**[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS.]**

* **GUIDELINES FOR USE [DELETE THIS PARAGRAPH BEFORE USING]**
* First, complete the [Software Contract Review Questionnaire](https://www.minnstate.edu/security/riskassessment) 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 only for Software-as-a-Service (SaaS), Cloud Service, or On-Premise software or solution that does **not** require customization or integration with ISRS
* This document **cannot** be used for hardware purchases, credit card or payment card processing services (PCI), or if purchasing software through a reseller
* Use for contracts valued at less than $10,000
* Vendors **may not edit** sections 1-12.
* The campus, via the person with proper delegated authority, may choose to accept or reject changes to sections 13-16. Any changes to those sections must be done through the track changes feature in Microsoft Word.

# Software Contract Addendum (“Addendum”)

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 NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]* and “Vendor” means *[INSERT FULL NAME OF COMPANY AND FULL ADDRESS, DO NOT USE A PO BOX]*.

## Conflict.

Any terms in the Agreement which 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. Vendor expressly acknowledges that no legal terms 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.

## 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; 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. The termination of this Agreement shall serve to terminate all existing order forms, schedules, statements of work, addenda, and the like unless otherwise agreed to in writing by the Parties.

## Ownership of Works; No License.

Minnesota State or its end-users shall retain all rights, title, and interest in any content, data, or intellectual property provided or supplied by Minnesota State or its end-users hereunder. 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.

## Assignment.

No assignment of the Agreement shall relieve Vendor’s assignee from its obligations and liabilities under the Agreement.

## Governing Law, Venue.

The Agreement, this Addendum, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Agreement, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## Limitations on Liability.

Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall limit Vendor’s liability to Minnesota State or any third parties as a result of Vendor’s negligence, willful misconduct, or a Breach of the security of the data as that phrase is defined by Minn. Stat. § 13.055, resulting from Vendor’s acts or omissions.

## Indemnification.

Nothing in the Agreement shall be construed as an indemnification of Vendor by Minnesota State. The Minnesota Tort Claims Act, Minn. Stat. § 3.736, and other applicable laws govern the liability of Minnesota State.

## Sovereign Immunity.

Nothing in the Agreement shall be construed to deprive the State of Minnesota of its sovereign immunity, any other governmental immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations applying to the Agreement or afforded to the State by Minnesota law.

## Compliance with Public Records Law.

Minnesota State is subject to applicable public records laws as provided by provisions of Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13. The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this Agreement. The parties must comply with the MGDPA, as it applies to all data provided by Minnesota State in accordance with this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Vendor in accordance with this Agreement. Any confidentiality provision in the Agreement is subject to disclosure obligations under the MGDPA to Minnesota State. Minnesota State will respond to public records request without any duty to give the Vendor prior notice. In the event Vendor receives a request to release data pursuant to the MGDPA, Vendor shall immediately notify Minnesota State. Minnesota State will give Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either party.

## Compliance with FERPA.

Vendor acknowledges that for the purposes of this Agreement it may have access to Educational Data as defined by Minnesota Statutes § 13.32 and Education Records as defined by the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99. To the extent Vendor has access to or receives Minnesota State Educational Data or Education Records, Minnesota State designates Vendor as a school official with a legitimate educational interest in the Educational Data or Education Record. Vendor shall only use Educational Data or Education Records for the purposes of fulfilling its duties under the Agreement and it will not monitor or share such data with or disclose it to any third party except as provided for in the Agreement or as otherwise allowed by law.

## Deletion.

Any term and or condition in the Agreement on the following subject matters are hereby deleted and declared null and void: (a) Grants of exclusivity by Minnesota State to Vendor; (b) Restrictions on the hiring of Vendor’s employees; (c) the responsibility to pay taxes by Minnesota State; (d) the tort liability by Minnesota State; (e) A payment requirement contingent upon the happening of an event in the future which will increase the current pricing as set forth in the Agreement; (f) Limitation of time to bring suit; (g) Granting Vendor any right to audit Minnesota State; (h) Attorney's or collections fees provisions; (i) waivers of any of the existing legal rights of Minnesota State, including but not limited to the right to a jury trial; and (j) mandatory arbitration, mediation, or any other alternative dispute resolution procedure.

## Insurance.

During the term of this Agreement, Vendor shall maintain all appropriate insurance coverage that is reasonable and customary in Vendor’s industry, but no less than the amounts set forth below or as required by applicable federal and state laws, whichever is greater, and shall produce a certificate of such insurance naming Minnesota State as additional insured within 30 days of executing the Agreement and any other time by written request of Minnesota State. At minimum, Vendor shall maintain the following coverage: Commercial Liability - Not less than $2,000,000, each occurrence and $2,000,000, aggregate; Professional Liability - Not less than $2,000,000 each occurrence and $2,000,000, aggregate; and Cyber Liability insurance with limits of not less than $2,000,000 for each claim and $2,000,000, aggregate, covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

## Intellectual Property Infringement.

### Warranty.

 Vendor represents and warrants that its software and any related systems and or services related to its software (collectively, the "Software") furnished by Vendor to Minnesota State will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party.

### Indemnification.

Vendor will, at its expense, defend any suit brought against Minnesota State, and will indemnify and hold harmless Minnesota State against an award of damages and costs (including reasonable attorney fees, court costs, and appeals), made against Minnesota State by settlement or final judgment of a court that is based on a claim that the use of the Vendor’s Software infringes an intellectual property right of a third party; provided that Minnesota State notifies Vendor in writing of the suit or any claim of infringement within thirty (30) calendar days after receiving notice thereof, and further provided that Vendor is permitted to control the defense in any litigation or settlement of the suit, upon permission of the Minnesota Attorney General. Minnesota State will provide reasonable cooperation in the defense of the suit at Vendor’s expense. Such defense and indemnity shall survive termination or expiration of the Agreement and the Vendor’s liability for the above is not limited by any limitation of liability clauses in the Agreement.

### Purchase, Replacement or Refund.

In the event an injunction or order is obtained against Minnesota State for the use of the Vendor’s Software or if in the Vendor’s opinion the Software is likely to become the subject of a claim of infringement or violation of a copyright, trademark, trade secret, or other proprietary right of a third party, Vendor shall, at its expense: (a) procure for Minnesota State the right to continue using the Software; or (b) at no additional cost to Minnesota State, replace or modify the Software so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications of the Software or its use by Minnesota State. If neither (a) nor (b) above is practical, Vendor shall remove the Software from Minnesota State and shall issue a refund for the Software to Minnesota State, less reasonable depreciation. Thereafter, any license involved shall be considered canceled.

## Privacy Policy.

Vendor warrants that any Privacy Policy change will not materially reduce the level of protection afforded to Minnesota State or its end-users.

## Warranty.

Vendor represents and warrants to Minnesota State that (a) it has the right to license any Software offered in the Agreement; (b) that all Software shall substantially conform to the description in any applicable documentation; (c) the functionality of any Software will not materially decrease during the term of the Agreement or any renewal term; (d) Vendor shall perform any professional services in a workmanlike manner exercising the degree of care customary in the industry for a provider of similar services; (e) the Software is provided free of viruses, malware, or other malicious or destructive programs or features.

## Secure Protection and Handling of Data

### Minnesota State Data.

“Minnesota State Data” means any data, information, or other materials of any nature whatsoever, provided to Vendor by Minnesota State or obtained by Vendor from Minnesota State end-users in the course of the Agreement.

### Privacy and Security.

Vendor agrees to protect the privacy and security of Minnesota State Data according to all applicable laws and regulations, using industry best practices, and no less rigorously than it protects its own confidential information. Vendor shall implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality (authorized access), integrity and availability of Minnesota State Data.

### Message Sending.

Only if Vendor sends messages (email, SMS, MMS, or similar) on behalf of Minnesota State, Vendor agrees to (i) have a Domain-based Message Authentication, Reporting & Conformance (DMARC) policy in place and enforced and (ii) provide a Domain Keys Identified Mail (DKIM) signature to Minnesota State. Vendor further agrees to adhere to the message authentication standards of Minnesota State throughout the duration of this Agreement, available upon request from Minnesota State.

### Network Security.

To the extent applicable to Vendor’s performance under the Agreement, Vendor agrees at all times to maintain network security that, at a minimum, includes network firewall provisioning, intrusion detection, regular third-party penetration testing and vulnerability scanning. Vendor shall ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.

### Patching.

Vendor agrees to maintain secure environments that are patched and up-to-date with all appropriate security updates no less than the standards set forth in Operating Instructions 5.23.1.5 (see <http://www.minnstate.edu/board/policy/index.html>).

### Data Encryption.

Vendor agrees to encrypt all Minnesota State Data in transit and implement security controls to protect Minnesota State Data at rest using commercially reasonable and industry accepted measures such as encryption.

### Application Security.

Vendor agrees to use industry standard practices (including regular static and dynamic scanning) at all times to provide, maintain and support the Software with subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities as described in:

1. The Open Web Application Security Project’s (OWASP) “Top Ten Project” – <http://www.owasp.org> and
2. The CWE/SANS Top 25 Programming Errors - <http://cwe.mitre.org/top25/> or <http://www.sans.org/top25-programming-errors/> and
3. Other generally recognized and comparable industry practices or standards.

### Data Re-Use.

Vendor agrees that Minnesota State Data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement. Minnesota State Data shall not be distributed, repurposed or shaped across other applications, environments, or business units of Vendor unless such data is aggregated and anonymized only for Vendor’s internal business assessments or metrics. Vendor further agrees that no Minnesota State Data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Minnesota State. By way of illustration and not of limitation, Vendor will not use such data for Vendor’s own benefit and, in particular, will not engage in “data mining” of Minnesota State data or communications, whether through automated or human means, except as necessary to fulfill its duties under the Agreement, or as specifically and expressly provided for in the Agreement, as required by law, or authorized in writing by Minnesota State.

### Data Return or Destruction.

Vendor agrees that, upon completion, termination, or cancellation of the Agreement, all Minnesota State Data shall be remitted, without charge, in a mutually agreeable format and media, to Minnesota State. The foregoing sentence does not apply if the notice parties in the Notices Section authorizes in writing the Vendor to erase, destroy, and render unreadable the data and the Vendor certifies in writing that these actions have been completed within thirty (30) days of the termination of the Agreement or within seven (7) days of the request of an agent of Minnesota State, whichever shall come first.

### Security Audits & Remediation.

Vendor will audit the security of the systems and processes used to provide the Software, including those of any data centers or third parties used by Vendor to provide the Software. This security audit: (1) will be performed at least once every calendar year; (2) will be performed according Statement on Standards for Attestation Engagements (“SSAE”) 16 Service Organization Control (“SOC”) 2, International Organization for Standardization (“ISO”) 27001/27002, or FedRAMP; (3) will be performed by third party security professionals at Vendor’s election and expense; (4) will result in the generation of an audit report (“Audit Report”), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act; and (5) may be performed for other purposes in addition to satisfying this section. Upon reasonable, advance written request of Minnesota State, Vendor will provide to Minnesota State a copy of the Audit Report. Vendor will make best efforts to remediate any control deficiencies identified in the Audit Report in a commercially reasonable timeframe. If Minnesota State becomes aware of any other Vendor controls that do not substantially meet the requirements of Minnesota State, Minnesota State may request remediation from Vendor. Vendor will make best efforts to remediate any control deficiencies identified by Minnesota State or known by the Vendor, in a commercially reasonable timeframe.

### Data Security Breaches.

For this and following subsections, “Breach” means a “Breach in the security of the data” as that phrase is defined in Minn. Stat. § 13.055 Subd. 1(a)). Immediately upon discovery of a Breach of Minnesota State Data, or circumstances that are reasonably understood to suggest and actual or suspected Breach of Minnesota State Data, Vendor will notify Minnesota State by telephone and email, consistent with applicable state or federal laws. Unless less time is required by law, in no event shall the report be made more than two (2) business days after Vendor knows or reasonably suspects a Breach has or may have occurred. Vendor will fully investigate any Breach and cooperate fully with the investigation and response to a Breach of Minnesota State. In the event of a suspected Breach, the Vendor shall keep Minnesota State informed regularly of the progress of its investigation until the uncertainty is resolved. Except as otherwise required by law, Vendor will not provide notice of an actual or suspected Breach directly to individuals whose personally identifiable information was involved, regulatory agencies, or other entities, without prior written permission from Minnesota State. The decision to notify and the actual notifications to the data subjects is the responsibility of Minnesota State.

### Costs Arising from Breach.

In the event of a Breach of Minnesota State Data by the Vendor or its contractors, agents, or service providers, or any other event requiring notification under applicable law, Vendor agrees to promptly reimburse all costs to Minnesota State arising from such Breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of Minnesota State personnel responding to the Breach, civil or criminal penalties levied against Minnesota State, attorney’s fees, and court costs.

### Termination for Breach.

Any Breach that results in the unauthorized access, use or disclosure of Minnesota State Data is a material breach of this Agreement and Minnesota State may immediately terminate this Agreement by giving written notice to the Vendor. If Minnesota State terminates this Agreement due to a Breach, Minnesota State shall be entitled to a refund of any monies paid in advance prorated to the effective date of termination.

## Notice.

All official notices to Minnesota State including but not limited to reporting of an actual or suspected Breach of Minnesota State Data or any material changes to Vendor’s Privacy Policy must be sent to SO-Contracts-Team@MinnState.edu and [INSERT CAMPUS CONTACT HERE].

## Entire Agreement.

This Addendum and the Agreement to which it is attached is the entire agreement between Minnesota State (including Minnesota State employees and other end-users) and the Vendor. In the event that the Vendor enters into terms of use or other agreements, whether electronic, click-though, verbal or in writing, with Minnesota State employees or other end-users, such agreements shall be null, void and without effect, and the terms of the Agreement and this Addendum shall apply. The Agreement and Addendum may not be amended, except by an agreement in writing which is signed by the authorized representatives of the parties.

**Signature page to follow.**

*Minnesota State is an affirmative action, equal opportunity employer and educator.*

# Minnesota State logo.APPROVED:

## VENDOR.

 The Vendor certifies that the appropriate person(s) have executed the contract on behalf of Vendor as required by applicable articles, by-laws, resolutions, or ordinances.

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |

## MINNESOTA STATE COLLEGES AND UNIVERSITIES.

 **[*INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]*:**

|  |
| --- |
| By (authorized signature and printed name)      |
| Title      |
| Date      |

[signature page to Software Contract Addendum]