***DO NOT USE THIS DOCUMENT***

*if your supplier will have contact with, receive, or be providing services related to the following areas:*

* *Hotel space rental, conference agreements, or other use of space type agreement – instead send your agreement to OGC to determine if the hotel addendum can be used*
* *Agreements $50,000 and over (total value during the term of the agreement) – you must go to Purchasing Services first.*
* *Data classified by the University’s Information Security department as Private-Highly Restricted (see* [*https://policy.umn.edu/it/dataclassification*](https://policy.umn.edu/it/dataclassification) *)*
* *Protected Health Information - “PHI” or medical information or records*
* *Sponsorship – any type of sponsorship type arrangement*
* *Nonpublic student or employee data*
* *Credit card data*
* *Human or animal research*
* *Human tissue and specimen usage*
* *International goods or services*
* *Construction, architectural, or design services*
* *Working with or around children at the University*
* *Hiring of security services, or agreements related to building security*
* *Other activities or purchases that may be seen as higher risk or so unique that they should be reviewed.*

***In the above cases, this addendum CANNOT BE USED and the supplier’s agreement will have to be reviewed by the OGC.***  *Send a Word version of the supplier’s contract and a contract review form (available in the University’s Contracts Library* <https://policy.umn.edu/contracts/standard/ogc-sc515> *) to* [*ogcpurchasing@umn.edu*](mailto:ogcpurchasing@umn.edu) *for review.*

***READ THESE INSTRUCTIONS BEFORE MOVING FORWARD WITH THE ADDENDUM***

***Instructions for Use***

***This addendum template is used for lower risk lower dollar value purchasing type contracts (under $50,000) when the supplier insists its contract terms and conditions be used and is willing to sign this addendum IN ADDITION TO its own terms and conditions. To make this Addendum effective do the following:***

1. *Review the supplier’s* ***entire agreement*** *to be certain the agreement reflects the deal you expected from the supplier. Make any edits to the business terms in the supplier’s contract and review the statement of work (if applicable). This addendum only addresses legal terms all business and operation terms are the responsibility of the department to negotiate and edit in the supplier agreement.*

***IMPORTANT: Explanations and examples of business terms that the department should review and edit, if necessary, is found*** [***HERE***](https://docs.google.com/document/d/1gnTMc9B9zg9bdANBUhwAcW-qnZPd1__lHht4WmB9cGY/edit?usp=sharing) ***(this is not an all-inclusive list. The supplier’s entire agreement should be read for additional business terms.)***

1. *Enter the appropriate information in the highlighted sections of this Addendum. Make sure the highlighting is removed in this Addendum prior to submitting it to the supplier for review.*

*Once you have reviewed the supplier’s agreement, and are comfortable with the business terms, do the following:*

1. *You will need to remove all the instructions (all of page 1&2) before sending your addendum to the supplier.* ***However, first read through to step 7****.*
2. ***AFTER*** *you remove the instructions, you should restrict editing of the Addendum before sending the Addendum to the Supplier. Go to the “Review” tab at the top of the menu, then in the Review menu click the “Restrict Editing” button. A menu will pop up on the right. In the menu to the right check the box under “Editing Restrictions” that says, “Allow only this type of editing in the document”. In that section, click the down arrow to choose “Tracked Changes” (this is done so that the supplier can’t change terms of this addendum without it being tracked). Then go to the next section “Start Enforcement” and click “Yes, Start Enforcing Protection”. A box will pop up asking for a password. DO NOT USE A PASSWORD. Enter nothing and just click “ok”. The document is now protected.*
3. *Provide the supplier with your addendum along with the supplier’s contract with any edits you made to business terms of the supplier’s contract.*
4. *If the supplier does not accept this addendum, the OGC will need to review the supplier’s terms (please follow the process noted above in the shaded box to submit a contract to the OGC). If the supplier requests edits to this addendum, OGC must review.*
5. *If the addendum is accepted by the supplier with no changes, obtain signatures on* ***BOTH*** *this addendum and the supplier’s agreement from the appropriate person at the University with delegated authority (see University’s Delegations of Authority if uncertain if who can sign agreements* [*https://authority.umn.edu/*](https://authority.umn.edu/)*)*

**Do not edit or change any of the non-highlighted terms of the below agreement without OGC approval.**

***REMINDER: DELETE ALL INSTRUCTIONS BEFORE SENDING TO SUPPLIER (PAGE 1&2)***

# **_wdmk**

# **Addendum to Supplier’s Form**

Regents of the University of Minnesota through its [INSERT DEPARTMENT NAME] (“University”) and [INSERT SUPPLIER NAME] (“Supplier”) are this day entering into a contract, and for their mutual convenience, the parties are using the standard form agreement provided by the Supplier (the “Agreement”). This addendum duly executed by the parties, is attached and herby made a part of the Agreement.

To the extent any provisions of the Agreement conflict with any of the provisions of this addendum, the provisions of this addendum will control, regardless of any order of precedent to the contrary in the Agreement. Supplier further agrees that by signing this addendum, any language in the Agreement that asserts it takes precedence over this addendum is void regardless of whether this addendum is signed before or after the Agreement. If Supplier enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with University employees or other University end users, after this addendum, such agreements will be null and void, and without effect.

1. **Governing Law and Jurisdiction**. The University is a constitutionally sovereign arm of Minnesota state government. As such, this Addendum negates any Agreement term that applies the jurisdiction of any forum (including, by way of example and without limitation, any court, tribunal or arbitration panel) for resolution of disputes other than the state courts of Minnesota; any Agreement term that state that the laws of any other state or foreign nation will govern this Agreement or any disputes that arise from this Agreement; any Agreement term that requires the University to waive its right to a jury trial; and any Agreement term that requires the University to waive any applicable statute of limitations for bringing claims under this Agreement.

2. **Payment and Limitation of Damages.** Notwithstanding anything in the Supplier’s form to which this addendum is attached, the payments to be made by the University for all goods, services and other deliverables under this contract shall not exceed the quoted amount unless approved in writing by the University. Payments will be made only upon receipt of a proper invoice, detailing the goods/services provided. The total cumulative liability of the University, its officers, employees and agents in connection with this Agreement or in connection with any goods, services, actions or omissions relating to the Agreement, shall not under any circumstance exceed payment of the quoted amount. In its performance under this contract, the Supplier acts and will act as an independent contractor, and not as an agent oremployee of the University. UNIVERSITY IS NOT LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, LOST PROFIT, LOSS OF BUSINESS OPPORTUNITY, EXPECTATION, PUNITIVE OR OTHER INDIRECT DAMAGES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATED TO THE AGREEMENT, REGARDLESS OF THE THEORY ON WHICH SUCH CLAIM IS BASED.

3. **Minnesota Government Data Practices Act**. University’s obligations of confidentiality, if any, in the Agreement are subject to its obligations under the Minnesota Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq., which provides that all data collected, created, received, maintained, or disseminated by the University regardless of its physical form, storage media or conditions of use, are presumed public and accessible by the public for both inspection and copying unless there is a federal law or Minnesota state statute or temporary classification that provides such data are not public. <https://www.revisor.mn.gov/statutes/cite/13.01>. University’s agreements and the pricing are not confidential.

4. **Intellectual Property.** If applicable, University owns all deliverables and the intellectual property rights embodied therein with the exception of Supplier’s background intellectual property. Supplier grants to University a perpetual, non-exclusive, sub-licensable right to such background IP solely to the extent necessary to use the deliverables.

5. **Attorney Fees and Late Fees.** University recognizes an obligation to pay costs or attorneys’ fees only when assessed by a state court in Minnesota. If payment of late fees are permitted to be assessed under the terms of the Agreement, they are capped at 1.5% per month.

6. **Press Releases and Use of Name**. Neither party will use the name, logo, or other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity. Except when defined as part of the services, Supplier will not make any press releases, public statements, or advertisement referring to the services or the engagement of Supplier as an independent contractor of University, or release any information relative to the services for publication, advertisement or any other purpose without the prior written approval of University.

7. **Exclusions.** The parties specifically agree that, notwithstanding any provisions appearing in the Agreement, none of the following shall have any effect or be enforceable against the University:

1. Limiting the liability of the Supplier for property damage or personal injury.
2. Permitting unilateral modification of the Agreement by the Supplier.
3. Creation of a partnership or other business relationship beyond that of a goods or services supplier.
4. Granting the Supplier a security interest in University owned property.
5. Allowing for the use or retention of University data for anything other than to provide services to the University.
6. Requiring the University to maintain any type of insurance either for the University’s benefit or for the Supplier’s benefit.
7. Granting to the Supplier any type of exclusivity or exclusive relationship with the University.
8. Renewing or extending the Agreement beyond the initial term, or automatically renewing or continuing the Agreement period from term to term. Any extension of the agreement must be agreed to in writing signed by both parties.
9. Requiring the University to indemnify or hold harmless the Supplier.
10. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the University if the contract tis terminated for any reason.
11. Binding the University to any arbitration or to the decision of any arbitration board, commission, panel or other entity.
12. In the event that a contract allows for reimbursement to the Supplier for out-of-pocket expenses, travel, meals, lodging, etc. reimbursement will be processed in accordance with the University’s travel policy: <https://policy.umn.edu/finance/travel>.

8. **University Data.** Sensitive, non-public University data is regulated by state or federal law. Such data includes but is not limited to: non-public business, administrative and financial data, intellectual property, and patient, student and personnel data. If the Supplier providing goods or services to the University will create, obtain, transmit, use, maintain, process, dispose, or come into non-incidental contact with non-public University data, the supplier agrees to abide by the terms and conditions of the University’s Data Security Appendix (available at: [Data Security Appendix](https://ogc.umn.edu/sites/ogc.umn.edu/files/2023-04/11%20DATA%20SECURITY%20ADDENDUM%208SEP22.docx)). If the Supplier providing goods or services to the University will receive, create, or come into non-incidental contact with patient or University health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, the supplier is a Business Associate, and agrees to the terms and will sign the University’s Business Associate Addendum found at: <https://policy.umn.edu/contracts/standard/ogc-sc258> in addition to the Data Security Addendum.

9. **Representations and Warranties by Supplier.** Supplier represents and warrants Supplier is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Minnesota; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Supplier has been duly authorized to act for and bind Supplier. Supplier warrants it is not debarred or suspended from doing business with the federal government, or excluded from participating in Federal health care programs including Medicare and Medicaid and it will notify University if it becomes debarred, suspended, or excluded.

10. **Federal Funds**. If services are being procured with federal funds, the requirements set forth in Exhibit B (<http://purchasing.umn.edu/docs/FederalFlowdown.pdf>) are incorporated into the Agreement. In addition, if the price is in excess of $10,000, University and Supplier shall abide by the requirements of 41 CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

11. **Prohibited Telecommunications and Video Surveillance Equipment and Services.** If applicable, Supplier warrants that it shall not furnish to the University any product or service which uses as a substantial or essential component of any system, or as a critical technology as part of any system, telecommunications and surveillance equipment manufactured by any company the United States Congress has determined to represent a threat to secure communication as part of the 2019 National Defense Authorization Act, Pub. L. No. 115-232 Section 889.

12. **Audit.** Throughout the term of the Agreement and for a period of three years after the expiration or termination, the University, at its own expense, shall be entitled to perform, or have performed by a third party of University’s choosing, during normal business hours, an on-site audit of all records of Supplier necessary to permit University to evaluate and verify Supplier’s compliance with the requirements of the Agreement and this addendum.

13. I**nsurance**. At all times during its performance under this Agreement, Contractor will obtain and keep in force:

i. Commercial General Liability insurance including coverage for bodily injury and property damage with limits not less than $1,000,000 each occurrence and $2,000,000 annual aggregate.

ii. Automobile Liability insurance with a minimum limit of not less than $1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

iii. Professional Liability/Errors & Omissions insurance (if applicable) with a limit of not less than $1,000,000 per claim/occurrence and $2,000,000 annual aggregate for damages caused by error, omission or negligent acts related to any professional services to be provided under this Agreement. If written on a claims-made basis, the professional liability insurance will be maintained for a period of not less than two (2) years following the expiration or termination of this Agreement.

iv. Workers' Compensation insurance as required by statute and Employers Liability insurance with limits not less than $1,000,000 each accident, $1,000,000 disease – each employee, $1,000,000 disease – policy limit.

These insurance policies are to be issued by an insurance company authorized to do business in the State of Minnesota with an A.M. Best rating of A- or better. Regents of the University of Minnesota will be included as an additional insured for General Liability and Automobile Liability. Limit requirements may be met through combination of Primary and Umbrella/Excess insurance. All such policies will provide for thirty (30) days’ written notice to University prior to cancellation or non-renewal. Contractor’s insurance must be primary and non-contributory with regard to any insurance or self-insurance maintained by University. Contractor and its insurers waive all rights of subrogation against University. A Certificate of Insurance evidencing the requirements contained in this clause must be provided prior to the commencement of work.

14. **Force Majeure.** Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, acts of war, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority, plague, epidemic, pandemic, outbreaks of infectious disease (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases) or any other public health crisis, including quarantine and other employee restrictions, or other similar event beyond either party's reasonable control; provided, however, the party so affected shall promptly continue performance hereunder whenever such causes are removed. The affected party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The parties shall mutually seek a resolution of the delay or the failure to perform. In the event of a force majeure that lasts longer than thirty (30) days, or in the case in which the force majeure event is occurring during the date of performance, a party may terminate this Agreement upon written notice to the other Party. Upon such termination, each Party shall be relieved from its respective obligations to perform and Supplier will refund any prepaid amounts or deposits prorated for any work completed prior to the event of force majeure.

This addendum and the attached Supplier’s form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

**AGREED:**

**Regents of the University of Minnesota** Click or tap here to enter Vendor legal name.

By: By:

Name: Name:

Title: Title:

Date: Date: