CONTRACTS: TEMPLATES, COMPLIANCE, CONSIDERATIONS AND MORE

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SESSION OVERVIEW

- What’s a contract? Why is it needed?
- Templates
  - Accessing Minnesota State contract templates with updates
- Compliance
  - Board Policies and Procedures
  - General Contract Terms and Requirements: Encumbrance, Payment, Data privacy, Liability, Indemnification (No!), Insurance, Intellectual Property, Delegation of Authority and more!
  - Professional Technical/ Services Contracts - Grant Contracts - Software Contract
  - Clinical Affiliation Agreements
  - Facilities and Construction Related Contract Resources
- Considerations
  - E-Procurement aka Minnesota State Marketplace
  - ITS Security
  - Contracts with current Minnesota State employees
- More:
  - Legal Review – how you can help
  - 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
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!)

- Minnesota State Finance Contracts [website](http://www.minnstate.edu/system/templates/index.html)

- All forms and templates have moved. [http://www.minnstate.edu/system/templates/index.html](http://www.minnstate.edu/system/templates/index.html)

- If you have questions, comments or need help, please email us at [sourcing@minnstate.edu](mailto:sourcing@minnstate.edu).
If no changes to the standard Minnesota State contract form are made or needed, the contract does not need to be reviewed by system legal counsel

Changes to the standard contract forms need review by system legal counsel

- Even if changes need to be made to the standard contract form, using the standard contract form will still expedite the contract review process
Any contract that is not on a Minnesota State standard contract form must be reviewed and approved by system legal counsel

- **Minnesota State Board Policy 5.14 part 3 subpart B**
  - “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.”

- **Minnesota State Board Procedure 5.14.5 part 3**
  - “Purchases 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 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.”
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
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
PROCUREMENT AND CONTRACT TRIGGER AMOUNTS

Contracts Over $500,000
- RFP, Affirmative Action and Equal Pay Certificates

Contracts Over $100,000
- RFP and Affirmative Action certificate

Contracts Over $50,000
- Request for Proposal (RFP)
SINGLE SOURCE POLICY

- 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@minnstate.edu, (651) 201-1694
The Women’s Economic Security Act (WESA) requires Equal Pay Certificates for large state contractors with contracts over $500,000. This requirement 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.
PREPAYMENT (NOT ALLOWED)

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](#)
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.
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: Keswic Joiner, Minnesota State Director of Risk Management (651-201-1778) or the Department of Administration’s Risk Management Office (651-201-2591)
DATA PRACTICES ACT AND FERPA

- “The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The CONTRACTOR and MnSCU must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MnSCU 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 apply to the release of the data referred to in this clause by either the CONTRACTOR or MnSCU. In the event the CONTRACTOR receives a request to release the data referred to in this clause, the CONTRACTOR must immediately notify MnSCU. MnSCU will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released."

- **Remember FERPA may apply:** 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 a 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.

- If you are wanting to use a Master Contract, and your contract involves education data or other private data, please contact OGC to ensure the Master Contract has appropriate terms for protecting private data in accordance with the law.
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.
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@minnstate.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.”

- Forms on Office of General Counsel’s website

- 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
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.

Watch for trigger amounts (contract creep)

- If the amendment is adding money to the contract the value/amount of the contract changes.
- Example: You have a contract for $45,000 for consulting services. You need more consulting services from the vendor and are going to amend the contract to add $15,000 to the contract. Your total contract value is now $60,000 (45,000 + 15,000 = 60,000). Now the contract is over $50,000 and an RFP is necessary.
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.
5.14 Contracts and Procurement-(Grants)

- 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.
SOFTWARE CONTRACTS

- All software contracts need to be reviewed by ITS Security and System Legal.
  - All software contracts should be submitted for review along with the Contract Review Questionnaire for Product/Software/Services.
    - The questionnaire can be accessed via SharePoint.
      - Username: yourstarID@minnstate.edu
      - Password: your StarID password
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
- Any contract not on approved templates need legal review
- *Templates may be modified to include other Allied Health Programs*
CLINICAL AFFILIATION AGREEMENTS NEGOTIATED WITH HOSPITALS OR HEALTH CARE SYSTEMS

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. If you aren’t in agreement to following the terms and requirements of the contract, don’t sign it.

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

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

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

- 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"
E-PROCUREMENT STATUS UPDATE

- **System Update**
  - Over 20,000 Purchase Orders completed to date in Marketplace (Minnesota State e-Procurement application)
  - About 25 colleges/universities active in Marketplace – generating orders in Production
  - Remainder of colleges/universities are in implementation/training process
  - Plan is for all FY 19 encumbrances to be in Marketplace
  - Pilot and testing for Sourcing and Contracts is now in process – schedule is for rollout of contracts and sourcing functionality to begin later this Spring
E-PROCUREMENT RESOURCES

- Minnesota State Marketplace SharePoint
  - Username: yourstarID@minnstate.edu
  - Password: your StarID password

  - This site has access to the following:
    - Training materials for e-Procurement (Marketplace) – including security access
    - Links to Marketplace Test and Production sites
    - Links to Minnesota State contract templates
    - Links to the following contract resources:
      1. Minnesota State negotiated contracts (IT, Facilities and others)
      2. State of Minnesota contracts
      3. U of M contracts
      4. Other Cooperative contract resources
E-PROCUREMENT CONTACTS

- Dan Duffy – e-Procurement Administrator 651-201-1648 or daniel.duffy@minnstate.edu
- Sodany Chantes – e-Procurement Trainer 651-201-1812 or sodany.chantes@minnstate.edu
- Kathy Easthagen – Contracts/Sourcing Trainer 651-201-1422 or kathleen.easthagen@minnstate.edu
- Michael Noble-Olson – Chief Procurement Officer 651-201-1445 or michael.noble-olson@minnstate.edu
- Steve Hawrysh – Project Manager 320-223-6447 or steve.hawrysh@minnstate.edu
CONTRACT REVIEW QUESTIONNAIRE FOR PRODUCT/SOFTWARE/SERVICES

Contract Review Questionnaire for products/software/services

Review required date:

1. Is the vendor willing to negotiate the contract terms? Yes/No. If no, seek alternate vendors and contact legal.
   a. Vendor name:
   b. Vendor Contact name:
   c. Vendor contact email or phone number:

2. Minnesota State - Requestor’s Information
   a. Name of Requestor:
   b. Institution:
   c. Department:
   d. Contact email:
   e. Phone:
   f. If different than the Requestor’s name, the main contact/sponsor contact information for the product/service/software to answer security related questions:

3. Ask vendor if they have a government version of the contract and if so to provide it in a Word document. Obtain and provide all the related documents (EULA, SLA, attachments, etc.) in a Word version (not PDF) and submit with this questionnaire.

4. Is this a product/service/software that will be used for:
   a. Classroom, instructional, or testing purposes – i.e. a product or software as a service (SaaS) that a faculty member has requested to use as a resource for educational purposes. Yes/No
   b. Conducting business on campus – i.e. an application or service that will be utilized by the business office, admissions, registrar, etc. Yes/No
   c. Other? Explain

5. Is any of the data potentially entered, accessed, stored, or captured by the product/service/software considered:
   a. Private information about individual students or staff? e.g. names, grades, phone number, class schedule, birth date, SSN
      i. If yes, please describe that data and how it is to be used.
   b. Health/medical records information (e.g. immunization records, test results, etc.) Yes/No
      i. If yes, please describe that information and how it is to be used.
   c. Credit card information, bank routing numbers, or any other kind of bank/financial information? Yes/No
      i. If yes, please describe that data and how it is to be used.
   d. Private data under the Minnesota Data Practices Act, Minn. Stat. Ch. 13? Yes/No
      i. If yes, please describe that data and how it is to be used.

6. Will this product/service/software “talk to” or require integration with existing enterprise or campus Information systems or the exchange of data with other Information systems (such as SRS, D2L, etc.)? Yes/No

7. Will this product/service/software require any assistance from campus ITS staff regarding set-up or ongoing maintenance? If yes, have they been contacted and reviewed it?

8. Are you aware of any other institutions that are currently using this product/service/software or are considering using the software/service? If yes, please list the other institutions.

To be completed by System office Security.

Name of reviewer:

A. No issues and/or concerns.

B. Concerns and/or issues below
ITS SECURITY CONTACTS

- Jim Nelson, Security Risk Analyst
  Jim.Nelson@minnstate.edu
  651-201-1453

- Tom Johnson, Security Risk Analyst
  Tom.R.Johnson@minnstate.edu
  651-201-1416
CONTRACTING WITH CURRENT MINNESOTA STATE EMPLOYEES

- When contracting with a current Minnesota State employee use the HR forms found on the HR Connect website
  - Username: yourstarID@minnstate.edu
  - Password: your StarID password

- 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
CAMPUS LEVEL-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.
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, ITS security.
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
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
- If applicable, complete software questionnaire, address data security
- 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
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.
- System Office, 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.
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.
WHAT REMAINS IMPORTANT (cont.)

- 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.
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.
RESOURCES AND CONTACT INFORMATION

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

Minnesota Attorney General’s Office
- Michele Owen, Assistant Attorney General
  - michele.owen@ag.state.mn.us, (651) 757-1322

System Office, Real Estate:
- Paul Harrington, Real Estate Manager
  - paul.harrington@minnstate.edu, (651) 201-1539
- Greg Ewig, Director, Real Estate
  - gregory.ewig@minnstate.edu

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

OGC Webinars:
http://www.minnstate.edu/system/ogc/events.html

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