[NAME OF ORGANIZATION]

**Statement of Style for Contract Drafting**

Version of [date]

***Introduction***

With the aim of ensuring that our contracts are as clear and efficient as possible, we have adopted this statement of style for contract drafting. It specifies guidelines regarding the look of and, more importantly, the language used in our contracts. It applies to everyone in our [organization] who is responsible for drafting or reviewing contracts. We believe that complying with this statement will save us time and money, make us more competitive, and reduce our risk.

Any kind of writing would benefit from use of a style guide. That’s particularly the case with contract drafting, given that contract language is so limited and stylized and given that the ramifications of unclear contract language are potentially drastic.

Lawyers have traditionally treated contract drafting as a craft, with differences in drafting usages being regarded as a matter of personal preference. That approach has contributed to the inconsistency and lack of clarity that afflicts mainstream contract language. By adopting this statement of style, we’re breaking with that tradition.

***Following* A Manual of Style for Contract Drafting**

Once we decided to adopt contract-drafting guidelines, we were faced with two alternatives. We could take advantage of an existing style guide for contract drafting, or we could create our own entirely from scratch.

Only one style guide for contract drafting is currently in existence—*A Manual of Style for Contract Drafting* (*MSCD*), by Kenneth A. Adams. Published by the American Bar Association and currently in its third edition, *MSCD* is a work of practical scholarship that has gained a wide following in the legal profession. If we want to piggy-back off of an existing style guide, *MSCD* would be the only candidate.

We could conceivably create our own version of *MSCD*, but that would be unrealistic—it would require more resources and expertise that we have available to devote to the task. And why reinvent the wheel?

We could prepare a skimpier version, one perhaps a couple of dozen pages long. But any such guide could only skate over the surface of the many subtle issues underlying contract language, so it would be of little value—with any form of writing, the devil is in the details. All published style guides for general writing are book-length. Given the technical and demanding nature of contract language, it would be unrealistic to expect that one could make do with anything less for purposes of contract drafting.

Consequently, we have decided to follow *MSCD*. Our guidelines regarding style can be summarized as follows: Comply with the recommendations made in *MSCD*.

In future versions of this statement we might supplement that guidance, either generally or for purposes of particular kinds of contracts. That’s because sometimes *MSCD* invites you to choose from different alternatives, depending on the context.

***Surrendering Autonomy***

We expect that some of our [lawyers] [contracts professionals] will bridle at having to conform to the recommendations in *MSCD*. But sacrificing autonomy is essential to improving the quality and consistency of contract language.

You may be reluctant to assume that *MSCD*’s analysis is reliable. But that’s no basis for not following *MSCD*’s recommendations—to some extent, using any reference work requires a leap of faith, and *MSCD* has established its value. If you take issue with anything in *MSCD*, we suggest that you prepare a detailed analysis and submit it to me; I’ll present it to Ken Adams, who welcomes such input. (Simply parroting the conventional wisdom wouldn’t constitute detailed analysis. Neither would simply saying that you don’t agree with *MSCD*.)

Some of the recommendations in this statement of style or in *MSCD* relate to usages that aren’t likely to result in any dispute and that may not even affect readability. We nevertheless ask that you comply with those recommendations. Drafters make dozens, or hundreds, of choices regarding usages when drafting a contract, so minor decisions can have a big impact cumulatively. Furthermore, consistency is a worthwhile objective in itself.

No one will be looking over your shoulder to make sure that you comply with the style guide. But it does have the backing of our [organization]. If you deviate from it or, more particularly, if you insist that junior [lawyers] [contracts professionals] deviate from it in drafting contracts on your behalf, don’t be surprised if you’re asked to explain why.

***Layout***

We want our contracts have a consistent look. And we don’t want our personnel fiddling unnecessarily with contract layout—how blocks of text are positioned on the page, and how they’re enumerated. So all contracts we draft should use the numbering scheme recommended in *MSCD*, in either the “articles” or “sections” version. To facilitate that, we have installed on each of your computers The Numbering Assistant, a numbering utility that includes among the built-in schemes the two version of the *MSCD* numbering scheme.

The *MSCD* scheme uses a Microsoft typeface called Calibri. Once you get used to Calibri, you should like it well enough. Typographers certainly regard it more favorably than Times New Roman or Arial. And on the technological front, it’s a safe choice.

Using either version of the *MSCD* scheme also results in ragged-right text, rather than fully justified text. Typographers are unanimous that for purpose of word-processed documents, using ragged-right margins makes text easier to read.

For more information on these layout issues, see *MSCD*.

[***Drafting Guidelines and Outside Counsel***

We can’t unilaterally impose our drafting guidelines on outside counsel. But over time we will favor those firms that make an effort to draft contracts that are consistent with our guidelines.]

***Drafting Guidelines from the Perspective of the Reviewer***

When you’re reviewing a draft submitted by the other side in a transaction, that’s not the time to administer drafting lessons. The other side probably wouldn’t respond favorably to a general critique of their use of *shall* and their tolerance of archaisms.

But *MSCD* discusses plenty of issues that could create confusion resulting in dispute—for example, whether a given provision is a condition or an obligation, or whether it exhibits syntactic ambiguity. Those are the kinds of issues to focus on when reviewing a contract.

***Alerting the Other Side to Our Use of Drafting Guidelines***

Readers shouldn’t notice any jarring difference between a contract containing traditional usages and one drafted consistent with this statement of style. *MSCD* works within the prevailing idiom, and it’s in widespread use throughout the legal profession.

But that said, on reviewing an *MSCD*-compliant draft, anyone who’s a traditionalist might seek to change the language back to what they’re used to. An obvious response would be to tell anyone requesting changes that you’re only going to consider changes that have a bearing on meaning, and that nothing would be gained by devoting lawyer time to discussing changes that have no bearing on the deal terms. It’s standard deal etiquette that you should stick with the drafter’s language unless you have good reason to ask for a change.

But once the other side sends over their markup, it might be difficult simply to ignore extraneous changes, particularly if your side is eager to do the deal. So we recommend that you include the following in any email that accompanies your first draft of any contract:

The language used in the attached draft complies with the recommendations contained in Kenneth A. Adams, *A Manual of Style for Contract Drafting* (ABA 3d ed. 2013).

That book explains that many traditional drafting usages are inconsistent with clear, modern, and effective drafting, and it recommends alternatives. Consequently, you may find that some usages that you use routinely in your contracts aren’t present in this draft.

Before you ask that any traditional usages be restored to this draft, please consider whether restoring them would change the meaning of any contract provisions or make them clearer. If it wouldn’t, making those changes would serve no purpose.

And please consult *A Manual of Style for Contract Drafting* to see what it has to say about any usage that you seek to restore—it may be problematic in ways you hadn’t considered.

It’s in the interests of both sides not to spend time making, or even discussing, changes that have no bearing on the deal or that might create confusion.

***Words and Phrases to Avoid***

The most straightforward *MSCD* recommendations are those urging you not to use a given word or phrase because it’s confusing or wordy. Here’s a partial list of words and phrases that should as a general matter be absent from your contracts:

at no timebest effortscovenantformal, formally
for the avoidance of doubtform and substance
hereinafter referred to asincluding but not limited toincluding without limitationin consideration of the foregoingincorporated by referenceindemnify and hold harmlessin lieu ofintending to be legally bound (but see MSCD 2.156)
in the event ofin witness whereofit being understoodLatinisms
may at its sole discretionmoral turpitudenotwithstandingnow thereforeof any kindprior toprovided, however, thatprovided thatpursuant to
remit, remittancerepresents and warrantsreserves the right to(s) (at the end of a noun)
saidsame (used as a pronoun)
set forth inshall beshall have the right tosole and exclusive
such assuch (used as a pointing word)
subsectiontermination or expirationterms and conditionsthat certainthird partytrue and correctunder no circumstancesunless the context requires otherwiseuntil such time aswhatsoeverwhereaswillfulwithout limiting the generality of the foregoingwitnesseth

***Drafting Corporate Resolutions***

Related to drafting contracts is the drafting of corporate resolutions. The traditional language of corporate resolutions is if anything more problematic than the traditional language of contracts. That’s why *MSCD* proposes a major overhaul of the language of corporate resolutions. [In drafting corporate resolutions for [organization] and its affiliate, use the approach recommended in *MSCD*.]

***Transition***

Each [lawyer] [contracts professional] in our [organization] will be supplied with a copy of *MSCD*, and we will make available additional training. But we recognize that the transition to a new approach to contract language won’t be quick or easy. For one thing, all our precedent contracts use traditional language.

But slow change is still change, and it’s preferable to sticking with the current inefficiencies and incoherence. And we’ll soon start reaping the rewards.

We’ll be monitoring the transition. If you have any questions or comments, please contact me.

[Name]
[Title]