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## Of counsel: Fall 2011

Northeastern University - Office of the University Counsel

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the newsletter of

NORTHEASTERN UNIVERSITY  
OFFICE OF THE UNIVERSITY COUNSEL  
378 COLUMBUS PLACE

Your Questions and Answers on Contracts  
Massachusetts AG Enforcement of Data Breaches  
For Your Consideration: Recent and Upcoming Seminars

Your Questions and Answers on Contracts

Following are questions we have received recently and answers to them. If you have any questions about contracts you'd like to see responded to in this space, please submit them to the Office of University Counsel either online to [k.brown@neu.edu](mailto:k.brown@neu.edu) or in hard copy to 378 Columbus Place. Depending upon the nature of your question, we'll either answer you personally or address your issue in a future edition of this newsletter.

**Question 1:** Why do we have written contracts?

**Answer:** There are several key reasons why the University wants to have its agreements with others put in writing. These include the following:

- **To prevent/reduce disputes about the transaction.** A written contract states each party's responsibilities about all the elements of their transaction. It also states the consequences for failing to meet those responsibilities. This provides clarity for both parties and can help prevent disputes since the responsibilities have been agreed to in writing.
- **To create a cost management tool.** A written contract can aid in managing expected costs. It also provides a control or a limit on costs resulting from contingencies and, importantly, allocates the risks of the unexpected between the parties.
- **To comply with legal requirements and for use in litigation.** Many contracts must be in writing to be enforceable in the courts. For example, contracts for the sale of goods with a value of \$500 or more, contracts that will not be completely performed within a year, real estate contracts and personal services contracts all must be in writing to be enforceable. However, even if the law does not require it, a written contract is the best way to show the agreement between the parties if one party is attempting to enforce the contract.

**Question 2:** When should I use the Professional Services Agreement (either the long or short form)?

**Answer:** The Professional Services Agreement should be used when the University is purchasing the expertise, knowledge or know-how of a person or company. Examples would typically include a contract with a consultant, web designer, computer programmer or another independent contractor to perform a service for the University which is outside the University's usual sphere of business. As a general matter, all independent contractors must offer their services to the general public (e.g., via a website or other advertising). The Accounts Payable Department, working in conjunction with the Office of University Counsel, has posted a policy and related information regarding Independent Contractors on its website, <http://www.northeastern.edu/ap/independent>. Please review it for additional details.

**Question 3 :** Who keeps a copy of my department's contracts?

**Answer:** The originating department must keep a copy of its signed agreements. One very good reason the originating department must keep a copy of its agreements is because the originating department is obligated to comply with the business terms of its agreements. If you do not keep a copy, you cannot keep yourself apprised of your obligations and/or any deadlines provided in your agreement.

**Question 4 :** A business is loaning a piece of equipment to us free of charge for a period of time. The company's letter to us describes the piece of equipment and contains some other writing, but there's no money exchanging hands. Is there a contract if there is no money involved in the transaction or deal?

**Answer:** It depends. An agreement may be a binding contract even though money is not involved in the deal. For example, if an agreement involves a use of University facilities, personnel, other resources, its name, or a promise by the University to refrain from doing something, chances are the parties have formed a legally binding contract. In this case, our office should review the letter from the company to make a legal determination.

### **Massachusetts AG Enforcement of Data Breaches**

#### **Massachusetts AG Enforcement of Data Privacy Breaches**

The Massachusetts privacy statute enacted in 2007 requires, among other things, companies doing business in Massachusetts to alert the Office of the Attorney General (AG) about security breaches that might result in identity theft. Based on the notices of data breach provided to it by companies, the Massachusetts AG recently announced that since the beginning of 2010, as many as 1 in 3 residents of Massachusetts have had their nonpublic personal information accessed in data privacy breaches. In light of this, the AG expects her office to focus on issues related to data privacy – specifically, enforcement of the Massachusetts data privacy regulations – more frequently and rigorously.

Please be reminded that under the Massachusetts data privacy regulations, nonpublic personal information is defined as:

- a person's **name** (last *and* first, or last *and* first initial) AND/PLUS

- a **state-assigned number** (e.g., passport/visa number, driver’s license number, social security number), OR
- **financial account information** (e.g., bank account or bank card number, insurance policy number).

The University has already taken several steps to comply with this regulation and minimize the need for receiving and storing these pieces of information together. However, given the wide-spread attention to this law and the significant risks associated with noncompliance, the keys to continued compliance are awareness and diligence. All faculty members and staff should continue to be aware of their receipt of, control over and access to nonpublic personal information.

As a refresher . . .

- If you electronically store on a portable device or send wirelessly or over public networks nonpublic personal information, **it must, to the extent feasible, be encrypted.**
- Keep physical records containing nonpublic personal information in **locked, secured spaces** only.
- **Conduct reasonable and continuing due diligence** on entities with whom you do business to determine whether their policies and procedures relating to the protection of any nonpublic personal information that you send to them will comply with the Massachusetts privacy regulations and applicable federal regulations. For example, contracts that involve any exchange of data that may be covered by the statute must reflect adherence to the law.
- **Review NU IT security policies** – never write down or share your password, and always lock or log out of your workstation when finished.

**For Your Information: Recent and Upcoming Seminars offered by the Office of University Counsel**

The following is a partial listing of some of the upcoming and recent seminars offered by the Office of University Counsel. Watch for additional, specific announcements regarding upcoming seminars.

Over the summer, a seminar on contracts was provided, focusing on the steps faculty and staff can take to speed up the process of contract review. Topics discussed included the steps individuals can take to get their contracts reviewed as quickly as possible, pitfalls to avoid and key contract terms. A question and answer period was also provided. Approximately 80 faculty and staff members attended the seminar. The seminar materials are available from the Office of University Counsel website under the “Educational Resources” tab.

Also during the summer, a seminar on immigration issues was presented. Topics covered included a presentation relating to the requirements for self-petitioning and the realities of the path to permanent residency. Over 70 faculty and staff members attended this seminar and materials from the seminar are available from our office.

In September, an overview of the Supreme Court's decision in the Stanford v. Roche case was presented to faculty and staff. The Court's important decision concerns the assignment of invention rights by an inventor.

During the remainder of the Fall semester, additional seminars on contracts, independent contractors, the legal and ethical considerations in digital media projects design, HIPAA and Title IX compliance obligations pursuant to the Office of Civil Rights "Dear Colleague Letter" will be presented by members of the Office of University Counsel. If your department or area would like to schedule a seminar on any of these issues or another legal topic of interest or applicability, please contact the Office at 617-373-2157 to make arrangements.

**Of Special Note:**

**January 2012**

Nick Bradley and Matt McIntyre will re-present their July 2011 contracts seminar for faculty and staff members who could not otherwise attend the summer session. The date of the January seminar will be provided in the next edition of the newsletter to be issued in December 2011.

*If you have any questions you would like to see answered in this space, please submit them to the Office of University Counsel at 378 Columbus Place. Depending upon the nature of your question, we'll either answer you personally or address your issue in a future edition of this newsletter.*

*Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of University Counsel, 378 Columbus Place, x2157.*

*The Office of University Counsel is grateful for the thoughtful assistance of our law clerk, Alexander Elder, in preparing this edition of our newsletter.*