

EQUIPMENT LICENSE AGREEMENT

THIS EQUIPMENT LICENSE AGREEMENT (the "Agreement") is made and entered into on the date fully executed below (the "Effective Date") by and between the **Florida International University Board of Trustees** ("FIU") on behalf of its _____, whose address is _____, and _____, a _____, ("Licensee") whose principal business address is _____, (Attn.: _____; e-mail address: _____).

1. Licensed Equipment. Subject to the terms of this Agreement, FIU agrees that Licensee may license the equipment described in Exhibit "A" (the "Equipment"), attached hereto and herein incorporated by this reference. Exhibit A shall also outlined specific additional terms related to the Equipment, including: (a) a description of the Equipment, including its current condition; (b) the approximate value of the Equipment; (c) the purpose of Licensee's use of the Equipment; (d) the date, time and location where the Equipment shall be picked up from and returned to; and (e) details as to where the Equipment will be located at all times during the Term of this Agreement, as hereinafter defined.

2. Term. The Licensee to use the Equipment shall begin on _____ and shall end on _____ (the "Term").

3. Compensation/Payment Terms. Licensee agrees to pay to FIU as compensation for the Equipment the amount of \$_____ (the "License Fee") each month in advance on the first (1st) day of each month. Payments should be sent to the above address, or any other address so designated by FIU. All checks should be made payable to: Florida International University. If the Term does not start on the first day of the month or end on the last day of a month, the License Fee shall be prorated accordingly. The Fee, and any other fees, taxes and costs due and payable by Licensee to FIU under this Agreement shall bear interest from the tenth (10th) day of the date due, and Licensee until paid at the lesser of (i) twelve (12%) percent per annum or (ii) the maximum interest rate per annum allowed by law. Licensee is responsible for paying all taxes, credit card fees, royalties, debit card fees or other fees associated with the License. Licensee shall also pay when due all taxes, if any, levied or assessed against FIU by reason of this Agreement or Licensee's use of the Equipment (other than FIU's income taxes).

4. Security Deposit. Prior to taking possession of the Equipment, Licensee shall deposit with Lessor, in trust, a security deposit of \$_____ as security for the performance by Licensee of the terms under this Agreement and for any damages caused by Licensee or Licensee's agents to the Equipment during the Term. FIU may use part or all of the security deposit to repair any damage to Equipment caused by Licensee or Licensee's agents. However, FIU is not just limited to the security deposit amount and Licensee remains liable for any balance. Licensee shall not apply or deduct any portion of any security deposit from any amounts owed to FIU. Licensee shall not use or apply any such security deposit at any time in lieu of payment of the License Fee. If Licensee breaches any terms or conditions of this Agreement, Licensee shall forfeit any deposit, as permitted by law.

5. Delivery. Licensee shall be responsible for all expenses and costs for shipping the Equipment to Licensee's premises and of shipping the Equipment back to FIU's premises, at the location designated by FIU.

6. Condition of the Equipment. Licensee has inspected the Equipment and acknowledges that the Equipment is in good and acceptable condition.

7. Possession and Surrender of Equipment. Licensee shall exercise prudent care in the use and maintenance of the Equipment and shall maintain it in good working order. The Equipment shall be returned to FIU in the same condition as when it was leased to Licensee, ordinary wear and tear accepted. Licensee will be responsible for the cost of any repairs to the Equipment as a result of damage occurring during the Term hereof or arising out of or resulting from the rights granted to Licensee under this Agreement. In the event the Equipment is lost or damaged beyond repair, Licensee shall pay to FIU the replacement cost of the Equipment; in addition, the obligations of this Agreement shall continue in full force and effect through the Term.

8. NO WARRANTIES. THE EQUIPMENT IS PROVIDED ON AN “AS-IS” BASIS WITHOUT WARRANTIES OF ANY KIND. FIU MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FIU SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR PROBLEMS WITH REGARD TO THE EQUIPMENT OR FOR ANY DAMAGES WHICH MAY BE CAUSED AS A RESULT OF THE USE OF THE EQUIPMENT.

9. Insurance Requirements.

- a. The Licensee shall obtain and maintain, at its sole cost and expense, policy or policies of insurance that covers the Equipment against all risks of loss or damage from every cause whatsoever for not less than the full replacement value of the Equipment described in this Agreement. In addition, Licensee shall obtain and maintain, at its sole cost and expense, general liability insurance, which includes coverage for bodily injury, property damage and contractual liability during the operation, handling and use of the Equipment with a minimum \$1,000,000 per occurrence limit.
- b. The policies shall carry endorsements which name the Florida International University Board of Trustees, Florida International University, The State of Florida, the Florida Board of Governors, and their respective trustees, directors, officers, employees and agents named as an Additional Insured and/or Loss Payee as appropriate to the type of policy.
- c. Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention. In the event any of the policies are subject to a deductible or self-insured retention, it is the sole responsibility of the Licensee to pay such deductible or self-insured retention.
- d. The insurance provided for herein shall be issued by insurance companies authorized to do business in the State of Florida and with general policy holder’s rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available “Best’s” insurance reports. Certificates of insurance shall be delivered to FIU prior to the Equipment being provided to Licensee. All policies of insurance required hereby must contain a provision that the company writing said policy will endeavor to give to FIU thirty (30) days’ notice in writing in advance of any cancellation or lapse or of any reduction in the amounts of coverage. If Licensee fails to secure and maintain insurance policies complying with the provisions of the Agreement, FIU may terminate the Agreement.
- e. The absence of a demand for any type of insurance certificates or policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of Licensee’s obligations to carry and maintain the appropriate types of insurances at limits that are appropriate to the exposure associated with the Agreement. FIU, upon request, reserves the right to obtain a copy of the policies requested above.

10. Ownership; No Encumbrances. The Equipment is and shall remain the exclusive property of FIU. Licensee shall keep the Equipment free and clear of any liens or other encumbrances, and shall not permit any act where FIU’s title or rights may be negatively affected.

11. FIU’s Representations. FIU represents and warrants that he/she has the right to lease the Equipment as provided in this Agreement and that Licensee shall be entitled to quietly hold and possess the Equipment, and FIU will not interfere with that right as long as Licensee pays the License Fee in a timely manner and performs all other obligations under this Agreement.

12. Default. If Licensee fails to comply with any provision of this Agreement, in addition to any other remedies available to FIU whether at law or in equity, FIU may terminate this Agreement immediately. Notwithstanding any provision herein to the contrary, Licensee’s failure to make any payments due under this Agreement shall be considered a material breach entitling FIU to immediately terminate this Agreement in its discretion, without any notice or opportunity to cure said default. All deposits, payments, advances, or other compensation paid by the Licensee to Licensee shall be forfeited and become the property of FIU. In no event shall FIU be liable to Licensee for any consequential, incidental, special and/or indirect damages or losses (in contract or tort), including, but not limited to, any lost revenues or savings in connection with this Agreement and/or any breach and/or default by FIU hereunder.

13. Termination. FIU shall have the right to terminate this Agreement for any reason whatsoever, in FIU’s sole and absolute discretion, upon providing Licensee with thirty (30) days prior written notice of termination. In the event of such termination, FIU shall reimburse Licensee for any payments previously

paid by Licensee to FIU.

14. Confidentiality of Information. If Licensee is exposed to FIU's confidential information, Licensee will keep such information confidential and will act in accordance with any guidelines and applicable laws (e.g. Family Educational Rights and Privacy Act ("FERPA") and the Gramm-Leach Bliley Act.) If Licensee will have access to any protected health information, Licensee will enter into a business associates agreement with FIU. This provision shall survive termination of the Agreement.

15. Public Records Law. Licensee acknowledges that FIU is subject to Chapter 119 of the Florida Statutes, commonly known as the Public Records Law, and FIU will respond to such public records request without any duty to give Licensee prior notice. This Agreement and any related documents and correspondences Licensee submits to FIU shall become a public record subject to the Florida Public Records Law. FIU may unilaterally terminate this Agreement for Licensee's refusal to allow public access all public records made or received in conjunction with this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.

16. Compliance. Licensee, its employees, contractors, agents, representatives, invitees and each of its participants shall abide by all applicable federal, state, and local laws, rules and regulations, and FIU policies, procedures, rules and regulations, (collectively, the "Laws") in performing the Agreement terms, including, but not limited to, in its use of the Equipment. Licensee understands that FIU regulations, policies and/or procedures can be viewed on the designated FIU's website(s), as applicable. Without limiting any other provision herein, FIU may cancel this Agreement at any time if FIU determines, in its sole discretion, that any actions by Licensee, its employees, contractors, agents, representatives, invitees and/or participants constitutes a violation of any Laws and FIU shall not be subject to any liability for said cancellation.

17. Prohibitions. Unless expressly and specifically authorized in writing by FIU in advance, Licensee is prohibited from (a) using FIU's name, trademarks, logos, or other marks (collectively herein known as the "Marks") without FIU's prior written approval; (b) incurring any debt or obligation on behalf of FIU; (c) entering into any contract, arrangement, or transaction which binds FIU to any extent or creates any obligation on FIU; and/or (d) utilizing FIU's name, credit, reputation, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of FIU.

18. Indemnification. Licensee shall indemnify, defend and hold harmless Florida International University, the State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents, employees, contractors, and other representatives (collectively "Indemnitees") from and against any and all demands, claims, causes of action, injury, death, fines, penalties, damages, losses, liabilities, judgments, and expenses (including, without limitation, attorneys' fees and court costs) related to (i) Licensee's use or handling of the Equipment; (ii) damage to property arising from Licensee using and possessing the Equipment or from the acts or omissions of any person or persons, including Licensee, using or possessing the Equipment with Licensee's express or implied consent; (iii) any breach, violation, or nonperformance of this Agreement; and/or (iv) any injury or damage to the person, property, or business of Licensee.

Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of Indemnitees as are provided for by law. Nothing in this Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

19. Waiver/Severability/Binding Effect. The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof. If any provision or application thereto to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

20. Applicable Law. This Agreement and the rights and obligations of the parties shall be governed by and construed according to the laws of the State of Florida. Exclusive jurisdiction and venue of any actions arising out of this Agreement shall be in Miami-Dade County, Florida.

21. No Assignment. Licensee shall not be entitled to assign this Agreement without the prior written consent of FIU, which may be withheld for any reason in its sole discretion.

22. Captions. The captions to the paragraphs of this Agreement are for the convenience of reference only, do not form a part of this Agreement, and shall not affect its interpretation.

23. Survival. Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.

24. Entire Contract/Modifications. This Agreement constitutes the entire agreement of the parties, and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and agreements that have been made in connection with this subject. No modification or amendment to this Agreement shall be binding on the parties unless the same is in writing and signed by the parties.

25. Counterparts/Facsimile & Electronic Signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. To the extent permissible under Florida law, a facsimile/electronic (e.g. sent as a PDF attached to an email) signature shall be deemed to constitute an original signature for the purposes of this Agreement.

26. Taxes. Licensee acknowledges sole responsibility for the payment of all applicable federal, state, and local taxes and fees of whatever nature that are associated with the use of the Equipment.

27. No Joint Venture. Licensee acknowledges and agrees that FIU's sole role in this matter is to authorize Licensee to use FIU's Equipment for the purposes provided herein. This is not a joint venture between FIU and Licensee.

28. Independent Contractor. Licensee is an independent contractor, and neither Licensee nor Licensee's employees, contractors, agents, or other representatives shall be considered FIU employees, contractors, agents or representatives.

29. Authority. The individual signing below on behalf of Licensee hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of Licensee and that this Agreement is binding upon Licensee in accordance with its terms.

30. Conflict of Interest. Licensee represents that no University employee who has, or whose relative has, a relationship with FIU, will violate the Code of Ethics for Public Officers and Employees, including, but not limited to F.S. Section 112.313(3) and (7) and F.S. 112.3185(6) thereof, by reason of Licensee entering into this Agreement.

31. Federal Funds. If FIU has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is entered into with Licensee is to further the performance of the work required in such federal agreement, Licensee shall comply with the terms contained in FIU's Federally Funded Projects Addendum found at <https://generalcounsel.fiu.edu>, herein incorporated by this reference.

32. Notices. All notices, consents, approvals, and other communications (collectively "Notices") which may be or are required to be given by either party under this Agreement shall be properly given only if made in writing and sent to the address of the other party as set forth above, or as modified in accordance herewith, by hand delivery, U.S. Certified Mail (Return Receipt Requested) or a nationally recognized overnight delivery service. Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGE TO LOCATION AGREEMENT BETWEEN
_____ AND THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES]**

The parties execute this Agreement as of the date written below each signature block and each party executing this Agreement warrants and represents that it is authorized by its respective entity to execute a binding Agreement.

LICENSEE:

FIU:

THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

FOR INTERNAL USE ONLY:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"
Description of Equipment

Description of Equipment: _____

Value of Equipment: _____

Purpose: _____

Additional Details: _____

Schedule:

***Equipment Pick-up:**

Date: _____

Time: _____

Location: _____

Additional Equipment Location 1 (if any):

Date: _____

Time: _____

Location: _____

Additional Equipment Location 2 (if any):

Date: _____

Time: _____

Location: _____

Additional Equipment Location 3 (if any):

Date: _____

Time: _____

Location: _____

Additional Equipment Location 4 (if any):

Date: _____

Time: _____

Location: _____

***Equipment Return:**

Date: _____

Time: _____

Location: _____

**Equipment pick up and return must take place during regular FIU business hours.*