

FLORIDA INTERNATIONAL UNIVERSITY- SUPPLEMENTAL ADDENDUM- GENERAL

1. Incorporation by Reference. FIU and Contractor hereby incorporate this Supplemental Addendum ("Addendum") into the Agreement ("Agreement"). If this Addendum conflicts with the remainder of the Agreement terms, this Addendum shall control.

2. Payment. Contractor shall submit bills for compensation for goods, services or expenses in sufficient detail for a pre-and post-audit; invoice requirements are available at <http://finance.fiu.edu>. FIU is a tax immune sovereign and exempt from the payment of sales, use and excise taxes; Contractor is responsible for applicable taxes under this Agreement. FIU's performance and obligation to pay under the Agreement is contingent upon the legislature's annual appropriation. FIU will make payment in accordance with FIU Regulation 2202 entitled "Prompt Payment." If FIU does not issue payment within 40 days of receipt of a proper invoice, FIU may pay Contractor an interest penalty at the rate established pursuant to Florida Statutes §55.03(1) if the interest exceeds one dollar (\$1.00). Contractors experiencing payment problems may contact the Vendor Ombudsman at (305) 348-2101. FIU may require Contractor to accept payments due to it under this Agreement via the University's EFT/ACH payment process.

3. Relationship of the Parties. Contractor is an independent contractor, and neither Contractor nor Contractor's employees, agents, or other representatives shall be considered FIU employees or agents. Contractor shall not use FIU's name, trademarks, logos, or marks without FIU's prior written approval. Contractor represents and warrants that it is not on the Convicted Vendor List (see Florida Statutes §287.133(2)(a)). Each party hereby assumes any and all risk of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof. Contractor also assumes such risk with respect to the willful or negligent acts or omissions of Contractor's subcontractors or persons otherwise acting or engaged to act at the instance of Contractor in furtherance of Contractor fulfilling Contractor's obligations under the Agreement.

4. Public Records Law, Confidential Information. FIU is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. The Agreement, this Addendum and any related documents and/or correspondences Contractor submits to FIU shall also become a public record subject to the Public Records Law. FIU will respond to public records requests without providing Contractor any notice. Contractor acknowledges and agrees that any and all documents, materials and information furnished to the Contractor by FIU or its affiliates in connection with this Agreement (the "Information") are and shall remain at all times proprietary, and the sole property of FIU. Contractor shall not disclose Information to third parties unless it obtains FIU's prior written consent to such disclosure. Contractor shall at all times comply with any and all applicable state and federal laws governing the use and/or safe-keeping of confidential and/or personally identifiable information (as the term may be defined by state or federal law), including but not limited to Public Records laws, FERPA, the Gramm-Leach Bliley Act, the Federal Trade Commission's Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003). In the event that FIU will share with or provide access to Contractor of any protected health information ("PHI"), as that term is or may be defined by state or federal law, in order to perform this Agreement, FIU and Contractor shall enter into a separate business associate agreement which will govern the use of the PHI (in lieu of this provision). This provision shall survive the expiration or earlier termination of this Agreement.

5. Intellectual Property Infringement. If applicable, Contractor represents and warrants that any intellectual property furnished by Contractor to FIU will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Contractor will, at its sole expense, defend any suit brought against FIU and will indemnify FIU against an award of damages and costs made against FIU by settlement or final judgment of a court that is based on a claim that Contractor's product(s) and/or service(s), as applicable, infringe the intellectual property right of a third party. FIU will provide reasonable cooperation in the defense of the suit at Contractor's expense. Contractor's liability shall not be limited by any limitation of liability in the Agreement. These defense and indemnity obligations shall survive the expiration or earlier termination of the Agreement.

6. Compliance with Laws. In the performance of this Agreement, Contractor shall, at its own expense, at all times during the Term, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and all other governmental requirements. Contractor acknowledges and agrees that Contractor has and will at all times during the Term maintain all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under this Agreement.

7. General Provisions.

- A. Nothing in this Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.
- B. This Agreement may not be assigned or modified by either party except as agreed to in writing and signed by the parties, and this Agreement shall be binding upon the parties' successors and assigns.
- C. Any term and/or condition in the Agreement on the following subject matters are hereby deleted and declared null and void:
 - i. Grants of exclusivity by FIU to Contractor;
 - ii. Restrictions on the hiring of the Contractor's employees;
 - iii. Automatic renewals of the term of Agreement;
 - iv. Limitation of time to bring suit;
 - v. Limitation of the Contractor's liability;
 - vi. Indemnification of the Contractor by FIU;
 - vii. Attorneys' fees provisions; and
 - viii. Mediation and arbitration clauses.
- D. Contractor shall, at minimum, have and maintain the types and amounts of insurance that cover the Contractor, and if applicable, its subcontractor's exposure in performing this Agreement. FIU, as a public body corporate entity, warrants and represents that it is self-funded for liability insurance; FIU is not required to obtain additional insurance for this Agreement. FIU is not liable for the acts of third parties or the consequences of the acts of third parties.
- E. If FIU is specifically responsible for reimbursing Contractor for travel expenses pursuant to this Agreement, such expenses shall only be paid to the extent permitted by Florida Statutes §112.061 and FIU Policy 1110.060- "Travel: University Travel Expense."
- F. This Agreement is governed by the laws of the State of Florida without regards to any conflicts of law principles. Exclusive venue of any actions arising out of this Agreement shall be in Miami-Dade County, Florida.

8. Termination. FIU may terminate this Agreement by giving Contractor at least thirty (30) days prior written notice of termination. FIU shall only be liable for payment of goods received and/or services rendered and accepted by FIU prior to the effective date of termination.

9. No Counterparts; Facsimile Signatures Allowed. This Agreement may not be executed in counterparts. The Agreement, along with any and all Exhibits and this Addendum, may be executed and delivered by facsimile signature by any of the parties to the other parties; to the extent permissible under Florida law, a facsimile signature shall have the same legal force and effect as an original signature.

The duly authorized representatives of the parties hereby execute this Supplemental Addendum.

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES

CONTRACTOR: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____