

Assumption of Risk Agreement – Amazon Mechanical Turk (MTurk)

A. SUMMARY OF REQUEST

Business Services has received a request from faculty/staff in one or more of your College's units/departments to purchase the Amazon Mechanical Turk ("MTurk") service to assist in their research. Business Services has reviewed the MTurk "Participation Agreement" (hereafter the "Agreement"). You may find a copy of that agreement at this link: [Participation Agreement](#).

Please note that the Agreement itself contains links to a number of documents, all of which are part of the Agreement. The Agreement includes verbiage that is either problematic from a business perspective, is unacceptable under State of Wisconsin purchasing requirements, and/or that UWL generally does not accept, thus necessitating you to make a discretionary business judgment determination.

B. PURPOSES OF DOCUMENT:

The purposes of this document are as follows:

- To record and explain the opinion of Business Services regarding the payment mechanism and terms and conditions associated with the MTurk service.
- To provide you with the opportunity to acknowledge the potential risks of using the MTurk service as described under the Business Services Opinion and to afford your College and its Departments the ability to assess such risks and to assume responsibility for such risks if you decide to still move forward with the use of the MTurk service.

C. BUSINESS SERVICES OPINION:

1. Opinion Regarding the Payment Mechanism for Use of MTurk Services

- Based on Business Service's understanding of the nature of transactions made through M-Turk at this time, and the definition of recurring payments as 'automatically pulling out the payments every month', it is the opinion of Business Services that M-Turk purchases do not meet the definition of 'recurring' purchases.
- **Therefore, the department is hereby notified that, in line with other UWL purchases, the University PCard must be the method of payment for MTurk services.** Purchases made with this card must comply with Department of Administration and UWL procurement policies and procedures and UWL's PCard User Manual.
- Under 'Best Judgement' purchasing procedures, the department is reminded to routinely consider alternate crowd sourcing platforms if they would provide better value to the department, through lower pricing, preferred Terms and Conditions, or added/ higher level of services.

2. Opinion Regarding the Agreement's Terms & Conditions

- While Business Services understand that MTurk is an important, cost-effective tool for performing research, Agreement contains terms which are either outside the University's contracting authority or carry the potential to subject the University to liability beyond what is covered by the State of Wisconsin's self-insurance.
- Like most "terms of use" or "participation agreements," Amazon's Mechanical Turk Participation Agreement contains terms that are highly advantageous to the provider. The most troublesome terms

found in the current version of the Participation Agreement are the Indemnification; Limitation of Liability and Applicable Law; Arbitration. Section 8 is a problem because we are required to indemnify Amazon for claims made against Amazon related to our use of the Mechanical Turk. This term would act to obligate the University to be responsible for the debts of another entity, outside of the liability protection provided by the State of Wisconsin. Section 10 is a problem because we would agree that any dispute be settled by binding arbitration in the State of Washington, and that Washington courts would have jurisdiction over the matter. This term could be construed as a waiver of the State of Wisconsin's sovereign immunity, an act that is technically beyond the powers given to the University by the State of Wisconsin. Further, funding a litigation or arbitration outside of the State is an expensive proposition, as we are without a ready source of legal counsel. As is common with this type of agreement, I understand that Amazon is completely unwilling to change any terms of the Participation Agreement.

- In past discussions with the Department of Justice, UW Purchasing agents have been told that it is a "business decision" to accept liability in excess of State protection, and a "business decision" to agree to fund litigation or arbitration in a forum other than Wisconsin. Purchasing Services would suggest that such a decision to use Mechanical Turk only occur if the department and the researcher understands the following:
 - UWL's Contract Administrator can negotiate contracts with other providers of similar services who are not so insistent on including these problem terms. While these services may be more costly, their use is approved by the University with liability falling under the State's protection.
 - Using MTurk may result in the researcher being personally sued by Amazon or another party for claims resulting from that use. Because the University has not been successful in entering a separate agreement with Amazon related to use of Mechanical Turk, neither Amazon nor a third party would necessarily associate the researcher with the University. Assuming that the research in question was within the scope of the researcher's employment, the University would request legal representation for the researcher from the Department of Justice to defend the claim. However, it is unclear whether any such claim would proceed against the University or the researcher personally, or how such out-of-state litigation/arbitration might be funded (based on the above).
 - There is no central source of funds committed to payment of any indemnification judgment or other expenses associated with defending a claim outside of the State of Wisconsin. For this reason, at minimum, a researcher should have written departmental approval of his or her use of MTurk, seeing as the Department may be asked to cover these costs if a claim is made. If the Department is uncomfortable with this responsibility, the Department can also contact Risk Management to review the option of acquiring additional insurance to cover the potential liability related to a researcher's use of MTurk.
 - Under no circumstances should any FERPA or HIPAA protected data be shared without the approval of UW System Legal.

D. ACKNOWLEDGEMENT AND ASSUMPTION OF RISK

Amazon will not change the terms of their Agreement. The most troublesome terms found in the Agreement are a number of references to "indemnification" clauses, "applicable law" clauses, and "arbitration" clauses. Regarding the matter of indemnification, the State cannot indemnify Amazon for claims made against it relating to MTurk. Regarding applicable law language in the Agreement, Amazon wants disputes to be heard in the State of Washington courts. However, the State of Wisconsin is only willing to agree to have disputes heard in Wisconsin Courts. Lastly, regarding arbitration clauses, Wisconsin has rules prohibiting us from arbitrating claims.

There is no "master" UWL MTurk account with Amazon. Since the MTurk account will be in the researcher's individual name, there is the possibility that the researcher may be personally sued by Amazon (or another party) for claims

resulting from that use. Therefore, we require the faculty researcher's to sign the attached Use agreement directing them to only use their UWL contact information and UWL Procurement Card (PCard).

Any costs associated with the MTurk Account, or such actions, would be chargeable to the Department's budget. Therefore, in order to proceed with the purchase, we ask that you sign and return this AOR letter to the Business Services.

If you acknowledge that you have read and understand the referenced documents and believe that it is in UWL's best interest to use the MTurk service on behalf of the Department, subject to those terms, then please sign this document below, granting your assumption of the problematic terms, accepting the associated risks, assuring compliance with all the terms of the Agreement and this letter and granting the Department permission to proceed with the purchase. Your permission to proceed shall be for the current request and also for future MTurk purchases by the Department.

Purpose: Payment of Research Participants

Project Name: _____

Principal Investigator(s): _____

Requesting Unit/Department: _____

By:

DEPARTMENT CHAIR SIGNATURE DATE

Attachments: Faculty Use Agreement