

MAINE COMMUNITY COLLEGE SYSTEM

FINANCIAL AFFAIRS

Section 715

SUBJECT: CONTRACTS

PURPOSE: To establish rules and guidance for reviewing and entering into binding obligations on behalf of the M CCS

A. Definitions

For purposes of this policy, a contract is any agreement between a component of the M CCS (hereinafter “M CCS”) and another party, made on behalf of the M CCS, in which legally enforceable commitments are made by and to the M CCS. Such contracts include any of the following agreements, however named, and not just those documents entitled “contract”: letter of agreement, letter of understanding, letter of engagement, appointment letter, agreement, facility lease, capital or equipment lease, memorandum of agreement, memorandum of understanding, clinical affiliation agreement, adjunct faculty contract, service agreement, special service contract and/or a consortium agreement. “Contracts” also include oral agreements, although the M CCS discourages use of oral agreements.

B. Signature Authority

Only employees expressly designated by a college or System president are authorized to sign a contract on behalf of the M CCS.

C. Use of M CCS Forms

Employees shall use the M CCS contractual forms whenever such forms exist with respect to a particular transaction. Employees shall not vary or make changes to a contractual form without submitting the form for review in accordance with section D of this policy.

D. Review Process

Although all parties hope that a contract provides its intended mutual benefits, every contract must anticipate the possibility that it will not. Accordingly, contracts must be reviewed to ensure that the interests of the M CCS are adequately protected should the contract require termination.

Each college and the System Office shall designate qualified employees who shall review any proposed contract before it is signed. For example, contracts with financial, legal, human resource, information technology and/or academic related provisions shall be reviewed by employees with the pertinent experience and qualifications. A college may adopt an expedited or shortened review process for contracts utilizing pre-approved M CCS contractual forms.

E. Performance and/or Payment before Signing

Employees are discouraged from commencing performance under contracts not yet signed by all parties, and no payment shall be made on a contract that is not yet signed by all parties unless such payment is approved by a college or System president.

F. Purchasing Amount Limitations

Each college and the System Office shall adopt purchasing amount limitations for those employees with contracting authority. No provision of this policy shall be construed to replace or expand any spending limitation imposed by another college or System policy or procedure.

G. Common Contractual Terms and Conditions

Employees delegated authority to sign contracts, and employees who otherwise negotiate and review contracts, shall understand common contractual terms and conditions, including the following terms and conditions and the M CCS policy thereon:

1. Prohibited Terms or Conditions

Unless otherwise advised by the M CCS general counsel, no contract shall agree to the following terms or conditions:

- a. Insurance.** Any requirement that the M CCS carry insurance in addition to or in excess of its existing insurance coverage.
- b. Defense and Indemnity.** Any requirement that the M CCS defend, indemnify, hold harmless or assume a like responsibility towards any other party, to the extent such responsibility is not covered by an existing M CCS insurance policy.
- c. Tort or Other Governmental Immunity.** Any provision that expressly or implicitly waives M CCS tort or other governmental immunity or limitation of liability.
- d. Confidentiality.** Blanket requirements that the M CCS keep certain information confidential.
- e. Intellectual Property.** Any provision that the M CCS waive its intellectual property rights in work for which it has paid and will want to use again.
- f. Governing Law.** Any requirement that the contract be interpreted or arbitrated under the law of a state other than Maine and without application of its conflicts of laws statutes or principles.

- g. Subrogation.** Any requirement that the M CCS waive its insurer(s)' rights of subrogation for claims arising under the contract.
- h. Unlawful Purpose or Effect.** Any term or performance that would be unlawful or unenforceable under applicable law.
- i. Attorneys' Fees.** Any term that obligates M CCS to pay another party's attorneys' fees or costs of collection.
- j. Liquidated Damages.** Any provision that requires M CCS to agree in advance to the damage amount that M CCS would pay another party in the event of an alleged breach (otherwise known as "liquidated damages").
- k. Automatic Renewal Clauses.** Any provision that enables a contract to renew without an affirmative act by the M CCS.
- l. Limitation on Damages.** Any provision that prohibits M CCS from recovering its lawful damages incurred as a result of an alleged breach of the contract.
- m. Statute of Limitations.** Any provision that changes the time period under which claims can be made or actions can be brought under the laws of the State of Maine.
- n. Prevailing Terms.** Any provision that states the terms of a vendor's contract prevail over M CCS' standard terms and conditions, including any addenda.
- o. Unilateral Modification.** Any provision that permits the vendor to make unilateral modifications to the contract.

2. Discouraged Terms or Conditions

The M CCS discourages agreement to the following terms or conditions:

- a. Lengthy Terms.** Generally speaking, any provision that binds the M CCS to a term of more than three years.
- b. Incorporation by Reference.** Any provision that incorporates by reference terms, conditions or other rules from sources not attached to the contract and not otherwise reviewed for acceptability.
- c. Limited Notice before Termination.** Any provision that enables the other party to terminate without sufficient time to allow the M CCS to make suitable alternative arrangements.

- d. **Exclusivity Clauses.** Any provision that binds the M CCS to use exclusively the other party for the duration of the contract.
- e. **Releases.** Any requirement that the M CCS release any other party from certain claims.

3. **Favored Terms or Conditions**

The M CCS encourages use of the following terms or conditions:

- a. **Termination Rights.** A provision that enables the M CCS to timely terminate a contract without undue penalty.
- b. **Appropriation/Allocation Clauses.** A clause that expressly makes the M CCS performance contingent upon continued adequate funding.
- c. **End of Semester Expiration or Termination.** A provision that enables the contract to continue until after a semester or other important operative time-frame is over.
- d. **Third-Party Rights.** A provision stating that the parties do not intend the contract to create any rights in persons not a party to the contract.
- e. **Discount for 15 Day Payment Term.** A provision stating that M CCS will receive a discount for payment within 15 days of receipt of invoice. An invoice will be deemed received three business days from the invoice date.

H. **Additional Notice, Review and Approval Requirements**

Before signing the following types of contracts, a component of the M CCS shall:

1. Notify the M CCS chief financial officer if the contract exceeds the spending limits set forth in the M CCS policy on purchasing.
2. Notify the M CCS chief financial officer if the term of the contract extends for three or more years.
3. Obtain a review by the M CCS general counsel and the express approval of the M CCS president if the contract is for the purchase or sale of real property.
4. Comply with the M CCS policy on rental/leasing of college facilities if the contract is to rent or lease a facility to or from another entity.
5. Obtain a review by the M CCS general counsel and M CCS director of human resources of any employment separation agreement.

I. Violations of this Policy

Any contract executed by the M CCS in contravention of this policy is hereby declared void if at least one of its provision(s) materially prejudices M CCS interests, and if the M CCS employee authorized to execute a proper and/or amended contract does not act affirmatively to do so. Employees who sign a contract without obtaining the proper review(s) and/or the appropriate authorization may be subject to discipline and, in cases where a contract so signed exposes a college or the M CCS to a significant liability, personal liability as well.

REFERENCES: 20-A M.R.S.A. §12706(9)

DATE ADOPTED: June 24, 2009

DATE(S) AMENDED: November 29, 2012; November 13, 2019