

FLORIDA ATLANTIC UNIVERSITY

1. **Incorporation by Reference.** The Florida Atlantic University Board of Trustees (“FAU”) and the undersigned governmental entity (“Agency”) hereby incorporate this Supplemental Addendum – State of Florida Agencies or Subdivisions (“Addendum”) into the agreement between FAU and Agency (the “Agreement”).

2. **Payment.** In the event either party owes payment to the other, such party 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 such party 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, it may pay the other party an interest penalty at the rate established pursuant to § 55.03(1), F.S. Invoices which have been returned because of preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided. Each party’s performance and obligation to pay is contingent upon the legislature’s annual appropriation; it will give notice to the other party of the non-availability of funds when it has knowledge thereof. Each party is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Neither party may offset any amounts owed to the other party. Should FAU owe payment to Agency, and Agency experiences payment problems, it may contact FAU’s Vendor Ombudsman at (561) 297-3693.

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. Each party represents that it is not on the Convicted Vendor List (see § 287.133, F.S.). Neither party is authorized to bind the other to any contracts or other obligations.

4. **Confidentiality.** To the extent that either party has access to the other’s information (e.g., financial, business, strategic, health or student records), such party agrees to maintain the confidentiality of such information and shall not disclose, discuss, or divulge any such information other than as directly and expressly required to fulfill such party’s obligations under the Agreement or as otherwise required by law, rule, regulation or court order.

5. **Public Records.** Each party 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. Each party may unilaterally cancel the Agreement for the other party’s refusal to allow public access to public records related to the Agreement. Additionally, each party shall comply with all applicable requirements of the Public Records Laws, particularly if Agency is a “Contractor” as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the Agreement.

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

6. **Indemnity.** Each party agrees to be (i) fully responsible for its acts of negligence or its employees’ acts of negligence when acting within the course and scope of their employment; and (ii) liable for any damages resulting from said negligence. The foregoing shall only be to the extent and within the limitations of Section 768.28, F.S., subject to the provisions of that statute whereby neither party shall be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by said party arising out of the same incident or occurrence, exceeds the sum of \$300,000. Nothing herein shall be construed as making either party responsible for any liability or claim arising out of the negligent performance or failure of performance of the other party or as a result of the negligence or failure of performance of any third party. Further, nothing contained herein shall be construed or interpreted as: i) denying either party or other state or public entity any remedy or defense available under the laws of the State of Florida; ii) the consent of either party to be sued; or iii) a waiver of sovereign immunity of either party beyond the waiver described herein and provided in §768.28, F.S..

7. **Compliance.** Each party agrees to abide by all applicable federal, state and local laws, ordinances, regulations and policies, specifically including without limitation those pertaining to the privacy and use of student records, health information, and other data. Each party represents that it shall have all applicable permits, licenses, consents, and approvals necessary to perform under the Agreement.

8. **Insurance.** Each party, 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 the other party to provide or acquire insurance coverage other than such self-insurance shall not be effective.

9. **Third Parties.** Neither party is 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.

10. **Governing Law.** The Agreement is governed by the laws of the State of Florida, without regards to its conflicts of law principles. Each party is entitled to the full benefits of sovereign immunity.

11. **Travel Expenses.** If either party is responsible for reimbursing the other for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Agency in accordance with, § 112.061, F.S.

12. **Termination.** Upon giving at least thirty (30) days’ written notice to Agency, either party may terminate the Agreement, at any time, with no further obligation to the other party, other than to pay for any goods received or services rendered in compliance with the Agreement prior to the effective date of termination. Neither party shall be liable for any early termination charges.

13. **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 33431-0991.

14. **Deletion.** Any term in the Agreement related to the following are hereby deleted in their entirety: (a) Limitation of time to bring suit; (b) Attorneys’ or collection fees provisions; (c) Arbitration and mediation clauses; (d) Grants of exclusivity; (e) Restrictions on the hiring of the other’s employees; (f) Any non-compete provision; (g) auto-renewal of the Agreement; and (h) personal guaranties.

15. **Assignment.** Neither party may, without the advance written approval of the other party, 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 the other party’s consent shall be, at the other party’s option, null and void. No subcontracting or delegation shall in any event relieve either party of any obligation or liability under the Agreement.

16. **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 Agency 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.

17. **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 Agency. 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, Agency’s authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.

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