

## CONTRACTS

### Welcome

The Office of University Counsel is responsible for providing all legal advice significantly affecting the legal position of the University of Maine System. To effectively and uniformly respond to legal matters, review and management of these matters must be handled centrally. The University of Maine System enters into a high number of contracts each year. Thorough and consistent review and management of these contracts is vitally important for the best interests of the University.

The information and materials contained in this Web site are presented for informational and educational purposes only and do not constitute legal advice. This page has been developed and presented for the purpose of improving the content and consistency of contracts entered into by the University and the efficiency and effectiveness of the services provided by the University Counsel. **USE OF THE INFORMATION, MATERIALS AND SAMPLE CONTRACTS ON THIS WEB SITE DOES NOT SUBSTITUTE FOR REVIEW OF A CONTRACT BY UNIVERSITY COUNSEL.** In order for the University Counsel to provide advice or a legal opinion on a specific contract, that contract must be sent to the University Counsel for review.

### Frequently Asked Questions?

#### **1. What is a contract?**

Generally, a contract is any agreement between two or more parties where there is a mutual exchange of promises, where the terms and conditions are reasonable and understandable and which creates legally enforceable rights and/or duties of the parties.

#### **2. Is a Memorandum of Understanding or a Letter of Agreement a contract?**

Yes. What a document is called has nothing to do with whether it is a contract or not. If it has the necessary elements of a contract - offer, acceptance, mutual understanding and consideration - it is a contract. For example, Leases, Memoranda of Understanding, software licenses and affiliation agreements are all contracts.

#### **3. Who can sign a contract for the University of Maine System campus or unit?**

The Board of Trustees has the authority to grant signature authority and has assigned such authority under **Board of Trustees Policy 207** to the Treasurer of the University of Maine System. The Board has further authorized the Treasurer to delegate signature authority to certain officers and employees of the University within specific limits. Information regarding the delegation of signature authority can be found in **Administrative Practice Letter IV-C**. Any questions you may have regarding signature authority on your campus should be directed to the Chief Financial Officer on your campus or the Treasurer's Office for SWS employees.

#### 4. What contracts require approval of the University Council?

In compliance with **Administrative Practice Letter IV-C**, if a contract is non-routine in nature or could have major financial or other implications for the University, University Council must review the document. Individuals shall sign such documents only after receiving approval by University Council. University Council also must authorize the engagement of any outside legal counsel.

#### 5. What basic information should be included in any University contract?

In order to make the intent of the parties clear, a contract should include:

- the legal names of the parties. The University must always be identified in any contract as **“the University of Maine System, acting by and through its University of (Campus Name, followed by department, division or unit if necessary).”**
- contact information for each party: address, telephone, fax, etc.
- a clear description of the obligations and responsibilities of each party
- the term of the contract, with a beginning date and an ending date.
- the total amount, schedule and manner of payment(s) required, if any
- a right of the University to terminate the contract early without cause
- contract will be governed by the laws of Maine, or be silent on governing law
- amendment only in writing signed by the parties
- signature lines for all parties

#### 6. What provisions should not be included in a University contract?

The following types of provisions generally are not acceptable from a legal standpoint and should only be included in a contract after consulting with University Council:

- indemnification provisions requiring the University to indemnify or hold harmless the other party
- provisions for automatic renewal of the contract
- provisions which the parties agree will not be applicable
- provisions for injunctive relief or binding arbitration
- governing law and/or jurisdiction of any state or country other than Maine
- limitations on and/or releases of liability of the other party
- disclaimers of warranty of any kind
- an effective date prior to the date of signature
- provisions where lack of response/inaction is deemed to be approval
- confidentiality provisions without an exception for Freedom of Access requests
- caps on damages

**7. I need a contract for a specific purpose. What do I do?**

1. Check the sample contracts included on this site.
2. If there is a sample contract that is applicable, use it to create a contract specifically for your purpose and send that contract to University Counsel for review.
3. If there is not a sample contract that is applicable, send a written request to the University Counsel asking that a specific contract be drafted. Include with your request as much information as possible about the parties, their intent regarding the contract and the desired terms of the contract - dates, services provided, payments, etc.

**8. The other party has sent me their standard contract. What do I do?**

1. Be wary of cookie cutter, one-size-fits-all contracts. Many such standard contracts are written with the idea that both parties will be private, for-profit businesses. They often fail to take into consideration the special circumstances of a public, educational institution. Some provisions of such contracts may simply be inapplicable to or inappropriate for the University.
2. Look through their contract and check to see if all of the information listed in Question 5 above is included in the contract. Make a note of anything that is missing or incomplete.
3. Look through their contract and check to see if any of the provisions listed in Question 6 above is included in the contract. Make a note of any of such provisions that are in their contract.
4. Make a note of any terms or conditions in the contract which are not consistent with your understanding of what the contract should say or what was promised by the other party.
5. Work with your contact for the other party to see if any of the items you have noted can be addressed.
6. Send the contract to University Counsel for review.
7. If the other party is represented by counsel, please provide contact information for that counsel when you send the contract to University Counsel for review.

**9. Where should I send a contract to start the review process?**

Unless your supervisor or someone in the University Counsel's office has instructed you to do otherwise, all contracts needing legal review should be sent to:

Office of University Counsel  
University of Maine System  
16 Central Street  
Bangor, ME 04401

Phone: 207-973-3238  
Fax: 207-973-3239  
anick@maine.edu

\* If the contract involves the leasing or sale of real property, the contract should be sent to the System Office of Facilities for their review prior to sending it to University Counsel.

Office of Facilities  
University of Maine System  
16 Central Street  
Bangor, ME 04401

Phone: 207-973-3334  
Fax: 207-947-7556

Once you have sent the contract to the University Counsel, we will review it and provide you with advice and any changes we recommend. If there are particular time constraints involved with the contract, please let us know that when you send the contract for review. Please be aware that turn around time can vary greatly based on work load and priority of other legal matters, so give as much lead time as possible.

## **Sample Contracts**

**2 + 2 Articulation Agreement**

**Artist Performance Agreement**

**Clinical Affiliation Agreement**

**Contract to Obtain Services ([link](#))**

**Contract to Provide Services**

**Copyright License Agreement**

**FERPA Consent Form**

**Foreign Travel Program Release Form**

**Health Record Release Authorization Form ([link](#))**

**HIPAA Business Associate Contract ([link](#))**

**Lease Agreement - University as Lessee ([link](#))**

**Lease Agreement - University as Lessor ([link](#))**

**Movie Location Agreement**

**Photo/Video Release Form**

**Publishing Agreement**

**Release & Assumption of Risk Form**

**Residential Lease Agreement**

**Site License Agreement**

**Tower Lease Agreement**

**Trademark License Agreement**

**Work for Hire Copyright Agreement**

**Conclusion**

We hope you find the information and sample contracts on this page helpful. Our goal is to provide all parts of the University with assistance in improving the content and consistency of contracts entered into by the University and to increase the efficiency and effectiveness of the legal services we provide. As always, please feel free to contact the University Counsel's office with any specific contract matters or other legal issues.