



Nebraska State
College System

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CONTRACT FOR SERVICES
GUIDANCE AND INSTRUCTIONS

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CONTRACT FOR SERVICES GUIDANCE AND INSTRUCTIONS

The following information is intended to assist each College with their contracts. We have provided a general overview of the terms and concepts in contracts as well as forms and checklists for your use. Following these guidelines will ensure that the interests of the College, employees, and students are protected.

College departments are responsible for negotiating contracts prior to submission to the appropriate Vice President's office for review and execution. The Designated College Representative is responsible for drafting the contract document, implementation, monitoring and oversight of the contract terms and performance. Please refer to pages 11 and 12 for more information regarding Designated College Representative duties.

Contract Basics

What Is a Contract?

Whether a document is titled as a contract, an agreement, a memorandum of understanding, or any other type of cooperative undertaking, **any** written arrangement wherein parties exchange value, such as the exchange of services for payment, is legally considered to be a contract. The relationship's legal status does not change just because the document is labeled as something other than a contract.

Do I Need a Contract?

The Colleges should use a Contract for Services form (either the Nebraska State College System (NSCS) long form or the short form) to document agreements between the College and a party, *other than an employee*, who provides services to the College. NSCS employees must be paid through the payroll system, not through "accounts payable" as a Contractor.

Who Can Sign A Contract?

Employees authorized to sign contracts are identified in Board Policies. At the Colleges, signing authority is limited to Presidents and Vice Presidents.

Who Can Amend, Cancel or Terminate a Contract?

The only employees who are authorized to amend, cancel or terminate a contract are the same employees who are authorized to sign. At the Colleges, this authority is limited to Presidents and Vice Presidents.

Board Policy References.

The Board Policies provide more information for certain types of contracts and are available online for reference. Policy 6401 addresses Contracts and Agreements for Services. Policy 6402 addresses lease purchase agreements, Policy 6405 addresses sponsorships, Policy 6407 addresses athletic competition agreements, Policy 6704 addresses grants and service agreements, Policy 8064 addresses capital construction/facility maintenance and repair contracts, Policy 9300 addresses food service operations, and Policy 9302 addresses beverage and snack vending contracts.

How do I know if the party should be a Contractor or Employee?

A Contract for Services is appropriate only when the contracting party will be treated as an independent contractor, rather than as an employee, under federal tax law. The determination is based on criteria established by the Internal Revenue Service. The parties' characterization of their relationship is not conclusive. Incorrectly treating a contracting party as an independent contractor can cause substantial federal tax problems for both the College and the Contractor. If the Contractor is an employee under federal tax law, do NOT use the Contract for Services. Hire the Contractor as an employee through Human Resources. Paragraphs 1-5 below provide guidance to make the determination.

1. *Independent Business Entity.* If the Contractor is a corporation, limited liability company, partnership, or other business entity not affiliated with the College, then in most cases, the Contractor will be an independent contractor under federal tax law. See paragraph 2 below if the business entity is affiliated with a current or former College employee.
2. *Affiliated Business Entity.* If (a) the business entity is owned or controlled by a current or former College employee, or (b) a substantial portion of the work under the contract is to be performed by a current or former College employee, the contractual relationship should be analyzed as though it were a contract directly with the current or former employee under paragraph 3 or 4 below.
3. *Current College Employee.* If the Contractor is currently a full-time or part-time College employee, do NOT use the Contract for Services form, even if the contracted work is entirely different from the employee's current duties. Consult with Human Resources about modifying the employee's existing employment contract.
4. *Former College Employee.* Under federal tax law, a former College employee who contracts with the College is likely to be deemed an employee rather than an independent contractor, particularly if the work to be performed under the contract is similar to the former employee's prior duties at the College. In most cases, a proposed contract with a former employee should be referred to Human Resources with a request to hire the individual as a temporary employee under Board Policy 5010. A Contract for Services should not be used unless the Contractor is determined to be an independent contractor using the analysis in paragraph 5 below.
5. *Individual Contractor.* If the Contractor is an individual, use the checklist in the Appendix to evaluate whether the Contractor will be treated as an independent contractor or an employee. If the analysis using the checklist is inconclusive, hire the Contractor as an employee through Human Resources, and do NOT use the Contract for Services.

Conflict of Interest

Contract Advisors and Decision Makers.

According to Nebraska state statutes, no College employee involved in an advisory or decision-making capacity relating to College or System purchases and no employee's family member shall be financially interested, or have any beneficial personal interest, either directly or indirectly in such purchase or in any bidder, contractor, lessor, or vendor for such purchase.

Contracts with Public Employees and/or Family Members.

Nebraska state statutes also restrict the award of contracts and other financial benefits to a public employee or a family member of a public employee. "Public employees" include individuals employed by the College, NSCS, State of Nebraska or any political subdivision of the State of Nebraska (including public schools and colleges, Educational Service Units, cities, or any other state or local government agency), or an individual serving as a public official in state or local government. "Family member" includes spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption. Neb. Rev. Stat. §49-14,102 provides that no public employee, employee's family member, or business with which the employee is associated shall enter into a contract valued at two thousand dollars (\$2,000) or more, in any one (1) year, with a governmental body unless the contract is awarded through an open and public process.

Liability Insurance Considerations

The College maintains property insurance, liability insurance, and other types of insurance pertinent to its operation. State statutes and Board policies do not dictate any minimum insurance requirements for Contractors. The College should require adequate insurance from a Contractor as necessary to protect the College in the event of damage or injury during the Contractor's performance of the contract. The Long Form provides four (4) liability insurance options for the College to consider in a risk/benefit analysis when entering into a contractual relationship.

Situations exist in which it may be unreasonable to require the Contractor to fully insure for a project. For example, if the contract is for a small remodeling job in a multimillion-dollar building, it may be impossible or cost-prohibitive for the Contractor to obtain sufficient insurance to replace the building in the event the Contractor accidentally burns it down. In situations like this, the College may decide to assume the risk to get the work done.

On the other hand, in some situations it is essential for the Contractor to provide insurance. One example is a dangerous activity such as a bungee jump or an inflatable bounce house. The College's liability insurance specifically excludes "trampolines and rebound devices," so the College must require the Contractor to maintain insurance that protects both the Contractor and the College. If you have questions regarding the coverage provided by the College's liability insurance, the Vice President for Administration and Finance or the Vice Chancellor for Student Affairs and Risk Management will provide guidance.

In addition to general liability insurance, there are instances where other types of insurance may need to be required of a Contractor. For example, contracted health workers (i.e. physicians, allied health workers) are required to carry professional liability insurance. Contracts related to the transportation of people should require automobile coverage.

Drafting the Contract

The NSCS has provided two (2) contract forms for your use: a long form and a short form. The NSCS forms are preferred whenever possible; however, if the Contractor requires the use of a different/external form, the guidance and checklists provided in these instructions should be used to make changes that may be necessary for the Contractor's form.

Do I use the Long Form or Short Form?

It is always acceptable to use the Long Form Contract for Services when contracting with a non-employee. However, neither of these forms should be used for employment contracts.

The Short Form Contract for Services may be used when the Contractor is an individual providing a one-time service, services of a short duration, or occasional services, with payment in full upon completion. Some examples of circumstances in which the Short Form Contract for Services could be used are a guest speaker or a simple construction task (e.g., painting a room, pouring a concrete slab, or replacing a window or door).

The Short Form Contract for Services should also be used when the College will pay an honorarium or reimburse expenses to a volunteer. A documented contract is required to justify the payment. Current College employees are not eligible for honoraria. Any additional payment to a current employee must be reflected in a modification to the employee's existing employment contract or a request for reimbursement of employee expenses.

The Long Form Contract for Services must be used if (a) the Contractor's performance of the contract will require the use of other people, such as contractor employees or subcontractors; (b) the work is complex or will require substantial time to complete, such as a typical construction or remodeling project; (c) the provisions for payment are unusual, such as an advance payment for purchase of materials or a progress payment schedule based on milestones; or, (d) the College will require the Contractor to maintain liability insurance coverage for the protection of the College.

Modifications to Contract Forms.

The College should complete the Contract for Services by adding information where required. Detailed notes and instructions are provided on the following pages. If necessary, an addendum can be created to add contract terms. Appendices can also be added/attached to the contract form. Any time an appendix is added, the contract form must specifically note that the appendix "is attached and is incorporated by reference into the contract." Appendices to a contract can include a scope of work, a response to a request for proposals, or other documents that provide further detail regarding the services to be provided or the terms of payment.

As a general rule, provisions should not be deleted from the Contract for Services form. Proposed deletions may be discussed with General Counsel.

If at all possible, use the appropriate NSCS Contract for Services form. The use of a Contractor's form will require the addition of numerous provisions to comply with the restrictions that apply to the NSCS. Please refer to the *Contract Review Checklist* for the review of contracts for specific provisions.

Arbitration.

Arbitration is a procedure by which a dispute is submitted to an arbitrator (usually an expert in the field that is the subject matter of the contract), and the parties agree to abide by the arbitrator's decision. By agreeing to arbitration, the College gives up recourse to the court system. As a general matter, governmental agencies fare better in court than in arbitration. It is generally in the College's best interests to resist the inclusion of arbitration clauses in contracts.

Indemnification.

Contractors frequently seek to include so-called "hold harmless," limitation of liability, or indemnification clauses in contracts. These clauses attempt to transfer liability from the Contractor to the College. Do not offer to indemnify the Contractor, and always resist the addition of indemnification language. When presented with proposed indemnification language, the best response is, "Under our contract, each party is responsible for its own performance. If there is litigation, the court will determine who is liable." The Contractor may be able to purchase insurance to cover a risk the Contractor is uncomfortable taking. If the Contractor insists on indemnification, the contract should include mutual indemnification provisions (each party will indemnify the other). Because indemnification provisions can negatively impact our insurance coverage, any contractual indemnification provision that attempts to shift liability from the Contractor to the College or the Nebraska State College System needs to be approved in advance by the NSCS Vice Chancellor for Student Affairs & Risk Management.

Statutory Requirements.

The Nebraska Public Records statutes (Neb. Rev. Stat. §§84-712 through 84-713) provide citizens and other interested persons the right to obtain access to, and copies of, public records in the custody of the Nebraska State Colleges. Service contracts are public records.

In addition to being subject to public disclosure under the Nebraska Public Records statutes, most contracts that expend state funds are subject to Neb. Rev. Stat. §84-602.04, which requires contract information to be included in a public, searchable database. The public website provides access to a copy of the full contract, including any amendments and all documents incorporated by reference in the contract. Limited information, such as social security numbers, federal tax identification numbers, and signatures will be redacted.

The Prompt Payment Act applies to the NSCS under Neb. Rev. Stat. §§81-2401 through 81-2408.

The Interlocal Cooperation Act, Neb. Rev. Stat. §§13-801 through 13-827, is applicable to contracts between public entities. Public entities include the NSCS Colleges, any county, city, village, school district, agency of state government, or the United States, or political subdivisions. The Act allows public entities to enter into written agreements with other public entities to provide services for the parties' mutual benefit. The Act specifies elements that must be addressed in the written agreements and the agreements must be approved by the Board.

Other statutes may apply. If you have any questions regarding the statutory obligations relating to contracts, please contact General Counsel.

Section-by-Section Notes

Long Form Contract Template

The following instructions are intended to assist you in completing the form but do not take the place of a complete review. Please contact the General Counsel if you have questions regarding the contract necessary for your particular circumstance.

Parties.

Insert College name. Insert Contractor name and organizational form (“an individual,” “a Nebraska corporation,” etc.) If the College does not have a Form W-9 on file, the Contractor should complete a Form W-9, a copy of which is included in the Appendix. A form is also available on the DAS website; however, it is a dual form that includes ACH enrollment information. Due to the fact that the W-9 is uploaded into SAP, the Colleges should not use a combined form, but should instead complete a separate W-9.

If the Contractor is another governmental agency, the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§13-801 through 13-827, includes specific requirements that must be met. Interlocal agreements must be reviewed by the General Counsel and must always be approved by the Board of Trustees. The Long Form Contract will likely require substantial modifications to address all Interlocal agreement requirements. The Short Form Contract is not appropriate for Interlocal Cooperation Act contracts.

- ***Section 1. Effective Date***

Please note a beginning date and an ending date. The contract is enforceable when it is signed by all parties. No work should be done under the contract until it has been signed by all parties. If Board approval is required, the contract cannot be signed, and work cannot be performed until Board approval has been obtained.

- ***Section 2. Services***

Describe in detail the services to be provided by the Contractor (*be sure to include all elements addressing “who, what, when, where and how”*). If the description refers to an attachment, be sure to include the attachment and language incorporating the attachment by reference (*e.g.*, “the provisions of which are incorporated by reference”). If the attachment is an existing document, it is advisable to import an electronic version of the existing document to the end of the contract form. It is far better to attach a referenced document than to refer to an unattached document that may be difficult to find or reproduce if a dispute arises.

- ***Section 3. Consideration***

Include the amounts and times of payment from the College to the Contractor. If the College will pay or reimburse expenses, the contract should include specific descriptions (for example, travel, meals, or mileage) and maximum amounts of the expenses to be paid

or reimbursed. If the contract is for more than twenty-five thousand dollars (\$25,000), or if multiple payments will be made to the Contractor during a year, payment will be made by electronic transfer (ACH). ACH payment is optional for other contracts. To establish an electronic payment process, the Contractor must complete the State of Nebraska ACH Enrollment Form, available in fillable form at <http://das.nebraska.gov/accounting/forms/forms.htm>. A copy of the ACH Enrollment Form is also included in the Appendix.

- ***Section 4. Prompt Payment Act***

The Prompt Payment Act applies to the NSCS under Neb. Rev. Stat. §§81-2401 through 81-2408.

- ***Section 5. Independent Contractor and Liability Insurance***

See the general discussion above under “Contractor or Employee?” and refer to the *Checklist to Determine Employee/Contractor Status*. This section also includes the options related to liability insurance. If you are uncertain as to which option you should choose, please contact your Vice President for Administration and Finance or the Vice Chancellor for Student Affairs & Risk Management. Also, if you are requiring that the Contractor provide insurance related to the contract, make sure you receive the certificate of insurance referenced in this section. If the College is required to provide a certificate of insurance, please contact the Vice Chancellor for Student Affairs & Risk Management in the System Office to make that request.

- ***Section 6. Access to Records***

The funding federal agency and the Comptroller General will have access to the Contractor’s records under this section only if the contract is for the expenditure of federal funds. In addition to the specific provisions of this section, the contract and attachments (with narrow exceptions) are public records under Neb. Rev. Stat. §§84-712 through 84-713. The Nebraska Auditor of Public Accounts has broad authority to review contracts under Neb. Rev. Stat. §§84-304 through 84-315.

- ***Section 7. New Employee Work Eligibility Status***

State statute requires this provision for all State contracts for services physically performed within the state. See Neb. Rev. Stat. §§4-108 through 4-114. It is non-negotiable, and the language cannot be changed. If the Contractor is an individual or a sole proprietorship, the Contractor must complete the [Department of Administrative Services United States Citizenship Attestation Form](#), available on their website.

- ***Section 8. Non-Discrimination***

Self-explanatory.

- ***Section 9. ADA & Drug-Free Workplace Requirements***

This provision is based upon federal law and applies to all contracts and Contractors within the United States.

- ***Section 10. Debarment/Suspension Certification***
Applies only in the limited circumstances stated. Because the language is conditional, the paragraph does not need to be removed when it does not apply.
- ***Section 11. Use of Information; Property Ownership***
This section has two (2) purposes – to prevent the Contractor from using the College’s information outside of the scope of its duties under the contract and to avoid future disputes about the ownership of property created under the contract. The assignment of copyright is especially important to make sure the College has unrestricted rights to use the Contractor’s work product.
- ***Section 12. Parties; Subcontractors; Assignment***
Self-explanatory.
- ***Section 13. Cancellation***
If the Contractor cancels, the College will only pay for completed work. If the College cancels, the College will pay for completed work and work in progress.
- ***Section 14. Default; Remedies***
Self-explanatory.
- ***Section 15. Unavailability of Funding***
Board Policy 6401 requires this provision in contracts that extend beyond the current fiscal year.
- ***Section 16. Complete Agreement; Governing Law; Amendment***
Contractors often ask to change the state whose law will govern. As an agency of the State of Nebraska, it is difficult for the State Colleges to consent to the jurisdiction of another state, to become familiar with that state’s law, and to pursue or defend litigation in the other state. Do NOT change the state in the Contract for Services form, and if a Contractor submits a form that specifies another state’s law will apply, change it to Nebraska whenever possible.

After the contract is in effect, a change in circumstances, facts, or conditions that affects performance of the contract may require an amendment to the contract. The amendment can be made using the Contract for Services form. It is the responsibility of the Designated College Representative to monitor the parties’ performance under the contract and to make sure the contract amendment is approved and signed by the Board, Chancellor, President, or Vice President as appropriate.

- ***Section 17. Technology Access***
Self-explanatory.
- ***Section 18. Confidentiality***
This section addresses the legal confidentiality and privacy requirements associated with contracts whereby the Contractor is provided with user data from the College.

- **Section 19. Designated College Representative**
Add name and contact information for the Designated College Representative responsible for implementation, monitoring, and oversight of the contract. The Designated College Representative must also be identified in the Board of Trustees materials. The Designated College Representative can be an administrator, faculty member, or professional staff member. Support staff may not be the Designated College Representative. Colleges may require the Designated College Representative to complete, sign and submit a routing form prior to sending the contract to the appropriate Vice President's office for review and execution.
- **Section 20. Savings Clause**
Self-explanatory.
- **Section 21. Construction Site**
Self-explanatory.
- **Section 22. Party Signatures**
The Contractor should typically sign the document first. Refer to Board Policy 6401 to see who is authorized to sign the contract for the College. Contracts may be signed electronically through DocuSign or other similar services.
- **For College Office Use Only**
This area allows a space for the College to note the appropriate budget code related to the contract.

Short Form Contract Template

The following instructions are intended to assist you in completing the form but do not take the place of a complete review. Please contact the General Counsel, if you have questions regarding the contract necessary for your particular circumstance.

- **Contract Terms**
Insert College name. Insert Contractor name and organizational form (“an individual,” “a Nebraska corporation,” etc.). If the College does not have a Form W-9 on file, the Contractor should complete a Form W-9, a copy of which is included in the Appendix. The form is also available on the DAS website; however, it is a dual form that includes ACH enrollment information. Due to the fact that the W-9 is uploaded into SAP, the Colleges should not use a combined form, but should instead complete a separate W-9.

Describe in detail the services to be provided by the Contractor (*be sure to include all elements addressing “who, what, when, where and how”*). If the description refers to an attachment, be sure to include the attachment and language incorporating the attachment by reference (*e.g., “the provisions of which are incorporated by reference”*). If the attachment is an existing document, it is advisable to import an electronic version of the existing document to the end of the contract form. It is far better to attach a referenced document than to refer to an unattached document that may be difficult to find or reproduce if a dispute arises.

If the contract is for more than twenty-five thousand dollars (\$25,000), or if multiple payments will be made to the Contractor during a year, payment will be made by electronic transfer (ACH). To establish an electronic payment process, the Contractor must complete the State of Nebraska ACH Enrollment Form, available in fillable form at <http://das.nebraska.gov/accounting/forms/forms.htm>. A copy of the ACH Enrollment Form is also included in the Appendix.

If the College will pay or reimburse expenses (for example, travel, meals, or mileage), the contract should include specific descriptions and maximum amounts of the expenses to be paid or reimbursed.

- ***New Employee Work Eligibility Status***
State statute requires that all State contracts for services physically performed within the state include the new employee work eligibility status provision set forth in the second through seventh paragraphs. See Neb. Rev. Stat. §§4-106 through 4-114. It is non-negotiable, and the language cannot be changed. If the Contractor is an individual or a sole proprietorship, the Contractor must complete the [Department of Administrative Services United States Citizenship Attestation Form](#), available on their website.
- ***Non-Discrimination***
Self-explanatory.
- ***ADA & Drug-Free Workplace Requirements***
This provision is based upon federal law and applies to all contracts and Contractors within the United States.
- ***Technology Access***
Self-explanatory.
- ***Confidentiality and Privacy***
This section addresses the legal confidentiality and privacy requirements associated with contracts whereby the Contractor is provided with user data from the College.
- ***Designated College Representative***
Add name and contact information for the Designated College Representative responsible for implementation, monitoring and oversight of the contract. The Designated College Representative must also be identified in the Board of Trustees materials. The Designated College Representative can be an administrator, faculty member or professional staff member. Support staff may not be the Designated College representative. Colleges may require the Designated College Representative to complete, sign and submit a routing form prior to sending the contract to the appropriate Vice President's office for review and execution.
- ***Signatures***
The Contractor should typically sign the document first. Refer to Board Policy 6401 to see

who is authorized to sign the contract for the College. Contracts may be signed electronically through DocuSign or other similar services.

- ***For College Office Use Only***

This area allows a space for the College to note the appropriate budget code related to the contract.

APPENDIX LIST

1. Checklist to Determine Employee/Independent Contractor Status
2. Long Form Contract and Short Form Contract Templates
3. Contract Review Checklist
4. Guidelines for State Contracts Website Compliance

Checklist to Determine Employee/Independent Contractor Status

1. Is the Contractor a current employee of the College? Yes No
2. During the past two (2) years, did the Contractor provide similar services to the College as a full or part-time employee? Yes No
3. Does the Contractor work exclusively for the College (versus operating a trade or business that offers services to the general public)? Yes No
4. Will the College be providing specific direction to the Contractor as to when, where, and how the work is to be done? Yes No
5. Will the College be requiring the Contractor to undergo specific training? Yes No
6. Will the College be directing to whom the Contractor is assigning specific tasks or be involved in the hiring, supervision, or direct payment of the Contractor's workers? Yes No
7. Will the College require that the Contractor work specific days or hours (like an employee) rather than allowing the Contractor to establish the work schedule? Yes No
8. Will the College provide all of the tools, equipment, and supplies that the Contractor will use in performing the work? Yes No

Answering "Yes" to any of the questions above indicates the Contractor may be considered an employee, rather than an independent contractor, and you should consult with your Vice President for Administration and Finance or the General Counsel as to whether the Contractor should be hired as a temporary employee under Board Policy 5010, and the Contract for Services should not be used.

Additional Guidance

Behavioral Control

Questions 4, 5, 6, and 7 relate to the amount of behavioral control between the parties. Whether the College provides specific direction as to when, where, and how the work is done, whether the College requires specific training, whether the College controls how the worker assigns work and hires additional workers, and the College's control over the worker's schedule all shed light on the behavioral relationship. These questions are likely sufficient to establish the amount of behavioral control the College exerts over the worker for this analysis.

Financial Control

Questions 3 and 8, regarding the provision of tools and supplies as well as the exclusivity of the working arrangement, inquire into the financial relationship of the parties. However, it may be advisable to consider additional aspects of the parties' financial relationship. Factors such as the opportunity for profit or loss by the worker and the method of payment may be additionally helpful:

- Is the Contractor paid hourly or weekly?
 - Hourly/weekly pay may indicate an employee relationship, while payment on commission or a per-assignment basis may indicate an independent contractor relationship.
- Is the Contractor responsible for paying their own business and travel expenses?
 - Employees are generally directly reimbursed for travel and other business costs, while independent contractors are generally responsible for those expenses.

Relationship Control

Questions 1, 2, 3, and 7 inquire into the parties' relationship to one another and how they perceive the employment relationship. Whether the College is the worker's only employer, whether the worker is currently or has recently been an employee of the College, and the extent to which the College determines the worker's schedule are all relevant to an analysis of relationship control. These questions are also likely sufficient for an analysis of the parties' relationship control. Additional factors that may be helpful in assessing relationship control include the permanency of the position, any employee benefits provided, and the regularity of business activity.

- Does the College provide the Contractor with vacation, retirement, or health benefits?
 - Provision of these benefits may indicate an employee relationship.
- Has the College hired the Contractor for a specific time period?
 - This factor would indicate an independent contractor relationship. Employees are generally hired for an indefinite period.

Long Form Contract and Short Form Contract Templates

The long and short form contract templates can be found on the procurement webpage of the NSCS website or by clicking the following link:

<https://www.nscs.edu/information-for/system-resources/procurement>

Contract Review Checklist

Please use this checklist to ensure key provisions are addressed. This checklist should not take the place of a thorough legal review.

Parties

- ❑ The College is identified in the Contract as “The Board of Trustees of the Nebraska State Colleges doing business as INSERT NAME OF COLLEGE”
- ❑ The Contractor is identified by its full name and organizational form (“an individual,” “a Nebraska corporation,” etc.)
- ❑ The Contract does NOT allow the Contractor to assign or transfer any interest, rights, or duties in the Contract to another without the College’s written permission.

Effective Date of Contract

- ❑ The beginning and ending dates of the Contract are clearly stated.

Services

- ❑ The Contract clearly states in detail the services to be performed and/or products to be delivered.
- ❑ If the Contract specifically references a detailed scope of work attached to the Contract, the Contract includes language referencing the attachment and incorporating its terms. (e.g. “A scope of work is attached as Appendix A, the provisions of which are incorporated by reference.”)

Consideration

- ❑ The amounts and times for payments from the College to the Contractor are clearly stated.
- ❑ If consideration other than payment will be provided by the College to the Contractor, ensure those considerations (i.e. meals, beverages, hotel room directly billed to College, equipment provided for their use) are clearly spelled out.
- ❑ Contract contains the following language regarding the Prompt Payment Act:

“In the event any amount due under this Contract remains unpaid for forty-five (45) days after the due date, the unpaid amount shall bear interest from the 31st day after the due date at the rate specified in the Prompt Payment Act, Neb. Rev. Stat. §§81-2401 through 81-2408.”

- If the Contract is for more than twenty-five thousand dollars (\$25,000) or if multiple payments will be made to the Contractor during a year, the Contract states that payment will be made by electronic transfer (ACH).
- If payment will be made by ACH, an ACH Enrollment Form has been completed by the Contractor and is attached to the Contract.

Liability and Insurance

- The Contract does NOT contain any language stating that the College will indemnify the Contractor or hold the Contractor harmless. If a party insists on indemnification, the Contract includes mutual indemnification provisions (each party will indemnify the other).
- The Contract does NOT contain language requiring arbitration or mediation between the College and the Contractor in the event of a dispute. If a party is insisting on the inclusion of language requiring arbitration or mediation, contact the General Counsel prior to signing.
- The Contract clearly identifies the party responsible for having insurance to cover the activity or work at issue in the Contract.
- If the Contractor is providing the insurance, the Contractor is required to provide the College with a certificate of insurance.

Conflict of Interest

- If the Contract is valued at two thousand dollars (\$2,000) or more and was not awarded through an open and public process, NO public employee, public employee's family member, or business with which the public employee is associated is a party to this Contract.
- NO employee involved in an advisory or decision-making capacity relating to College or System purchases and no employee's family member is financially interested, or has any beneficial personal interest, either directly or indirectly in this Contract.

Other Required Provisions

- **Independent Contractor** – The Contract includes the following or very similar language:

The Contractor shall be an independent contractor and not a College employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any Nebraska revenue and taxation law, Nebraska workers' compensation law, and Nebraska unemployment insurance law.

The Contractor agrees that it is a separate and independent enterprise from the College, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it shall utilize a high level of skill necessary to perform the work. This Contract shall not be

construed as creating any partnership, joint venture, or joint employment relationship between the Contractor and the College, and the College shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages or overtime premiums. If the Contractor has employees or subcontractors, the Contractor further agrees to maintain at least the prescribed minimum workers' compensation insurance coverage for all of the Contractor's employees for the duration of this Contract. The Contractor agrees to furnish the College proof of workers' compensation insurance coverage upon request.

- **New Employee Work Eligibility Status** – The Contract is for services to be physically performed within Nebraska and includes language either from a or b below.

- a. **Employee Work Eligibility Status.** The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

- b. The Contractor is an individual or sole proprietorship. The Contractor must complete the "[United States Citizenship Attestation Form](#)," available on the Department of Administrative Services website. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide US Citizenship and Immigration Services (USCIS) documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The attestation form and USCIS documents (if applicable) must be attached to the Contract.

The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified or the Contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

- **Non-Discrimination** - The Contract contains the following language related to non-discrimination:

The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended, the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 through 48-1125, as amended, and Board Policy 5000. Unlawful harassment and/or discrimination is prohibited. This provision shall include, but not be limited to, employment, promotion, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts for services allowed under this Contract.

- **ADA & Drug-Free Workplace Requirements** – The Contract contains the following or similar language related to the ADA & Drug-Free Workplace Requirements:

All provisions of this Contract are subject to the Americans with Disabilities Act (ADA). Further, the Contractor certifies that the Contractor operates a drug-free workplace and, during the term of this Contract, will be in compliance with the provisions of the Drug-Free Workplace Act of 1988.

- **Information Technology CIO Review** – If the Contract applies to Information Technology hardware, software, or service purchases, the Designated College Representative must consult with the CIO prior to the Contract's execution. This consultation will help ensure that data security is maintained in compliance with federal regulatory frameworks, and that new purchases are compatible and can be effectively supported and integrated with existing network systems, per Board Policy 7003: Information Security Program (at the time of this writing available at: <https://www.nscs.edu/policy-manual/detail/208-7003-information%20security%20program>).
- **Statutory Public Disclosure** – The Contract does not contain any language indicating that the Contract is confidential but rather contains the following or similar language related to the Statutory Public Disclosure Requirements: Contracts for Services are public records which are generally subject to statutory public disclosure and public website posting requirements.
- **Designated College Representative** – The Contract clearly states the College employee who is responsible for monitoring and oversight of the Contract.
- **Labels** - In addition to the above provisions, it is important that each Contract uses consistent labels throughout the document. For example, if the document is first called a Contract, then it should be consistently referred to as a Contract throughout; however, if it is first called an Agreement, then it should be consistently referred to as an Agreement throughout. Furthermore, a party to the Contract may be referred to by another label if indicated in parenthesis or quotes after the first use of the party's legal name and then that label should be used consistently throughout. For example, College can be used to refer to the Board of Trustees of the Nebraska State Colleges doing business as X State College by placing (College) after the full legal name is spelled out. If College is selected as the preferred label in the document, then Institution, CSC, PSC, WSC, or Customer should not be used as a label in place of College.

Additional Documents for Contract

The following documents are included with the Contract:

- W-9 and ACH Enrollment Form
- United States Citizenship Attestation Form

Guidelines for State Contracts Website Compliance

Contracts for Inclusion on the State Website

- All contracts (including grants, contracts, and subcontracts) where payments flow through the State of Nebraska Treasury, with limited exceptions as noted below.
- Contracts from revenue bond operating budget.
- Contracts where payments/funds do NOT go through the State of Nebraska Treasury, as in revenue bond contingency maintenance project contracts and bonded construction projects for residence halls and student centers (funds paid by trustee).

Contracts Excluded from the State Website

- Contracts providing specific services or financial assistance to specifically named individuals or families.
- Contracts of employment (federal work study excluded, as are benefits contracts).
- Contracts transferring funds between two agencies, boards, commissions, or departments of the state, or payments of state or federal assistance to an individual.

When scanning the contract, DO NOT include any documents that are NOT part of the contract (e.g. background check forms, ACH Enrollment forms, W-9's, Citizenship Attestation forms, etc.)

Redaction Items for the Contracts

Prior to uploading the contract into Ion Wave, **two (2)** people must review it to ensure that any of the following information contained in the contract or any of the attachments or appendices have been redacted.

- Social Security numbers and Federal Tax ID numbers (individual or business)
- Protected health information (HIPAA)
- Any bank account or credit card numbers or bank routing information
- Any information considered confidential per state or federal law, rule, or regulation
- DAS is recommending that **signatures should be redacted**, but not the identities of persons signing the contract
- Any information or records that may be withheld from the public per Neb. Rev. Stat. §84-712.05. There is a lengthy list in Neb. Rev. Stat. §84-712.05, most of which should never be in a contract, including **“proprietary information”** (trade secrets, research work, and information advantageous to business competitors). There is a paragraph in Neb. Rev. Stat. §84-712.05 that addresses security of public property and persons. We know other agencies are NOT placing **construction plans and specifications** on the DAS website, and

that is our recommendation until the NSCS gets further direction from DAS on the matter. Also, it is important to redact any **computer or communications network information** (such as system diagrams) that can jeopardize the security of the systems.