

GN Policies, Procedures and Guidelines

Policy Section: General

Subsection: Legal

Topic: Contracts and Agreements

Status: Approved by Board

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Policy Statement

The GN Club and MHIP have been involved in a wide variety of transactions, agreements, grants and contracts involving funding agencies and suppliers. These can take many forms:

1. Formal negotiated signed contract. These are mainly with the City of Medicine Hat who sends GN a draft that the two parties then negotiate.
2. Grants with external agencies. These usually involve a proposal from us with an approval or rejection from the agency.
3. Less formal email and phone communications. These should only involve relatively small transactions.

The above can involve both external funding as well as purchases by the GN Club or MHIP. Also, agreements do not necessarily involve a financial payment. Suitable agreements may be required when information is exchanged to ensure confidentiality and the protection of intellectual property.

This Policy and Procedure (P&P) addresses the following topics:

1. When is a contract required?
2. The type of agreement that is required for different situations.
3. The GN person(s) involved in negotiating and signing the agreement.
4. The main issues that need to be addressed in the agreement.

Procedures

1. When is a written contract/agreement required?

1.1 Requirement

Generally speaking, a contract should be required if:

1. the financial value of the transaction represents a significant percentage of the annual revenue of MHIP or the GN Club.
2. the human resources required to satisfy a transaction could potentially become a burden or liability for GN. This includes in-kind contributions.

3. the transaction involves significant concerns related to liability, Intellectual Property (IntProp), GN's arms-length relationship, its official mandate, or its Charitable Organization status.

The following guideline governs the need of a written contract/agreement for the GN Club and MHIP.

1.2 Guideline

A contract or written agreement is required if any of the following conditions apply:

1. The total value of the transaction exceeds the following
 - a. GN Club: \$500 or 10% of the previous year's total revenue, whichever is least.
 - b. MHIP: ~~\$2,000~~ \$15,000 or 10% of the previous year's total revenue, whichever is least.
2. The transaction requires an in-kind contribution that exceeds the following:
 - a. GN Club:
 - i. A value of \$500 or 5% of the previous year's total revenue, whichever is least.
 - ii. 50 hours of volunteer time.
 - b. MHIP: *At the discretion of the MHIP Chief Interpreter*
 - ~~i. A value of \$1,000 or 5% of the previous year's total revenue, whichever is least.~~
 - ~~ii. 35 hours of staff time.~~
 - ~~iii. 50 hours of volunteer time.~~
3. The transaction involves the development of IntProp that GN wishes to keep or limit its transfer to the client, supplier and/or a third party. *MHIP also needs to protect the IntProp of the City of Medicine Hat as specified in the contract between the City and GN to manage the Medicine Hat Interpretive Program.*
4. The transaction involves significant liability concerns or requires clauses to protect GN's arm's length relationship with the client or supplier and its Charitable Organization status.

In some cases, GN may be compelled to enter into an agreement by a funding agency or supplier either through an explicit signed contract or through implicit Terms and Conditions (T&Cs) that automatically come into effect when GN accepts the funding, service, or product. In this case, as discussed *below in clause 3.2 below*, the T&Cs may need to be reviewed by the *Board President* before acceptance.

GN shall avoid any transaction that is in conflict with existing contracts signed by GN (e.g. the contract with the City of Medicine Hat to manage the Medicine Hat Interpretive Program).

2. Types of agreements

Agreements can take a variety of forms including:

1. An explicit formal contract that is negotiated and signed by authorized representatives of the organizations involved.
2. An agreement that is solely based on a Request for Proposal (RFP), quote, or

proposal. This can involve agreements that

- a. have no added terms and conditions other than those explicitly stated in the RFP, quote or proposal.
- b. have added terms and conditions based on a separate document or implied by terms and conditions posted on an organization's website.

It is important for GN to know the type of contractual agreement it is entering and fully understand any explicit or implied terms and conditions. Also, any transaction requiring a written agreement under this P&P must be fully documented in writing and not simply based on phone conversations or casual emails. All relevant documents and emails shall be carefully stored by GN for possible future reference following the requirements specified in GN's Policy and Procedure (P&P) "Storage of Documents and Records".

3. Person(s) negotiating and signing an agreement

3.1 General Requirements

Any GN staff member or volunteer negotiating and/or signing an agreement shall:

1. be authorized, in writing, to do so by the GN Board, Committee Chair or MHIP Chief Interpreter on a case-by-case basis and subject to the guidelines below.
2. be familiar with the agreement's explicit or implied terms and conditions.
3. be familiar with the GN Policies and Procedures.
4. inform the Board, before the agreement is signed, if there are important concerns that require further guidance or scrutiny including liability, IntProp, arms-length relationship, Charitable Organization status, GN's official mandate and possible conflicts with other GN agreements.

3.2 Guidelines for staff or volunteers negotiating and/or signing agreement

GN Club:

1. GN Volunteers can enter into negotiations with a client or vendor only as a representative of a recognized GN Committee and with the approval of the Committee Chair.
2. A contract/agreement requires the signature of the GN president.

MHIP:

1. MHIP staff or volunteers can enter into negotiations with a client or vendor only as a representative of MHIP and with the approval of the Chief Interpreter.
2. A contract/agreement document may be signed by the MHIP Chief Interpreter, unless specified otherwise in the document, but requires vetting by the Operations Committee and written approval in a letter or email by the GN President before the signing of the contract if:
 - a. The value of the transaction exceeds \$15,000 or 10% of the previous year's total revenue, whichever is least.
 - b. The transaction involves the development of IntProp that GN wishes to keep or limit its transfer to the client, supplier and/or a third party. MHIP also needs to

- protect the IntProp of the City of Medicine Hat as specified in the contract between the City and GN to manage the Medicine Hat Interpretive Program.
- c. The transaction involves significant liability concerns or requires clauses to protect GN's arm's length relationship with the client or supplier and its Charitable Organization status.
 - d. The transaction involves clauses that are in conflict with other contracts signed by GN (e.g. contract with the City of Medicine Hat to manage the Medicine Hat Interpretive Program).

4. Issues to be Addressed in Contract/Agreement

The most important issues in an agreement include:

1. Financial and 'in kind' exchange
2. Deliverables (goods, services) and obligations
3. Schedule
4. Reporting
5. Method of payment
6. Intellectual property and confidentiality
7. Liability, insurance and indemnification
8. Arms-length relationship and conflict of interest
9. Termination
10. Symmetry

4.1 Financial

Financial exchange can be either in the form of cash or 'in kind', such as volunteer hours. These must be stated clearly and itemized in as much detail as practical. When labour costs are involved, the hourly rates must be stated beforehand.

4.2 Deliverables and obligations

Deliverables include both goods and services. Once again, these must be itemized. If GN is offering a service or developing a product, it should first determine who will be responsible for the various deliverables and make sure that it has the required resources to do the work. Obligations could include other issues such as, for example, insurance and required qualifications to do the work. Any GN proposal or quote involving the purchase of materials or services from a third-party vendor must, before submission, be supported by a quote from the vendor. Multiple quotes should be received before selecting a vendor.

4.3 Schedule

The schedule of the delivery of goods, services and reports should be specified beforehand. GN should be aware of any penalty clauses for late delivery before accepting a contract.

4.4 Reporting

In addition to a final report, progress or interim reports may be required, particularly for large

contracts.

4.5 Method of payment

The payment method and schedule should be clearly identified. Pre-payments may be involved, particularly for the purchase of materials by the vendor. Such pre-payment should not include markup or labour and be restricted to relatively small companies, which may not be expected to have the cash flow to perform the work without the pre-payment. Any pre-payment agreement must be approved by the President.

4.6 Intellectual property and confidentiality

4.6.1 *Intellectual Property (IntProp)*

Agreement clauses concerning IntProp may be required, particularly when the delivery of products is involved. GN must take into consideration not only its own ownership but also those of its members, volunteers, suppliers and collaborators. GN should be particularly careful to make sure that all of these are properly protected before signing a contract or agreement. IntProp clauses can take a variety of forms:

1. GN retains all or specified parts of the IntProp it develops regardless of who pays for the work.
2. GN retains all or specified parts of the IntProp it develops at its own expense.
3. GN retains all or specified parts of the IntProp but provides non-exclusive "Right of Use" to the client or vendor.

4.6.2 *Confidentiality*

In order to comply with regulations such as PIPA, GN must be careful not to release confidential personal information without consent and include appropriate clauses in the contract to ensure this confidentiality.

4.7 Liability, insurance and indemnification

Liability can be an important issue particularly when the contract work involves possible injury, loss of life, or major property damages. GN should ensure that its insurance policy covers the type of service or product it is supplying. Also, GN should request proof of insurance from a contractor when there are liability concerns.

Some contracts include an indemnification or 'save harmless' clause that protects an organization from being sued. This can have important implications. It not only protects the City from being sued by GN but also by its insurance company. Insurance companies usually have a "subrogation" clause that allows them to sue an individual or organization to recover the cost of paying an insurance claim. In cases where an organization insists on imposing an indemnification clause, GN can request that an exception be included to exclude expenses resulting from "*negligent actions or omissions*" by that organization. GN should also ask its insurance company to provide a subrogation waiver.

4.8 Arms-length relationship and conflict of interest

GN is an independent non-profit organization and must be treated as such by avoiding clauses in a contract where GN staff or volunteers are be treated as employees of another organization or vice-versa. Also, GN should resist any clauses, including "muzzle" clauses that may limit its ability to perform activities that are consistent with its official mandate.

4.9 Termination

Any "Termination without Cause" clause should allow both parties to terminate an agreement without undue harm to either party. For example, if an organization requests the ability to terminate an agreement without cause, that clause should be symmetric and allow GN to recover costs incurred before termination.

4.10 Symmetry

Wherever possible, clauses should be symmetric such that no party asks the other party to accept a clause that it would not be willing to accept itself under similar circumstances.

5. Contract Management

5.1 Detailed timesheets of individual team members shall be kept for grants or contracts that involve GN labour contributions.

5.2 Project management tools such as, for example, Gantt charts, should be used for projects involving the collaboration of multiple team members.

6. Contracts involving External Organizations

6.1 GN shall not apply for a grant or contract for another organization.