

**1. Incorporation by Reference.** The Florida Atlantic University Board of Trustees (“FAU”) and the undersigned party (“Seller”) hereby incorporate this Supplemental Addendum – Purchase/Lease of Goods or Equipment (the “Addendum”) into the agreement between FAU and Seller (the “Agreement”). “Goods” shall mean all those items, services and/or products specified in the Agreement.

**2. Payment.** Seller shall submit bills for compensation for Goods in detail sufficient for a pre-and post-audit. Each bill or invoice must clearly identify the Goods 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, as provided in accordance with the terms and conditions of the Agreement, FAU may pay Seller 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 Seller experience payment problems, it may contact FAU’s Vendor Ombudsman at (561) 297-3693. FAU may require Seller 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. Seller is responsible for and shall pay any taxes due under the Agreement. FAU will be responsible for paying only for any Goods it receives. FAU shall not make any deposits or prepay any amounts; any deposits are refundable. Seller 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 Seller of the non-availability of funds when FAU has knowledge thereof. If Seller is making any payment to FAU, Seller 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. Seller represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Seller certifies its compliance with § 448.095, F.S. (Seller’s use of the E-Verify system).

**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. Seller also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Seller or otherwise acting or engaged to act at the instance of Seller in furtherance Seller’s obligations under the Agreement.

**5. Confidentiality.** Seller acknowledges that all documents, materials, and information furnished to or learned by Seller in connection with the Agreement (the “Information”) are confidential, proprietary, and the sole property of FAU. Seller 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 Seller any notice. Pursuant to § 287.058(1)(c), F.S., FAU may unilaterally cancel the Agreement for Seller’s refusal to allow public access to public records related to the Agreement. Seller shall comply with all applicable requirements of the Public Records Laws, particularly if Seller is a “Contractor” as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the Agreement.

**IF SELLER HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO SELLER’S DUTY TO PROVIDE PUBLIC RECORDS, SELLER MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, [public-records@fau.edu](mailto:public-records@fau.edu), DIVISION OF PUBLIC AFFAIRS, FLORIDA ATLANTIC UNIVERSITY, 777 GLADES ROAD, ADM, BOCA RATON, FL 33431.**

**7. Indemnity.** Nothing in the Agreement shall be construed as a waiver of

FAU’s sovereign immunity nor as an indemnification of Seller 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 purchase of the Goods is in furtherance of the commitments and/or requirements of such federal agreement or funds, Seller agrees to comply with the terms contained in FAU’s Federally Funded Projects Addendum, a copy of which shall be provided to Seller upon request and is herein incorporated by this reference.

**9. 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. Seller shall have and maintain the types and amounts of insurance that, at minimum, will cover Seller’s (or subcontractor’s) exposure under the Agreement.

**10. 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.

**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. 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 Seller is providing any on-site service that requires local permitting, FAU shall be the permitting authority. Seller 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.

**13. Conflicts.** Seller 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.

**14. 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.

**15. 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 Seller’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) Seller’s liability limitations; (g) granting Seller audit rights; (h) attorneys’ or collection fees provisions; (i) arbitration or mediation clauses; (j) FAU’s tort liability; (k) indemnification of Seller 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; (o) unilateral modification of the Agreement or any supplemental terms/policies (e.g., the Privacy Policy); and (p) any security interests by Seller in the Goods.

**16. Purchase Terms**

**a. Delivery.** Seller agrees to on-time delivery based upon the timeline set forth in the Agreement. If the Agreement does not specify a delivery date or timeline, Seller shall provide the Goods as if time is of the essence. If Seller anticipates a delay in the delivery of the Goods, Seller shall immediately notify FAU. If Seller fails to deliver the Goods by the delivery date not due to the fault of FAU, or Seller fails to deliver conforming Goods, FAU may purchase substitute Goods elsewhere and charge Seller for any additional expense incurred relating to the purchase of such substitute Goods. If delivery of the Goods is not complete by the delivery date, FAU may, without liability, and in addition to its other rights and remedies, terminate the Agreement, by notice effective when received by Seller, as to Goods not yet delivered or rendered. Acceptance (as defined below) of any part shall not bind FAU to Accept any future shipments nor deprive it of the right to return Goods already Accepted.

**b. Acceptance.** “Acceptance” means the point at which FAU accepts or is

- deemed to accept the Goods in accordance with the Agreement terms. As a condition precedent to payment for the Goods by FAU to Seller, the Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by FAU to Seller within a reasonable period of time, or (ii) upon timely delivery of the Goods identified herein to the shipping address specified on the face of the Agreement and the examination and confirmation that the Goods conform to their applicable specifications. FAU retains the right to reject any non-conforming Goods. Payment for the Goods shall not constitute Acceptance thereof. FAU may inspect and test such Goods and reject any/all items that are, in FAU's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at Seller's expense. Failure by FAU to inspect and/or test the Goods shall not be deemed Acceptance by FAU.
- c. **Risk of Loss.** Seller assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by FAU until the same are received by Seller or Accepted by FAU.
  - d. **Changes.** If price, terms, shipping date or any other expressed condition of the Agreement cannot be achieved or met by Seller, FAU must be notified and must accept in writing any variation prior to shipment or delivery, or FAU may cancel the Agreement. Any changes to the scope/quantity of the Goods shall be agreed to in writing. If a change causes an increase or decrease in cost and/or time required for production of the Goods, an equitable adjustment shall be made, and the Agreement shall be modified accordingly.
  - e. **Warranty.** In addition to Seller's standard warranty relating to the Goods, Seller warrants that the Goods to be delivered pursuant to the Agreement (i) are of merchantable quality and free from defects in material or workmanship, (ii) shall conform to all specifications or other descriptions furnished to and approved by the parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety, and environmental standards), and industry standards, which bear upon Seller's performance, including, but not limited to, § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment); (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by FAU, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual right of any third party. In addition, Seller warrants that FAU shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Agreement, free of all liens and encumbrances and that no licenses are required for FAU to use such Goods. The terms of this Section shall not be waived by reason of Acceptance or payment of the Goods by FAU. Seller shall maintain, solely at Seller's cost and expense, all licenses, permits, approvals, and the like necessary to conduct its business and perform its obligations under the Agreement.
  - f. **Shipping.** Seller shall substantially pack, mark, and ship all Goods: (i) to ensure safe arrival to final destination; (ii) in a manner to secure the lowest, reasonable transportation cost; and (iii) in accordance with the shipping instructions contained in the Agreement and the requirements of common carriers. If no shipping instructions are included, Seller will ship goods FOB Destination. Seller shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. Seller will include a packing list showing contents of that package or container. FAU will accept delivery of goods only between 8:30 A.M. and 4:30 P.M. EST Mondays through Fridays at Central Receiving; no deliveries will be accepted on University and State of Florida holidays. Seller must get prior approval from a purchasing agent at the Purchasing Department for changes in delivery times. The Parties agree to assist each other in the prosecution of claims against carriers.
  - g. **Toxic Substances.** In compliance with 29 CFR 1910.1200, if the Agreement involves the shipping of any item designated as a toxic substance such shipment must be in compliance with the law and accompanied by a Material Safety Data Sheet.
  - h. **Cancellation.** FAU may for any reason and at any time, at its option cancel any unshipped Goods. A termination penalty may not be charged

- to FAU. To the extent the Agreement covers stock Goods, FAU's only obligation is to pay for Accepted Goods prior to such cancellation. To the extent the Agreement covers Goods manufactured or fabricated to FAU's specifications, Seller shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Seller is not in default, FAU shall reimburse Seller for the actual, direct cost to Seller of such Goods which have, at the time of such cancellation, been wholly or partially manufactured and title to all such Goods shall pass to FAU. Unless FAU shall have otherwise instructed Seller, Seller agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to FAU at any one time.
- i. **Delay.** FAU may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its control. Seller shall hold such Goods at the direction of FAU, and Seller shall deliver the Goods when the cause affecting the delay is eliminated. FAU shall be responsible only for Seller's direct additional costs incurred by holding the Goods at FAU's request. Causes beyond FAU's control shall include, without limitation, government action or failure.
  - j. **Lease/Return of Goods.** If the Goods were leased to FAU pursuant to the terms of the Agreement, FAU shall make the Goods available to the Seller within five (5) business days after termination of this Agreement, in good working order, reasonable wear and tear excepted. In the event the Seller provides shipping instructions FAU shall reasonably comply with such shipping instructions. If the leased Goods are lost, stolen or damaged, not due to Seller's fault or failure, FAU will promptly notify the Seller. FAU, at its option, may: (i) promptly repair the Goods to return it to good working order; or (ii) replace the Goods with like Goods of the same or later model, in good condition and working order, free and clear of all liens and encumbrances and such replacement shall be substituted in the Agreement by appropriate amendment; or (iii) pay the Seller the replacement value, less any rental payments previously paid.

**17. Assignment.** Seller 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 Seller of any obligation or liability under the Agreement.

**18. 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 Seller 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.

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

**SELLER:**

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

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

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

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