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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 for Software Contracts

## This means:

- Software contracts will always use the vendor's form of contract
- The Office of General Counsel has created a software contract addendum to attach to certain specific software contracts
  - for those software purchases which are determined to be low risk and low dollar value.



# All Software Purchases Go Through IT Security Review

- All software purchases must be reviewed by the System Office IT Security Team
  - You can reach IT Security at the following email address:
    - [risk-assessment@minnstate.edu](mailto:risk-assessment@minnstate.edu)



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



# What is the Software Contract Addendum and why do we need it?

- By law and Board policy, there are certain contract terms we cannot agree to.
- We attach the Software Contract Addendum to vendors' contracts so that Minnesota State's contract terms will supersede the vendors' terms.
- We make the Software Contract Addendum available to campuses for campuses to easily share it with vendors.



# Prohibited Contract Terms - Unknown Costs

- 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, such as unknown, indefinite, or future unspecified costs.

# Prohibited Contract Terms - Litigation

- 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:
  - Mandatory 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 the Minnesota Government Data Practices Act, specifically 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

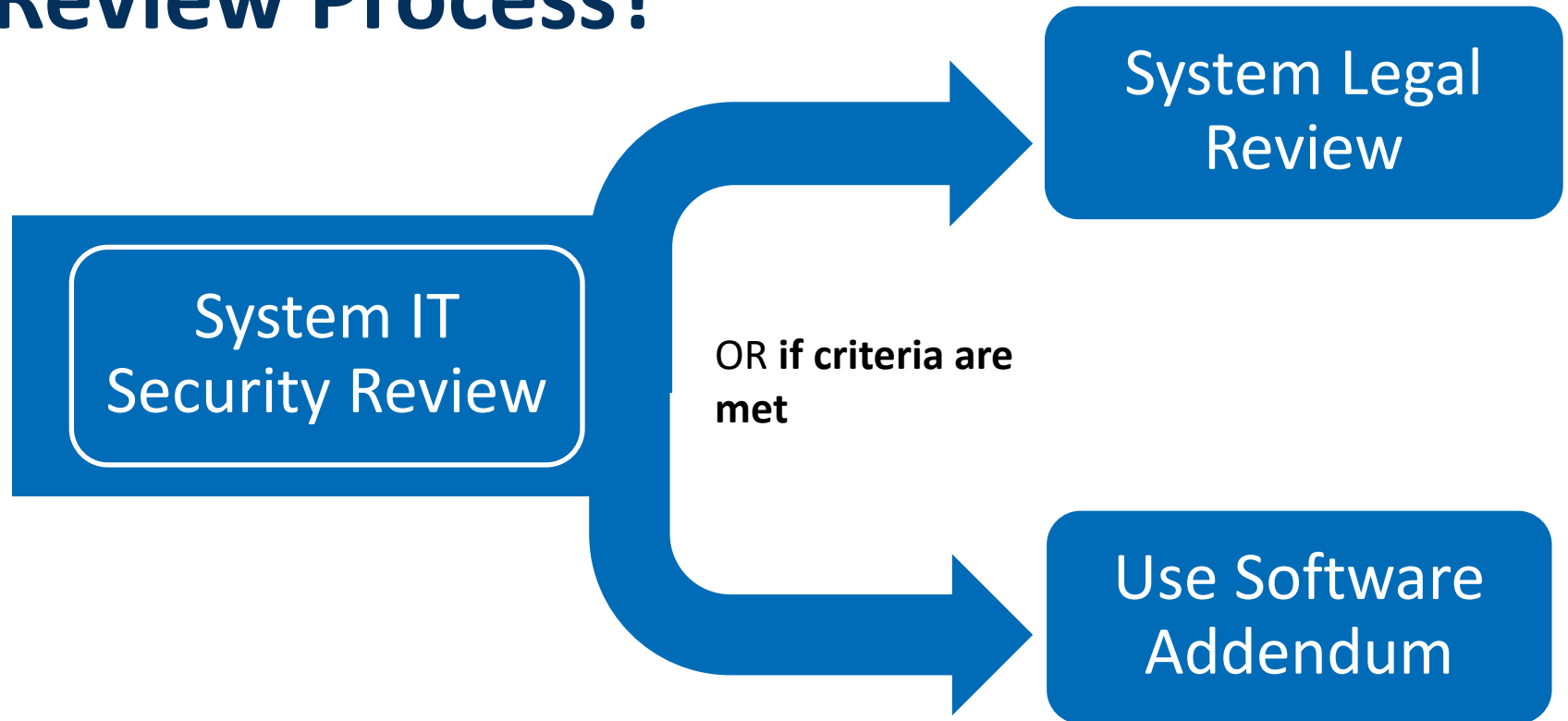
- Limitation or waiver of liability
- No intellectual property infringement remedies
- No insurance
- No warranties
- Vendor can unilaterally amend
- No PCI Standard language
- No security or data breach language
- Grant of exclusivity



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



# Where Does the Addendum Fit in the Review Process?



# How is the Software Contract Addendum used by campuses?

- The Minnesota State Software Addendum can only be used by campuses without legal review if all four conditions are met:
  - IT Security and the person with delegation of authority determined low risk regarding private data;
  - The purchase is for Software-as-a-Service (SaaS), Cloud Service, or On-Premise software or solution that does not require customization or integration with ISRS;
  - The purchase is not for hardware, credit card or payment card processing services (PCI), or if purchasing software through a reseller, and
  - the contract value is less than \$10,000.



# Step One



# The First Step With All Software Contracts

- Complete the Software Contract Review Questionnaire and send to System Office IT Security for review.
  - [risk-assessment@minnstate.edu](mailto:risk-assessment@minnstate.edu)
  - 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.
- If any of the four criteria are not met the contract needs to be sent to the Office of General Counsel for legal review.

# Must Meet All Four



One

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



Two

- The purchase is for Software-as-a-Service (SaaS), Cloud Service, or On-Premise software or solution that does not require customization or integration with ISRS



Three

- The purchase is not for hardware, credit card or payment card processing services (PCI), or if purchasing software through a reseller, and



Four

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

If any of the four above are not met, send to Office of General Counsel for legal review.



# Step Two

If all four criteria in step one are met, you can move forward with step two.



# 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 not 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) and its address
- Fill in the Signature Block



# What You Fill In

The following terms and conditions are incorporated into and form a part of the agreement, \_\_\_\_\_ **[INSERT NAME OF MASTER AGREEMENT/PURCHASE ORDER/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 AND FULL ADDRESS, DO NOT USE A PO BOX]**.



# 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 (“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, 4600 140<sup>th</sup> Avenue North, Suite 180, Clearwater, Florida 33762.**

# Example 2: How to Fill In Addendum

## Kahoot! Terms and Conditions

### Welcome to Kahoot!

These Terms apply to your use of the Kahoot! Services and our Platform, and we encourage you to read them carefully. Please also refer to the definitions set out at the bottom of this page. The Terms and any attachments related to it, including our [Acceptable Use Policy](#), applicable guidelines and any Service Plan(s), forms a legal Agreement between you and Kahoot! for your use of the Kahoot! Services.

#### 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 **[REDACTED]**

**[INSERT COLLEGE NAME]** and "Vendor" means **[REDACTED]** **[INSERT FULL NAME OF COMPANY]**.

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

## Software Contract Addendum (“Addendum”)

The following terms and conditions are incorporated into and form a part of the agreement, **Kahoot! Terms and Conditions** 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 **SOUTH CENTRAL COLLEGE** and “Vendor” means Kahoot! ASA, Fridtjof Nansens plass 7, Oslo, Oslo 0160, Norway.

# 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





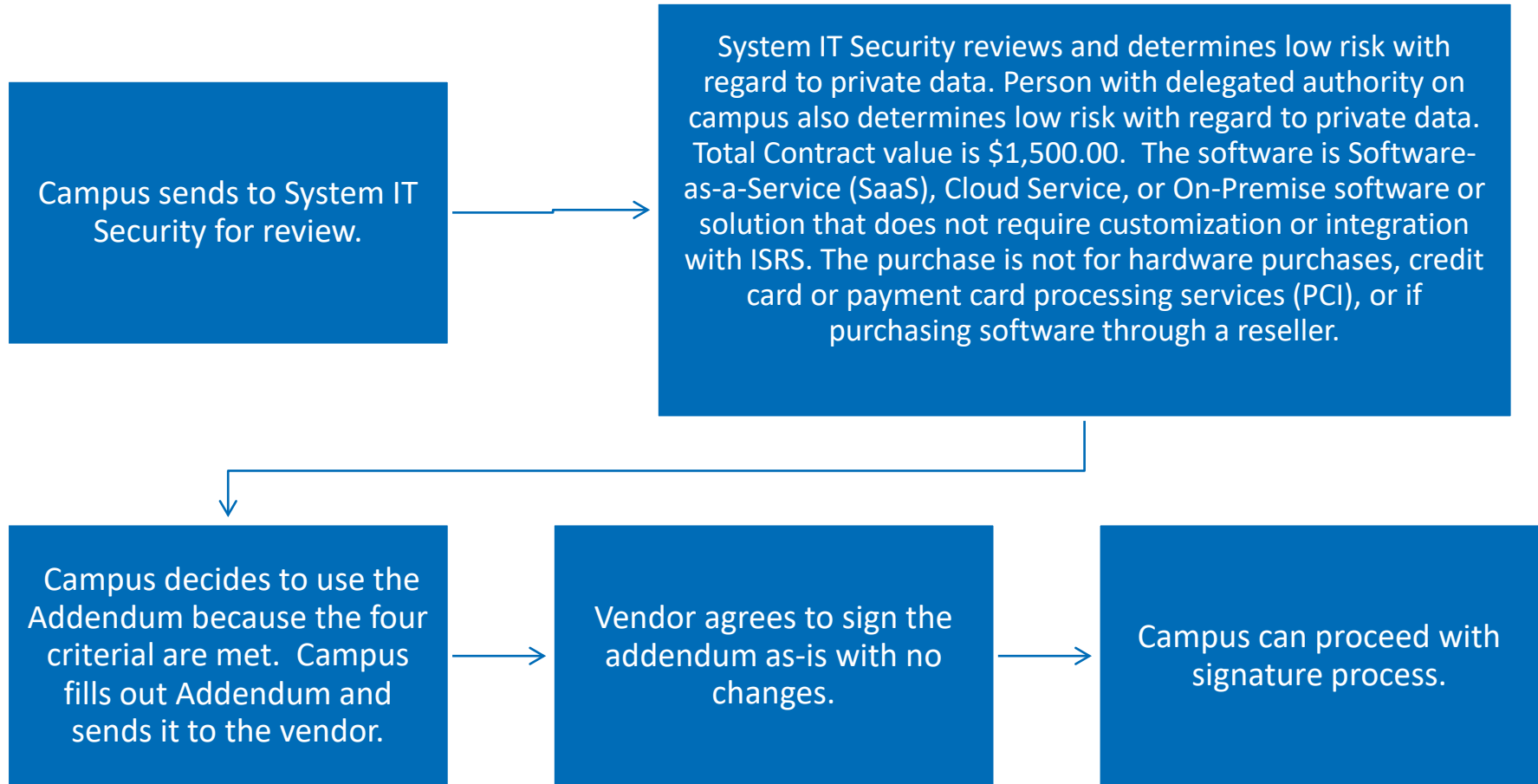
# What if the vendor requests changes to the Addendum?

- No changes may be made to sections 1-12 of the Addendum.
- These are legal terms, which cannot be changed by Minnesota State as they are required by law or Board policy.

# What if the vendor requests changes to the Addendum?

- Vendors may request changes to sections 13-16.
- The person with delegated authority may accept changes to sections 13-16.
- Sections 13-16 are business terms, which do not require legal review.

# How Campuses can use the Software Contract Addendum



# 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.**

# 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>

# Office of General Counsel Contacts for Software

- Melitta Drechsler, Assistant General Counsel  
[Melitta.Drechsler@minnstate.edu](mailto:Melitta.Drechsler@minnstate.edu)
- Daniel McCabe, Assistant General Counsel  
[Daniel.McCabe@minnstate.edu](mailto:Daniel.McCabe@minnstate.edu)
- Amanda Bohnhoff, Paralegal  
[Amanda.Bohnhoff@minnstate.edu](mailto:Amanda.Bohnhoff@minnstate.edu)
- Heidi Slegers, Paralegal  
[Heidi.Slegers@minnstate.edu](mailto:Heidi.Slegers@minnstate.edu)

# 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)

# 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.



# Questions and Answers

- Please chat in your questions.