

FLORIDA ATLANTIC UNIVERSITY

1. Incorporation by Reference. The Florida Atlantic University Board of Trustees ("FAU") and the undersigned party ("Vendor") hereby incorporate this Supplemental Addendum - General (the "Addendum") into the agreement between FAU and Vendor (the "Agreement").
2. Payment. 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 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 Vendor 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. Vendors experiencing payment problems may contact FAU's Vendor Ombudsman at (561) 297-3693. FAU may require Vendor 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. Vendor 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; Vendor 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. Vendor 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 Vendor of the non-availability of funds when FAU has knowledge thereof. If Vendor is making any payment to FAU, Vendor 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. 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.
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. 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.
5. 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 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 Vendor any notice. Pursuant to § 287.058(1)(c), F.S., 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. This provision shall survive the expiration or termination of the Agreement.
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.
7. Indemnity. Vendor 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 Vendor 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 Vendor 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 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.
8. Compliance. Vendor 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). Vendor 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 Vendor of any protected health information ("PHI"), FAU and Vendor enter into a separate business associate agreement which will govern the use of the PHI. Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts. Vendor certifies its compliance with § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment), and § 448.095, F.S. (Vendor's use of the E-Verify system). Vendor represents that it shall have all applicable permits, licenses, consents, and approvals necessary to perform under the Agreement.
9. 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, Vendor agrees to comply with the terms contained in FAU's Federally Funded Projects Addendum, a copy of which shall be provided to Vendor upon request and is herein incorporated by this reference.
10. Warranties. Vendor warrants that the goods, products and/or services to be provided by Vendor will be free of any material defects and will operate and conform to the specifications in all material aspects throughout the term of the Agreement. This warranty shall be in addition to any warranties provided in the Agreement. Vendor further represents and warrants that its hardware, software and any related systems, documentation and/or services related thereto furnished to FAU will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party, and will indemnify, defend, and hold FAU harmless from any such claims, costs, and expenses, including attorneys' fees.
11. 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.
12. 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. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure under 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 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 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.
13. 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.
14. 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.
15. 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.
16. Security Interests, Liens & Permitting. The parties acknowledge that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands and any such provisions in the Agreement are null and void. In the event Vendor is providing any on-site service that requires local permitting, FAU shall be the permitting authority. Vendor agrees to comply with all applicable project guidelines, policies, and protocols, including without limitation FAU's Facilities Project Manual and the standards and cost containment guidelines set forth therein.
17. Travel Expenses. If 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.
18. 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.
19. Termination. Upon giving at least thirty (30) days' written notice to Vendor, FAU may terminate the Agreement, at any time, 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.
20. Breach. Each term and condition of the Agreement is material and any breach or default by Vendor shall be a material breach of the entire Agreement for which FAU shall have the right to terminate the Agreement upon notice to Vendor and without termination penalty.
21. Records. Vendor 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 Vendor.
22. 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.
23. 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 notices, hearings, or jury trials; (e) limitation of time to bring suit or make a claim; (f) Vendor's liability limitations; (g) granting Vendor 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 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).
24. 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.
25. 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 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.
26. 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 signature.
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: