

Georgia Gwinnett College

Contract Process & Procedures Manual



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Memorandum

To: Georgia Gwinnett College Campus
From: Office of Legal Affairs
Date: August 28, 2019
Re: Contract Process

Georgia Gwinnett College through the Office of Legal Affairs has developed and now publishes a manual for Contract Process and Procedures. The Office of Legal Affairs has taken the manual and broken it into specific links for your convenience. You may choose to download and review each link separately or the full manual in its entirety.

All the information can be found at: <http://www.ggc.edu/community/legal-affairs/contracts/>.

The manual will enable the person needing a contract, to find answers to such questions as who has to sign the contract, how is it routed for approval, what language should (or should not) be included and where can I find help.

The manual includes a “Contract Cheat Sheet” to ensure your contract meets all requirements.

The following documents, when used in the order listed, can prove to be the most efficient and helpful when writing, negotiating, reviewing and/or routing a contract for approval:

1. GGC Contract Procedures
2. Contract Checklist

The document ‘Boilerplate Language’ also has helpful language that must be placed in each contract. It should be attached as an “addendum” to contracts as necessary.

There are times when the other party states the contract is their standard contract and the language cannot be changed. The document titled ‘Letter to Vendors and Contractors’ on our website (already signed by GGC general counsel) can be sent to the other party as it is written to explain why certain terms are not acceptable and why certain terms are necessary.

After reviewing the above two documents (three if you include the cheat sheet) and you still have questions regarding any process involved in the contract, please do not hesitate to contact the Office of Legal Affairs for further assistance at x5154.

Training regarding the new Contract Process & Procedures is forthcoming. Please contact the Office of Legal Affairs at x5154 for more information.

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Georgia Gwinnett College Procedures on Contract Review and Approval

General

This procedures handbook defines the general process by which a contract involving the Board of Regents of the University System of Georgia (“Board”) by and on behalf of Georgia Gwinnett College (“College”) might be (1) created; (2) reviewed and approved; (3) appropriately signed by an authorized College official; (4) administered and (5) retained for records retention purposes and to ensure the purpose of the contract is performed.

Contracts must satisfy three basic criteria in order to be approved by an authorized College official:

1. The contract must be appropriate to the mission and operation of the College.
2. The funds and other resources must be available to carry out the obligations of the contract.
3. The terms of the contract must comply with Board and College regulations, and applicable local, state, and federal laws.

Individuals having ultimate responsibility to oversee the performance for contracts should have signature authority for them. Prior to final signature, contracts need to pass through only those offices having direct oversight for the activities (or their funding) and those assuring administrative or regulatory compliance.

College Contract Defined

For the purposes of this policy, a “College Contract” is defined as an agreement between two (2) or more parties, one of which is the College or any of its subunits intended to have legal effect or be otherwise recognized at law. There must be a common understanding among the parties as to the essential terms, the mutual obligations, and the existence of valid and sufficient “legal consideration,” meaning that something of value is exchanged between the parties.

Examples of College contracts include, but are not limited to:

- Agreements to buy, sell, or rent goods;
- Agreements to provide, obtain, or rent services;
- Volunteer agreements;
- MOUs with government agencies and other organizations for the accomplishment of particular purposes;
- Grants and subgrants awarded by government agencies and private organizations;
- Affiliation/clinical agreements;
- Leases of movable property, such as tools, equipment, vehicles, etc.
- Leases, deeds, and other conveyances affecting interests in real property;
- Employment contracts;
- Waivers and releases;
- Nondisclosure agreements;
- Material transfer agreements;
- Student or faculty exchange agreements; and
- Software license agreements.

Administrative Review

A person initiating a College contract, also referred as “contract originator”, is responsible for the following:

1. Reading the contract entirely and determining that:
 - a. the contract meets programmatic and College mission and operational requirements;
 - b. the contract language accurately reflects the current state of negotiations;
 - c. the contract is in the best interests of the College;
 - d. he/she can ensure compliance with the obligations it places on the College;
 - e. the contract is sufficiently clear, consistent, and fiscally prudent; and
 - f. the contract language is proper and meets College requirements.
2. In addition, such person(s) must have the cooperation and approval of any College department/unit that may be directly or indirectly involved in the performance or funding of the contract. Accordingly, PRIOR TO BEING SIGNED BY THE APPROPRIATE COLLEGE OFFICIAL, all contracts must be reviewed and approved by: (1) the Office of Legal Affairs; (2) Director of Foundation Finance (applicable only if using Buildings D, E, F, G, I, Residence Life, Parking Deck, Tennis Complex, Athletic Fields, or Intramural Fields); (3) Chief Information Officer (applicable only if contract is technology related); (4) the College department Director, Dean and/or Division Head; and (5) the Director of Purchasing and/or VP of Business-Finance CFO & Facilities. The following outlines the responsibility of each of these reviewing offices:

Office of Legal Affairs

- Assures that the contract does not subject the College to undue liability or risk.
- Assures that the contract does not contain any prohibited clauses.
- Assures that the terms of the contract comply with Board and College regulations, and applicable local, state, and federal laws.

Director of Foundation Finance *(Only if contract involves Foundation owned property.)*

- Assures the contract doesn't interfere with the bonds.

Chief Information Officer *(Only if contract involves software, hardware, or other IT matters.)*

- Assures that the technology will be compatible and doesn't interfere with current GGC infrastructure and systems.

Department Director and/or Dean

- Assures that the contract is appropriate and necessary to the department's missions and priorities.
- Guarantees that the department or unit can furnish services, materials, and/or funds provided for in the contract.
- Assures that alternative activities, actions and/or providers have been considered, and that those stipulated in the contract or agreement represent the most feasible, reasonable, and fiscally prudent arrangements for the department.

Appropriate Vice President

- Assures the Vice President is informed of the various moving parts in his or her areas.
- Ensures that duplication of goods or services does not occur.

Director of Purchasing and/or VP Business and Finance/CBO

- Assures that the contract is appropriate and necessary to the College's mission and priorities, and is not in conflict with the needs, mission, or priorities of any other division within the College.
- Verifies that all appropriate signatures are intact, including Legal Affairs approval and Accounting Services/Grants and Contracts approval as necessary.
- Obligates the College and the Board of Regents to the terms of the contract.

Approvals from the above departments and/ or units are to be endorsed through the GGC Cobblestone Contract Management System.

Information about the GGC Cobblestone Contract Management System can be found at: www.ggc.edu/contracts. These approvals assure the authorized signatory that the terms of the contract have been appropriately reviewed and approved.

NOTE: Approving the contract in the system indicates each approver has followed the GGC contract review procedures.

Contract Requirements

Prior to final College approval, every contract must go through proper approval workflow. Please review the document titled "Contract Requirements for Approval" for additional information regarding the requirements for contracts seeking approval. If an agreement requires the signature of a member of the executive level and there is NOT a signature line already in place do the following:

1. State in the signature line on the original contract "Please see the attached signature line document for all College signatures pertaining to this contract"
2. Print the signature line associated with the College department that is originating the contract and attach it to contract. You may delete any name that is not needed for your specific contract.

However, if a contract is written correctly there will be a signature line already in place for each signatory at Georgia Gwinnett College therefore the signature line inserts will not be needed.

Every contract that is approved on behalf of Georgia Gwinnett College must contain the correct contract language. The Office of Legal Affairs will return the contract to the originator due to incorrect language used in the contract along with an explanation as to why the language will need to be changed. The contract originator should be aware of the ramifications this may cause between the originator and the other party listed on the contract. In order to avoid this, please review the documents titled "Contract Cheat Sheet" and "Boilerplate Language" contained on pages **10** and **16**. The Office of Legal Affairs is available to assist any person with contracts, contract language and, if necessary, contract negotiations as to necessary legal requirements.

The Office of Legal Affairs has drafted a letter that may be sent to outside vendors for clarification regarding common required and prohibited contract language. The title of this letter is "Letter to Contractors and Vendors" and can be found on page **18**.

By utilizing these documents, the contract can be issued by the originator correctly the first time thus avoiding any issues regarding language and signature lines. Should you have any questions please contact the Office of Legal Affairs.

Authorizing Signatures

All contracts involving the College must be signed by an authorized College official. The President must sign certain types of contracts, such as Joint Staffing Agreements. The President may sign any other type of contract for the on-going operations of the College. All other contracts may only be signed by those designated by the President as having signature authority.

The following persons have signature authority to commit the College on a contract.

1. President: The President has delegated authority to sign contracts to the following persons. If there are any questions as to whether the President needs to sign the agreement, contact the Office of Legal Affairs prior to routing the contract for signature.
2. Provost and VP for Academic and Student Affairs: (for non-monetary contracts related to academics.)
3. VP for Business and Finance/CBO
4. Director of Purchasing

Vice Presidents may **NOT** delegate final signature authority for contracts.

*****Contracts and agreements signed by other than authorized officials will be rejected and returned to the originating department. Failure to follow College policies and procedures regarding signature authority may result in an employee's loss of insurance coverage, personal liability for all contractual obligations, and/or disciplinary action.*****

Vice Presidents may authorize their direct reports to "recommend" contracts be approved to the President or delegated Vice President after the contract has been reviewed by the Office of Legal Affairs. This authority would be specifically in lieu of the Vice President reviewing and approving the contract prior to it being sent to a signatory for approval. Prior to this authority taking effect, the Vice President will notify the Office of Legal Affairs in writing or by electronic mail for records purposes. Absent such written signed approval, the Office of Legal Affairs will return the contract for proper review and signature. The Vice President authorizing their direct reports to directly recommend

Approval Routing Process

responsibility for the contract.

To assure the proper and timely routing of College contracts through the approval process, the College requires the use of the GGC CobbleStone Contract Management System. The system provides an easy routing process so that College contracts can be handled expediently. Information regarding this system may be found at: www.ggc.edu/contracts.

Contract Retention

The College complies with the Board's published record retention guidelines, which may be reviewed at http://www.usg.edu/records_management/schedules/. Unless otherwise required within any particular division or for any particular contract, departments/units should retain the final, executed agreements for retention purposes; the department/unit is responsible for maintaining copies of such agreements in its own files and for complying with the specific retention requirements. In addition, any College contract provisions dealing with document retention by the parties must be satisfied, even if such contractual provisions require longer retention periods than the Board's guidelines. The Office of Legal Affairs is designated as the College's overall records retention office. Guidance on records retention for any particular document may be obtained by contacting the Office of Legal Affairs if the above site is not helpful or adequate.

Contract Administration

Unless otherwise provided by College policy, the individual, or his/her designee, who originates the College contract is responsible for properly carrying out the terms of the contract for the College. It may be advisable for each College department/unit to establish a database of all its current contracts, including such information as performance dates, payments to or from the College, and receipt of certificates of insurance, performance bonds or letters of credit. Failure to monitor these requirements can expose the College department/unit and the College to financial loss, legal actions, and potential claims for breach of contract or default. If any contract administrator has any questions regarding these matters, he/she should contact the Office of Legal Affairs.

Contract Procedures Training

The Office of Legal Affairs will provide Contract Procedures training for any department and/or individual as requested. There will be Contract Procedures training material forthcoming on the Office of Legal Affairs website found at: <http://www.ggc.edu/community/legal-affairs/>.

Contract Procedures Violations

Any contract found to be out of compliance with any of the above mentioned procedures will be sent back to the contract originator to correct the matter with an attached memo specifying what needs to be corrected. Continued failure by an originator to route contracts for appropriate signature(s) may cause contracts to be sent back to the originator for proper routing.

Contract Checklist

1. Does the contract properly identify all parties of the contract?
2. Are the effective dates properly identified?
3. Does the contract have signature lines for all individuals who need to sign the contract?
4. Does your contract involve the physical performance of services with a cost \$2,500 or more? If so, an e-verify is required.
5. Does the contract have the appropriate language, some of which may need modification or deletion, for the following:
 - a. 30 days for payments
 - b. Finance charges and/or payment penalties
 - c. Liability
 - d. Indemnification
 - e. Attorney fees and/or court costs and/or litigation expenses
 - f. Insurance
 - g. Termination Clauses
 - h. Breach of Contract Clauses
 - i. Any state laws other than Georgia governing the contract
 - j. Binding arbitration or mediation laws
 - k. Other
6. Have all levels described in the administrative review approved and/or signed the contract?

Signature Lines for College Signatories

Signature: _____ Date: _____
Name: Bruce Burbank
Title: Director of Purchasing

Signature: _____ Date: _____
Name: Frank Hardyman
Title: VP for Business and Finance/CBO

Signature: _____ Date: _____
Name: Dr. George S. Low
Title: Senior VP for Academic and Student Affairs and Provost

Contract Cheat Sheet

Basics

Question		Modification
1. Does the contract correctly identify GGC?	No?	The Board of Regents of the University System of Georgia by and on behalf of GGC
2. Does the contract require GGC expend funds and end after the close of the fiscal year?	Yes?	Change term of the agreement to run concurrent with fiscal year. <i>Example: This agreement begins on _____ and expires on June 30, 20___. With the mutual written consent of the parties, this agreement may be renewed four (4) times with each additional term expiring at the end of GGC's fiscal year.</i>
3. Does the contract call for automatic renewals?	Yes.	Delete.
4. Is the other party an independent contractor?	Yes?	Insert language clarifying the independent contractor status. <i>Revision: This Agreement does not create a joint venture, partnership, employment, or agency relationship between the parties.</i>
5. Does the agreement make GGC responsible for performance under the contract rather than the Board of Regents?	No?	Clarify in the contract. <i>Revision: Georgia Gwinnett College will perform all obligations of The Board of Regents of the University System of Georgia under this Agreement.</i>

Insurance Requirements

Question		Modification
1. Does the contract require the College to obtain general liability insurance or a bond? <i>Example: College shall provide, maintain, and pay for public liability insurance naming VENDOR as an additional insured party.</i>	Yes	Delete and insert insurance language from boilerplate section of this manual. <i>Revision: The parties acknowledge that GGC is a governmental entity and is subject to the Georgia Tort Claims Act (OCGA § 50-21-20 et seq.). The parties further acknowledge that GGC is self-insured through the Department of Administrative Services at amounts set by the state legislature.</i>
2. Should the contract require the Vendor to provide insurance or a bond?		The contract should. GGC should also be named as an additional insured. If the other party is resistant, perform risk assessment and consult with Office of Legal Affairs.

Payment Terms

Question	Modification
1. Does the contract provide for payment at least thirty days after receipt of a proper invoice?	No? Modify to include.
2. Does the contract call for late payment penalties or finance charges? <i>Example: In the event of delay in payment Vendor reserves the right to levy a service charge to cover administrative and other associated costs in relation to overdue accounts at the rate of 1% per month on all unpaid amounts [or] If College does not pay any invoice by the due date, Vendor may charge interest on the outstanding amount, calculated daily at an annual rate equal to Prime Rate plus 1.5% from the due date to the date of payment.</i>	Yes? Delete.

Liability and Indemnification Issues

Question	Modification
1. Does the contract seek to limit the Vendor's liability and the College's scope of recovery? <i>Example: In no event shall VENDOR be liable to College for any special, incidental, or consequential damages, arising from breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory, even if VENDOR has been advised of the possibility of such damages. Such damages include, but are not limited to, loss of profits/revenue, cost of capital, overhead costs, costs of any substitute services or claims of College for any such damages. Or in combination with other terms that limit Vendor liability: The remedies set forth in this Agreement shall be College's sole and exclusive remedies for any claims against Vendor under or related to this Agreement.</i>	Yes? Delete. (If unsuccessful, seek counsel from Office of Legal Affairs.)
2. Should the contract require vendor to indemnify the College for any personal injury?	This depends on a number of factors. If vendor is not indemnifying college, consult with Office of Legal Affairs.

3. Does the contract subject the College to tort liability or otherwise waive State's sovereign immunity? Yes? Delete

Example: College assumes all risk of loss for any damages that arise under this Agreement.

4. Does the contract contain "hold harmless" or indemnification clauses in favor of the Vendor? Yes? Delete

Example: College shall defend, indemnify, and hold Vendor harmless against any expense, judgment or loss or which results from College's actions under this Agreement.

5. Does the contract require personal liability of the College signatory or any other College employee? Yes? Delete

6. Does the contract provide for the College to pay attorney fees, court costs, or other litigation expenses of other parties if there is a dispute? Yes? Delete

Example: In the event of a breach of this Agreement, the breaching party shall pay to the other party all attorneys' fees and other costs and expenses incurred by the non-breaching party in connection with the enforcement of any provision of this Agreement.

7. Does the contract provide for a limitation of damages to be paid by GGC? No? Insert Boiler Plate Language

Breach of Contract and Termination Clauses

Question	Modification
<p>1. Does the contract allow the Vendor to unilaterally terminate the contract for cause? Yes?</p> <p><i>Example: Vendor may terminate this Agreement for breach [or cause] at any time upon thirty (30) calendar days' prior written notice to College.</i></p>	<p>Modify the contract to make the clause mutual to both parties, so that the College may also terminate for cause in the same way the Vendor can and allow for a cure period.</p> <p><i>Revision: Either party may terminate this Agreement at any time upon prior written notice to the other Party of a specific breach and the failure of the other Party to cure its breach within 30 days of receipt of notice of breach.</i></p>

<p>2. Does the contract allow the Vendor to unilaterally terminate the contract for convenience?</p> <p><i>Example: Vendor may terminate this Agreement at any time upon thirty (30) calendar days' prior written notice.</i></p>	<p>Yes?</p>	<p>Modify the contract to make the clause mutual to both parties, so that the College may also terminate for convenience in the same way that the other party can. Check with client to determine if more time is required to terminate the agreement.</p> <p><i>Example: Either Party may terminate this Agreement at any time it determines it is in its best interest to do so upon thirty (30) calendar days' prior written notice to the other Party.</i></p>
<p>3. In the event of termination by Vendor does the contract allow the Vendor to receive full payment under the contract?</p> <p><i>Example: In the event Vendor terminates this Agreement for breach, Vendor shall retain the deposit and College shall issue payment on the remaining balance [or loss of business] within 30 days of the date of termination.</i></p>	<p>Yes?</p>	<p>Modify the contract to provide that the College will reimburse the Vendor for reasonable costs incurred prior to the date of termination. If not successful, then delete the clause.</p>
<p>4. Does the contract state that a breach by the College would cause irreparable harm and justify injunctive action?</p> <p><i>Ex: College acknowledges that for any breach of the confidentiality article of the contract, Vendor will not have an adequate remedy at law and shall be entitled to obtain entry of an injunction against College in a court of competent jurisdiction.</i></p>	<p>Yes?</p>	<p>Delete. If unsuccessful, seek advice from the Office of Legal Affairs.</p>
<p>5. Does the contract contain a survival clause?</p> <p><i>Example: Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination. The rights and duties under Articles survive the termination or expiration of this Agreement.</i></p>	<p>Yes?</p>	<p>Ensure that the articles specified in the survival clause are ones that the College wants to survive the contract, such as those shown in the revision below.</p> <p><i>Example: Termination of this Agreement by either party shall not affect the rights and obligations of the parties that accrued prior to the effective date of the termination.</i></p>

Terms Governing Disputes and Lawsuits

Question		Modification
<p>1. Does the contract require arbitration?</p> <p><i>Example: Any dispute, claim, or disagreement that arises under this Agreement shall be submitted and resolved by binding arbitration.</i></p>	<p>Yes?</p>	<p>Delete Clause.</p>

2. Does the contract allow for mediation?	Yes?	Ensure the agreement caps all College expenses for mediation, the mediation is not binding, and the mediation occurs in Fulton County. Contact Legal Affairs with questions or for language modifications.
3. Does the contract provide less than three years for the College to file a legal claim or sue for breach of contract?	Yes?	Delete the reference so that the contract is silent on the issue or modify the contract to include the relevant Georgia statute of limitation as shown below. If unsuccessful, seek advice from Legal Affairs. <i>Revision: Any legal action brought pursuant to this Agreement shall be initiated within the period authorized under the laws of the State of Georgia following the discovery by the party bringing such action of the event giving rise to the cause of action.</i>
4. Does the contract contain clauses that would make it subject to the courts of another state or country?	Yes?	Modify to be the State of Georgia, Fulton County. If unsuccessful, seek advice from the Office of Legal Affairs. <i>Example: The validity, construction and effect of this Agreement shall be governed by the laws of the State of Georgia as if this agreement were signed and completely performed in Georgia, regardless of the place of performance. Any litigation between and/or among the parties to this contract shall be adjudicated in the State of Georgia and for that purpose each party expressly and irrevocably consents to exclusive jurisdiction and venue in the Superior Court of Fulton County, Georgia or the United States District Court for the Northern District of Georgia.</i>

Miscellaneous Provisions

Question	Modification	
1. Does the contract allow modifications to be made by any means other than mutual written agreement of authorized signatories of the Parties?	Yes?	Delete clause and ensure the GGC modification language from the boilerplate section is included in the agreement.

2. Does the Agreement specify that any statements made by any College employees in connection with the Agreement are binding on the College?

Example: The College shall be bound by any representations or statements made on the part of its employees or agents whether oral or in writing.

Yes?

Delete clause and ensure the GGC modification language from the boilerplate section is included in the agreement.

3. Does the contract allow the Vendor to use the College's name in any advertising, endorsement, or promotion?

Example: Any legal action brought pursuant to this Agreement shall be initiated within a period of one (1) year following the discovery by the party bringing such action of the event giving rise to the cause of action.

Yes?

Contact Strategic Communications and Positioning to discuss and for approval. If approval is not given, include language protecting College's intellectual property.

Revision: Vendor agrees that it shall not use the name or intellectual property of Georgia Gwinnett College, or the University System of Georgia, including trademarks and service marks, without the express written permission of the College.

4. Does the agreement require that any part of the Agreement is confidential?

Example: The terms of this Agreement are confidential and College shall not disclose this Agreement to any third party without Vendor's prior written consent.

Yes?

Delete clause.

5. Does the Agreement incorporate other documents or information by reference or refer to information that is not in the Agreement?

Example: The terms and conditions located on our website are incorporated and made part of this agreement.

Yes?

Obtain copies of the documents incorporated, review and modify as necessary, and then attach them as Exhibits to the original agreement. Incorporate the exhibits into the agreement, not the separate documents.

6. Is the intellectual property of GGC, including patent rights, part of the agreement?

Yes?

Contact Legal Affairs.

7. Does the contract require GGC to be responsible for taxes?

Yes?

Delete and provide a copy of the tax exemption letter.

Boilerplate Language

Amendment

This constitutes the entire Agreement, along with any Exhibits or appendices attached. This Agreement may not be amended orally, but only by an instrument in writing signed by the party against whom enforcement of such amendment is sought.

Applicable Law

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Georgia as if this agreement were signed and completely performed in Georgia, regardless of the place of performance. Any litigation between and/or among the parties to this contract shall be adjudicated in the State of Georgia and for that purpose each party expressly and irrevocably consents to exclusive jurisdiction and venue in the Superior Court of Fulton County, Georgia or the United States District Court for the Northern District of Georgia.

Assignment

This Agreement is not assignable in whole or in part by either Party without the prior written approval of the other Party.

Nondiscrimination

There will be no discrimination on the basis of race, color, national origin, religion, creed, sex, sexual orientation, gender identity/expression, age, genetics, or disability.

Force Majeure

Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. All parties agree that this clause shall serve to suspend, but not excuse, all parties from the performance of their obligations pursuant to this Agreement, and that full performance shall occur as soon as practicable after the force majeure circumstance is no longer present.

GORA

Notwithstanding anything herein, GGC is subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. The parties agree that nothing herein shall prevent or delay GGC from fulfilling its obligations under the Georgia Open Records Act.

Headings

The Section headings provided herein are for convenience only and shall have no force or effect upon the construction or interpretation of any Provision hereof.

Insurance

OTHER PARTY will add GGC as an additional insured on the liability coverage(s) on a primary and noncontributory basis and provide evidence of such insurance.

The parties acknowledge that GGC is a governmental entity and is subject to the Georgia Tort Claims Act (OCGA § 50-21-20 et seq.). The parties further acknowledge that GGC is self-insured through the Department of Administrative Services at amounts set by the state legislature.

Merger

These Terms and Conditions constitute the entire agreement and understanding of the parties with respect to this Agreement and supersede all previous understandings and agreements between the parties, whether oral or written.

Notice

Notice under this Agreement will be sent:

For GGC:

For _____:

Relationship

This Agreement does not create a joint venture, partnership, employment, or agency relationship between the parties.

Severability

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Waiver

Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy.