

FLORIDA ATLANTIC UNIVERSITY

1. **Incorporation by Reference.** The Florida Atlantic University Board of Trustees ("FAU") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum - General ("Addendum") into the agreement between FAU and Vendor (the "Agreement").

2. **Payment.** In the event FAU owes payment to Vendor, Vendor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre-and post-audit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. If FAU does not issue payment within forty (40) days of receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the Agreement, FAU may pay Vendor an interest penalty at the rate established pursuant to § 55.03(1), F.S. Vendors experiencing payment problems may contact Vendor Ombudsman at (561) 297-3693. FAU's performance and obligation to pay is contingent upon the legislature's annual appropriation; FAU will give notice to Vendor of the non-availability of funds when FAU has knowledge thereof. FAU will be responsible for paying only for any goods/services it receives; Vendor must refund any payment for goods/services that are unused upon the termination of the Agreement. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to FAU. FAU is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Vendor is responsible for and shall pay any taxes due under the Agreement. FAU may require Vendor to accept payments via FAU's EFT/ACH payment process. If Vendor is making any payment to FAU, Vendor shall pay timely and not offset any amounts. FAU shall not make any deposits or prepay any amounts; any deposits are refundable.

3. **Charges.** No additional charges or fees (e.g., parking, security, amenities, wifi, storage fees) may be charged to FAU without FAU's express written approval. Service charges may be paid and/or modified depending upon level of service, as determined by FAU in each instance.

4. **Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Vendor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Vendor is not authorized to bind FAU to any contracts or other obligations.

5. **Assumption of Risk.** Each party assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and its own officers, employees and other agents. Vendor also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance Vendor's obligations under the Agreement.

6. **Confidentiality.** Vendor acknowledges that all documents, materials, and information furnished to or learned by Vendor in connection with the Agreement (the "Information") are confidential, proprietary, and the sole property of FAU. Vendor shall not disclose the Information to third parties unless it obtains FAU's prior written consent or compelled by law.

7. **Public Records.** FAU is subject to Chapter 119 of the Florida Statutes, known as the Public Records Law. The Agreement, this Addendum, and any related documents and/or correspondence shall also become a public record subject to the Public Records Law, regardless of any confidentiality provision outlined in the Agreement. FAU may respond to public records requests without providing Vendor any notice. FAU may unilaterally cancel the Agreement for Vendor's refusal to allow public access to public records related to the Agreement. Vendor shall comply with all applicable requirements of the Public Records Laws, particularly if Vendor is a "Contractor" as defined under § 119.0701, F.S.

**IF VENDOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS, VENDOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, publicrecords@fau.edu, DIVISION OF PUBLIC AFFAIRS, FLORIDA ATLANTIC UNIVERSITY, 777 GLADES ROAD, ADM, BOCA RATON, FL 33431.**

8. **Indemnity.** Vendor agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, trustees, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys' fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of Vendor or its officers, employees, agents and contractors, in connection with the Contract, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right. Any limitations of liability of Vendor set forth in the Contract shall not apply to: (a) claims for infringement or misappropriation of a copyright, patent, trade secret or other third-party proprietary right or (b) claims for personal injury or damages to real or personal property caused by Vendor's negligence or willful misconduct. **Nothing in the Agreement shall be construed as a waiver of FAU's sovereign immunity nor as an indemnification of Vendor by FAU, and then such indemnification is limited to the extent permitted by § 768.28, F.S.**

9. **Compliance.** In its performance, Vendor shall, at its own expense, at all times in the term:

- a. **Permits:** have all applicable permits, licenses, consents, and approvals;
- b. **General:** comply with all applicable federal, state, local, and FAU laws, rules, regulations, ordinances, policies, and all other governmental requirements, including with § 889 of the McCain Defense Authorization Act (covered telecommunications equipment), and §448.095, F.S. (E-Verify system);; and
- c. **Privacy:** comply with all applicable state and federal laws and FAU policies and procedures governing the use and/or safe-keeping of confidential, highly sensitive, and/or personally identifiable or protected health information (as may be defined by state or federal law), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act, and the Federal Trade Commission's Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003). Vendor shall obtain, in advance, all necessary permissions and consents required related to its collection and/or receipt of any such information. Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts.

10. **Publicity.** Vendor shall not make any announcements relating to the Agreement, nor shall Vendor use FAU's name, trademarks, logos or marks, without the prior written approval from

FAU's Office of Brand Development, Licensing & Marketing in each instance.

11. **Insurance.** FAU, as a public body corporate entity, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by FAU. Any provision requiring FAU to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure in performing the Agreement and name FAU as additional insured and be primary and non-contributory on Vendor's policies (except for workers' compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to FAU, with insurance companies authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with FAU prior to the date of the Agreement. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving FAU thirty (30) days' written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to FAU as coverage renews. Vendor, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against FAU for any loss or damage arising from any cause covered by any insurance required to be carried under the Agreement by any other insurance actually carried by Vendor. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue for three (3) years following the expiration or termination of the Agreement. The insurance shall have a retroactive date of placement by the effective date of the Agreement. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, the Vendor must purchase Extended Reporting ("Tail") coverage for a minimum of three (3) years following the expiration or termination of the Agreement.

12. **Force Majeure.** In the event the parties are prevented from performing their respective obligations due to causes beyond its reasonable control, including, but not limited to, an act of war, catastrophic natural event, pandemic or epidemic, restrictions promulgated by an applicable state, federal or governing agency, or act of God, FAU may terminate the Agreement without further obligation or penalty.

13. **Third Parties.** FAU is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third-party beneficiary to the Agreement.

14. **Governing Law.** The Agreement is governed by the laws of the State of Florida, without regards to its conflicts of law principles. Exclusive venue of any actions shall be in the state courts of Palm Beach County, Florida. FAU is entitled to the full benefits of sovereign immunity.

15. **Travel Expenses.** FAU is responsible for reimbursing Vendor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Vendor in accordance with, § 112.061, F.S. FAU reserves the right not to pay travel expenses unless FAU preapproves such expenses in writing. FAU has the right to make travel arrangements for Vendor.

16. **Conflicts.** Vendor certifies that to the best of its knowledge no individual employed by it or subcontracted by it has an immediate relation to any employee of FAU who was directly or indirectly involved in the procurement of the services. Violation of this section shall be grounds for cancellation of the Agreement by FAU per § 112.3185, F.S. FAU shall consider the employment by any vendor of unauthorized aliens a violation of the Immigration and Naturalization Act.

17. **Termination.** Upon notice to Vendor, FAU may terminate the Agreement with no further obligation to Vendor, other than to pay for any goods received or services rendered in compliance with the Agreement prior to the effective date of termination. FAU shall not be liable for any early termination charges.

18. **Notices.** All notices required to be given shall be sent by certified mail to: Florida Atlantic University, Attn: Purchasing, ADM 121, 777 Glades Road, Boca Raton, FL 33431.

19. **Deletion.** Any terms in the Agreement related to the following are null and void and hereby deleted in their entirety: (a) grants of exclusivity by FAU; (b) restrictions on the hiring of Vendor's employees; (c) non-compete provisions; (d) waiver of jury trials, notices, or hearings; (e) limitation of time to bring suit; (f) Vendor's liability limitations; (g) granting Vendor any audit rights; (h) attorneys' or collection fees provisions; (i) arbitration or mediation clauses; (j) FAU's tort liability; (k) indemnification of Vendor by FAU; (l) personal guaranties; (m) that FAU performs reporting functions and/or certain operations; (n) auto-renewal of the Agreement; and (o) unilateral modification of the Agreement or any supplemental terms/policies (e.g., a Privacy Policy).

20. **Assignment.** Vendor may not, without the advance written approval of FAU, not to be unreasonably withheld, assign any right or duties under the Agreement, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the Agreement. Any assignment made without FAU's consent shall be, at FAU's option, null and void. No subcontracting or delegation shall in any event relieve Vendor of any obligation or liability under the Agreement.

21. **Entire Agreement.** In the event of inconsistency between the Agreement and this Addendum, this Addendum will govern. This Addendum and the Agreement embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between FAU and Vendor other than are set forth. Any renewals, amendments, alterations or modifications to the Agreement must be signed or initialed and approved by all signatories of the Agreement. To be clear, the Agreement shall not auto-renew and must be upon the written agreement of the parties.

22. **Signatures.** The parties represent and warrant that any person signing the Agreement has the authority to do so and that such signature shall be sufficient to bind Vendor. The Agreement may be signed electronically and shall be considered signed if/when a party's signature is delivered by facsimile or e-mail transmission of a ".pdf" format date file, including via DocuSign. Such signature shall be treated in all respects as having the same force and effect as an original.

**By signing below, Vendor's authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.**

**VENDOR:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_