

1. Incorporation by Reference. The Florida Atlantic University Board of Trustees (“FAU”) and the undersigned party (“Contractor”) hereby incorporate this Supplemental Addendum - Consulting Services (the “Addendum”) into the agreement between FAU and Contractor (the “Agreement”).

2. Payment. Contractor 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 goods, services, and expenses for which compensation is sought. FAU shall make payment in accordance with FAU Policy 5.1 – Prompt Payment. 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 Contractor an interest penalty at the rate established pursuant to § 55.03(1), F.S. 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. Should Contractor experience payment problems, please contact FAU’s Vendor Ombudsman at (561) 297-3693. FAU may require Contractor to accept payments via FAU’s EFT/ACH payment process. FAU is a tax immune sovereign and exempt from the payment of sales, use, or excise taxes. Contractor is responsible for and shall pay any taxes due under the Agreement. FAU will be responsible for paying only for any goods/services it receives; Contractor must refund any payment for goods/services that are unused upon the termination of the Agreement. FAU shall not make any deposits or prepay any amounts; any deposits are refundable. Contractor must supply FAU with a complete vendor application. FAU’s performance and obligation to pay is contingent upon the legislature’s annual appropriation; FAU will give notice to Contractor of the non-availability of funds when FAU has knowledge thereof. If Contractor is making any payment to FAU, Contractor shall pay timely and not offset any amounts.

3. 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. Contractor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Contractor is not authorized to bind FAU to any contracts or other obligations.

4. Assumption of Risk. Each party assumes 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. Contractor also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Contractor or otherwise acting or engaged to act at the instance of Contractor in furtherance Contractor’s obligations under the Agreement.

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

6. Public Records. FAU is subject to Chapter 119 of Florida Statutes, the Public Records Laws. The Agreement, this Addendum, and any related documents and/or correspondence shall also become a public record subject to the Public Records Laws, regardless of any confidentiality terms in the Agreement. FAU may respond to public records requests without providing Contractor any notice. Pursuant to § 287.058(1)(c), F.S., FAU may unilaterally cancel the Agreement for Contractor’s refusal to allow public access to public records related to the Agreement. Contractor shall comply with all applicable requirements of the Public Records Laws, particularly if Contractor is a “Contractor” as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the Agreement.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS, CONTRACTOR 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.

7. Indemnity. Contractor agrees to indemnify, 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 Contractor or its officers, employees, agents and contractors, in connection with the Agreement, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right. Any limitations of liability of Contractor set forth in the Agreement 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 Contractor’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 Contractor by FAU, and then such indemnification is limited to the extent permitted by § 768.28, F.S.**

8. Federal funds. If FAU has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is in furtherance of the commitments and/or requirements of such federal agreement or funds, Contractor agrees to comply with the terms contained in FAU’s Federally Funded Projects Addendum, a copy of which shall be provided to Contractor upon request and is herein incorporated by this reference.

9. Compliance. Contractor agrees to abide by all applicable federal, state, and local laws, ordinances, and regulations and all FAU regulations and policies, specifically including without limitation those pertaining to the privacy and use of student records, health information, and other FAU data, 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). Contractor shall obtain, in advance, all necessary permissions and consents required related to its collection and/or receipt of any such information. In the event FAU shares with or provides access to Contractor of any protected health information (“PHI”), FAU and Contractor enter into a separate business associate agreement which will govern the use of the PHI. Contractor agrees to include all such terms and conditions contained in any subcontractor or agency contracts. Contractor certifies its compliance with § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment), and § 448.095, F.S. (Contractor’s use of the E-Verify system). Contractor represents that it shall have all applicable permits, licenses, consents, and approvals necessary to perform under the Agreement.

10. Publicity. Contractor shall not make any announcements relating to the Agreement, nor shall Contractor 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, 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. Contractor shall have and maintain the types and amounts of insurance that, at minimum, will cover Contractor’s (or its subcontractor’s) exposure under 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. If FAU is responsible for reimbursing Contractor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Contractor 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 Contractor.

16. Conflicts. Contractor 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 giving at least thirty (30) days' written notice to Contractor, FAU may terminate the Agreement, at any time, with no further obligation to Contractor, 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. Records. Contractor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. FAU or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to Contractor.

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

20. 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 Contractor's employees; (c) non-compete provisions; (d) waiver of notices, hearings, or jury trials; (e) limitation of time to bring suit or make a claim; (f) Contractor's liability limitations; (g) granting Contractor audit rights; (h) attorneys' or collection fees provisions; (i) arbitration or mediation clauses; (j) FAU's tort liability; (k) indemnification of Contractor by FAU; (l) personal guaranties or liability of/by the FAU signatory; (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., the Privacy Policy).

21. Consulting Services.

- a. **Services.** Contractor agrees to provide and FAU agrees to accept the Services defined in the Agreement. Contractor shall control the manner in which the Services are provided, giving due consideration to the requests of FAU. Contractor agrees to use its best efforts in the performance of the Services. Unless otherwise detailed in the Agreement, the Services shall be performed at FAU's facilities.
- b. **Exclusivity.** Nothing herein shall be deemed to preclude FAU from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder or from independently developing or acquiring materials or programs that are similar to, or competitive with, the Services.
- c. **Key Personnel.** Contractor may only reassign or substitute Key Personnel upon consent by FAU, not to be unreasonably withheld, or upon the unavailability of assigned Key Personnel due to illness or other factors beyond Contractor's control, provided that prior notice of such reassignment or substitution is delivered to FAU. Additionally, Contractor shall substitute Key Personnel upon FAU's reasonable request.
- d. **Work Product.** The parties acknowledge that this Agreement may result in the discovery, creation, or development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, know-how, data, and original works of authorship (collectively, the "Work Product"). Contractor agrees that, whether the Services are work for hire or an employment to invent, all right, title, and interest in and to the Work Product shall be property of FAU, whether created individually by the Contractor or jointly with FAU, on or off FAU's premises. Except as specifically agreed to by the parties in writing, Contractor agrees that University shall have all copyright and patent rights with respect to any Work Product discovered, created, or developed under

this Agreement without regard to the origin of the Work Product. If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Contractor grants to University the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof. This provision shall survive the expiration or earlier termination of the Agreement.

- e. **Access to Work.** Although Contractor has the authority to control and direct the performance of the details of the work, the work contemplated herein must meet FAU's standards and approval and shall be subject to FAU's general right of inspection to secure the satisfactory completion thereof.
- f. **Non-Compete.** If Contractor is acting as a consultant to FAU and is representing FAU's interests in dealings with other third parties, Contractor shall not accept employment with or act as an independent contractor for such third parties for a period of one (1) year after the Agreement is terminated.
- g. **Warranty.** Contractor represents and warrants: (a) that it is possessed of superior knowledge with respect to the Services; (b) that it knows the particular purpose for which the Services are required; (c) that it is aware that FAU is relying upon its skill and judgment in providing the Services; (d) that the Services shall be provided with the highest professional degree of care and skill; and (e) that the Services and any other work performed by Contractor hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, trade secret or other proprietary right, or misappropriate any trade secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement. In the event of a breach of any of the foregoing warranties, Contractor shall, in addition to any other remedies which may be available to University, supply services to correct such defect at no cost to University.

22. Assignment. Contractor 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 Contractor of any obligation or liability under the Agreement.

23. 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 Contractor other than are set forth therein. Any renewals, amendments, alterations, or modifications to the Agreement must be signed or initialed and approved by all signatories of the Agreement. The Agreement shall not auto-renew and must be upon the written agreement of the parties.

24. 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 Contractor. 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 signature.

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

CONTRACTOR:

By: _____
 Name: _____
 Title: _____
 Date: _____