

1. Incorporation by Reference. The Florida International University Board of Trustees (“FIU”) and the undersigned (“Contractor”) hereby incorporate this Supplemental Addendum - General (“Addendum”) into the agreement between FIU and Contractor (the “Agreement”). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

2. Payment. All payments due and payable by Contractor to FIU under the Agreement, and any other fees, taxes and costs, shall bear interest from the tenth (10th) day of the date due, and continue until paid at the lesser of (i) twelve (12%) percent per annum or (ii) the maximum interest rate per annum allowed by law. Contractor is responsible for paying all taxes, credit card fees, royalties, debit card fees or other fees associated with the Services. Contractor will maintain and provide FIU with a copy of Contractor’s direct pay permit that allows Contractor to self-accrue and remit the applicable tax due, if applicable, FIU may require Contractor to make payments via FIU’s EFT/ACH payment process. Contractor shall not offset any payments.

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. Contractor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Contractor hereby assumes all risks attributable to the willful or negligent acts or omissions of Contractor and its officers, employees, agents and subcontractors or persons otherwise acting at the instance of Contractor, in furtherance of fulfilling Contractor’s obligations.

4. Information. Contractor acknowledges that all documents, materials and information furnished to or learned by Contractor in connection with the 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. FIU is subject to Chapter 119 of Florida Statutes, the Florida 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. FIU may respond to public records requests without providing Contractor any notice. However, in the event FIU receives a request for Contractor’s information, which is exempt from disclosure pursuant to the Public Records Laws AND is clearly marked as confidential, FIU will redact such information from release, unless otherwise authorized in writing by Contractor. FIU may unilaterally cancel the Agreement for Contractor’s refusal to allow public access to public records related to the Agreement. Additionally, Contractor shall comply with all applicable requirements of the Public Records Laws, particularly if Contractor is a “Contractor” as defined under § 119.0701, F.S. This provision shall survive the expiration or termination of the Agreement. **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS, CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, recordsmanagement@fiu.edu, OR BY MAIL AT 11200 S.W. 8th ST., GL 460, MIAMI, FLORIDA 33199.**

5. Indemnity. Contractor will indemnify, defend and hold harmless FIU, the FIU Board of Trustees, the State of Florida, the Florida Board of Governors, and their officers, employees, and agents from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which may arise in any manner or are alleged to have arisen, from: (i) the acts, omissions, negligence or misconduct of Contractor or its officers, employees, agents, representatives or subcontractors in connection with or related to (a) Contractor’s operations, activities, business and/or services or (b) Contractor’s occupancy or use of the FIU premises; or (ii) that Contractor’s documentation, products and/or services (collectively, the “IP”) infringes upon or violates any proprietary right of any third party. FIU will provide reasonable cooperation in the defense of the suit at Contractor’s expense. Contractor’s indemnification obligations shall not be limited by any limitation of liability outlined in the Agreement. Such defense and indemnity shall survive termination or expiration of the Agreement. **Nothing in the Agreement shall be construed as a waiver of sovereign immunity nor as an indemnification of Contractor, and then such indemnification is limited to the express terms of §768.28, F.S.**

6. Compliance. In its performance, Contractor shall, at its own expense, at all times in the term:

- a. **Permits:** have all applicable permits, licenses, consents, and approvals necessary;
- b. **General:** comply with all applicable federal, state, local and FIU laws, rules, regulations, and ordinances and all other governmental requirements;
- c. **Section 889 Compliance Certification:** comply with § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment);
- d. **Privacy:** comply with all applicable state and federal laws and FIU 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). Contractor shall obtain, in advance, all necessary permissions and consents required in regards to its collection and/or receipt of any such information. In the event that FIU will share with or provide access to Contractor of any protected health information (“PHI”), FIU and Contractor enter into a separate business associate agreement which will govern the use of the PHI (in lieu of this provision). Contractor agrees to include all such terms and conditions contained in any subcontractor or agency contracts providing services on behalf of Contractor; and
- e. **Federal funds.** If FIU has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is in furtherance of the commitments and/or requirements of such federal agreement or funds, Contractor agrees to comply with the terms contained in FIU’s Federally Funded Projects Addendum, found at <https://generalcounsel.fiu.edu/contract-forms/>, herein incorporated by this reference.

7. General Provisions.

- a. **Warranties.** Contractor, at a minimum, warrants that the IP, the goods, and/or services to be provided by Contractor 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 Agreement. This warranty shall be in addition to any warranties provided in the Agreement.
- b. **Publicity.** Contractor shall not make any announcements relating to the Agreement, nor shall Contractor use FIU’s name, trademarks, logos or marks, without the prior written approval from FIU’s External Relations department in each instance.
- c. **Insurance.** FIU, 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 FIU. Any provision requiring FIU to provide or acquire insurance coverage other than such self-insurance shall not be effective. Contractor shall have and maintain the types and amounts of insurance that, at minimum, will cover Contractor’s (or subcontractor’s) exposure in performing the Agreement and at FIU’s request, name FIU as additional insured and be primary and non-contributory on Contractor’s policies (except for workers’ compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to FIU, with insurance companies reasonably approved by FIU and authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with FIU prior to the date of the Agreement. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving FIU thirty (30) days’ written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to FIU as coverage renews. Contractor, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against FIU for any loss or damage arising from any cause covered by any insurance required to be carried under the Agreement by any other insurance actually carried by Contractor. Contractor shall provide copies of any insurance policies upon request by FIU. 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 Agreement. The insurance shall have a retroactive date of placement by the effective date of the Agreement. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, Contractor must purchase Extended Reporting (“Tail”) coverage for a minimum of three (3) years following the expiration or termination of the Agreement.

- d. **Third Parties.** FIU 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.
- e. **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 Miami-Dade County, Florida. FIU is entitled to the benefits of sovereign immunity.
- f. **Travel Expenses.** If FIU is responsible for reimbursing Contractor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Contractor in accordance with, § 112.061, F.S. and [FIU Policy 1110.060 – Travel: University Travel Expense Policy](#). FIU reserves the right not to pay travel expenses unless FIU approves such expenses in advance, in writing. FIU has the right to make travel arrangements for Contractor.
- g. **Lobbying.** Contractor is prohibited from using funds provided under the Agreement to lobby the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.
- h. **Conflicts.** Contractor represents that it is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements thereof, and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Contractor certifies that its directors and/or principal officers are not employed and/or affiliated with FIU unless a current Conflict of Interest (Report of Outside Activity/Employment) form has been completed, executed by such director or officer and approved in accordance with applicable University policies or rules. Violation of this section shall be grounds for termination of the Agreement.
- i. **Termination.** Upon giving at least thirty (30) days’ written notice to Contractor, FIU may terminate the Agreement, at any time, with no further obligation to Contractor, other than to pay for any goods received or services rendered in compliance with the Agreement prior to the effective date of termination. FIU shall not be liable for any early termination charges.
- j. **Records.** Contractor 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 Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. FIU or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to Contractor.
- k. **Deletion.** Any term and/or condition in the Agreement on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by FIU to Contractor; (b) Restrictions on the hiring of Contractor’s employees; (c) FIU’s responsibility to pay intangible taxes, property taxes, or sales taxes; (d) FIU’s tort liability; (e) Automatic renewals of the term of the Agreement; (f) Limitation of time to bring suit; (g) Limitation of Contractor’s liability; (h) that FIU performs reporting functions and/or maintains certain types of operations (i) Granting Contractor any right to audit FIU; (j) Attorneys’ or collection fees provisions; (k) Arbitration and mediation clauses; and (l) Indemnification of Contractor by FIU.

1. **Assignment.** Contractor shall not assign, transfer, delegate, subcontract, or otherwise dispose of, whether voluntarily, involuntarily, or by operation of law, any right or obligation under the Agreement without the prior written consent of FIU, not to be unreasonably withheld. Any such unapproved assignment, subcontracting or transfer is void. No subcontracting or delegation shall in any event relieve Contractor of any obligation or liability under the Agreement.

8. No counterparts; Signatures. The Agreement may not be executed in counterparts. It may be signed electronically and such electronic signatures shall constitute an original for all purposes. 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 Contractor. This Agreement shall be considered signed if/when a party’s signature is delivered by facsimile or e-mail transmission of a “.pdf” for-mat date file, including via DocuSign. Such signature via DocuSign shall be treated in all respects as having the same force and effect as an original signature.

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

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

Date: _____