

## FLORIDA ATLANTIC UNIVERSITY

**1. Incorporation by Reference.** The Florida Atlantic University Board of Trustees ("FAU") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum – Basic General ("Addendum") into the agreement between FAU and Vendor (the "Agreement").

**2. Payment.** In the event FAU owes payment to Vendor, Vendor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre-and post-audit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. If FAU does not issue payment within forty (40) days of receipt of an acceptable invoice and receipt, 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. Vendors experiencing payment problems may contact Vendor Ombudsman at (561) 297-3693. FAU's performance and obligation to pay is contingent upon the legislature's annual appropriation; FAU will give notice to Vendor of the non-availability of funds when FAU has knowledge thereof. 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. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to FAU. FAU is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Vendor is responsible for and shall pay any taxes due under the Agreement. FAU may require Vendor to accept payments via FAU's EFT/ACH payment process. If Vendor is making any payment to FAU, Vendor shall pay timely and not offset any amounts. FAU shall not make any deposits or prepay any amounts; any deposits are refundable.

**3. Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Vendor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Vendor is not authorized to bind FAU to any contracts or other obligations.

**4. 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 of Vendor's obligations.

**5. Confidentiality.** To the extent Vendor has access to FAU information (e.g., financial, business, strategic, or student records), Vendor agrees to maintain the confidentiality of such information and shall not disclose, discuss, or divulge any such information other than as directly and expressly required to fulfill Vendor's obligations under the Agreement or as otherwise required by law.

**6. Public Records.** FAU is subject to Chapter 119 of Florida Statutes, known as the Public Records Law. The Agreement, this Addendum and any related documents and/or correspondence shall also become a public record subject to the Public Records Law, regardless of any confidentiality provision outlined in the Agreement. FAU may respond to public records requests without providing Vendor notice. FAU may unilaterally cancel the Agreement for Vendor's refusal to allow public access to public records related to the Agreement. Vendor shall comply with all applicable requirements of the Public Records Laws, particularly if Vendor is a "Contractor" as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the Agreement.

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

**7. Intellectual Property.** Vendor represents and warrants that its hardware, software and any related systems, documentation and/or services related thereto (collectively, the "IP") furnished by Vendor to FAU will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party.

**8. Indemnity.** Nothing in the Agreement shall be construed as FAU's waiver of sovereign immunity nor as an indemnification of Vendor, and then such indemnification is limited to the extent permitted by § 768.28, F.S.

**9. Compliance.** Vendor agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all FAU regulations and policies, specifically including without limitation those pertaining to the privacy and use of

student records, health information, and other FAU data. Vendor warrants and represents that it shall have all applicable permits, licenses, consents, and approvals necessary to perform under the Agreement.

**10. Insurance.** FAU, as a public body corporate, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by FAU. Any provision requiring FAU to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure under the Agreement.

**11. Third Parties.** FAU is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third party beneficiary to the Agreement.

**12. Governing Law.** The Agreement is governed by the laws of the State of Florida, without regards to its conflicts of law principles. Exclusive venue of any actions shall be in the state courts of Palm Beach County, Florida. FAU is entitled to the benefits of sovereign immunity.

**13. Travel Expenses.** If FAU is responsible for reimbursing Vendor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Vendor in accordance with, § 112.061, F.S. FAU 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.

**14. Termination.** Upon giving at least thirty (30) days' written notice to Vendor, FAU may terminate the Agreement, at any time, with no further obligation to Vendor, other than to pay for any goods received or services rendered in compliance with the Agreement prior to the effective date of termination. FAU shall not be liable for any early termination charges.

**15. Notices.** All notices required to be given to FAU under the Agreement shall be sent by certified mail to: Florida Atlantic University, Attn: Purchasing, ADM 121, 777 Glades Road, Boca Raton, FL 33431-0991.

**16. Deletion.** Any terms in the Agreement related to the following are null and void and hereby deleted in their entirety: (a) Limitation of time to bring suit; (b) Attorneys' or collection fees provisions; (c) Arbitration or mediation clauses; (d) personal guaranties by the FAU signatory; (e) grants of exclusivity by FAU; (f) restrictions of the hiring of Vendor's employees; (g) non-compete provisions; (h) waiver of jury trials, notices, or hearings; (i) Vendor's liability limitations; (j) granting Vendor any audit rights; (k); FAU's tort liability; (l) indemnification of Vendor by FAU; (m) that FAU performs reporting functions and/or certain operations; and (n) auto-renewal of the Agreement.

**17. Assignment.** Vendor may not, without the advance written approval of FAU, not to be unreasonably withheld, assign any right or duties under the Agreement, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the Agreement. Any assignment made without FAU's consent shall be, at FAU's option, null and void. No subcontracting or delegation shall in any event relieve Vendor of any obligation or liability under the Agreement.

**18. Entire Agreement.** In the event of inconsistency between the Agreement and this Addendum, this Addendum will govern. This Addendum and the Agreement embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between FAU and Vendor other than are set forth. Any renewals, amendments, alterations or modifications to the Agreement must be signed or initialed and approved by all signatories of the Agreement. To be clear, the Agreement shall not auto-renew and must be upon the written agreement of the parties.

**19. Signatures.** The parties represent and warrant that any person signing the Agreement has the authority to do so and that such signature shall be sufficient to bind Vendor. The Agreement may be signed electronically and shall be considered signed if/when a party's signature is delivered by facsimile or e-mail transmission of a ".pdf" format date file, including via DocuSign. Such signature shall be treated in all respects as having the same force and effect as an original signature.

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

**VENDOR:** \_\_\_\_\_

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

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

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

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