPTANCE (CONT.)

- Part 3. Transfer of Gift. A college or university that receives a gift or bequest as provided in Minnesota Statutes §136F.80 and §136F.81 that is intended for the purposes performed by a foundation approved under Minnesota Statutes §136F.46 may transfer the money to its foundation, provided the money is used only for public purposes.

- Part 4. Accountability/Reporting. No proposal shall be submitted to any funding authority without the signature of the president (for institutional grants) or the chancellor (for system office grants), or a person designated by the president or chancellor.

- The chancellor or designee will be periodically updated on the nature and the amount of all private gifts and grants with a value in excess of $100,000 accepted by the colleges, the universities, and the system. The colleges and universities shall maintain a list of all private gifts and grants for incorporation into a comprehensive annual report to the chancellor.
Part 3. Accountability/Reporting.

Subpart A. Compliance. College and university presidents will be held accountable by the chancellor for complying with state and federal laws, Board policy, and system-wide procedures for all purchases and contracts.

Subpart B. Contract form approval. Any contract or other legally binding agreement, including grant agreements, or memorandums of understanding/agreement that create legally binding obligations and responsibilities, that does not adhere to system approved contract templates must be approved in advance by the office of general counsel or attorney general’s office. (emphasis added)
Subpart C. Board approval required.

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.

The following contracts and agreements must be approved in advance by the Board if the total value of the initial contract/agreement and/or subsequent amendments exceeds $3,000,000:

a. Inter-agency agreements;
b. Joint powers agreements;
c. System master contracts if the total purchases made for goods or services under the master contract are expected to exceed $3,000,000; individual purchase orders made under a system master contract approved by the Board are not subject to separate Board approval;

d. Grant agreements other than federal grants or grants from Minnesota state agencies.

Joint powers agreements that create a joint powers board, regardless of the dollar value, must be approved in advance by the Board.
**CONTRACTING WITH CURRENT MINNESOTA STATE EMPLOYEES**

- When contracting with a current Minnesota State employee use the HR forms found on the [HR Connect website](#).
  - [Decision Flowchart for Minnesota State Shared Employees](#)
    - To help supervisors and HR staff determine when to use a Shared Employee agreement and when to hire the employee at your institution.
  - [Guidelines for Minnesota State Shared Employees](#)
    - Follow this checklist before offering work to an employee of another institution.
  - [Agreement for Minnesota State Shared Employees](#)
    - To document agreed upon terms of the shared employee arrangement.

**QUESTIONS:** If you have questions about contracting with Minnesota State Employees contact System Office Human Resources.
SOFTWARE CONTRACTS

- For efficiency in the contract review process please submit answers to these questions along with the software contract to be reviewed:
  1. Ensure/ask vendor if they are open to negotiation and changes to their contract. Provide a human contact information for the vendor.
  2. Provide a detailed product description (cloud? How data is stored? Who potentially has access? Other software involved or used in conjunction?)
  3. Provide all data elements the software accesses or stores (student data, employee data, etc.)
  4. Provide System Office IT security review
  5. Obtain, collect, and provide the Word document versions all of the contract forms (EULA, SLA, Privacy Policy)
MINNESOTA STATE TEMPLATES FOR CLINICAL SITE AGREEMENTS

- Nursing Program – Memorandum of Agreement
  - Nursing Program Notices to Students
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs
- Use updated/most current template found on Finance website.
- Only one contract per college/university and facility site is necessary- include all programs sending students
- *Templates may be modified to include other Allied Health Programs*
Minnesota State system legal counsel has negotiated memorandum of agreement (MOA) templates for a number of specific health care organizations. Samples of these negotiated MOA templates can be found below. Please read the instructions on this page and remember that the MOA’s found on this website are to be used for reference and comparison purposes only.

http://www.minnstate.edu/system/ogc/clinicalagreements.html
FACILITIES & CONSTRUCTION RELATED CONTRACTS

- [http://www.minnstate.edu/system/finance/facilities/design-construction/pm_emanual/index.html](http://www.minnstate.edu/system/finance/facilities/design-construction/pm_emanual/index.html)

- **NOTE**: Policies and procedures relating to facilities design and construction contracts are addressed in [Board Policy 6.5](http://www.minnstate.edu/system/finance/facilities/design-construction/pm_emanual/index.html), Capital Program Planning.

- Every campus has a construction program manager in the system office assigned to their campus to assist individual campus staff with policy, procedural, technical, and contract items related to design or construction.

- **Construction Program Managers** names and contact information, list of assigned campuses can be found at [“Who to Call”](http://www.minnstate.edu/system/finance/facilities/design-construction/pm_emanual/index.html)
THE CAMPUS SERVICE COOPERATIVE (CSC)

- The CSC began in 2011 to demonstrate how campuses can work together to develop efficient, high quality, and transformational delivery of support services.
- CSC project team members are from campuses across the system collaborating to increase effectiveness, contain costs, maximize resources, and reinvest in the students and institutions in Minnesota.

- [CSC Website](#)
- [SharePoint E-Procurement Site](#)
  - Log-in with your StarID and Password
E-PROCUREMENT

https://mns cu.sharepoint.com/sites/mnscuprocurement/SitePages/Home.aspx
WHO CAN CALL FOR LEGAL SERVICES?

- President determines internal process, who on campus is authorized to seek legal advice.
  - Some matters may be resolved at policy level
  - But 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., labor relations.
ATTORNEY/CLIENT PRIVILEGE AND COMMUNICATION

- Legal advice provided by AGO, OGC generally protected by attorney/client privilege, work product.
- Privilege belongs to board of trustees, chancellor as governing authorities of system—
  - Staff do no have authority on their own to share privileged information, communication with others.
  - Consult with legal counsel before forwarding emails, documents to others.
- OOC, campus administrators who receive legal advice must take care to protect privilege.
- Don’t discuss privileged matters with others while trying to sort through advice received
- Ask (!) before forwarding OGC/AGO emails or correspondence.
HOW TO HELP YOUR LAWYER DO THE BEST POSSIBLE JOB FOR YOU

- Inform the attorney of any deadlines, timelines
- Plan ahead/consult early to avoid “emergencies” accordingly
- Identify others who may have information helpful to resolution or issue or need to be consulted
- Tell the attorney the background or context and why you are asking, rather than asking “Can you tell me if its legal to do X, Y, Z?” Attorneys need context and may spot other concerns.
EMPLOYEE CODE OF CONDUCT

- WHY IS EMPLOYEE ETHICAL BEHAVIOR IMPORTANT?
  - We are obligated to comply with law.
  - Violations can result in
    - criminal penalties;
    - employment sanctions-including termination.
  - Our Code is a compilation of various existing statutes and policies that govern employee conduct.
  - Adopted as a system procedure
    - Minnesota State System Procedure 1C.0.1 - Employee Code of Conduct
    - Frequently Asked Questions about Minnesota State Employee Code of Conduct
  - Effective July 1, 2008.
PROHIBITED CONFLICTS: PERSONAL INTEREST IN CONTRACTS

Employees involved in college/university purchasing decisions may not:

- Have any personal financial interest in contracts or purchase orders (PO’s); or
- Accept directly or indirectly anything of value (other than nominal) from an entity to which a contract or PO is or may be awarded; or
- Accept a promise for benefit or reward in the future.
RESOURCES AND CONTACT INFORMATION

Minnesota State Office of General Counsel
- Mary Al Balber, Assistant General Counsel
  - maryal.balber@so.mnscu.edu, (651) 201-1752
- Sarah McGee, Assistant General Counsel
  - sarah.mcgee@so.mnscu.edu, (651) 201-1410
- Daniel McCabe, Assistant General Counsel
  - daniel.mccabe@so.mnscu.edu, (651) 201-1833
- Heidi Slegers, Legal Assistant
  - heidi.slegers@so.mnscu.edu, (651) 201-1755
- Amanda Bohnhoff, Legal Assistant
  - amanda.bohnhoff@so.mnscu.edu, (651) 201-1676

Assistance for RFP, Sole Source, Procurement & Tax:
- Mike Nordby, Campus Assistance Supervisor
  - michael.nordby@so.mnscu.edu, (612) 548-2059
- Steve Gednalski, System Director- Tax & Financial Services
  - steve.gednalski@so.mnscu.edu, (612) 548-2043

Minnesota Attorney General’s Office
- Michele Owen, Assistant Attorney General
  - michele.owen@ag.state.mn.us, (651) 757-1322
- Jeffrey Weber, Assistant Attorney General
  - jeffrey.weber@ag.state.mn.us, (651) 757-1017
- Patty Nolte, Paralegal
  - patty.nolte@ag.state.mn.us, (651) 757-1285

System Office, Real Estate:
- Paul Harrington, Real Estate Manager
  - paul.harrington@so.mnscu.edu, (612) 201-1539
- Greg Ewig, Director, Real Estate
  - gregory.ewig@so.mnscu.edu

Campus Service Cooperative, E-procurement:
Michael Noble-Olson, Chief Procurement Officer
- Michael.noble-olson@so.mnscu.edu

OGC Webinars:
- http://www.minnstate.edu/system/ogc/events.html
Contact Information
Minnesota State Colleges & Universities
System Office

Mary Al Balber
Assistant General Counsel
MaryAl.Balber@so.mnscu.edu
(651) 201-1752