**Notes on using this template:** This Addendum can be attached to most third party vendor agreements to bring the Agreement into compliance with Smith College standard terms and conditions. (It is not applicable to Construction Agreements.)

Please note: the ADDENDUM is NOT in ready-to-go condition. You must delete these notes and then adapt it to your specific agreement; see **red, bold text for instructions**. Please note there is also information to change in the footer of this document. You may also need to delete some clauses. If the Vendor is unwilling to sign the Standard Addendum, then the Smith person in charge of the Contract will have to negotiate any or all of the clauses individually. Any changes in Insurance, Indemnity, Limitation of Liability or Waiver of Subrogation must be reviewed by Risk Management. Using this template is not a guarantee that you will get the contract you need. Read all contracts very carefully and negotiate all the terms and conditions to meet the College’s needs and expectations. If you have questions, particularly on technical areas, ask for assistance.

 **STANDARD ADDENDUM** for all Contracts or Agreements between the Trustees of Smith College and any third party Vendor or Consultant. This ADDENDUM is attached to and forms part of the Agreement between the Trustees of Smith College and **[name of company or consultant]** as of **[date]**. To the extent that any of the terms or conditions contained in this ADDENDUM may contradict or conflict with any of the terms or conditions of the attached Agreement, it is expressly understood and agreed that the terms of this ADDENDUM shall take precedence and supersede the attached Agreement.

**Assignment**

Neither party shall have the right to assign this Agreement without the prior written consent of the other party.

**Mediation / Choice of Laws / Jurisdiction**

The parties agree that any disputes that may arise as a result of this Agreement or the provision of products or services as a result of this Agreement will first be attempted to be resolved through mediation. Upon failure to mediate any such disputes in good faith, the parties may resolve the dispute through any other legal means available, including arbitration or litigation without requirement of a specific legal forum. The laws of the Commonwealth of Massachusetts shall govern the validity, construction and effect of this Agreement. All mediations, arbitrations or lawsuits arising out of this agreement, wherever derived, shall be resolved in Hampshire County in the Commonwealth of Massachusetts.

**Confidentiality of Information**

**[Name of company or consultant]** agrees to keep confidential and not to disclose to third parties any information provided by College pursuant to or learned by **[name of company or consultant]** during the course of this Agreement unless **[name of company or consultant]** has received the prior written consent of College to make such disclosure. This provision shall survive expiration and termination of this Agreement. This obligation of confidentiality does not extend to any information that: 1) Was in the possession of Consultant at the time of disclosure by College, directly or indirectly; 2) Is or shall become, through no fault of **[name of company or consultant]**, available to the general public; or 3) Is independently developed and hereafter supplied to **[name of company or consultant]** by a third party without restriction or disclosure.

**Emergency Notification** (*applicable only to on-site service providers while they are on site*)

The College will not provide specific emergency notification to **[name of company or consultant]** unless expressly provided for in this agreement. Specific emergency notification means a call to a cell phone to a designated person using either text messaging or recorded voice to alert **[name of company or consultant]** to an immediate event on campus. The College may utilize general emergency notification procedures including fire alarms or other communication methods to alert the campus community of an emergency. **[Name of company or consultant]** agrees that it will follow all College rules and directions in the event of an emergency.

**Entire Agreement**

This Agreement constitutes the entire agreement and there are no oral or other representations regarding the subject of this Agreement that are binding on either party. All changes to this Agreement must be in writing, signed by both parties. It is understood and agreed that e-mail correspondence shall not constitute “a writing” to this agreement unless expressly included herein.

**Force Majeure**

In the event that either party is unable to perform its obligations under this Agreement as a result of a force majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. “Force Majeure” shall mean fire, earthquake, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, litigation, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

**Indemnification / Release / Hold Harmless**

To the fullest extent permitted by Law, the **[name of company or consultant]** will defend, indemnify and hold harmless Smith College, including its current and former trustees, officers, directors, employees, volunteer workers, agents, assigns and students from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, or from the performance of its operations or services and for the acts or omissions of its employees, volunteers, participants, guests or any third party for whom it is responsible, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist in the absence of this agreement.

**Insurance**

**[Name of company or consultant]** shall at its own expense obtain and maintain:

1. Comprehensive general liability insurance, covering bodily injury in the sum of not less than one-million dollars ($1,000,000) per person and one-million dollars ($1,000,000) per occurrence and property damage in the amount of not less than one-million dollars ($1,000,000) per occurrence;

2. Workers’ compensation insurance in accordance with the laws of the Commonwealth of Massachusetts;

3. Comprehensive automobile liability insurance, including operation of owned, non-owned, and hired automobiles, covering bodily injury in the sum of not less than one-million dollars ($1,000,000) per person and one-million dollars ($1,000,000) per occurrence and property damage in the amount of not less than one-million dollars ($1,000,000) per occurrence;

4. If available generally to members of **[name of company or consultant]**'s profession, professional liability (errors and omissions) insurance on a claims-made basis with limits of liability of not less than one million dollars ($1,000,000).

5. All insurance required hereunder shall be maintained in full force and effect in a company or companies reasonably satisfactory to the Institution and shall be maintained at **[name of company or consultant]**’s expense. All insurance required hereunder shall name “The [formal name of the Institution], its agents, its employees, and its assigns” as additional insureds and shall contain a clause requiring written notice to the Institution thirty (30) days in advance of the cancellation, non-renewal, or material modification of said insurance as evidenced by return receipt of United States certified mail. Certificates of insurance shall be supplied contemporaneously with the execution and delivery of a final contract. Said certificates shall evidence compliance with all provisions of this section.

This insurance requirement shall not be construed as limiting in any way the extent to which **[name of company or consultant]**may be held responsible for the payment of damages to any persons resulting from its operations or the activities of any person or persons for whom it is liable.

**Limitation of Liability**

Notwithstanding anything contained in the Agreement that this ADDENDUM is attached hereto, nothing in this Agreement shall limit the liability of the **[name of company or consultant]** under law or custom.

**Names and Trademarks**

No party to this Agreement shall, without express written consent in each case, use any name, trade name, trademark, or other designation of any other party hereto (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context.

**Non-waiver**

The failure or delay of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under or arising from this Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

**Notice**

Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Institution: (Name the person who signed the contract OR the person who will administer and manage the contract)

 Institution

 Street

 City, State, ZIP

 Phone:

 FAX:

**[Name of company or consultant]**:

 Name

 Street

 City, State, ZIP

 Phone:

 FAX:

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

**Property Rights**

To the extent applicable, **[name of company or consultant]** agrees that any physical or intellectual property including but not limited to computer programs, software, documentation, copyrightable work, discoveries, inventions, or improvements developed by **[name of company or consultant]** solely, or with others, resulting from the performance of services pursuant to this Agreement is the property of College, and **[name of company or consultant]** hereby agrees to assign all rights therein to College. **[name of company or consultant]** further agrees to provide College with any assistance which College may require to obtain patents or copyright registrations, including the execution of any documents submitted by College. College­ shall be considered the author thereof, and the sole and exclusive owner throughout the world forever of all rights existing there­in, including all art, manuscripts, reports, sketches, drafts, data, notes, maps, memoranda, etc., relating to the work, and all revisions, editions, and versions thereof in all languages, forms, and media now or hereafter known and developed.

This provision shall survive expiration and termination of this Agreement.

**Relationship of the Parties**

It is agreed that **[name of company or consultant]**, its agents and/or employees are solely responsible for their own actions and have no relationship to Institution as partners, joint venturers, employees or agents.

**Severability**

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

**Term and Termination**

This contract is effective on **[DATE]** and will terminate on **[DATE]**. The College reserves the right to terminate this agreement at any time with **[number of days]** days notice for any reason or no reason.

**Waiver of Subrogation**

Notwithstanding anything contained in the attached Agreement to the contrary, the College will make no waiver of subrogation on any policies or coverage which it self-insures, whether by internal reserve or through any captive insurer that it may own or place insurance with or any self-insurance group it may participate in or place its insurance with. If the College’s commercial insurers charge any additional premium for a waiver of subrogation, the value of the contract shall be reduced by said premium or fees. If the College’s commercial insurers refuse to waive their rights of subrogation, any such requirement shall be null and void.

**Signature Authority**

The individuals signing below hereby represent and warrants that they are duly authorized to execute and deliver this Agreement on behalf of their organization and that this Agreement is binding upon each party and organization in accordance with its terms.

**The Trustees of Smith College [Name of company or consultant]**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_