

FLORIDA ATLANTIC UNIVERSITY

1. **Incorporation by Reference.** The Florida Atlantic University Board of Trustees ("FAU") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum – Library Subscriptions ("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 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, FAU may pay Vendor an interest penalty at the rate established pursuant to § 55.03(1), F.S. Vendors experiencing payment problems may contact the FAU Vendor Ombudsman at (561) 297-3693. 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. **Appropriations.** 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.

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. **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.

6. **Public Records.** FAU is subject to Chapter 119 of 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. Additionally, 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. **Intellectual Property.** If Vendor uses copyrighted materials or documents not owned by FAU ("Copyrighted Materials") in Vendor's performance of the Agreement, Vendor represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials. Vendor will, at its own expense, defend any suit brought against FAU and will indemnify FAU against an award of damages and/or costs made against FAU by a settlement or final judgment of a court that is based on a claim that FAU's use of the Copyrighted Materials infringes a trademark or copyright of a third party. This provision shall survive termination of the Agreement and Vendor's liability for the above is not limited by any limitation of liability clauses in the Agreement. **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 applicable FAU regulations and policies, specifically including without limitation those pertaining to the privacy and use of student records, health information, and other FAU data. Vendor warrants and 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. **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 Trademark Licensing and Marketing in each instance.

11. **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.

12. **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.

13. **Notices.** All notices required to be given under the Agreement shall be sent by certified mail to: Florida Atlantic University, Attn: FAU Libraries, 777 Glades Road, Wimberly Library Room 103C, Boca Raton, FL 33431.

14. **Deletion.** Any term in the Agreement related to the following are hereby deleted in their entirety: (a) Grants of exclusivity by FAU; (b) Restrictions on the hiring of Vendor's employees; (c) Any non-compete provision; (d) FAU's tort liability; (e) Limitation of time to bring suit; (f) that FAU performs reporting functions and/or maintains certain types of operations; (g) Granting Vendor any right to audit FAU; (h) Attorneys' or collection fees provisions; (i) Arbitration and mediation clauses; (j) auto-renewal of the Agreement; and (j) Indemnification of Vendor by FAU.

15. **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. The Agreement shall not auto-renew and must be upon the written agreement of the parties.

16. **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: _____