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FLORIDA ATLANTIC  
UNIVERSITY

# **CONTRACTS AND AGREEMENTS MANUAL**

**BY:**

FLORIDA ATLANTIC UNIVERSITY  
PURCHASING DEPARTMENT  
777 GLADES ROAD  
BOCA RATON, FL 33431-0991

**MARCH 19, 2004**

## **OBJECTIVE & PURPOSE**

To establish, to the extent possible and practical, uniform contracts and agreements procedures for the acquisition of commodities and services.

## **AUTHORITY**

Florida Statutes 1001.74(4), (5), (17), (23), (24), (29), (34), 1001.75(5), (16), (19); Florida Administrative Code, Chapter 6C5-6.008; Presidential Memorandum PM 71.

## **POLICY/POLICY REFERENCE:**

Section 1001.74 (5), Florida Statutes, grants acquisition authority to the University Board of Trustees. Section 1001.75(5), Florida Statutes, delegates responsibility for the purchasing function to the University President or their designee(s). Florida Administrative Code, 6C5-6.008 establishes the Purchasing Rules for administration of a purchasing program at Florida Atlantic University.

The purpose of this document is to establish uniform policies and procedures for contracts and agreements consistent with the authority and responsibilities granted to the Florida Atlantic University Board of Trustees and the President towards the establishment of an effective purchasing program.

## **RULES:**

Effective February 13, 2003, Florida Atlantic University promulgated it's purchasing rule, Chapter 6C5-6.008, Florida Administrative Code, to serve as the replacement of s. 287, Florida Statutes, and the Board of Regents Rules for Administration of the Purchasing Program, Chapter 6C-18, Florida Administrative Code.

# **PROCEDURES**

## **1.0 INTRODUCTION**

Contracts and Agreements are an important purchasing function in the administrative management of the University. The Purchasing Department is responsible for the acquisition of equipment, furnishings, supplies, construction services, maintenance services, professional services, contractual services, and the lease of space for the University within pre-established budgetary constraints.

This manual, issued by the Director of Purchasing by direction of the University President, establishes uniform procedures relating to the formation of contractual relationships on behalf of the University towards the purchase of commodities and services.

The manual reflects statutory requirements of the State of Florida, rules and directives established by the Department of Education, and standard practices in the public university system of Florida, as applicable. The requirements stated herein shall apply to all purchases of commodities and services whether funded by state appropriation, grants, or student fees.

Except as otherwise delegated in the Purchasing Manual, the Purchasing Department is the only University department authorized to commit funds for the acquisition of commodities or services and is the initial point of contact for service contracts and agreements prior to any obligation or commitment by the University.

## 2.0 GENERAL PROCEDURES

A. Contractual services are defined as the rendering of a contractor of its time and effort rather than furnishing specific commodities. This definition applies to individuals who are not performing the duties of an authorized position. OPS employment is not considered a contractual service. The written agreement for contractual services shall be signed by all parties prior to the rendering of any service. For the purposes of this section, Construction is not considered a service.

B. Requirement for Agreements - Every procurement of contractual services in excess of \$49,999 shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services. The terms and conditions of an agreement should be stated clearly and unambiguously in order that any person would have no difficulty in determining that the precise duties and obligations undertaken by the University are not in violation of any of the laws of the state relative to the expenditure of funds.

C. At the discretion of the Purchasing Department, a contractual agreement may be required for supply items, non-service related commodities, exempt purchases, and acquisitions less than \$50,000. Examples of acquisitions that may require a contractual agreement are:

1. Term and multi year contracts and agreements.
2. The furnishing of supplies with significant service and installation costs.
3. The production of items from design or performance specifications.
4. Research and development type equipment (leading edge technology).
5. High-value, unique, or non-standard supplies and equipment.
6. Long lead time production items.
7. Agreements involving partial payment schedules, multiple delivery schedules or definitive project phases.
8. The requirement for an agreement is prescribed by a commanding authority, such as grant subcontracts requiring an agreement on services of \$25,000 or more.
9. Circumstances when an agreement is necessary to protect the University's best interests.
10. Complex services for establishing the payment method, payment schedule, contract deliverables, or performance standards.
11. Required by the contractor.

D. Only university personnel specifically delegated the authority, in writing, by the President are authorized to sign agreements and financially commit the University within the limits of their delegation.

No department or individual, unless specifically delegated so, may sign any agreement or represent in any manner whatsoever to an individual or business that they possess the authority to bind the University. All agreements must be signed by the person with the delegated authority. All agreements are subject to legal review and approval prior to signature,

except for those specific agreements, conditions, and circumstances assigned to the Purchasing Department.

E. The contractual terms and provisions, as contained in this manual, may be used as required on all forms of purchasing transactions including Purchase Orders and Limited Purchase Orders.

F. When required, the written agreement shall be signed by all parties prior to the rendering of any goods or services, except in the case of a valid emergency as certified by the President. The certification of an emergency shall be prepared within 30 days after the contractor begins rendering the services and shall state the particular facts and circumstances which precluded the execution of the written agreement prior to the rendering of the service.

G. If the University fails to have the agreement signed by all parties prior to rendering of goods or services, and if an emergency does not exist, the responsible organization shall certify to the Director of Purchasing the specific conditions and circumstances surrounding the action and describe the measures taken to prevent recurrence of such noncompliance. The procurement shall not be divided so as to avoid this provision.

H. Amendments and renewals to contracts and must be executed prior to the end of the contract and signed by the same authority level or higher. The original contract, ITB, ITN, or RFP must provide for the renewal. The terms of the cost of renewal must be stated in the contract, ITB, ITN or RFP.

I. The Purchasing Department will maintain an agreement log for issuing numbers for agreements issued by the Purchasing Department, Sponsored Research, and other agreements as required. The University's numbering sequence is:

First Digit – First Letter of Vendor's Name

Second Digit – Acceptable Values: P or R

P - denotes a Purchasing Agreement

R – denotes a Sponsored Research Subcontract Agreement

Last three digits – Numerical count as obtained from the agreements log.

### 3.0 SPECIFIC PROVISIONS

Contractual agreements may include, but are not limited to, the following provisions and conditions, where applicable. The Director of Purchasing, as approved by the University Attorney, may amend these provisions as deemed necessary based on the circumstances of the agreement and in accordance with the Laws of Florida.

- A. A provision specifying that the agreement is governed by the laws of the State of Florida and any provisions herein, in conflict therewith, shall be void and of no effect.
- B. A provision notifying the Vendor that the University, as a public entity, is entitled to the benefits of sovereign immunity, including immunities from taxation.
- C. A statement of the Vendor's rights to payment including being provided with the name and telephone number of the University Ombudsman.
- D. A provision that bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- E. A provision that any travel expenses must be submitted in accordance with F.S. 112.061 and will be processed in accordance with the University's travel policies as stated in the Controller's Manual and utilizing the Travel Authorization Request (TAR) process.
- F. A provision allowing unilateral cancellation by the University for refusal by the Vendor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Vendor in conjunction with the contract.
- G. A cancellation provision that states the Agreement shall be subject to cancellation by University upon a predetermined or agreed to number of days written notice to Vendor. A cancellation penalty may not be charged to the University. The University shall be liable only for payment for services rendered, allowable expenses incurred or both, prior to the effective date of termination within the limits of the description provided in this Agreement.

When appropriate, the above provision may be modified to allow for mutual, or bilateral cancellation.

- H. A provision concerning the availability of funds shall be included in all multi-year agreements for contracts crossing fiscal year periods. The following statement shall be included in the agreement:

"The performance of the University of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Legislature of the State of Florida, the obligation of funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge of such fact. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received."

- I. A provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings, and drafts, that must be received and accepted in writing by the contract manager prior to payment.
- J. A provision specifying the period of time in which the criteria must be met for completion of the contract.
- K. A provision specifying that the agreement may or may not be renewed. Any cost changes for renewals should be specified in the terms as determined in the Invitation To Bid, Request For Proposals, or Invitation to Negotiate. Renewals shall be contingent upon satisfactory performance evaluations and subject to the availability of funds.
- L. The University may not authorize or make any disbursement of grants and aid appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- M. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$24,999 for a period of 36 months from the date of being placed on the convicted vendor list.
- N. In accordance with Section 112.3185, Florida Statutes, the agreement shall include a provision that the Vendor certifies, to the best of its knowledge and belief, no individual employed by it or subcontracted by it has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of the services described in the Agreement. Violation of this section by Vendor shall be grounds for cancellation of this Agreement by the University.

- O. A provision wherein the Vendor agrees to abide by FAU Rules, including the Sexual Harassment Policy, Rule 6C5-5.012 of the Florida Administrative Code.
- P. Extensions must be executed prior to the end of the contract and shall not exceed 12 months. The extension represents an increase in the time allowed for the contract period due to circumstances which, without fault of either party, make performance impracticable or impossible, or which prevent a new contract from being executed, with or without a proportional increase in the total dollar amount, with any increase to be based on the method and rate previously established in the contract. Extension of a contract for contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial agreement. There shall be only one extension unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the agreement of the contractor.
- Q. Agreements shall include notice that the University shall consider the employment by any contractor of unauthorized aliens a violation of section 274(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of the contract.
- R. A Force Majeure provision, that states: "No default, delay or failure to perform on the part of the contractor or the State shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes; fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform."
- S. A Severability Clause that states in the event any provision of this agreement shall be held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.
- T. The University cannot grant a security interest in property purchased by deferred payment. There should be no references to security interest in agreements.
- U. Bankruptcy, Insolvency and Receivership are not applicable to the University and should not be included in agreements.
- V. Consequential damages clauses should not be included in agreements unless specific statutory authority exists.

- W. An indemnification provision, wherein the Vendor agrees to indemnify and hold free and harmless, and defend Florida Atlantic University, the Florida Atlantic University Board of Trustees, the State of Florida, and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the activities of every kind and nature whatsoever of Vendor or its officers, employees, agents and contractors, in connection with this Agreement.

#### **4.0 INDEMNITY AND LIMITATION OF LIABILITY**

In accordance with Florida Statutes, 672.719, the University shall not enter into any agreement whereby the University agrees to indemnify or limit the liability of the Vendor in any manner whatsoever.

Absent specific statutory authority, the University's ability to enter into a limitation of remedies agreement whereby the contractor's liability for damages for any cause and regardless of the form of action (with certain specified exceptions) is severely limited.

Acceptable limitation of remedies clauses exist for the following specified exceptions, subject to the review and approval of the University Attorney:

- A. Acquisition of computer equipment maintenance
- B. Computer hardware
- C. Software maintenance
- D. Software

These exceptions are not automatically granted and must be applicable for the specific circumstances of the agreement. Note: The provision following the Contracts for Licensed Programs must be included in conjunction with the liability clause used for the specific purchase.

Before issuing or signing any agreement containing a limitation of liability alternate provisions, the agreement shall be reviewed as to form and legality by the University Attorney.

#### **4.1 MAINTENANCE CONTRACTS**

(Contractor's) entire liability and the University's exclusive remedy for damages to the University for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to actual damages up to the greater of \$100,000 or an amount equal to the maintenance charges for the term of the contract for the specific machines under this Agreement that caused the damages or that are the subject matter of, or are directly related to, the cause of action.

Such maintenance charges will be those in effect for the specific machines when the cause of action arose. The foregoing limitation of liability will not apply to (a) the payment of cost and damage awards for patents and royalties, or to (b) claims for procurement costs or the cost of cover, or (c) claims by the University for personal injury or damage to real property or tangible personal property caused by contractor's negligence or tortious conduct.

## **4.2 CONTRACTS FOR HARDWARE**

In all situations involving performance or non-performance of machines or programming furnished under this Agreement, the University's remedy is (a) the adjustment or repair of the machine or replacement of its parts by Contractor, or at Contractor's option, replacement of the machine or correction of programming errors, or (b) if, after repeated efforts, Contractor is unable to install the machine or a replacement machine, model upgrade or feature in good working order, or to restore it to good working order, or to make the programming operate, all as warranted, the University shall be entitled to recover actual damages to the limits set forth in this Special Condition. For any other claim concerning performance or non-performance by Contractor pursuant to, or in any other way related to the subject matter of, this Agreement or any order under this Agreement, the University shall be entitled to recover actual damages to the limits set forth in this Special Condition.

Contractor's liability for damages to the University for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of \$100,000 or the appropriate price herein for the specific machines that caused the damages or that are the subject matter of or are directly related to the cause of action. The foregoing limitation of liability will not apply to (a) the payment of cost and damage awards for patents and royalties, or to (b) claims for replacement costs or the cost of cover, or to (c) claims for personal injury or damage to real or personal property caused by Contractor's tortuous conduct.

## **4.3 SOFTWARE MAINTENANCE CONTRACTS**

Contractor's liability and the University's exclusive remedy for damages to the University from any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to actual damages up to the greater of \$100,000, the total sum of the term contract or an amount equal to 12 months maintenance charges for the specific software product under this Agreement that caused the damages or that are the subject matter of, or are directly related to, the cause of action. Such maintenance charges will be those in effect for the specific software product when the cause of action arose. The foregoing limitation of liability will not apply to (a) the payment of cost and damage awards for patents and royalties, or to (b) claims for procurement costs or the cost of cover, or to (c) claims by the University for personal injury or damage to real property or tangible personal property caused by Contractor's negligence or tortuous conduct.

## **4.4 CONTRACTS FOR LICENSED PROGRAMS (Including those for personal computers)**

Contractor's entire liability and the University's exclusive remedy shall be as follows: In all situations involving performance or non-performance of licensed programs furnished under this Agreement, the University's remedy is (1) the correction by the Contractor of licensed program defects, or (2) if, after repeated efforts, the Contractor is unable to make the licensed program

operate as warranted, the University shall be entitled to recover actual damages to the limits set forth in this section. For any other claim concerning performance or non-performance by the Contractor pursuant to, or in any other way related to, the subject matter of this Agreement the University shall be entitled to recover actual damages to the limits set forth in this section. Contractor's liability for damages to the University for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of \$100,000 or the one-time charges paid for, or any Monthly License or Initial License Charges which would be due for 12 months use of, the licensed program that cause the damages or that is the subject matter of, or is directly related to, the cause of action and shall include any initial or process charges paid to the Contractor. This limitation of liability will not apply to (a) the payment of cost and damage awards for patents and royalties or to (b) claims for procurement costs or the cost of cover, or to (c) claims for personal injury or damage to real or personal property caused by the Contractor's negligence or tortious conduct.

#### **4.5 INDEMNIFY AND HOLD HARMLESS**

The following language must be included with any of the above provisions:

Contractor shall hold and save the University harmless for any and all suits and judgments against the University for personal injury or damage to real or personal property caused by Contractor's tortious conduct in the performance of this Agreement provided that, (a) the University promptly notifies Contractor in writing of any claims, and (b) Contractor shall be given the opportunity, at its option, to participate and associate with the University in the control, defense and trial of any claims and any related settlement negotiations and, provided further, that with respect to any claim, or portion thereof, for which Contractor agrees at the initiation of such claim that Contractor shall save and hold the University harmless, Contractor shall have the sole control of the defense, trial and any related settlement negotiations, and (c) the University fully cooperates with the contractor in the defense of any claim. In no event, however, will Contractor be liable for (a) any damages caused by the University's failure to perform the University's responsibility, or for (b) any lost profits or other consequential damages, even if contractor has been advised of the possibility of such damages, or for (c) any claim against the University by any other party, except as provided in the hold harmless provision of the preceding paragraph and except as provided in the General Condition of the Invitation to Bid entitled "Patents and Royalties", or for (d) any damages caused by performance or non-performance of machines or programming located outside the United States or Puerto Rico.

## **5.0 PRIVATE PUBLICATION OF PUBLIC INFORMATION MATERIALS**

- A. The University may enter into agreements to secure the private publication of public information brochures, pamphlets, audiotapes, videotapes, and related materials for distribution without charge to the public. The University may:
  - 1. Enter into agreements with private vendors for the publication or production of such public information materials, by which the costs of publication or production will be borne in whole or in part by the vendor or the vendor agrees to provide additional compensation in return for the right of the vendor to select, sell, and place advertising that publicizes products or services related to and harmonious with the subject matter of the publication.
  - 2. Retain the right, by agreement, to approve all elements of any advertising placed in such public information materials, including the form and content thereof.
- B. Any public information materials containing advertising of any kind must include a statement providing that the inclusion of advertising in such material does not constitute an endorsement by the University of the products or services so advertised.

## 6.0 STANDARD AGREEMENT FOR SERVICES

The following section contains the Purchasing Department's standard template used to generate a contractual agreement. This template may be modified as required and subject to the laws and rules of the state, the rules and procedures of the University, and as may be deemed necessary for legal sufficiency as determined by the University Attorney.

### AGREEMENT FOR SERVICES

This is an Agreement entered into on \_\_\_\_\_ between Florida Atlantic University, acting for and on behalf of the Florida Atlantic University Board of Trustees, a public corporation of the State of Florida ("University") and \_\_\_\_\_ ("Vendor").

The parties to this Agreement, in consideration of the mutual covenants and promises contained in it, and other good and valuable consideration, the adequacy and receipt of which are acknowledged, agree as follows.

- I. The Vendor is an independent contractor pursuant to Florida law. The Vendor assumes full responsibility for completion of the services described below:

In accordance with FAU's RFP \_\_\_\_\_ and the Vendor's Proposal, dated \_\_\_\_\_, as amended, negotiated and agreed to, are hereby incorporated by this reference into this agreement, except for the Vendor's Proposal, \_\_\_\_\_. The contents of these paragraphs are dealt with elsewhere in this Agreement or are intentionally omitted.

The Vendor will be responsible for \_\_\_\_\_.

The Vendor shall begin performance under the terms of this Agreement no earlier than \_\_\_\_\_ and complete performance to the satisfaction of the University no later than \_\_\_\_\_.

This Agreement may/may not be renewed.

If renewable, it shall be for a period of \_\_\_\_\_ after the initial contract beginning \_\_\_\_\_ through \_\_\_\_\_ at the same terms and conditions. Renewal shall be at the sole option of the University and subject to the availability of funds under the same terms and conditions.

Or,

This Agreement may be renewed for \_\_\_\_\_ additional \_\_\_\_\_ year periods. Renewal shall be at the sole option of the University and subject to the availability of funds under the same terms and conditions.

- II. The total amount payable by the University under this Agreement is \$ \_\_\_\_\_. This amount is determined as follows:

In accordance with the Vendor's proposal dated \_\_\_\_\_, as amended:

Or

Based on estimated/historical usage \_\_\_\_\_.

- III. a) Pursuant to Section 215.422(3)(b), Florida Statutes, in the event University owes payment to the Vendor, a state agency shall mail the Vendor's payment within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, if provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to mail the warrant within 40 days shall result in the agency paying interest at a rate as established pursuant to s. 55.03(1) on

the unpaid balance from the expiration of such 40 day period until such time as the warrant is issued to the Vendor. The interest penalty shall be mailed within 15 days after mailing the warrant. A "Vendor Ombudsman" has been established with the Florida Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 488-2924, or by calling the State Comptroller's Hot-Line, 1-800-848-3792.

- b) Partial payment in the full amount of the value of service received and accepted may be requested by the submission of a properly executed invoice, with supporting documents, if required. Only one partial payment will be made per month.
- c) The Vendor agrees that bills and invoices for fees or other compensation for services or expenses shall cite the Agreement number and shall be submitted to the Controller in detail sufficient for a proper preaudit and postaudit. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought. Payment will be tendered only for services, or the portion of services, completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission, or both.
- d) The performance of the University of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Legislature of the state of Florida, the obligation of funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge of such fact. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received.
- e) If this Agreement includes reimbursement for travel expenses, such reimbursement must comply with Section 112.061, Florida Statutes and will be processed in accordance with the University's travel policies as stated in the Controller's Manual and utilizing the Travel Authorization Request (TAR) process.
- f) Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay on the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the University.

IV. Each party assumes any and all risk of personal injury, death and property damage attributable to the negligent acts or omissions of that party and their officers, employees and agents. Vendor also assumes such risk with respect to the negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance of Vendor fulfilling Vendor's obligations under this Agreement.

V. The Vendor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Refusal by the Vendor to allow such public access shall be grounds for cancellation of this Agreement by the University.

VI. This Agreement shall be subject to immediate termination for cause after the terminating party has given the non-terminating party seven days prior written notice indicating the cause for termination, within which time the non-terminating party may correct the stated reason for termination. This Agreement shall be subject to termination without cause by the University upon thirty (30) days written notice to the Vendor. A cancellation penalty may not be charged to the University. The University shall be liable only for payment for services rendered, allowable expenses incurred or both, prior to the effective date of termination within the limits of the description provided in this Agreement.

- VII. The University and the Vendor may mutually agree to modifications in the contract agreement including items not originally identified in the contract, but are within the overall scope and serve the best interests of the University. Any changes must be in writing as mutually agreed to by each party. Any renewals, amendments, alterations, or modifications to the Agreement must be signed or initialed and approved by the signatories to this Agreement.
- VIII. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. The University, as an agency of the State of Florida, is entitled to the benefits of sovereign immunity, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization as a prerequisite to perform its obligations under this Agreement, the cost shall be borne by the party required to obtain such permit, license or authorization.
- IX. In accordance with Section 112.3185, Florida Statutes, the Vendor certifies that to the best of its knowledge and belief, no individual employed by it or subcontracted by it has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of the services described in this Agreement. Violation of this section by Vendor shall be grounds for cancellation of this Agreement by the University.
- X. Vendor agrees to indemnify and hold free and harmless, and defend the State of Florida, the Florida Atlantic University Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the activities of every kind and nature whatsoever of Vendor or its officers, employees, agents and contractors, in connection with this Agreement.
- XI. Vendor may not, without the advance written approval of University, assign any right or delegate any duties under this Agreement nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Agreement.
- XII. Each term and condition of this Agreement is material and any breach or default by Vendor in the performance of each such term and condition shall be a material breach or default of the entire Agreement for which University shall have the right to terminate this Agreement immediately upon notice to Vendor and without termination penalty to University.
- XIII. It is understood and agreed that nothing contained in this Agreement is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Vendor as the agent or representative of University for any purpose in any manner whatsoever. Vendor is not authorized to bind University to any contracts or other obligations. Vendor shall not expressly or impliedly represent to any party that Vendor and University are partners or that Vendor is the agent or representative of University or of the Florida Atlantic University Board of Trustees for any purpose or in any manner whatsoever.
- XIV. University's representative for purposes of this Agreement shall be the Director of Purchasing or his/her designee; Vendor's representative for purposes of this Agreement shall be \_\_\_\_\_.
- XV. No failure to exercise or delay in exercising any right, power or remedy accruing to University for any breach or default of Vendor under this Agreement shall impair any such right, power or remedy of University, or be construed as a waiver by University of any such breach or default or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default thereafter occurring.
- XVI. All documents submitted as part of Vendor's offer are incorporated into this Agreement by reference. In the event of inconsistency between provisions, the provisions of this Agreement will govern. This Agreement and such documents embody the entire agreement of the parties and there are no other representation, promises, agreements, conditions or understandings, either oral or written between University and Vendor other than are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon

either University or Vendor unless reduced to writing and signed by them and by direct reference made a part of this Agreement.

- XVII. This agreement is subject to Florida Administrative Code, Chapter 6C5-6.008 (7)d., Purchasing rules, effective February 13, 2003, specifically regarding Public Entity Crimes.
- XVIII. NOTICE TO VENDOR: Florida Atlantic University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this agreement.
- XIX. Vendor agrees to abide by FAU rules, including the Sexual Harassment Policy, Rule 6c5-5.012 of the Florida Administrative Code. A copy of the Sexual Harassment Policy is available at FAU's Office of Equal Opportunity Programs by calling 561-297-3004 or on the Purchasing Web Site at <http://www.fau.edu/purchasing/policy>.
- XX. In the event any provision of this agreement shall be held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.
- XXI. No default, delay or failure to perform on the part of the contractor or the State shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.
- XXII. All notices required to be given under this Agreement shall be sent by certified mail to:
- Florida Atlantic University  
Attn: Purchasing, ADM 207  
777 Glades Road  
Boca Raton, FL 33431-0991
- XXIII. This agreement has been negotiated by all the Parties. Therefore, in the event of an ambiguity, such ambiguity shall not be construed against any party as the author of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have signed this Agreement.

VENDOR

UNIVERSITY

\_\_\_\_\_  
Name

FLORIDA ATLANTIC UNIVERSITY,  
acting for and on behalf of the Florida  
Atlantic University Board of Trustees,  
a public corporation of the State of Florida

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\* By the signature of the person  
signing for the Vendor, such  
person represents that he/she  
is authorized to bind and does  
bind the Vendor to this Agreement.

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## 7.0 CONTRACT ADDENDUM

The following section contains the Purchasing Department's standard contract Addendum. The Addendum is used in conjunction with a Vendor's agreement. The Vendor agreement must be edited in accordance with the law and rules of the state and the University, and is subject to legal review by the University Attorney. The Addendum may be modified as required and subject to the laws and rules of the state, the rules and procedures of the University, and as may be deemed necessary for legal sufficiency as determined by the University Attorney.

Both the Addendum and the Vendor's agreement can only be signed by University personnel specifically delegated contracts authority by the University President. The final contract is not approved until both the University and the Vendor have signed and approved all documents and any changes therein. No goods can be received, or services started until the final approved agreement is received and Purchasing has issued a valid Purchase Order.

### **FLORIDA ATLANTIC UNIVERSITY ADDENDUM**

This Addendum is part of the attached Contract between Florida Atlantic University, acting for and on behalf of the Florida Atlantic University Board of Trustees, a public corporation of the State of Florida, referred to as "University" and \_\_\_\_\_, referred to as "Vendor". This Addendum relates to Vendor providing commodities and/or contractual services as described in attached Contract.

The Parties to the attached Contract and Addendum, in consideration of the mutual covenants and stipulations set in Contract and Addendum, agree as follows:

- I. The Vendor is an independent contractor pursuant to Florida law.
- II.
  - a) In the event University owes payment to the Vendor, a University shall mail the Vendor's payment within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, if provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to mail the warrant within 40 days shall result in the University paying interest at a rate of 1% per month on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the Vendor. The interest penalty shall be mailed within 15 days after mailing the warrant. The University has established a "Vendor Ombudsman". The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s). The University's ombudsman may be contacted at (561)-297-3693.
  - b) Partial payment in the full amount of the value of service received and accepted may be requested by the submission of a properly executed invoice, with supporting documents, if required. Only one partial payment will be made per month.
  - c) The Vendor agrees that bills and invoices for fees or other compensation for services or expenses shall cite the Agreement number and shall be submitted to the Controller in detail sufficient for a proper preaudit and postaudit. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought. Payment will be tendered only for services, or the portion of services, completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission, or both.
  - d) The performance of the University of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Legislature of the state of Florida, the obligation of

funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge of such fact. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received.

e) If this Agreement includes reimbursement for travel expenses, such reimbursement must comply with Section 112.061, Florida Statutes and will be processed in accordance with the University's travel policies as stated in the Controller's Manual and utilizing the Travel Authorization Request (TAR) process.

f) Invoices, which have to be returned to a vendor because of vendor preparation errors, will result in a delay on the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the University.

- III. Each party assumes any and all risk of personal injury, death and property damage attributable to the negligent acts or omissions of that party and their officers, employees and agents. Vendor also assumes such risk with respect to the negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance of Vendor fulfilling Vendor's obligations under this Agreement.
- IV. The Vendor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Refusal by the Vendor to allow such public access shall be grounds for cancellation of this Agreement by the University.
- V. This Agreement shall be subject to cancellation by University upon Thirty (30) days written notice to Vendor. A cancellation penalty may not be charged to the University. The University shall be liable only for payment for services rendered, allowable expenses incurred or both, prior to the effective date of termination within the limits of this Agreement.
- VI. Any renewals, amendments, alterations, or modifications to the Agreement must be signed or initialed and approved by the signatories to this Agreement. Renewals shall be at the sole discretion and option of the University if deemed advantageous to do so and subject to the availability of funds. Renewals shall be under the same terms and conditions as the initial period unless otherwise amended.
- VII. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. The University, as a public entity of the State of Florida, is entitled to the benefits of sovereign immunity, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization as a prerequisite to perform its obligations under this Agreement, the cost shall be borne by the party required to obtain such permit, license or authorization.
- VIII. In accordance with Section 112.3185, Florida Statutes, the Vendor certifies that to the best of its knowledge and belief, no individual employed by it or subcontracted by it has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of the services described in this Agreement. Violation of this section by Vendor shall be grounds for cancellation of this Agreement by the University.
- IX. Vendor agrees to indemnify and hold free and harmless, and defend the Florida Atlantic University Board of Trustees, Florida Atlantic University, the State of Florida, and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the activities of every kind and nature whatsoever of Vendor or its officers, employees, agents and contractors, in connection with this Agreement.
- X. Vendor may not, without the advance written approval of University, assign any right or delegate any duties under this Agreement nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in

any portion of this Agreement.

- XI. Each term and condition of this Agreement is material and any breach or default by Vendor in the performance of each such term and condition shall be a material breach or default of the entire Agreement for which University shall have the right to terminate this Agreement immediately upon notice to Vendor and without termination penalty to University.
- XII. It is understood and agreed that nothing contained in this Agreement is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Vendor as the agent or representative of University for any purpose in any manner whatsoever. Vendor is not authorized to bind University to any contracts or other obligations. Vendor shall not expressly or impliedly represent to any party that Vendor and University are partners or that Vendor is the agent or representative of Florida Atlantic University or of the Florida Atlantic University Board of Trustees for any purpose or in any manner whatsoever.
- XIII. No failure to exercise or delay in exercising any right, power or remedy accruing to University for any breach or default of Vendor under this Agreement shall impair any such right, power or remedy of University, or be construed as a waiver by University of any such breach or default or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default thereafter occurring.
- XIV. All documents submitted as part of Vendor's offer are incorporated into this Agreement by reference. In the event of inconsistency between provisions, the provisions of this Agreement will govern. This Agreement and such documents embody the entire agreement of the parties and there are no other representation, promises, agreements, conditions or understandings, either oral or written between University and Vendor other than are set forth in this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either University or Vendor unless reduced to writing and signed by them and by direct reference made a part of this Agreement.
- XV. This agreement is subject to Florida Administrative Code, Chapter 6C5-6, Section 6C5-6.008, Purchasing Rules for Florida Atlantic University effective February 13, 2003, specifically regarding Public Entity Crimes.
- XVI. NOTICE TO VENDOR: Florida Atlantic University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act. Such violation shall be cause for unilateral cancellation of this agreement.
- XVII. Vendor agrees to abide by FAU rules, including the Sexual Harassment Policy, rule 6C5-5.012 of the Florida Administrative Code. A copy of the Sexual Harassment Policy is available at FAU's Office of Equal Opportunity Programs by calling 561-297-3004 or on the Purchasing Web Site at: <http://www.fau.edu/purchasing/policy>.
- XVIII. In the event any provision of this agreement shall be held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.
- XIX. No default, delay or failure to perform on the part of the contractor or the State shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

XX. All notices required to be given under this Agreement shall be sent by certified mail to:

Florida Atlantic University  
Attn: Purchasing, ADM 207  
777 Glades Road  
Boca Raton, FL 33431-0991

XXI. This agreement has been negotiated by all the Parties. Therefore, in the event of an ambiguity, such ambiguity shall not be construed against any party as the author of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have signed this Agreement.

**VENDOR**

**UNIVERSITY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
Title

FLORIDA ATLANTIC UNIVERSITY,  
acting for and on behalf of the Florida  
Atlantic University Board of Trustees,  
a public corporation of the State of Florida

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\* By the signature of the person signing for the Vendor, such person represents that he/she is authorized to bind and does bind the Vendor to this Agreement.

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## 8.0 BIDS

The following section contains the Purchasing Department's standard contract agreement for use in Bid Documents.

The standard bid agreement appears as Exhibit B in the Bid Document. The agreement consists of two sections: The first part is an award page which will be completed by Purchasing for the selected Vendor after evaluation of the bids or proposals, but prior to the commencement of work under the bid.

The second part of Exhibit B is the University's standard Terms and Conditions. As a condition of award, the Vendor is required to sign and return this document with their bid or proposal.

The agreement format and bid notice may be modified as required and subject to the laws and rules of the state, the rules and procedures of the University, and as may be deemed necessary for legal sufficiency as determined by the University Attorney.

## 8.1 BID NOTICE

The following notice will appear in Bid Documents when a contractual agreement is required:

### **AGREEMENT FOR CONTRACTUAL SERVICES**

The successful Offeror and Florida Atlantic University shall enter into a two party agreement as mandated by, Chapter 6C5-6.008, Florida Administrative Code, effective February 13, 2003.

The FAU standard terms and conditions are enclosed in Exhibit B. The Vendor shall complete, sign and return *Exhibit B, Agreement for Services, Terms and Conditions* with their proposal.

If the Vendor is selected for award, the sample *Contract Award Page* in Exhibit B will be completed and submitted to the Vendor for signature prior to the commencement of any work under this RFP.

The successful Offeror's signature on the Agreement for Services, Exhibit B is a condition required for award. Any objections to provisions in the contract or the RFP must be clearly stated in the Offeror's proposal. However, proposals containing any such objections, alterations of forms, conditions, limitations, or other irregularities of any kind may be rejected by the University at its discretion and render the Offeror ineligible for award.

The Vendor may propose separate, secondary agreements or supplements to the Agreement for Services as a condition of award. Copies of these agreements must be provided with the proposal.

Vendors should carefully review any terms or conditions proposed that are contrary to those specified in the RFP and the Agreement for Services. The modification or removal of terms and conditions contained in the enclosed agreement may not be possible. These provisions as stated herein have been prescribed in accordance with Florida law. Additionally, in no case will the University sign a provision requiring the University to indemnify, limit liabilities or hold harmless any vendor or their agents.

**8.2 EXHIBIT B**

The following section will appear as Exhibit B in the Bid Documents when a contractual agreement is required and in conjunction with the above notice statement:

**AGREEMENT FOR SERVICES  
CONTRACT AWARD PAGE**

<b>Vendor Name:</b>		<b>Agreement No:</b>	
<b>Address:</b>		<b>Bid Ref No:</b>	
<b>FEID No.</b>		<input type="checkbox"/> The attached additional documentation/pages are hereby incorporated specifically into this agreement. (Check if exist):	
<b>Phone:</b>			
<b>Fax:</b>			
<b>Business Size:</b>			
<b>Vendor Point of Contact</b>		<b>University's Designated Contract Manager:</b>	
<b>Award Date:</b>		<b>Effective Dates:</b>	
<b>Renewal Periods:</b>		<b>Estimated Contract Value:</b>	
<b>Description of Goods/Services:</b>			
<b>Vendor</b>		<b>Florida Atlantic University*</b>	
_____		_____	
<b>Signature</b>	<b>Date</b>	<b>Signature</b>	<b>Date</b>

\*Acting for and on behalf of the Florida Atlantic University Board of Trustees, a public corporation of the State of Florida.

## **FLORIDA ATLANTIC UNIVERSITY AGREEMENT FOR SERVICES**

As a condition of award for this solicitation, the successful vendor and Florida Atlantic University shall enter into a two party agreement as mandated by, Florida Administrative Code, Chapter 6C5-6.008, Purchasing rules effective February 13, 2003.

The vendor is required to complete, sign, and return with their bid/proposal this exhibit. If selected as the award vendor an award notice will be submitted to the vendor for signature. This exhibit, along with the award notice and any special terms and conditions will comprise the final Agreement for Services.

### **TERMS AND CONDITIONS**

This agreement on terms and conditions is between Florida Atlantic University, acting for and on behalf of the Florida Atlantic University Board of Trustees, a public corporation of the State of Florida, referred to as "University" and \_\_\_\_\_, referred to as "Vendor".

The Parties, in consideration of the mutual covenants and stipulations set forth in a University's solicitation and the Vendor's proposal/bid, agree as follows:

A. The Vendor is an independent contractor pursuant to Florida law. The Vendor assumes full responsibility for completion of the requirements, as provided in the Florida Atlantic University's solicitation \_\_\_\_\_ and the Vendor's proposal/bid.

B. Pursuant to Section 215.422(3)(b), Florida Statutes, in the event University owes payment to the Vendor, a state agency shall mail the Vendor's payment within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, if provided in accordance with the terms and conditions of the applicable purchase order/agreement. Failure to mail the warrant within 40 days shall result in the agency paying interest at a rate as established pursuant to s. 55.03(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the Vendor. The interest penalty shall be mailed within 15 days after mailing the warrant. A "Vendor Ombudsman" has been established with the Florida Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 488-2924, or by calling the State Comptroller's Hot-Line, 1-800-848-3792.

C. Partial payment in the full amount of the value of service received and accepted may be requested by the submission of a properly executed invoice, with supporting documents, if required. Only one partial payment will be made per month.

c) The Vendor agrees that bills and invoices for fees or other compensation for services or expenses shall cite the Agreement number and shall be submitted to the Controller in detail sufficient for a proper preaudit and postaudit. Each bill or invoice must clearly identify the services, portion of services and expenses for which compensation is sought. Payment will be tendered only for services, or the portion of services, completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission, or both.

d) The performance of the University of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Legislature of the state of Florida, the obligation of funds by the prime funding agency, or otherwise lawfully expendable for the purposes of this Agreement for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge of such fact. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed and expenses incurred prior to the date notice is received.

e) If this Agreement includes reimbursement for travel expenses, such reimbursement must comply with Section 112.061, Florida Statutes and will be processed in accordance with the University's travel policies as stated in the Controller's Manual and utilizing the Travel Authorization Request (TAR) process.

Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay on the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the University.

F. Each party assumes any and all risk of personal injury, death and property damage attributable to the negligent acts or omissions of that party and their officers, employees and agents. Vendor also assumes such risk with respect to the negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance of Vendor fulfilling Vendor's obligations under this Contract.

G. The Vendor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Contract. Refusal by the Vendor to allow such public access shall be grounds for cancellation of this Contract by the University.

H. This Contract shall be subject to cancellation by University upon Thirty (30) days written notice to Vendor. A termination penalty may not be charged to the University. The University shall be liable only for payment for services rendered prior to the effective date of termination.

I. Any renewals, amendments, alterations, or modifications to the Contract must be signed or initialed and approved by the signatories to this Contract.

J. The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. The University, as an agency of the State of Florida, is entitled to the benefits of sovereign immunity, coextensive therewith, including immunities from taxation. In the event either party is required to obtain from any governmental authority any permit, license or authorization, as a prerequisite to perform its obligations, the cost shall be borne by the party required to obtain such permit, license or authorization.

K. In accordance with Section 112.3185, Florida Statutes, the Vendor certifies that to the best of its knowledge and belief, no individual employed by it or subcontracted by it has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services. Violation of this section by Vendor shall be grounds for cancellation of this Contract by the University.

L. Vendor agrees to indemnify and hold free and harmless, and defend the State of Florida, The Florida Atlantic University Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the activities of every kind and nature whatsoever of Vendor or its officers, employees, agents and contractors, in connection with this Agreement.

M. Vendor may not, without the advance written approval of University, assign any right or delegate any duties under this Contract, nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Contract.

N. Each term and condition of this Contract is material and any breach or default by Vendor in the performance of each such term and condition shall be a material breach of the entire Contract for which University shall have the right to terminate this Contract immediately upon notice to Vendor and without termination penalty to University.

O. It is understood and agreed that nothing contained is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Vendor as the agent or representative of University for any purpose in any manner whatsoever. Vendor is not authorized to bind University to any contracts or other obligations. Vendor shall not expressly or impliedly represent to any party that Vendor and University are partners or that Vendor is the agent or representative of University or of the Board of Trustees for any purpose or in any manner whatsoever.

P. No failure to exercise or delay in exercising any right, power or remedy accruing to University for any breach or default of Vendor under this Agreement shall impair any such right, power or remedy of University, or be construed as a waiver by University of any such breach or default or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default thereafter occurring.

Q. All documents submitted as part of Vendor's offer are incorporated by this reference. In the event of inconsistency between such documents and the provisions of this Contract, the provisions of this Contract will govern. This Contract and such documents embody the entire agreement of the parties and there are no other representations, promises, agreements, conditions or understandings, either oral or written between University and Vendor other than are set forth. No subsequent alterations, amendment, change or addition to this Contract shall be binding upon either University or Vendor unless reduced to writing and signed by them and by direct reference made a part hereof.

R. This agreement is subject to the provisions of the Rules for the Administration of Purchasing Program, Chapter 6C-18, Florida Administrative Code, 6C-18.050 (6) effective January 13, 1999, regarding Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida, Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract, may not be awarded or perform work as a consultant, supplier, or subcontractor, and may not conduct business with a state agency for a period of thirty six months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Contract.

S. The University shall consider the employment by the Vendor of unauthorized aliens a violation of section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract.

T. Vendor agrees to abide by FAU rules, including the Sexual Harassment Policy, rule 6c5-5.012 of the Florida Administrative Code. A copy of the Sexual Harassment Policy is available at FAU's Office of Equal Opportunity Programs by calling 561-297-3004 or on the Purchasing Web Site at <http://www.fau.edu/purchasing/policy>.

U. Severability Clause:

In the event any provision of this agreement shall be held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.

V. Force Majeure:

No default, delay or failure to perform on the part of the contractor or the State shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

IN WITNESS OF THE FOREGOING, the parties have caused this Contract to be executed.

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

FLORIDA ATLANTIC UNIVERSITY,  
acting for and on behalf of the Florida  
Atlantic University Board of Trustees,  
a public corporation of the State of Florida

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **9.0 CONTRACTS AND AGREEMENTS ISSUES**

A contract represents the written embodiment of an agreement between two parties. A contract consists of a promise or set of promises given by one party in exchange for a promise or set of promises given by another which the law recognizes as a duty. The basic tenets of contract law state that a contract must be for legal purpose, enforceable, equitable, representing the intent of the parties (Material Agreement), and it must have clarity.

FAU is a unique contract party vastly different from a commercial business enterprise. These key differences dictate the manner in which the University must conduct its contractual relationships:

- FAU is a Public (Governmental) Entity
- FAU is vested with the Public Trust in conducting business transactions
- FAU is accountable for Public Funds
- As a public entity, FAU has Sovereign Immunity

Because of this status the Vendor must recognize these differences and adjust their business practices accordingly if they are to enter into a contract with the University. If the Vendor and the University cannot agree to mutually acceptable terms and conditions, a contractual relationship cannot be formed and the University will be unable to conduct business with the Vendor.

This section will discuss the prominent issues typically found in negotiating a contract and the provisions in a Vendor contract that the University finds objectionable.

### **A. AUTHORITY**

Except as otherwise delegated in the Purchasing Manual, the Purchasing Department is the only University department authorized to commit funds for the acquisition of commodities or services and is the initial point of contact for service contracts and agreements prior to any obligation or commitment by the University.

Furthermore, only university personnel specifically delegated the authority, in writing, by the President are authorized to sign agreements and financially commit the University within the limits of their delegation.

This concept of Authority is very important to the University. As a public entity, all authorities must be expressly granted; implied or apparent authority does not exist. University personnel without delegated authority must be careful that their words or actions do not misrepresent to a Vendor that they are in a position to commit the University.

The other important issue with Authority in a public institution is that delegated authority is only valid within the limits of the delegation. Any improper transactions conducted outside a delegated authority or contrary to the laws of the state or the rules of the University are deemed invalid because the individual signing for the public entity was operating without specific delegated authority.

University personnel may find themselves subject to civil liability and disciplinary action for improperly entering into an agreement or committing the University.

## **B. CONTRACT LAW**

As a public entity, the University is subject to the laws of the State of Florida. Coupled with the Authority discussion above, a public entity only has the authority delegated to it specifically and does not have the authority to change, alter, or expand their authority beyond the limits set by law. All other rights are specifically reserved by the State. In summary, any contract, agreement, proposal, standard practice or other claim cannot override the Law.

Therefore, if the Vendor requires a provision in a contract that is contrary to the law, the University has absolutely no authority to sign the agreement and we cannot do business with that Vendor. If an agreement is signed containing a provision contrary to the law, whether known or unknown to the contract parties, the agreement is invalid because the law, by reference, is the basis of the agreement and absolute.

## **C. PAYMENTS AND DEPOSITS**

The following rules apply to Vendor payments. Any contract provisions contrary to these terms are unacceptable:

1. Payment is net 30 days after receipt of a proper invoice.
2. Late fees are 1% per month beginning the 40<sup>th</sup> day after receipt of proper invoice, or an equivalent of 12% per annum.
3. Deposits and prepayments are unacceptable. Public funds may only be dispersed after goods or services have been received, and an authorized representative of the University has certified the payment. The University's Purchase Order is considered a valid state warrant and guarantee of funds; thus negating the need for prepayments and deposits.
  - a. Advanced payments are authorized for a limited number of commodities, including insurance, subscriptions, software licenses/maintenance, memberships, and acquisitions where prepayment will result in a significant cost savings to the University and the risk of non-performance/non-delivery is low. Any advanced payments are subject to the approval of the Controller's Office and the laws of the state.

4. Partial payments based on completed goods and services are acceptable provided that such payment terms are appropriate for the acquisition, the Purchase Order or Contract specifically contains pre-priced milestones/deliverables, and an authorized representative of the University has certified the payment. Partial/progress payments are not normally appropriate for small construction projects or materials and installation services.
5. The University does not reimburse any Vendor's claims for the costs associated with collections on past due bills.
6. Travel reimbursements must be processed through the Controller's Office via the TAR process. Travel expenses cannot be billed on a Purchase Order. All travel reimbursements will be paid in accordance with the guidelines established by the Controller's Office and the State Comptroller. Mileage, per diem, car rental, hotel, and air fare are not paid at the Vendor's cost. Original paid receipts are required to be submitted on a Voucher for Reimbursement of Travel Expenses, and the expenses will be reimbursed at the state approved rates.
7. Reimbursements based on salary will require the submission of detailed payroll records from the Vendor, or an acceptable alternate thereof substantiating the payment.

#### **D. INDEMNIFICATION AND LIMITATION OF LIABILITY**

In accordance with Florida Statutes, 672.719, the University shall not enter into any agreement whereby the University agrees to indemnify or limit the liability of the Vendor in any manner whatsoever. Approved alternates exist for specific computer hardware, software and maintenance acquisitions. The use of an alternate indemnification and limitation of liability provision requires the approval of the University Attorney.

#### **E. GOVERNING LAW**

As a public entity of the State of Florida, all contracts, agreements, and purchasing transactions are governed by the laws of the state. The University does not accept contracts citing the governing laws of other states except when another public entity is involved and dual laws govern.

#### **F. ARBITRATION AND ATTORNEY'S FEES**

FAU is governed by Chapter 120 of the Florida Statutes regarding Disputes Resolution. The University does not agree to arbitration. The University also does not accept provisions awarding the Vendor attorney's fees in the event of a dispute. Attorney's fees are a matter of decision by a court of law or ruling administrative board.

## **G. CANCELLATION**

All agreements must contain a provision to allow the University to unilaterally cancel the contract without penalty. Contracts containing termination penalties or that do not allow the University to cancel the agreement are unacceptable.

## **H. MULTI-YEAR AGREEMENTS**

Agreements cannot extend beyond the length of the appropriation. For annual state appropriations the agreement cannot cross into the next fiscal year. Grant funded agreements can extend up until the appropriation expires or as otherwise specified by the funding agency. A multi-year agreement can be made acceptable provided that the contract ends prior to the expiration of funds without penalty or further commitment, contains a renewal option that can be exercised by the University, and contains the subject to the availability of funds clause.

## **I. ASSIGNMENTS**

FAU requires the right for approval before the Vendor can assign, dispose of, or sell the contract agreement or any portion of their interest therein.

## **J. AUTOMATIC RENEWALS**

Agreements containing automatic renewals (without positive written approval from an authorized representative of the University) are unacceptable.

## **K. PUBLIC RECORDS LAW**

Unless otherwise exempted from F.S. 119, any agreements claiming confidential information or requiring the University to limit disclosure of information are unacceptable.

## **10.0 TAX EXEMPTIONS & W-9's**

The Purchasing Department is responsible for distributing the University's Tax Exempt Certificate to Vendor's upon request. The Tax Exempt Certificate is a controlled document and will not be distributed to any individual or department. Vendor's requiring a tax exempt certificate should contact the Purchasing Department's main office at 561-297-3080 or faxed to 561-297-3084. Any requests from Vendor's to complete a tax exempt certificate of resale should forward the document to Purchasing for completion and distribution. Any requests to complete an IRS Form W-9 should also be sent to the Purchasing Department for completion and distribution.

## **11.0 CREDIT APPLICATIONS**

On occasion, a Vendor may request the completion of a credit application or customer application form. These documents constitute an agreement and must be completed and approved by the Purchasing Department. All Vendor requests for credit information from the University should be directed to the Purchasing Department at 561-297-3080 or faxed to 561-297-3084.