

FLORIDA ATLANTIC UNIVERSITY
PO TERMS

These purchase order terms ("PO Terms") are incorporated into the Florida Atlantic University (the "University" or "FAU") PO and any contract, terms and conditions, quote, or invoice associated therewith (collectively, "Contract") between the University and the Vendor as may be referenced in the PO. The University's approval and acceptance of the Contract is conditioned on Vendor's agreement that any terms different from or in addition to these PO Terms, whether communicated orally or contained in any confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Contract, even if Vendor purports to condition its acceptance of these Terms on the University's agreement to such different or additional terms. Vendor's electronic acceptance, receipt of payment, acknowledgement of these PO Terms, or commencement of performance, constitutes Vendor's acceptance of these PO Terms. If any discrepancy, difference or conflict exists between the various provisions of these PO Terms and the Contract, these PO Terms shall control.

- 1. Payment.** Vendor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre- and post-audit. Each bill or invoice must clearly identify the goods, services, and expenses for which compensation is sought. FAU shall make payment in accordance with FAU Policy 5.1 – Prompt Payment. If FAU does not issue payment within forty (40) days of receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services, or both, as provided in accordance with the terms and conditions of the Agreement, FAU may pay Vendor an interest penalty at the rate established pursuant to § 55.03(1), F.S. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to FAU. Vendors experiencing payment problems may contact FAU's Vendor Ombudsman at (561) 297-3693. FAU may require Vendor to accept payments via FAU's EFT/ACH payment process. FAU is a tax immune sovereign and exempt from the payment of sales, use, or excise taxes. Vendor is responsible for and shall pay any taxes due under the Agreement. FAU will be responsible for paying only for any goods/services it receives; Vendor must refund any payment for goods/services that are unused upon the termination of the Agreement. FAU shall not make any deposits or prepay any amounts; any deposits are refundable. If Vendor is making any payment to FAU, Vendor shall pay timely and not offset any amounts.
- 2. Appropriation of Funds.** The performance of the University of any of its obligations under the Contract shall be subject to and contingent upon the availability of funds appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the purpose of the Contract for the current and future periods. The University shall give notice to Vendor of the non-availability of such funds when University has knowledge. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed prior to the date notice is received.
- 3. Sovereign Immunity.** Any and all indemnification, liability, governing law, arbitration, attorneys' fees, venue and jurisdictional provisions applicable to the University in the Contract, shall be deleted from the Contract and replaced with the following: "Nothing contained herein or in any term or condition contained within the Contract or any sub-contract referenced shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the University, the State of Florida or their officers, employees, servants, agents, agencies, or public bodies corporate to be sued; (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28 of the Florida Statutes; or (4) the consent of the University, the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to the jurisdiction or authority of any laws, forum or court outside the State of Florida; and any such term or condition purporting to do so shall be null and void and of no force or effect."
- 4. No Guarantees.** Vendor acknowledges that the Contract is not a guarantee of any work.
- 5. Vendor Status.** Vendor will supply the University with a complete vendor application and accurate W-9 or W8-BC (Foreign Vendor); if Vendor fails to supply the University with a complete and accurate W-9 or W8-BC, the invoice will be deemed insufficient for payment until such information has been provided.
- 6. Audit & Record Keeping.** The Vendor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Contract. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Contract. The University or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Contract, upon reasonable notice to the Vendor.

- 7. Confidentiality of Information.** The Vendor acknowledges and agrees that (a) all documents, studies, materials and information furnished to the Vendor by the University or the University's affiliates in connection with the Contract and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for the University in connection with the Contract or which reflect any of the documents, studies, materials or information furnished to the Vendor by the University (the materials described in (a) and (b) are collectively referred to as the "Information") are and shall remain at all times confidential, proprietary, and the sole property of the University. The Vendor agrees that it shall not use the Information and will not share the Information with its employees, except as necessary to the Vendor's performance under the Contract. The Vendor shall not disclose Information to third parties unless it obtains the University's written consent to such disclosure or is required to pursuant to applicable law or court order.
- 8. Public Records.** The University is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. The Contract and any related documents and/or correspondence shall also become a public record subject to the Florida Public Records Law, regardless of any confidentiality provision outlined in the Contract. The University may respond to public records requests without providing Vendor any notice. 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 the Contract. Refusal by the Vendor to allow such public access shall be grounds for cancellation of the Contract by the University. If the Contract is for services and the Vendor is acting on behalf of the University, the Vendor further agrees to: (i) keep and maintain public records required by the University to perform the service, (ii) upon request from the University's custodian of public records, provide the University with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Vendor does not transfer the records to the University, and (iv) upon completion of the Contract, transfer, at no cost, to the University all public records in possession of the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the University upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University. This provision shall survive the expiration or termination of the Contract.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, 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.

- 9. Cancellation.** This Contract shall be subject to cancellation by University upon 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 service rendered prior to the effective date of termination.
- 10. Governing Law.** The validity, construction and effect of the Contract shall be governed by the laws of the State of Florida. Exclusive venue of any actions shall be in the state courts of Palm Beach County, Florida. The University, as a public entity of the State of Florida, is entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation. The parties acknowledge that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands.
- 11. Travel.** If the Contract includes reimbursement for travel expenses, such reimbursement must comply with Section 112.061, Florida Statutes and will be processed in accordance with University travel policies. The University reserves the right not to pay travel expenses unless FAU preapproves such expenses in writing. FAU has the right to make travel arrangements for Vendor.
- 12. Conflicts of Interest.** In accordance with Section 112.3185, Florida Statutes, the Vendor certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him 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 the Contract by the University.

- 13. Indemnity.** Vendor agrees to indemnify and hold free and harmless, and defend the State of Florida, the 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, including attorneys' fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of Vendor or its officers, employees, agents and contractors, in connection with the Contract, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right. Any limitations of liability of Vendor set forth in the Contract shall not apply to: (a) claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right or (b) claims for personal injury or damages to real or personal property caused by Licensor's negligence or willful misconduct.
- 14. Assumption of Risk.** Each party assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and its own officers, employees and other agents. Vendor also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance Vendor's obligations under the Contract.
- 15. Relationship of the Parties.** The Vendor is an independent contractor pursuant to Florida law. 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.
- 16. Publicity.** Use of the University's name, logo or any other symbolic or written reference and/or presentation, including without limitation any public display or advertising, requires advance written approval by the University. Vendor shall not make any announcements relating to the Agreement, nor shall Vendor use FAU's name, trademarks, logos or marks, without the prior written approval from FAU's Office of Trademark Licensing and Marketing in each instance.
- 17. Third Parties.** The University 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 Contract.
- 18. Precedence.** In the event of inconsistency between the Contract and the provisions of these PO Terms, the provisions of these PO Terms will govern. These PO Terms and the Contract 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. Any renewals, amendments, alterations or modifications to the Contract must be signed or initialed and approved by all signatories of the Contract. There shall be no unilateral modification of the Contract or any supplemental terms/policies (e.g., the Vendor's Privacy Policy). The term of the Contract shall not auto-renew unless such auto-renewal is expressly agreed upon in writing by the University. All non-solicitation, non-compete, and/or exclusivity provisions shall be ineffective unless expressly agreed upon in writing by the University.
- 19. Warranties.** Vendor, at a minimum, warrants that the goods, products and/or services to be provided by Vendor will be free of any material defects and will operate and conform to the specifications provided in all material aspects throughout the term of the Contract. This warranty shall be in addition to any warranties provided in the Contract.
- 20. Intellectual Property.** If Vendor uses copyrighted materials or documents not owned by FAU ("Copyrighted Materials") in Vendor's performance of the Agreement, Vendor represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials. Vendor will, at its own expense, defend any suit brought against FAU and will indemnify FAU against an award of damages and/or costs made against FAU by a settlement or final judgment of a court that is based on a claim that FAU's use of the Copyrighted Materials infringes a trademark or copyright of a third party.
- 21. Certification.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes § 287.017, for CATEGORY TWO for a period of 36 months from the date being placed on the convicted vendor list. By entering into the Contract, Vendor is certifying that Vendor is not on any convicted vendor list (see § 287.133(2)(a), F.S.).
- 22. Compliance.** Vendor agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all Florida Board of Governor's and University regulations and policies, specifically including without limitation the University's

sexual harassment regulations and policies and those pertaining to the privacy of student records. Vendor shall have all applicable permits, licenses, consents, and approvals necessary to provide the goods and/or services during the Term of the Contract. Specifically, this shall mean to include, but is not limited to, Vendor's compliance with Section 889 of the John S. McCain National Defense Authorization Act, prohibiting the University from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Additionally, the University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act. The University has the right to immediately cancel any Contract if it knows or has reason to believe that Vendor is in breach of any of these obligations.

- 23. E-Verify.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Vendor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all of Vendor's employees hired by the Vendor during the term of the Agreement and/or while performing work or providing services for FAU. Vendor shall require that all subcontractors performing work or providing services on behalf of Vendor for FAU also comply with the requirements of §448.095, Fla. Stat and utilize the E-Verify system to verify employment eligibility of all employees hired by subcontractor. The Vendor shall require for the subcontractor to provide to Vendor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Agreement. FAU may terminate the Agreement immediately upon notice to Vendor for any violation of this provision. A Vendor whose contract is terminated pursuant to this paragraph is liable for additional costs incurred by FAU due to the termination of the Agreement.
- 24. Export Control Compliance.** The Vendor acknowledges they must comply with export control laws, including the International Traffic in Arms Regulations (ITAR); the Export Administration Regulations (EAR); and the Office of Foreign Assets Control Regulations (OFAC). If Vendor provides export controlled products, technology and/or software to the University, Vendor will provide the University with a list of ECCNs (Export Control Classification Numbers) or the United States Munitions List (USML) Category Numbers, for such goods. This provision shall survive the expiration or earlier termination of the Contract.
- 25. Information Technology.** If the Vendor has access to the University's information technology infrastructure, or will be providing such infrastructure to the University, Vendor agrees at all times to maintain network security that, at a minimum, includes: industry-accepted network firewall provisioning, intrusion detection, encryption, current security patches, virus protection measures and access controls, and regular third-party penetration testing. Vendor further agrees: (a) that any websites hosted by Vendor on behalf of the University shall be on an encrypted domain in compliance with the minimum security standards; (b) that all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement and shall not be distributed, repurposed or shared across other applications, environments, or business units of Vendor, and that no University data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by the University; and (c) that it shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification in accordance therewith, and in the event of a data breach of any Vendor's security obligations or other event requiring notification under applicable law, Vendor shall assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend the University against any claims, damages, or other harm related to such notification event.
- 26. Compliance With PCI-DSS.** Vendor represents and warrants that while Vendor has involvement with the University customer cardholder data, the software and services used for processing transactions shall be compliant with the most recent version of the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>) in effect at the time of service delivery. Vendor will treat all of the University provided infrastructure and resources as public and non-secure, regardless of measures the University may choose to put in place. Vendor will also maintain all required qualifications and periodically furnish proof of ongoing compliance in the form of an Attestation of Compliance to demonstrate to the University that Vendor is continuously operating in full compliance with PCI-DSS and is not relying on the University for any aspect of that compliance. Vendor shall, upon written request, furnish proof of compliance with PCI DSS within 10 business days of the request. Vendor agrees to provide to the University a current and complete copy of their Attestation of Compliance (AOC). Further, Vendor agrees to provide to the University a proof of a recent (no more than 3 months old) passing quarterly external vulnerability scan as submitted by an Approved Scanning Vendor (ASV). If Vendor loses any required certification or the certification lapses, Vendor shall immediately notify the University, and the University will have an option to terminate this contract and receive a refund for unrendered services.

- 27. Privacy.** Vendor shall comply with all applicable state and federal laws and University policies and procedures governing the use and/or safe-keeping of confidential, highly sensitive, and/or personally identifiable or protected health information (as may be defined by state or federal law), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act, and the Federal Trade Commission's Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003). Vendor shall obtain, in advance, all necessary permissions and consents required related to its collection and/or receipt of any such information. In the event that the University will share with or provide access to Vendor of any protected health information ("PHI"), the University and Vendor enter into a separate business associate agreement which will govern the use of the PHI. Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts.
- 28. Equal Opportunity. The Vendor and subcontractors shall abide by the requirements of 41 CFR, Section 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**
- 29. Insurance.** The University, as a public body corporate entity, 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 the University. Any provision requiring the University to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure in performing the Contract and name the University as additional insured and be primary and non-contributory on Vendor's policies (except for workers' compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to the University, with insurance companies authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with the University prior to the date of the Contract. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving the University thirty (30) days' written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to the University as coverage renews. Vendor, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against the University for any loss or damage arising from any cause covered by any insurance required to be carried under the Contract by any other insurance actually carried by Vendor. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue for three (3) years following the expiration or termination of the Contract. The insurance shall have a retroactive date of placement by the effective date of the Contract. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, the Vendor must purchase Extended Reporting ("Tail") coverage for a minimum of three (3) years following the expiration or termination of the Contract. These insurance requirements shall be in addition to any other applicable insurance requirements outlined in the PO Terms.
- 30. Breach; Assignment.** Each term and condition of the Contract is material and any breach or default by Vendor shall be a material breach of the entire Contract for which University shall have the right to terminate the Contract upon notice to Vendor and without termination penalty. Vendor may not, without the advance written approval of University, assign any right or duties under the Contract, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the Contract.
- 31. Waiver** No default, delay or failure to perform 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. In the event of such default, delay or failure to perform, any date or times by which either party is scheduled to perform shall be extended for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.
- 32. Permitting.** In the event the Vendor is providing any on-site service that requires local permitting, the University shall be the permitting authority. The Vendor agrees to comply with all applicable project guidelines, policies and protocols, including without limitation the University's Facilities Project Manual and the standards and cost containment guidelines set forth therein.
- 33. Background Checks.** Section 1002.32(2) of the Florida Statutes established the public schools of the FAU School District, which includes A.D. Henderson University School, Palm Pointe Educational Research School, and FAU High School, as Developmental Research (Laboratory) Schools (individually and collectively, "the "School(s)"). The School District is organized as a department of FAU's College of Education as a vehicle for the conduct of research,

demonstration and evaluation regarding management, teaching and learning and is the 72nd school district under the Florida Department of Education. All Vendor employees who are permitted access to a School when students are present, who have direct contact with students, or who have access to, or control of School funds must undergo level 2 screening, as set forth in § 1012.32, F.S., including fingerprinting, at the sole cost of Vendor. Vendor warrants that no Vendor employee who meets the above conditions and who has been convicted or is under investigation for a crime per § 435.04, F.S., will be permitted such access.

- 34. Notices.** All notices required to be given under the Contract shall be sent by certified mail to: Florida Atlantic University, Attn: Purchasing, ADM 121, 777 Glades Road, Boca Raton, FL 33431-0991.
- 35. Deletion.** Any term and/or condition in the Contract on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by the University to the Vendor; (b) Restrictions on the hiring of the Vendor's employees; (c) the University's responsibility to pay intangible taxes, property taxes, or sales taxes; (d) the University's tort liability; (e) Automatic renewals of the term of the Contract; (f) Limitation of time to bring suit; (g) Limitation of Contractor's liability; (h) that the University performs reporting functions and/or maintains certain types of operations (i) Granting the Vendor any right to audit the University; (j) Attorneys' or collection fees provisions; (k) Arbitration and mediation clauses; (l) Indemnification of the Vendor by the University; (m) non-compete provisions; waiver of jury trials, notices or hearings; (n) personal guaranties; and (o) unilateral modification of the Contract or any supplemental terms/policies (e.g., a Privacy Policy).
- 36. Signatures.** The parties represent and warrant that any person signing the Contract has the authority to do so and that such signature shall be sufficient to bind Vendor. The Contract 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.
- 37. ADDITIONAL TERMS.** In addition to the foregoing terms, the following "Additional Terms" outlined in the remaining paragraphs of these PO Terms may apply to Vendor, and Vendor agrees and accepts such terms. More than one Additional Terms provision may apply.
- 38. ADDITIONAL TERMS RELATED TO "PIGGYBACKING" AGREEMENTS.**
- a) *Background.* The Florida Board of Governors' Regulation 18.001(1)(c) and FAU Regulation 6.008 allow FAU to utilize contracts that are entered into after a public and open competitive solicitation issued by the Federal Government, the State of Florida, other states, political subdivisions or entities, colleges, universities, cooperatives, or consortia (collectively, the "Procuring Party"), for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of FAU to make purchases under contracts let by such other entities. If the parties are utilizing such a competitive solicitation awarded to Vendor by the Procuring Party to "piggyback" and enter the Contract and/or issue the Purchase Order, all such documents related to the Procuring Party's competitive solicitation are herein incorporated by this reference, including the initial solicitation, Vendor's response(s), the final agreement, and any exhibits related thereto (collectively, the "Piggyback Agreement").
- b) *Beneficiary.* The parties agree that all obligations of Vendor under the Piggyback Agreement, and all benefits to be provided by Vendor to the Procuring Party under the Piggyback Agreement, specifically including, but not limited to, its indemnity obligations, insurance obligations, and work product ownership rights, shall inure to the benefit of FAU, and Florida Atlantic University, the FAU Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, agents, employees, successors and assigns, pursuant to this Agreement. All references in the Piggyback Agreement to the Procuring Party shall mean FAU where appropriate.
- c) *Insurance.* In addition to any other applicable Insurance provisions contained in these PO Terms, requiring Vendor to maintain that coverage necessary to protect both Vendor and FAU against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from Vendor's performance of the Agreement, Vendor shall also have and maintain the types and amounts of insurance outlined in the Piggyback Agreement.
- d) *Precedence.* In the event of any conflicts between or among the terms hereof, the documents (to the extent applicable) shall govern in the following order of precedence: (1) these PO Terms; (2) the Piggyback Agreement; (3) any of Vendor's terms.
- 39. ADDITIONAL TERMS RELATED TO THE PURCHASE OF GOODS.**
- a) *Goods.* As used in these PO Terms, "Goods" shall mean all those items and/or products specified in the Contract.
- b) *Changes.* Any changes to the Goods shall be negotiated in advance by the Parties and agreed to in writing. If a change causes an increase or decrease in cost and/or time required for performance of the Goods, an equitable adjustment shall be made and the Contract shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Contract cannot be achieved or met by Vendor, the University must be notified and must accept in

writing any variation prior to shipment or delivery.

- c) *Delivery of Goods.* Vendor agrees to on-time delivery based upon the timeline set forth in the Contract. If the Contract does not specify a delivery date (the "Delivery Date") or timeline, Vendor shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from the University that prevents Vendor from achieving the Delivery Date shall not constitute a breach of the Contract by Vendor. If Vendor anticipates a delay in the delivery of the Goods, Vendor shall immediately notify the University. In the event that Vendor fails to deliver the Goods by the Delivery Date not due to the fault of the University, or Vendor fails to deliver conforming Goods, the University may purchase substitute Goods elsewhere and charge Vendor for any additional expense incurred relating to the purchase of such substitute Goods. Vendor shall deliver all Goods in accordance with the terms of the Contract. If delivery of the Goods is not complete by the Delivery Date, the University may, without liability, and in addition to its other rights and remedies, terminate the Contract, by notice effective when received by Vendor, as to Goods not yet delivered or rendered. Acceptance (as defined below) of any part shall not bind the University to Accept any future shipments nor deprive it of the right to return Goods already Accepted.
- d) *Acceptance.* For purposes of these Terms, "Acceptance" means the point at which the University accepts or is deemed to *accept* the Goods in accordance with the terms set forth in the Contract. Acceptance shall include the terms "Accept" and "Accepted." As a condition precedent to payment for the Goods by the University to Vendor, the Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by the University to Vendor 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 Contract and the examination and confirmation that the Goods conform to their applicable specifications. the University retains the right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.
- e) *Risk of Loss.* Vendor assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Contract until the same are finally Accepted by the University. Vendor assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by the University until the same are received by Vendor or Accepted by the University.
- f) *Warranty.* In addition to Vendor's standard warranty relating to the Goods, Vendor warrants that the Goods to be delivered pursuant to the Contract (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) which bear upon Vendor's performance, (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by the University, 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, Vendor warrants that the University shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Contract, free of all liens and encumbrances and that no licenses are required for the University to use such Goods. The terms of this Section shall not be waived by reason of Acceptance or payment of the Goods by the University.
- g) *Shipping.* Vendor shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Contract and the requirements of common carriers. If no shipping instructions are included, Vendor will ship goods FOB Destination. Vendor 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. Vendor must include Contract No. on all: invoices, B/L, cases, bundles packing lists and correspondence. Vendor will include a packing list showing contents of that container in each container shipped. the University 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. Vendor 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.
- h) *Toxic Substances.* In compliance with 29 CFR 1910.1200, if the Contract 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.
- i) *Inspection.* Payment for the Goods provided under the Contract shall not constitute Acceptance thereof. the University may inspect and test such Goods and reject any/all items that are, in the University 's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Vendor at its expense. Failure by the University to inspect and/or test the Goods shall not be deemed Acceptance by the University.
- j) *Cancellation.* the University may for any reason and at any time, at its option cancel any unshipped Goods. A termination penalty may not be charged to the University. To the extent the Contract covers stock Goods, the University's only obligation is to pay for Accepted Products prior to such cancellation. To the extent the Contract covers Goods manufactured or fabricated to the University's specifications, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, the University shall reimburse Vendor for the actual, direct cost to Vendor 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 the University. Unless the University shall have otherwise instructed Vendor, Vendor agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to the University at any one time.

- k) *Delay.* The University may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its control. Vendor shall hold such Goods at the direction of the University, and Vendor shall deliver the Goods when the cause affecting the delay is eliminated. The University shall be responsible only for Vendor's direct additional costs incurred by holding the Goods at the University's request. Causes beyond the University's control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, fire or similar catastrophe, and severe weather or other acts of God.

40. ADDITIONAL TERMS RELATED TO PERFORMERS, SPEAKERS AND ENTERTAINERS.

- a) *Deposit.* Unless non-state funds are being used to pay, the University cannot make deposits or prepay any amounts. Any deposits made by the University are refundable.
- b) *Tapes/Recordings.* The University has the right to tape and/or record the performance; however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of the University's students, faculty and staff.
- c) *Cancellation.* The University may cancel the Contract by giving Vendor at least ten (10) days prior written notice of cancellation, without penalty. The University shall only be liable for payment of goods received and services rendered and accepted by the University prior to the date of notice of cancellation. If the University has made any advance payments or deposits, Vendor shall return such amounts to the University. If the University cancels this Contract for reasons other than breach by Vendor, the University will reimburse Vendor for Vendor's out-of-pocket expenses related to the performance of the Contract that were incurred by Vendor prior to notice of cancellation if such expenses are non-refundable/non-returnable, to the extent permitted by Fla. Stat. §112.061 and University Policy 11110.060 and only to the extent such expenses are supported by written, itemized and paid invoices submitted by Vendor to the University. Vendor may not cancel the Contract except for in the event of Force Majeure Conditions as defined below.
- d) *Public Officials.* To the extent applicable, in accordance with state and federal election laws, regulations and guidelines, public officials visiting a University campus for nonpartisan events or functions sponsored or hosted by the University shall comply with the following guidelines: (i) All appearances, questions/answers sessions, speeches or similar communications should be made in an academic setting and should not involve any campaign speeches, rallies or events; (ii) Campaigning, including fundraising, is prohibited; (iii) A nonpartisan atmosphere must be maintained in the premises; and (iv) If the public official is also a candidate for an upcoming or future election: (A) The public official shall appear and speak in a non-candidate capacity; (B) The public official shall appear and speak for reasons other than his or her candidacy; (C) The public official shall not refer to his or her own candidacy or that of any other candidate in his or her speech; (D) The public official's campaign staff shall not be permitted to solicit campaign contributions or campaign support; (E) Neither the public official or his/her staff will be permitted to coordinate or encourage the display of campaign banners or decorations or encourage distribution of the public official's campaign materials; (F) Any communications of the public official related to the public official's attendance at the event, before, during or after the event, shall clearly indicate the capacity in which the public official is appearing or appeared and should not mention the candidacy or the upcoming election; and (G) Any communication of the public official related to the public official's attendance at the event, before, during or after the event, shall not insinuate, imply or suggest the appearance of the University's support or opposition of the public official in his/her capacity as a candidate.
- e) *Failure to Perform.* Any failure of Vendor to perform may be excused only for proven sickness or injury, civil tumult or riot, epidemics, acts of God, or other conditions beyond the control of the Vendor ("Force Majeure Conditions"). Failure or delay of transportation shall not be considered a Force Majeure Condition. In the event of such default, delay or failure to perform due to a Force Majeure Condition, 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. Vendor must notify the University immediately of any reason which might result in Vendor's failure to perform on the scheduled date. The University reserves the right to approve/substitute any other Vendor for Vendor in the event that Vendor is not able to perform as scheduled.

41. ADDITIONAL TERMS RELATED TO THE PROCUREMENT OF HOTEL/MEETING SPACES.

- a) *Purpose.* The University is likely entering into the Contract with Vendor to acquire hotel venue and services associated with a game, event, match, meet, meeting, conference, or other event related to the University (collectively, "Event(s)").
- b) *Deposit.* Unless non-state funds are being used to pay, the University cannot make deposits or prepay any amounts. Any deposits made by the University are refundable.
- c) *Charges.* No additional charges or fees (including, but not limited, to parking, security, amenities, wifi, storage fees, or early checkout charges) may be charged to the University without the University's express written approval, regardless of whether they are outlined in the Contract.. Service charges may be modified depending upon level of service provided. The University is not responsible for any individual charges made by event attendees and/or individual room block

guests.

- d) *Room Block*. Vendor shall honor all reservations guaranteed by attendees and if it cannot meet its obligation, it shall find the attendee a room at a comparable hotel and providing transportation to and from that location, in addition to all other concessions.
- e) *Facility*. The facility will be in the same or better condition over the meeting/room block dates as it was when the Contract was entered into. Vendor shall disclose any current or future plans for construction and renovation and shall control other groups so they do not cause undue noise or other disturbances that would materially affect the attendees. Vendor may not reassign the meeting rooms specified in the Contract without the University's prior written consent, not to be unreasonably withheld.
- f) *Hotel Points*. Vendor acknowledges that, pursuant to § 112.313(2), F.S., it may not award "points" to any individuals or University employees under the Contract. Points may only be awarded, if at all, to the University generally or the University team or department.
- g) *Cancellation*. Attrition, cancellation fees and/or liquidated damages, as outlined in the Contract (collectively, "Cancellation Fees"), if any, may only be assessed if the University fails to give the Vendor at least ten (10) days advance notice (72 hours if the Contract is for meeting rooms only) and Vendor is unable to rent the rooms(s) to another person/entity. Additionally, Cancellation Fees may not be assessed if such cancellation is due to Event cancellation. Cancellation Fees shall not exceed twenty percent (20%) of estimated value of the Contract. The University, in lieu of paying Cancellation Fees, may agree to book another event with the Vendor that will generate revenue in an amount equal to or greater than the lost revenue. Vendor will use its best, commercially reasonable efforts to mitigate any Cancellation Fees which may be owed by the University. Cancellation Fees shall be billed separately and not posted to the Master Account.
- h) *Force Majeure*. Neither party shall be deemed in default of its obligations hereunder if and so long as such default, delay or failure to perform is due to causes beyond either party's reasonable control, which shall specifically mean to include, but is not limited to, Event cancellation or rescheduling, act of war, pandemic, epidemic, restrictions promulgated by an applicable state or federal agency (including the University) or other governing body or agency, or act of God. In such an event, the University may terminate the Contract without further obligation or penalty. Cancellation Fees shall not be charged and any deposits made shall be refunded.
- i) *Insurance*. In addition to any other applicable Insurance provisions contained in these PO Terms, the Vendor shall provide and keep in full force and effect during the term of the Contract, at the Vendor's own cost and expense, the following insurance policy for the joint benefit of the Vendor and the University, with an insurer reasonably acceptable to the University: (i) Commercial General Liability which includes coverage for bodily injury, property damage, personal injury, products/completed operations and contractual liability in the minimum amounts of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Vendor shall deliver to the University true and correct copies of certificates of such insurance. The certificates shall indicate that the Commercial General Liability policy carries an endorsement which names The Florida Atlantic University Board of Trustees, Florida Atlantic University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. The Vendor's policy shall be primary and any insurance carried by the University shall be noncontributing with respect thereto.
- j) *Americans With Disabilities Act ("ADA")*. (i) Compliance by the Vendor. The Vendor is responsible for complying with the public accommodations requirements of the ADA not otherwise allocated to the University, including: (a) the "readily achievable" removal of physical barriers to access to the meeting rooms (e.g., speakers' platform and public address systems), sleeping rooms, common areas (e.g., restaurants, rest rooms, and public telephones); (b) the provision of auxiliary aids and services where necessary to ensure that no disabled individual is treated differently by the Vendor other than other individuals (e.g., Braille room services menus or reader); and (c) the modification of the Vendor's policies, practices, and procedures applicable to all guests and/or groups as necessary to provide goods and services to disabled individuals (e.g., emergency procedures and policy of holding accessible rooms for hearing and mobility impaired open for disabled individuals until all remaining rooms are occupied). (ii) Compliance by the University. The University is responsible for complying with the following public accommodations requirements of ADA: (a) the "readily achievable" removal of physical barriers within the meeting rooms utilized by the University which the University would otherwise create (e.g., set-up of exhibits in an accessible manner) and not controlled or mandated by the Vendor; (b) any extraordinary costs for special auxiliary aids requested by the attendees/the University shall be borne by the University provided the Vendor notifies the University in advance and in writing; and (c) the modification of the University's policies, practices and procedures applicable to participants as required to enable disabled individuals to participate in the program. (iii) Mutual Cooperation in Identifying Special Needs. The University shall attempt to identify in advance any special needs of disabled registrants, faculty, and guests requiring accommodations by the Vendor. Each party will notify the other party in writing of such needs for accommodation as soon as the University is aware of such needs. Whenever possible, the University shall copy the Vendor on correspondence with attendees who indicate special needs as covered by ADA. The Vendor shall notify the University in advance and in writing of requests for accommodations which it may otherwise receive to facilitate identification by the University of its own accommodation

obligations or needs as required by ADA.

42. ADDITIONAL TERMS RELATED TO CONSULTING SERVICES AND PROFESSIONAL SERVICES.

- a) *Key Personnel.* Vendor may only reassign or substitute Key Personnel upon consent by the University, not to be unreasonably withheld, or upon the unavailability of assigned Key Personnel due to illness or other factors beyond Vendor's control, provided that prior notice of such reassignment or substitution is delivered to the University. Additionally, Vendor shall substitute Key Personnel upon the University's reasonable request.
- b) *Ownership of Work Product.* All right, title and interest in and to any invention, work product, idea or creation conceived, developed or produced during the performance of services under the Contract (including but not limited to creative, copy, scripts, story boards, writing, copyrights, trademarks, art, music, software and documentation, business systems or ideas, and research projects) shall be property of the University whether created individually by the Vendor or jointly with the University, on or off premises. If Vendor is providing software, the University may create and retain a copy of the Vendor and related documentation for back up and disaster recovery purposes, and for archival purposes for use after the Contract is terminated. This provision shall survive the expiration or earlier termination of the Contract.
- c) *Access to Work.* Although Vendor has the authority to control and direct the performance of the details of the work, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection to secure the satisfactory completion thereof.
- d) *Non-Compete.* If Vendor is acting as a consultant to the University and is representing the University's interests in dealings with other third parties, Vendor shall not accept employment with or act as an independent contractor for such third parties for a period of one (1) year after the Contract is terminated.
- e) *Warranty.* Vendor represents and warrants: (a) that it is possessed of superior knowledge with respect to the Services; (b) that it knows the particular purpose for which the Services are required; (c) that it is aware that FAU is relying upon its skill and judgment in providing the Services; (d) that the Services shall be provided with the highest professional degree of care and skill; and (e) that the Services and any other work performed by Vendor hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, trade secret or other proprietary right, or misappropriate any trade secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement. In the event of a breach of any of the foregoing warranties, Vendor shall, in addition to any other remedies which may be available to University, supply services to correct such defect at no cost to University.

43. ADDITIONAL TERMS RELATED TO ADVERTISING & MARKETING SERVICES.

- a) *Advertising Materials.* FAU will, at its sole cost and expense, unless otherwise outlined in the Agreement, create and deliver all advertising materials required for any Ad ("Advertising Materials") according to the technical specifications provided by Vendor. If the delivered Advertising Materials do not reasonably conform to Vendor's technical specifications, Vendor shall notify FAU immediately so FAU may correct any errors and ensure the Ad timely runs. If FAU is unable to correct the Advertising Materials or does not provide the Advertising Materials to Vendor timely enough to deliver the Ad on any agreed dates, then Vendor, in its reasonable discretion, may: (a) reject such Ad and refund any applicable amounts paid in advance; or (b) postpone running such Ad until a reasonable period of time after (i) the non-conforming Advertising Materials are corrected, or (ii) the late-arriving Advertising Materials are received.
- b) *Content.* FAU agrees that no part of the Ad or Advertising will: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false advertising or unfair competition; (c) be defamatory or libelous; (d) be pornographic or obscene; or (e) contain viruses or other similar harmful or deleterious programming routines.

44. ADDITIONAL TERMS RELATED TO ROYALTY CONTRACTS.

- a) *Warranties.* Vendor represents and warrants that Vendor is the sole author and/or lyricist and/or composer and/or arranger of the works detailed in the Contract (the "Material"); that said Material is Vendor's own original work and creation (except such part thereof as is taken from public domain) and is not a copy of any other copyrighted work; that Vendor has not sold, assigned, leased licensed or in any manner disposed of or encumbered the rights herein granted to the University; and that Vendor has the right to enter into the Contract. Vendor agrees to indemnify and hold the University harmless from all loss, liability, damages and expenses due to breach of said representations and warranties.
- b) *Royalties.* The term "Vendor" is deemed to mean all of the undersigned persons. Any and all Royalties to be paid under the Contract shall be paid jointly to the said persons if there be more than one and shall be divided equally among them unless otherwise indicated on the Contract.
- c) *Likeness.* Vendor grants the University the right to use Vendor's name, photograph, likeness, facsimile signature and biographical material in, on and in connection with publications, recordings and advertisements of, containing or relating to the Material.

- d) *Tapes/Recordings*. The University shall be entitled to tape and/or record the performance(s); however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of the University's students, faculty and staff.
- e) *Cancellation*. The University's only obligation shall be to pay Vendor the Royalty outlined in the Contract and is not obligated to actually use the Material.

45. ADDITIONAL TERMS RELATED TO ACCESSING STUDENT DATA.

- a) *Access*. Vendor acknowledges and agrees that any data or information provided to or made accessible to the Vendor by either the student or University personnel regarding University students in connection with this Agreement shall at all times constitute education records of the University. Vendor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)), Florida Statutes §1006.52, FAU Regulation 4.008, and with the terms set forth herein:
 - i. Covered data and information (CDI) includes paper and electronic student education record information supplied by the University, as well as any data provided by the University students to Vendor. Vendor agrees to hold CDI in strict confidence.
 - ii. Vendor shall not use or disclose CDI received from or on behalf of the University or its students except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by University or the student. Vendor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
 - iii. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the University or its students. These measures will be extended by contract to all subcontractors used by Vendor.
 - iv. Vendor shall, within one day of discovery, report to the University any use or disclosure of CDI not authorized by this Contract or in writing by the University or the applicable student(s). Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Institution.
 - v. Vendor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including University's costs and attorney fees, which arise as a result of Vendor's failure to meet any of its obligations hereunder.

46. ADDITIONAL TERMS RELATED TO THE UNIVERSITY'S LEASING OF SPACE.

- a) *Competitive Solicitation*. The Premises described in the Lease/Contract shall not exceed 5,000 square feet of space in a privately-owned building except upon advertisement for and receipt of competitive bids or proposals as determined by the University in accordance with BOG Regulation 17.001 and FAU Regulation 6.010. Competitive bidding shall not be required for leases of space as set forth in BOG Regulation 17.001. Any Leases/Contracts in excess of 5,000 square feet which are not competitively sourced are subject to cancellation by the University.
- b) *Premises*. Vendor/Landlord represents that the Premises may be used for any lawful purpose, and FAU represents that it shall not use the Premises for any unlawful purposes. To the extent applicable, FAU may set its own hours of operation subject to applicable municipal regulations. FAU shall not make any structural alterations to the Premises without receipt of Vendor/Landlord's consent. Vendor/Landlord warrants that if FAU adheres to the terms of the Lease/Contract, FAU shall freely and quietly occupy and enjoy the full possession of the Premises, together with all appurtenances and other rights and privileges, without hindrance or interruption by Vendor/Landlord or any other person(s). In the event FAU is disturbed, then, in addition to any other remedies, FAU shall be entitled to an equitable proration of the rent according to the duration of the disturbance.
- c) *Maintenance and Repair*. Vendor/Landlord, at Vendor/Landlord's expense, shall maintain the Premises in good condition and repair throughout the Term. This shall include, but not be limited to, the requirement that Vendor/Landlord maintain, repair, replace, and service, as necessary, all exterior and interior portions of the Premises, including, but not limited to, the roof, windows, floor slabs, exterior walls, gutters, HVAC, parking lot, driveways, sidewalks, carpeting, light fixtures, pest control, paint, and other elements. Vendor/Landlord, upon reasonable prior written notice to FAU, may enter the Premises during regular business hours for the purposes of inspecting the same and making any repairs as it is required to make under the Lease/Contract.
- d) *Utilities*. Vendor/Landlord shall provide and promptly pay for all utilities required by FAU for its use and operation of the Premises, including, but not limited to, gas, heat, water, sewer, power, internet, and electricity. In the event any utility is disrupted to such an extent that FAU cannot, in its reasonable discretion, operate for business for a period of more than twenty-four (24) hours, the rent payable under the Lease/Contract shall abate during the remaining period of disruption.
- e) *Term*. At the expiration of the Term, FAU will peaceably yield to Vendor/Landlord the Premises in good order and

condition, ordinary wear and tear, damage from casualty and condemnation excepted. If FAU fails to surrender the possession of the Premises at the expiration or termination of the Lease/Contract, FAU shall pay, as holdover rent, an amount equal to the rent payable during the last month of the Term, prorated for each day that FAU fails to surrender possession of the Premises, and the Lease/Contract shall thereafter continue on a month-to-month basis, terminable by either party upon thirty (30) days' notice.

- f) *Liability.* In addition to the earlier Insurance provision of these PO Terms, Vendor/Landlord shall carry property insurance on the Premises with Causes of Loss-Special Form coverage at full replacement value and commercial general liability insurance. Vendor/Landlord's insurer shall be licensed to do business in the State of Florida and have a minimum A.M. Best's financial rating of A-/VII. Vendor/Landlord shall provide FAU with the appropriate insurance certificates confirming the existence of all required insurance coverage. Vendor/Landlord agrees to defend and indemnify FAU for losses that occur in the common area of the Premises owned/controlled by Vendor/Landlord. Vendor/Landlord hereby waives all rights to recover against FAU for any loss or damage arising from any cause that would be covered by the insurance required by the Lease/Contract or actually carried by Vendor/Landlord. Vendor/Landlord will cause its insurer to issue appropriate waiver of subrogation rights endorsements and supply FAU with appropriate information from its insurer confirming such waiver to be in effect. Vendor/Landlord will reimburse FAU, at replacement value, for damages to FAU's property as a result of Vendor/Landlord's negligence. FAU is a self-insured entity with a general liability risk management program, including the administration of general liability claims, settlement of claims, a claims prevention program, and trust fund pursuant to Florida law. FAU shall keep in full force and effect and throughout the Term the aforementioned insurance program. Upon the request of Vendor/Landlord, FAU will provide Vendor/Landlord with proof of self-insurance.
- g) *FAU's Property.* All equipment, inventory, trade fixtures, and other property owned by FAU and located in the Premises shall remain the personal property of FAU and shall be exempt from the claims of Vendor/Landlord or any mortgagee or lienholder of Vendor/Landlord without regard to the means by which they are installed or attached. Vendor/Landlord specifically waives any statutory or common law Vendor/Landlord's lien and any and all rights granted under present or future laws to levy or distraint for rent against the aforesaid property of FAU on the Premises.
- h) *Termination & Breach.* If FAU shall fail to perform pursuant to the Lease/Contract and such failure shall continue for a period of thirty (30) days after the receipt of written notice thereof from Vendor/Landlord to FAU, then Vendor/Landlord lawfully may seek and enforce any lawful remedies to which it may be entitled. If Vendor/Landlord fails to perform any of its obligations under the Lease/Contract, within thirty (30) days after receipt of notice of such failure from FAU (except in the event of an emergency, in which case only reasonable notice is required), then FAU may, at FAU's option: (1) cure such violation on Vendor/Landlord's behalf and offset the cost thereof against the rent; or (2) seek and enforce any other lawful remedies to which it may be entitled. FAU shall have the right to terminate the Lease/Contract, without penalty, upon giving thirty (30) days prior written notice to Vendor/Landlord for any reason, including in the event a State-owned building becomes available to FAU for occupancy during the Term for the purposes for which this space is being leased. FAU shall not be liable for any early termination charges.

47. ADDITIONAL TERMS RELATED TO DISASTER AND EMERGENCY ("DE") SERVICES.

- a) *DE Services.* DE Services include, without limitation, any professional and/or technical services required by the University in the preparedness, response, recovery and mitigation phases of any natural or man-made disaster or emergency situation.
- b) *Compliance.* All Vendors providing DE Services to the University ("DE Service Providers") must abide by the Federal Emergency Management Agency ("FEMA") and the State of Florida Public Assistance Program requirements and work in cooperation and communication with University administration and any disaster management consultant(s) employed or retained by the University. These requirements are critical in ensuring that the University will be considered an eligible applicant should public assistance be made available.
 - 1) All DE Services and DE Service Providers shall comply with the following provisions and standards, as applicable, (i) Equal Employment Opportunity - E.O. 11246; (ii) Affirmative Action - 41 C.F.R. §§ 60-1.4(a), 60- 300.5(a), 60- 741.5(a), 61-300.10, Executive Orders 11246 and 13465, and Appendix A to Subpart A of Executive Order 13496; (iii) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act Executive Order 11738 and EPA regulations 40 CFR 15; (iv) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); (v) Debarment and Suspension (E.O.s 12549 and 12689); (vi) Energy Policy and Conservation. P.L. 94-163; 42 U.S.C. 6201-6422; (vii) Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act; (viii) Waste Disposal Act. Section 6002 of the Solid Waste Disposal Act; (ix) Rights to Inventions Made Under a Contract or Agreement. 2 C.F.R. 200 Appendix II [F]; (x) General Procurement Standards, 2 C.F.R. Section 200.318; (xi) Competition, 2 C.F.R. Section 200.319; and (xii) Procurement Methods and Requirements incl. 2 C.F.R. Sections 200.320 through 200.326.
 - 2) In addition to the above, the following provisions shall apply with regards to DE Service Providers performing DE Services involving construction or repair: (i) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c); (ii) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-70; and (iii) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

48. ADDITIONAL TERMS RELATED TO PROCUREMENT OF GOODS/SERVICES USING FEDERAL FUNDS.

a) *Standard.* All Agreements or POs made or entered into by FAU, which is paid in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, shall contain the following terms and conditions.

i. NON-CONSTRUCTION CONTRACT OR PURCHASE ORDER

- 1) **Equal Employment Opportunity** – Vendor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Vendor agrees to abide by the provisions of the following related to equal employment opportunity, to the extent applicable, which are incorporated herein by reference: 41 C.F.R. §§ 60-1.4, 60-300.5(a), 60-741.5(a), 61-300.10, Executive Orders 11246 and 13465, and Appendix A to Subpart A of Executive Order 13496. As applicable, **Vendor shall abide by the requirements of 41 CFR § 60-741.5. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Vendor shall abide by the requirements of 41 CFR § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- 2) **Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216)** – Vendor represents and warrants that no part of the equipment, services or systems provided to the University hereunder uses or consists of covered telecommunications equipment or services (as defined by 2 CFR §200.216) as a substantial or essential component of any equipment, service or system provided, or as a critical technology as part of any system provided.
- 3) **Rights to Inventions Made Under a Contract or Agreement** – If the purchase order includes the performance of experimental, developmental, or research work, Vendor shall provide for the rights of the Federal Government and the University in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 4) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** – If the Purchase Order amount exceeds \$100,000, Vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 5) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – If the Purchase Order amount is for \$100,000 or more, Vendor (and, if required, any sub-contractors) shall file the certifications required by this law and related regulations, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Vendor (and, if required, any sub-contractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- 6) **Debarment and Suspension (E.O.s 12549 and 12689)** – Vendor represents and warrants that neither it (nor any other person or entity affiliated with Vendor and for whom the standing under these laws is imputed to Vendor) is listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non- procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If the purchase order amount exceeds the small purchase threshold (currently, \$100,000), the Vendor shall provide the University with the required certification regarding its exclusion status and that of its principal employees.
- 7) **Records Access** – (Contracts in excess of \$100,000). University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Vendor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- 8) **Energy Policy and Conservation** – Vendor will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto;

- 9) **Procurement of Recovered Materials** – Vendor will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the provisions of the state Energy Conservation Plan adopted pursuant thereto;
 - 10) **Waste Disposal Act** – Vendor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- ii. **CONSTRUCTION AND/OR REPAIR.** In addition to the above provisions, the following provisions shall apply in relation to contracts or purchase orders for construction or repair:
- 11) **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – (Applies to contracts or purchase orders in excess of \$2000 for construction or repair). Vendor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Vendor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
 - 12) **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) (projects in excess of \$2,000.00)** – If required by the Federal program legislation, Vendor covenants and agrees that all laborers and mechanics employed by Vendor and its subcontractors on this project will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Vendor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Vendor is required to pay wages not less than once a week.
 - 13) **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** – (Applies to purchase orders in excess of \$2000 for construction projects and purchase orders in excess of \$2500 for other contracts that involve the employment of mechanics or laborers). Vendor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Vendor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- iii. **IN THE EVENT OF VENDOR'S NONCOMPLIANCE WITH THE NONDISCRIMINATION CLAUSES OF THIS CONTRACT OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT/PURCHASE ORDER MAY BE CANCELED, TERMINATED, OR SUSPENDED BY FAU IN WHOLE OR IN PART.**