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Office of General Counsel

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# The Minnesota State Software Contract Addendum: What it is and How to Use it

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# Presentation Content

- Part One: Software Contracts in General
- Part Two: What is the Minnesota State Software Contract Addendum?
- Part Three: When and How to Use the Minnesota State Software Contract Addendum



# Part One: Software Contracts in General

General information and the review process



# Software Contracts

## Also known as:

- Terms of Service
- Terms of Use
- Conditions of Use
- Subscription Agreement
- Master Subscription Agreements
- Click Through Agreements
- End User License Agreements (EULA)
- Software as a Service (SaaS)
- Etc.

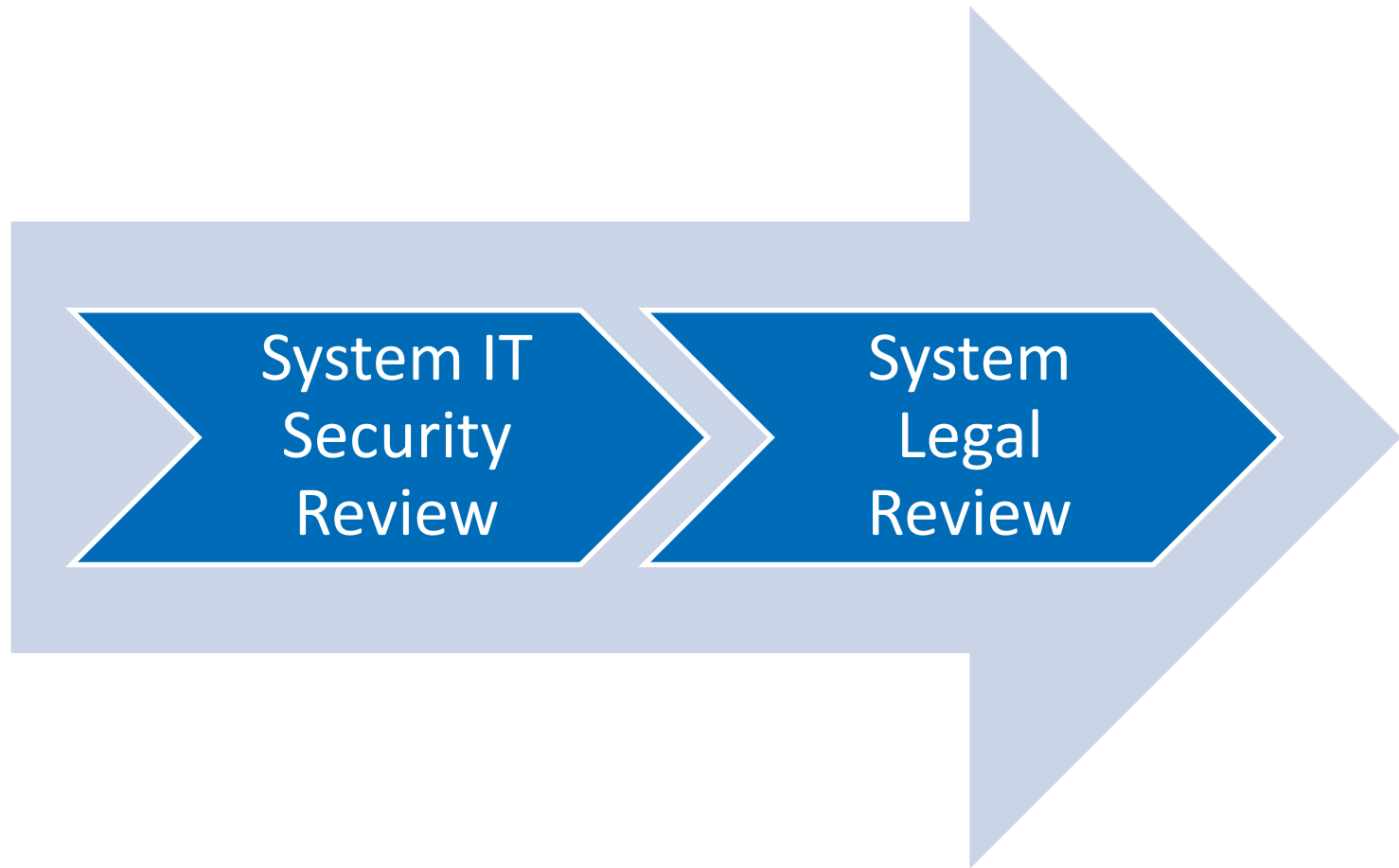
# No Minnesota State Standard Contract Template

## This means:

- Software contracts will always be vendor paper
  - Therefore, all software contracts will require legal review pursuant to Board Policy 5.14
    - “Any contracts or other legally binding agreements, including grant agreements, or memorandums of understanding/agreement that create legally binding obligations and responsibilities, that do not adhere to system approved contract templates must be approved in advance by the Office of General Counsel or Attorney General’s Office.”
- Do not fill out a Service/PT standard contract template for software



# Software Contract Review Process



# All Software Contracts Go Through at Least Two Types of Review

- IT Security Review
  - System Office IT Security
    - [risk-assessment@minnstate.edu](mailto:risk-assessment@minnstate.edu)
- Legal Review
  - Office of General Counsel
  - Attorney General's Office

# Review Always Happens in This Order

## 1. System IT Security Review

- [risk-assessment@minnstate.edu](mailto:risk-assessment@minnstate.edu)

## 2. System Legal Review

- Be sure to include the email from System IT Security with their recommendations when sending for legal review.





# What You Will Need to Get Your Software Contract Reviewed

- All relevant documents that need review in Word format (e.g. Terms of Use, Privacy Policy, Order Form, etc.)
- Completed software contract review questionnaire
  - Needs to be filled out by the individual at the System Office/College/University who is requesting the product and/or has knowledge about the product. It should not be filled out by the vendor. We want to know how you will use the product which may be different than what the vendor created the product for.
  - Can be found here:
    - <https://www.minnstate.edu/system/ogc/contracts.html>

# Software Contract Resources

- Office of General Counsel's [Contracts Webpage](#)
  - [Software Contract Review Questionnaire](#)
  - March 11, 2021 webinar ["Special Considerations for Software Contracts"](#)
  - [Contacts for Contracts](#)
  - [Checklist for Contract Creation](#)
- System Office IT Security
  - [risk-assessment@minnstate.edu](mailto:risk-assessment@minnstate.edu)

# **Part Two: What Is The Minnesota State Software Contract Addendum?**



# Why do we need a Software Addendum?

- Software companies will usually insist on using their own terms and conditions.
- Software companies can be difficult to negotiate with.
- Software companies use practices like “Clickwrapping” to force terms and conditions.
- There are certain contract terms we cannot agree to by law.

# Unknown Costs Prohibited

- Minn. Const. art. XI, § 1 and Minn. Stat. §§ 16A.138 and 16A.15 Subd.3 – The State cannot agree to pay an amount it cannot encumber for.
- This means the Colleges and Universities cannot agree to:
  - Indemnify a company
  - Pay a company's legal or collection fees
  - Pay any other obligation the College or University cannot encumber costs for.

# Litigation Determinations in Advance of a Dispute Prohibited

- Minn. Stat. § 8.06 gives the Attorney General's Office the exclusive ability to litigate on behalf of the State.
- This means we cannot agree to:
  - Arbitration and other ADR clauses
  - Waive legal rights such as trial by jury
  - Make other litigation determinations in advance of a dispute.

# Additional Prohibited Terms

- We cannot agree to automatic renewals beyond five (5) years without VC-CFO approval.
- We must maintain direct control over student data.
- We do not agree to non-solicitation and non-compete clauses.
- We are tax-exempt.

# Required Terms

- Software contracts require a reference to Minn. Stat. § 13.05 subd. 11.
- Software contracts involving student data require a reference to FERPA.
- Choice of law and forum in Minnesota (although silence may be acceptable).



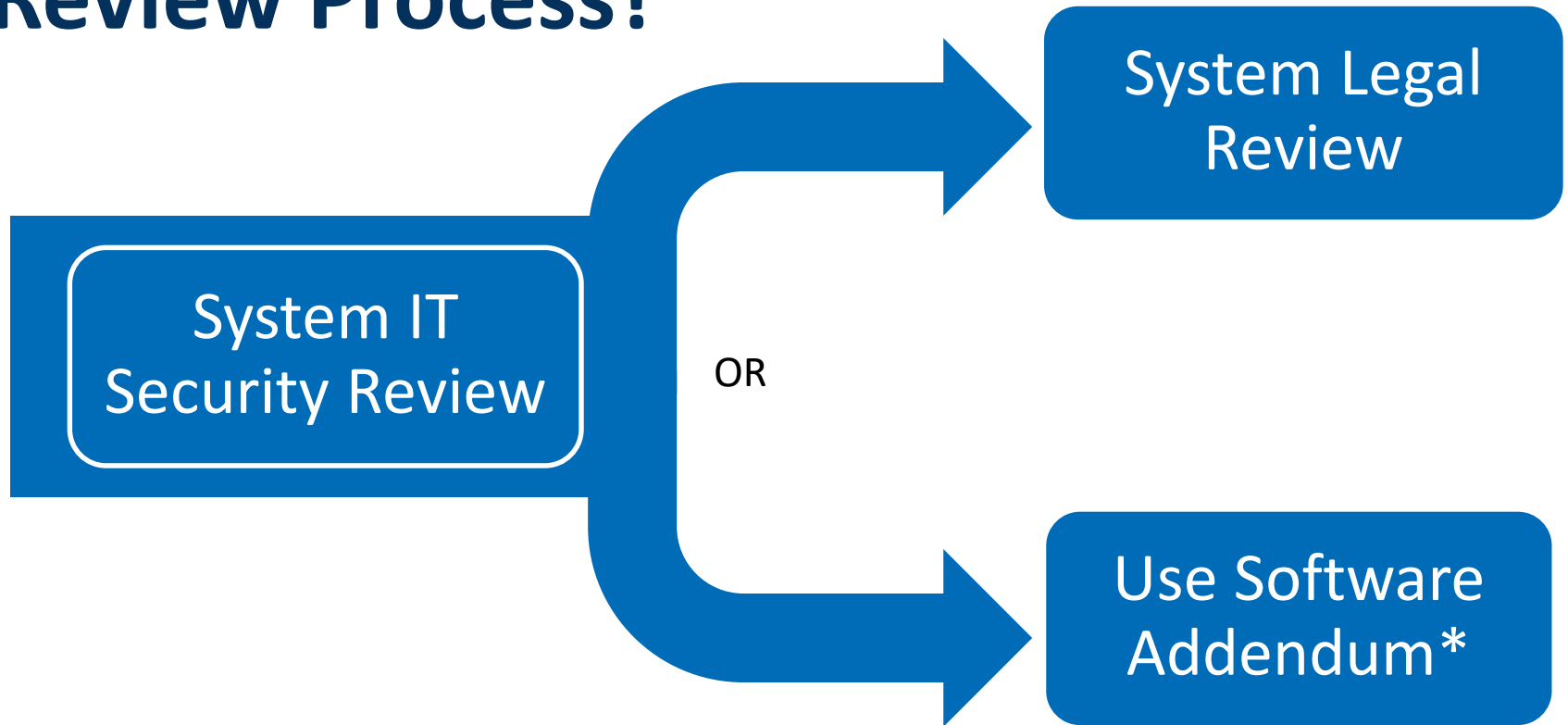
# One-Sided Software Terms

- Limitation or waiver of liability
- No intellectual property infringement remedies
- No insurance
- No warranties
- Vendor can unilaterally amend
- No PCI Standard language
- No security or data breach language
- Grant of exclusivity

# **Part Three: When and How to Use the Minnesota State Software Contract Addendum**



# Where Does the Addendum Fit in the Review Process?



\*The Minnesota State Software Addendum can only be used if all three conditions are met:

- (1) IT Security and the person with delegation of authority determined low risk regarding private data;
- (2) the software is off the shelf and does not requiring customization or integration with ISRS; and
- (3) the contract value is less than \$10,000.

If any changes are made to the addendum submit for legal review.

# Step One



# The First Step With All Software Contracts

- Complete the Software Contract Review Questionnaire.
  - The Software Contract Review Questionnaire can be found on the Office of General Counsel's Contracts webpage.

# Determine: Is the Addendum Appropriate?

- After System Office IT Security has completed their review, you can determine if the addendum is appropriate to use. The following criteria must be met to use the addendum:
  1. System IT Security and the person with delegation of authority have determined there is low risk regarding private data; and
  2. The software is “off the shelf,” and does not require customization or integration with ISRS; and
  3. The contract value is less than \$10,000.
- If any of the above three criteria are not met the contract needs to be sent to system legal counsel for legal review.

# Must Meet All Three



One

- System IT Security and the person with delegation of authority have determined there is low risk regarding private data



Two

- The software is “off the shelf,” and does not require customization or integration with ISRS



Three

- The contract value is less than \$10,000

If any of the three above are not met send to system legal counsel for legal review.



# Step Two

If all three criteria in step one are met you can move forward with step two. If all three criteria are not met send your contract the system legal counsel for review.





# Use the Correct Version of the Addendum

- We update the Addendum periodically, so make sure you are using the most up to date version.
- You can find the Addendum on the Office of General Counsel's webpage.
- Do use a copy of the Addendum saved to your computer/cloud drive. Download the most recent version every time.

# Step Three



# Fill in the Addendum

- Full name of the software contract (e.g. Acme Widget Works Terms of Use)
- Name of your College or University
- Full name of the software company (e.g. Acme Global Software Solutions, LLC)
- Fill in the Signature Block



## GUIDELINES FOR USE [DELETE THIS PARAGRAPH BEFORE USING]

- [First, complete the Software Contract Review Questionnaire and send to IT Security for review](#)
- [Use this document if the person with delegation of authority and IT Security determines low risk regarding private data](#)
- [Use for off-the-shelf software products only, not for any software that requires customization or integration with ISRS](#)
- [Use for low dollar \(less than \\$10,000\) value contracts](#)
- [System legal will need to review if Vendor makes any changes to this document](#)

## **Software Contract Addendum**

The following terms and conditions are incorporated into and form a part of the agreement,

\_\_\_\_\_ [INSERT NAME OF MASTER AGREEMENT/TERMS OF USE/LICENSE AGREEMENT]  
to which they are attached (the "Agreement") for all purposes. "Minnesota State" means the State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of \_\_\_\_\_  
[INSERT COLLEGE NAME] and "Vendor" means \_\_\_\_\_ [INSERT FULL NAME OF COMPANY] .

1. **Conflict.** Any terms in the Agreement which purport to modify or are in conflict with the terms of this Addendum are hereby deleted, and replaced with the terms in this Addendum. Vendor expressly acknowledges that the terms of this Addendum supersede the terms of any Agreement which this Addendum accompanies or to which it is attached; and expressly acknowledges that no agreement, or understanding, oral or written, which purports to modify the terms of this Addendum, whether contained in Vendor's prior or subsequent receipts, invoices, quotations, order confirmations, purchase orders, shipping forms, or any other documents, shall be binding on Minnesota State.
2. **Term; No Automatic Renewals.** The term of the Agreement shall be for the term stated in the Agreement itself. However, if no term is stated in the Agreement, the Agreement shall expire one (1) year from the date of the Agreement or purchase order, whichever is later. Any reference to any automatic renewals in the Agreement is hereby deleted in its entirety, and the parties expressly acknowledge that the Agreement is for one term only, and does not automatically renew itself for successive terms. All renewals must be in writing and agreed to by both parties. Notwithstanding anything contained in the Agreement to the contrary, either party may terminate the Agreement upon thirty (30) days written notice to the other.
3. **No License.** Minnesota State does not grant Vendor any license to use its logos or trademarks in any sales promotion work, advertising, or any form of publicity.
4. **Ownership of Works.** All information provided by Minnesota State or its users belongs exclusively to Minnesota State or its users, and Vendor will respect that ownership. Minnesota State shall retain all rights, title, and interest in any content, data, or intellectual property provided or supplied by Minnesota State hereunder.
5. **Assignment.** Nothing in this Agreement shall be construed to permit the assignment by any party of any rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of Minnesota State. No such assignment or transfer shall relieve the non-Minnesota State party from its obligations and liabilities under the Agreement.



# What You Fill In

## Software Contract Addendum

The following terms and conditions are incorporated into and form a part of the agreement, \_\_\_\_\_ [INSERT NAME OF MASTER AGREEMENT/TERMS OF USE/LICENSE AGREEMENT] to which they are attached (the "Agreement") for all purposes. "Minnesota State" means the State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of \_\_\_\_\_ [INSERT COLLEGE NAME] and "Vendor" means \_\_\_\_\_ [INSERT FULL NAME OF COMPANY] .



# Example 1: How to Fill in Addendum



## GLEAN™ ENTERPRISE SAAS AGREEMENT

This **Glean Enterprise SAAS Agreement** is made effective as of April 22, 2021 or once fully signed, (the “Effective Date”) between **Sonocent, LLC, a limited liability company** with a business address of 4600 140th Ave North, Suite 180, Clearwater, Florida 33762, USA (the “Supplier”) and the State of Minnesota through its Board of Trustees of the Minnesota State Colleges and Universities on behalf of **Dakota County Technical College** (the “Customer”) (each a “party” and together the “parties”). This Glean Enterprise SAAS Agreement together with the Accepted Quotation (defined below), background recitals below, and its attachments collectively constitutes the parties’ “Agreement” with respect to Customer’s use of Glean.

## Software Contract Addendum

The following terms and conditions are incorporated into and form a part of the agreement,

**[INSERT NAME OF MASTER AGREEMENT/TERMS OF USE/LICENSE AGREEMENT]** to which they are attached (the “Agreement”) for all purposes. “Minnesota State” means the State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of **[INSERT COLLEGE NAME]** and “Vendor” means **[INSERT FULL NAME OF COMPANY]**.

# Example 1: How It Should Look When It's Filled In

## Software Contract Addendum

The following terms and conditions are incorporated into and form a part of the agreement, **Glean Enterprise SAAS Agreement** to which they are attached (the "Agreement") for all purposes. "Minnesota State" means the State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of **Dakota County Technical College** and "Vendor" means **Sonocent, LLC, a limited liability company.**

# Example 2: How to Fill In Addendum

## HONORLOCK, INC. MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this “Agreement”), dated October 30, 2020 (the “Effective Date”), is between Honorlock, Inc. (“Honorlock,” or “we”), a Delaware corporation, with a business address of 2500 N Military Trail, Suite 322, Boca Raton, Florida 33431; and Minnesota State colleges and universities (“Subscriber,” or “you”), with a business address of 30 East 7<sup>th</sup> Street, Suite 350, St. Paul, MN 55101, each of which may sometimes be referred to in this Agreement as a “Party” or collectively as the “Parties.” This Agreement expires 8/31/2022.

### Software Contract Addendum

The following terms and conditions are incorporated into and form a part of the agreement,

\_\_\_\_\_ [INSERT NAME OF MASTER AGREEMENT/TERMS OF USE/LICENSE AGREEMENT]  
to which they are attached (the “Agreement”) for all purposes. “Minnesota State” means the State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of \_\_\_\_\_  
[INSERT COLLEGE NAME] and “Vendor” means \_\_\_\_\_ [INSERT FULL NAME OF COMPANY].



# Example 2: How It Should Look When It's Filled In

## Software Contract Addendum

The following terms and conditions are incorporated into and form a part of the agreement, **Master Subscription Agreement** to which they are attached (the "Agreement") for all purposes. "Minnesota State" means the **State of Minnesota through the Board of Trustees of the Minnesota State Colleges and Universities** and "Vendor" means **Honorlock, Inc.**

# Step Four



# Present the Addendum to the Software Vendor

- If the vendor agrees to sign the addendum without making any changes to it, you can move forward with the signature process.
  - Remember: Both the vendor and the college/university must sign the addendum and the vendor's terms.
- If the vendor wants to make changes to the addendum or refuses to sign it at all move on to Step 5.

# Step Five



# Negotiate the Addendum

- Vendors may push back on certain terms of the addendum.
- This is not unusual.
- If a vendor requests edits, please contact the Office of General Counsel to determine if the College or University can accept the edits, or if it needs to negotiate the Addendum further.

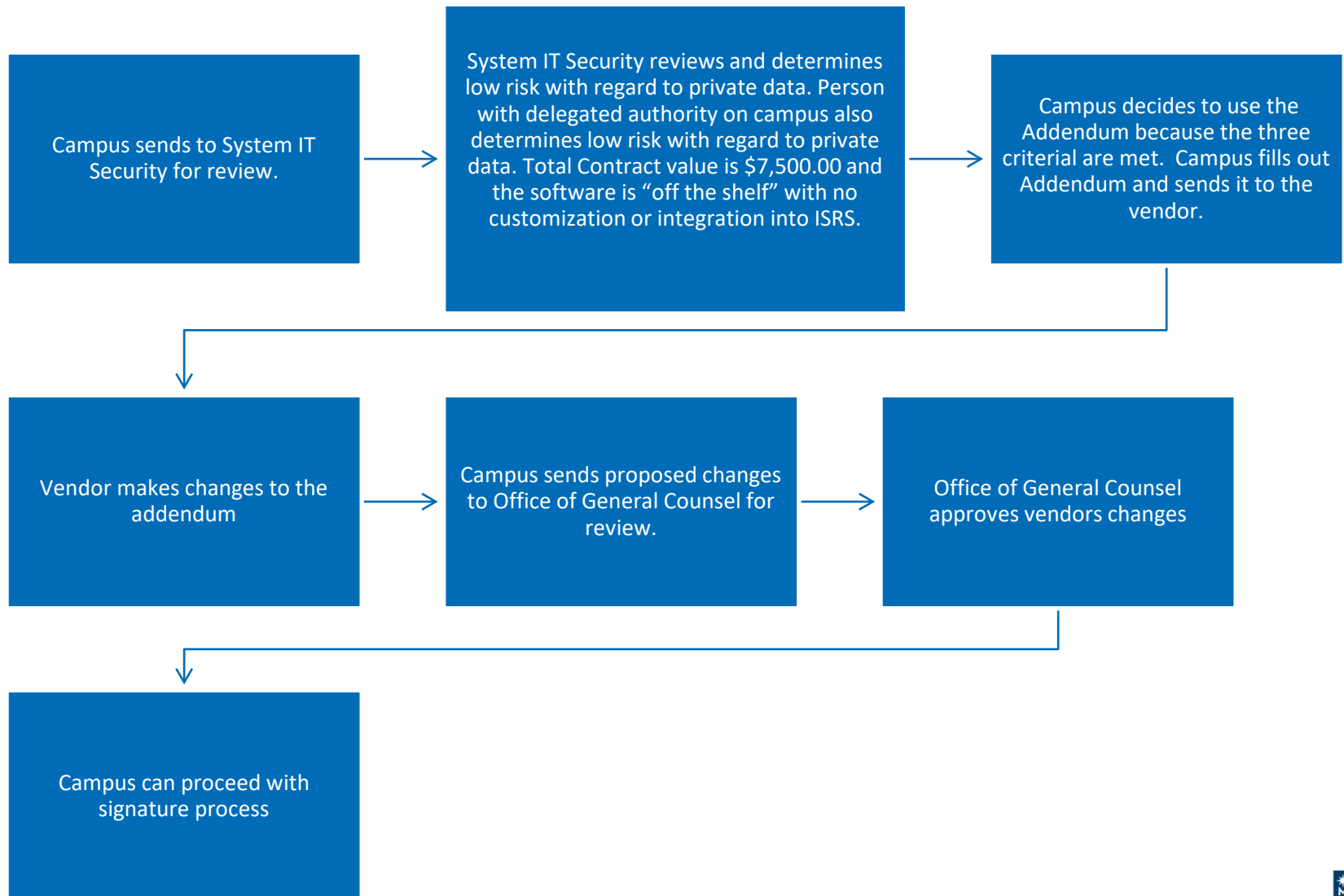
# Vendor Refuses the Addendum

- System Legal review is required
    - The Office of General Counsel or the Attorney General's Office will review the vendor's standard terms.
      - The OGC or the AGO will create a redline or a custom addendum
- OR
- If the terms are acceptable, the College or University may sign the terms as-is. **This very rarely happens with software contracts.**

# Vendor Stonewalls and Refuses to Negotiate Any Terms

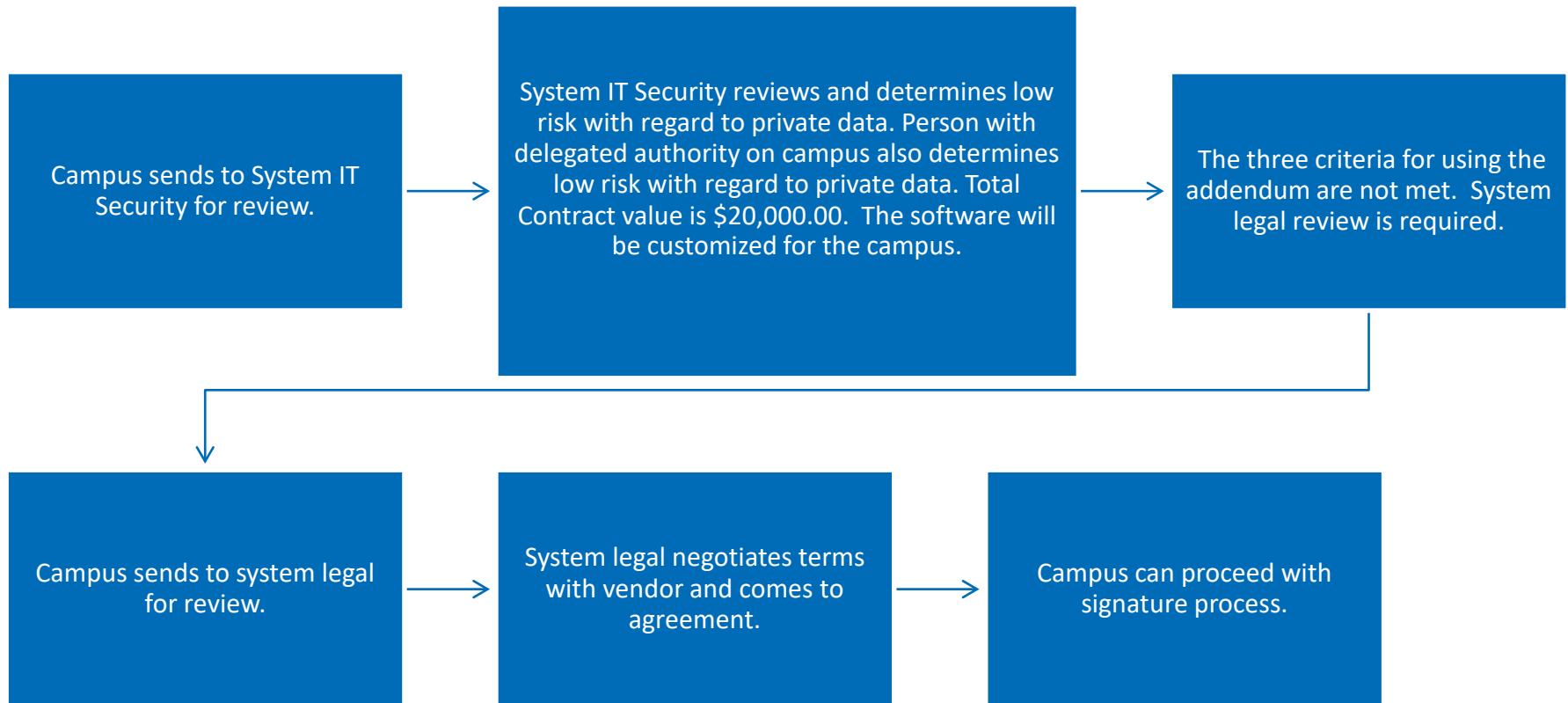
- Explore market alternatives
- If the software product is 1) truly the only alternative on the market; 2) low risk; and 3) mission critical – consult with your internal business office.
- If the College or University decides the risk of violating Minn. Stat. 16A is outweighed by the business need for the product, there is a process for assuming this risk.
- This “side letter” process is a last resort and the Colleges and Universities should not use it frequently.

# What the Process May Look like (1)

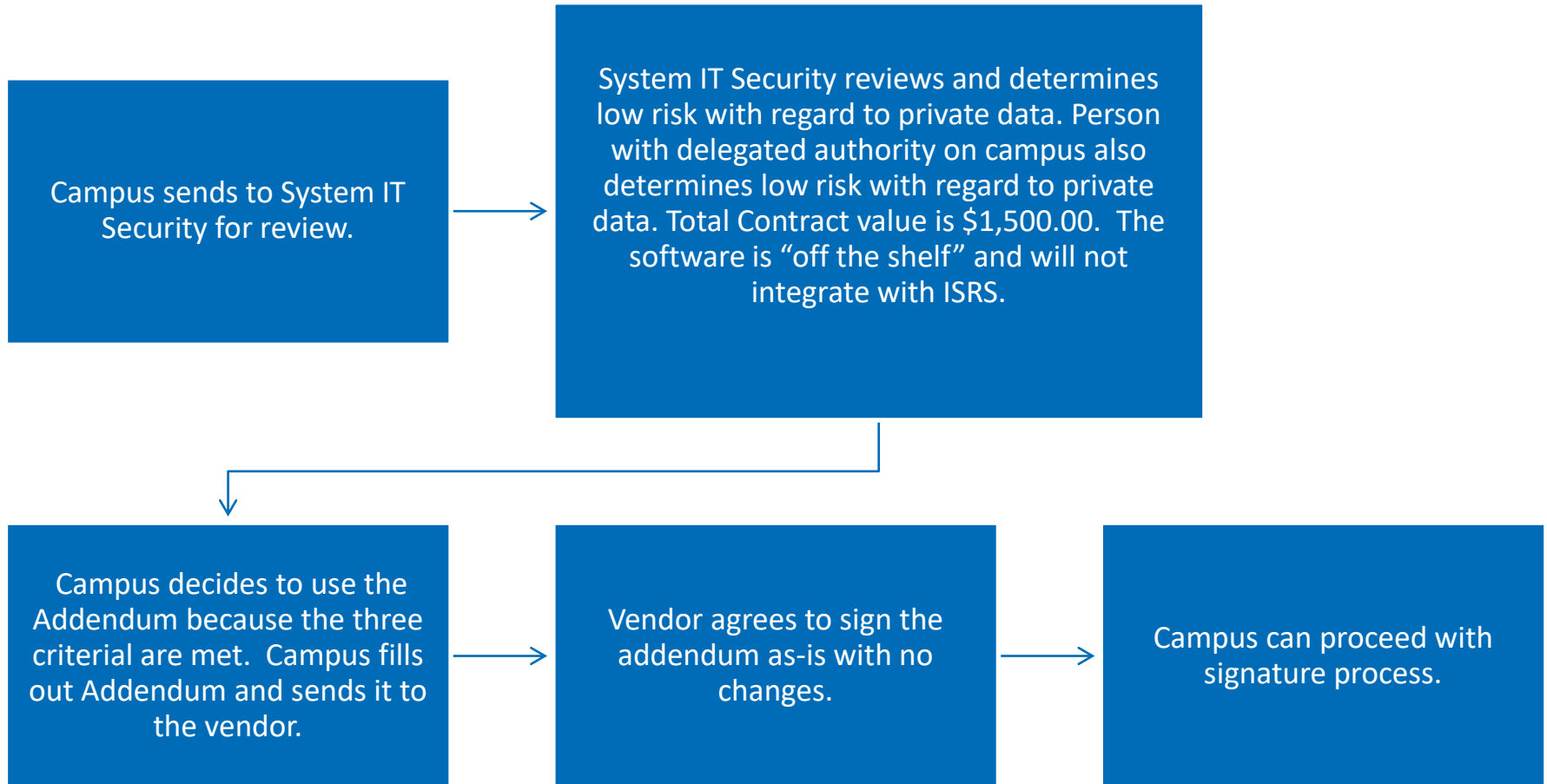




# What the Process May Look like (2)



# What the Process May Look like (3)



# Office of General Counsel Contacts for Software

- Daniel McCabe, Assistant General Counsel  
[Daniel.McCabe@minnstate.edu](mailto:Daniel.McCabe@minnstate.edu)
- Sarah McGee, Assistant General Counsel  
[Sarah.McGee@minnstate.edu](mailto:Sarah.McGee@minnstate.edu)
- Amanda Bohnhoff, Paralegal  
[Amanda.Bohnhoff@minnstate.edu](mailto:Amanda.Bohnhoff@minnstate.edu)

# Minnesota State Contact Information

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Office of General Counsel

<https://www.minnstate.edu/system/ogc/index.html>