

# Contracts and Agreements Overview

*Provided By:*

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# What is a Contract?

Generally, a contract is a legally enforceable agreement between two or more parties who agree to perform or refrain from performing some act now or in the future. Elements of a contract:

1. An offer
2. Acceptance of the offer
3. Consideration (generally consists of money)

# Other Types of Legal Documents

- Memorandum of Understanding or Agreement (MOU/MOA)
- Letter of Intent (LOI)
- License Agreement
- Lease Agreement
- Sub-agreement

# Memorandum of Understanding

- A bilateral or multilateral agreement between two or more parties.
- Expresses convergence of will between the parties.
- Generally recognized as binding.
- To be legally an MOU must:
  - Identify the contracting parties.
  - Define the purpose and terms of the MOU.
  - Must be signed by all parties involved.

# Letter of Intent

- Interim agreement that summarizes the main points of a proposed deal or confirms that a certain course of action is going to be taken.
- Generally does not constitute a definitive contract, but confirms an interest in reaching a final agreement.
- The language of the LOI is critical and will differentiate whether there is only an expression of interest or an enforceable undertaking.

# License Agreement

- Revocable written agreement by the contractual owner of a property or activity giving permission to another to use that property or engage in activity in relation to that property.
- Property can be real, personal, or intellectual.
- Licenses can include software, end user, copyright, trademark, domain name, etc.
- A license assigns limited use rights for property.



# Lease Agreement

- A legal document outlining the terms under which one party agrees to rent property from another property.
- Guarantees the lessee (renter) use of an asset and guarantees the lessor (property owner) regular payments for a specified length of time.
- Examples of leases include:
  - Real estate lease
  - Equipment lease
  - Vehicle lease

# Sub-Agreement

- An agreement, purchase order, or other legal instrument that is written under the authority of, and consistent with the terms and conditions of, a prime award (grant, contract, or cooperative agreement).
- Authorizes a portion of the work or effort to be performed by another institution or organization.



# Elements of Contract Formation

- To form a legally binding contract, six basic elements must be satisfied:
  1. Capacity to contract
  2. Mutual assent binding parties to contract terms
  3. Consideration
  4. Lawful purpose
  5. Terms must be reasonable clear and certain
  6. Must be in a form permitted by law

# Who May Sign a Contract on Behalf of the College?

- See College [APM 02-0303](#) Contract Signature Authority
- The President and Board Chair are the only persons authorized by statute to sign contracts on behalf of the College.
- The President is also authorized to delegate that authority (*See APM 02-0303*).
- All purchasing contracts must be submitted to the Purchasing Office.
- All other contracts should be submitted to General Counsel for review and approval as to form and legality, but generally not as to substantive matters.

# Legal Name Used in Contracts

- In all contracts FSCJ must be referenced as:
  - The District Board of Trustees of Florida State College at Jacksonville, a public body corporate of the State of Florida.

OR

- The Florida State College at Jacksonville District Board of Trustees, a public body corporate of the State of Florida, for its \_\_\_\_\_.

# Prohibitions & Other Considerations

- FSCJ cannot indemnify or hold harmless the other party due to the limited waiver of sovereign immunity found in Sec. 768.28, Florida Statutes.
- FSCJ is immune from liability under Sec. 768.28, F.S. for amounts over \$200K and cannot be required to obtain insurance beyond that amount as a condition of a contract.
- Jurisdiction and venue (usually state or federal court in Duval County).
- Must be in writing, no oral contracts.

# Prohibitions & Other Considerations

(cont'd.)

- Public records. Other party must allow access to all documents. Confidentiality clauses must allow the contract to be produced upon request.
- Other party may not assign the contract unless FSCJ approves of the assignment in writing *OR* without the prior written consent of FSCJ.

Any questions about contracts and other agreements may be directed to the Office of the General Counsel.

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