FLORIDA INTERNATIONAL UNIVERSITY

STANDARD TERMS AND CONDITIONS

The purchase order and/or agreement, together with these Standard Terms and Conditions (the "Terms and Conditions" or "Terms"), and any invoices, attachments, appendices, exhibits, specifications, drawings, notes, instructions and other information hereafter issued in connection therewith (collectively, the "Agreement"), constitutes the entire and exclusive agreement between The Florida International University Board of Trustees ("FIU") and the vendor (the "Vendor") identified in the Agreement, FIU's approval of the Agreement is conditioned on Vendor's representation that any and all other agreements and arrangements, 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 Agreement, even if Vendor purports to condition its acceptance of these Terms on FIU's agreement to such different or additional terms. Vendor's electronic acceptance, receipt of payment, acknowledgment of these Terms, or commencement of performance constitutes Vendor's acceptance of these Terms and Conditions. If any discrepancy, difference or conflict exists between the various provisions of these Terms and the Agreement, these Terms and Conditions shall control.

1. PAYMENT. Vendor shall submit bills for compensation for goods, services or expenses incurred in furnishing or providing services, as set forth in the FAA or the FAA contract, and FIU shall pay Vendor the amounts due at http://finance.fiu.edu. FIU will make payment in accordance with FIU Regulation FIU-2202 entitled "Prompt Payment." If FIU does not issue payment within 40 days of receipt of a proper invoice, FIU will pay to Vendor, an interest penalty at the rate established by Section 55.03(1) Fla. Stat. if the interest exceeds one dollar ($1.00). The foregoing provisions apply only to undisputed amounts for which payment has been authorized by FIU. Vendors experiencing payment problems may contact the Vendor Ombudsman at (305) 348-3600. FIU may make payments to vendor via the University's electronic payment method, subject to the University's approval. Vendor shall provide the necessary information to FIU upon request.

2. TAXES. FIU is tax-exempt and therefore is not obligated to pay sales, use and excise taxes. A copy of FIU's Certificate of Exemption will be made available upon request. Vendor shall provide all sales tax filings as requested by FIU.

3. VENDOR STATUS. Vendor will supply FIU with a complete vendor application and accurate W-9 or W-8B/C (Foreign Vendor); if Vendor fails to supply FIU with a complete and accurate W-9 or W-8B/C, the invoice will be deemed insufficient for payment unless approved by the Vendor's financial officer. Vendor shall provide all required reports to FIU in a timely fashion. Where required, Vendor shall promptly procure the required insurance and maintain it throughout the term of the Agreement, including any temporary periods of overlap. The Vendor’s operations within the scope provided for under the Agreement, and shall cooperate in all litigated claims and demands, arising from said operations, which its insurance carrier or carriers are requested to defend.

4. AVAILABILITY OF FUNDS. FIU’s performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Legislature.

5. AUDIT. Vendor will cooperate with FIU and provide specific records and/or access to its books and records. FIU reserves the right to requestVendor's records related to the Agreement for purposes of conducting an audit or investigation. FIU will provide Vendor with reasonable notice of the need for such audit.

6. RECORD KEEPING. Vendor agrees to retain all records relating to the Agreement during the term and for a period of three (3) years thereafter and to make those records available as necessary to any audit by FIU, the State of Florida Auditor General, or for the period required by law, whichever is greater. In connection with an inspection or audit, the records shall be provided at FIU's request. The Vendor shall maintain appropriate security for the confidentiality of the records provided under the Agreement.

7. TRAVEL. Vendor shall not charge FIU for any travel expenses, meals, and lodging unless expressly authorized in the Agreement. To the extent that FIU is responsible for paying a Vendor's travel expenses, meals and lodging, such travel expenses shall not exceed Travel University Travel Expense Policy. Any expenses in excess of the amounts prescribed shall be borne by Vendor.

8. INDEMNIFICATION. The Agreement shall be construed as FIU's indemnification of the Vendor or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28. To the fullest extent permitted by law, Vendor shall indemnify, defend, protect, and hold harmless Florida International University, the FIU Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, agents, employees, and their respective successors and assigns (each an "Indemnity Releasing Party") from, for, and against all fines, fees, demands, suits, claims, losses, liabilities, damages, lawsuits, royalties, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and any other provisions; and any other consequences of any "Indemnified Claim" or reasonable attorneys' fees ("Indemnified Claims") arising from Vendor's negligence, misrepresentation or breach of any representation, warranty, obligation, or covenant of the Agreement. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, exemplary, incidental and consequential damages and losses. This provision shall survive the expiration or earlier termination of the Agreement.

9. ASSUMPTION OF RISK. Each party hereby assumes any and all risk of personal injury and property damage attributable to the acts or omissions of that party and the officers, employees, and agents thereof. Vendor also assumes such risk with respect to the acts or omissions of Vendor's subcontractors or persons otherwise acting or engaged to act at the instance of Vendor in furtherance of Vendor fulfilling Vendor's obligations provided in the Agreement. FIU is not liable for the acts of third parties or the consequences of third parties.

10. INFRINGEMENT. Vendor represents that any goods or services furnished or provided to FIU, if any, will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Vendor will, at its expense, defend, protect, and hold harmless any other person or entity from any right or claim of infringement within 20 days after receiving notice from FIU. FIU will be notified in writing of the suit or any claim of infringement within 20 days after receiving notice from FIU. Each defense and indemnity shall survive expiration or earlier termination of the Agreement.

11. TERMINATION. Upon giving at least thirty (30) days written notice, or as may otherwise be provided in these Terms and Conditions, FIU may terminate the Agreement and further obligations to Vendor, other obligations to receive and/or services rendered and accepted in compliance with the Agreement prior to the date of termination. Additionally, if Vendor defaults under the Agreement and does not cure its default within fourteen (14) days after written notice thereof, FIU may immediately terminate the Agreement.

12. INSURANCE. a. 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, agents, and their respective successors and assigns. Each term and/or condition of the Agreement conditioned on any new insurance as required to comply with the Agreement to ensure continuous coverage. If the Vendor fails to secure and maintain insurance policies complying with the provisions of the Agreement, FIU may terminate the Agreement. Vendor shall do nothing that adversely affects FIU, in any way, including increasing risks, insurance premiums or liability. In addition to the insurance required to be obtained and maintained by the Vendor, if the Vendor assigns any portion of the duties under the Agreement in accordance with the terms thereof, each subcontractor or assignee is required to maintain insurance that provides coverage of the Vendor's procurement of the required insurance shall not relieve the Vendor of any liability or obligation arising under the Agreement, including specifically the indemnity obligations. The Vendor may carry, at its own expense, such additional insurance, as FIU deems necessary. The Vendor shall assist and cooperate in the satisfactory final settlement of all claims and suits, arising from said operations, which is insurance carrier or carriers are requested to respond to.

13. ADVERTISING OR PUBLICITY. Vendor nor any of its subcontractors or affiliates shall cause or allow the name of FIU or any FIU logo or mark (or any variation thereof), or that of any of its schools, departments, or employees to be used in any advertising or promotional literature, electronic or otherwise, or in any publication whatever, without prior written approval of FIU. Except with the prior written consent of FIU, no party shall make any press or media announcement concerning any party or the Agreement. In the case of FIU, consent must be provided by its Senior Vice President for External Relations or its designee.

14. RELATIONSHIP OF THE PARTIES. Vendor is an independent contractor, and no agency, partnership, joint venture, or other similar relations will be created between FIU and Vendor or Vendor's employees, agents, or other representatives. FIU shall be considered FIU employees or agents. Vendor is retained by FIU only for those purposes and to the extent set forth in the Agreement.

15. PROHIBITIONS. Prohibited is prohibited is (a) incurring any debt on behalf of FIU; (b) granting credit to any party; (c) granting credit; (d) granting credit; (e) granting credit; (f) granting credit; (g) granting credit; (h) granting credit; (i) granting credit; (j) granting credit; (k) granting credit; (l) granting credit; (m) granting credit; (n) granting credit; (o) granting credit; (p) granting credit; (q) granting credit; (r) granting credit; (s) granting credit; (t) granting credit; (u) granting credit; (v) granting credit; (w) granting credit; (x) granting credit; (y) granting credit; (z) granting credit.

16. NON-WAIVER. Except as otherwise provided in the Agreement, failure by FIU to insist on strict performance of any provision of the Agreement, or to enforce any provision of the Agreement, or any right or privilege, shall not constitute a waiver of any of FIU's rights under the Agreement.

17. DELETION. Any term and/or condition in the Agreement on the following subject matter is hereby stricken and deleted: "Assignment of Rights by FIU to the Vendor; (b) Restrictions on the hiring of the Vendor's employees; (c) Automatic renewals or extensions or term of the Agreement; (d) Limitation of time to bring suit; (e) Limitation of Vendor's liability; (f) Indemnification of the Vendor by FIU; (g) Attorney's fees and costs; (h) in any case, by federal action; (i) in any case, by federal action; (j) in any case, by federal action; (k) in any case, by federal action; (l) in any case, by federal action; (m) in any case, by federal action; (n) in any case, by federal action; (o) in any case, by federal action; (p) in any case, by federal action; (q) in any case, by federal action; (r) in any case, by federal action; (s) in any case, by federal action; (t) in any case, by federal action; (u) in any case, by federal action; (v) in any case, by federal action; (w) in any case, by federal action; (x) in any case, by federal action; (y) in any case, by federal action; (z) in any case, by federal action.

18. ASSIGNMENT. The Agreement may not be assigned, whether by operation of law or otherwise, subcontracted or modified by either party except as agreed to in writing and signed by the Parties, and the Agreement shall be binding upon the Parties' successors, and assigns.

19. THIRD PARTY BENEFICIARIES. The agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to the Agreement.

ACCESS TO WORK. If applicable, FIU shall at all times have access to review the ongoing work of Vendor for purposes of inspecting the same and determining that the Vendor's performance is in accordance with the terms of the Agreement.

20. CONFIDENTIALITY. Vendor acknowledges and agrees that any and all information furnished to the Vendor by or its affiliates in connection with the Agreement (the "Confidential Information") are and shall remain at all times proprietary, and the sole property of FIU. Confidential Information shall not include information that is a public record pursuant to Florida law. Vendor shall not disclose Confidential Information to Third Parties unless it obtains FIU’s prior written consent to such disclosure. Vendor shall at all times comply with any and all applicable state and federal laws governing the use and/or safe-keeping of Confidential

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Information and/or any personally identifiable information (as the term 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 Federal Trade Commission’s Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003), and The Health Insurance Portability and Accountability Act (HIPAA). In the event that FIU will share with Vendors or provides access to Vendor of any Protected Health Information (PHI), Vendor shall indemnify, defend FIU against any claims, damages, or confidentiality

26. LOBBYING. Vendor is prohibited from using funds provided under the Agreement in any lobbying, lobbying activity, or activity which is outside of the scope of services listed in the Agreement. Such activity is defined as an activity where a person or group attempts to influence legislation or governmental policies, or attempts to influence the activities of a governmental official or entity.

27. CERIFICATION. 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 be considered for any FIU contract or any other public contract or grant.

28. EQUAL OPPORTUNITY. Vendor will not discriminate against qualified candidates for any unlawful reasons, including race, religion, sex, sexual orientation, national origin, age, or disability. EEO 1.

29. VOCATIONAL REHABILITATION. If, in providing the goods and/or services to FIU pursuant to the Agreement, a product or service is required, and such product or service is included on the procurement list established by the commission pursuant to Florida Statutes §413.055(2), the following language is a part of the Agreement: IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THE AGREEMENT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SERIOUSLY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THE AGREEMENT THE PERSON, FIRM OR OTHER BUSINESS ENTITY (THE VENDOR) CARRYING OUT THE PROVISIONS OF THE AGREEMENT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE NONPROFIT AGENCY, AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONSIDERED.

30. AGREEMENTS RELATING TO FIU’S AGREEMENT WITH UNITED STATES OF AMERICA. If FIU HAS ENTERED INTO AN AGREEMENT WITH THE UNITED STATES OF AMERICA, OR ANY DEPARTMENT THEREOF, AND THE AGREEMENT IS ENTERED INTO WITH THE VENDOR TO FURTHER THE PERFORMANCE OF THE WORK REQUIRED IN SUCH AGREEMENT, THE VENDOR SHALL COMPLY WITH THE FEDERALLY FUNDED PROJECTS SUPPLEMENTAL ADDENDUM FOUND AT HTTPS://GENERALCOUNSEL.FIU.EDU/CONTRACT-FORMS.

31. AUTHORITY TO EXECUTE. The Vendor represents and warrants that the Agreement has been duly authorized, executed and delivered by and on behalf of the Vendor and constitutes the valid, binding and enforceable agreement in accordance with all applicable laws, as to each party thereto. The Vendor further represents, warrants and covenant that (i) the Vendor is authorized to act for and on behalf of the Vendor, that he/she is duly authorized to act for and on behalf of the Vendor, that he/she is authorized to enter into the Agreement, and that the agent and Vendor shall be jointly and severally liable for any breach of the Agreement or representation.

32. FACSIMILE SIGNATURES ALLOWED. The Agreement, along with any and all Exhibits, 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.

33. DELIVERIES. The Agreement may only be amended by written amendments duly executed by the parties hereto. 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 the Agreement shall remain valid and enforceable.

34. NOTICE. Any notice to either party hereunder must be in writing and signed by a duly authorized representative of the party sending such notice. Notice shall be deemed given if sent by certified mail, registered or certified, return receipt requested; or 3) through expedited mail or package service, if a receipt showing the delivery has been retained; addressed to the address in the Agreement.

35. SPECIAL ADDITIONAL TERMS FOR THE PURCHASE OF GOODS.

a. Goods. As used in these Terms and Conditions, “Goods” shall mean all those products and/or services identified in the Agreement.

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 the cost or price of the Goods, an equitable adjustment shall be made and the Agreement shall be modified accordingly. If price, terms, shipping dates, or any other expression of condition of the Agreement cannot be achieved or met by Vendor, FIU must be notified and must accept in writing any variation prior to shipment or delivery.

Delivery of Goods. Vendor hereby agrees to on-time delivery based upon the timeline set forth in the Agreement. If the Agreement 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 FIU that prevents Vendor from timely delivery shall only be at the discretion of the Buyer and not at the discretion of any other party. Vendor shall be liable for all expense incurred relating to the purchase of such substitute Goods. Vendor shall deliver all Goods in accordance with the terms of the Agreement. If delivery of the Goods is not complete by the Delivery Date, FIU may, without liability, and in addition to its other rights and remedies, terminate the Agreement, by notice effective when received by Vendor, as to Goods not yet delivered or rendered. Acceptance of any part of the Agreement shall not bind FIU to Accept any future shipments nor deprive it of the right to return Goods already Accepted.

Acceptance. In the event that FIU accepts or is deemed to accept the Goods in accordance with the terms set forth in the Agreement, acceptance shall include the terms “Accept” and “Accepted.” As a condition precedent to payment for the Goods by FIU to Vendor, FIU may require a substitute Goods be defined to FIU, and it shall be deemed to have been Accepted (i) in the absence of written notice of non-Acceptance by FIU 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 Agreement and the examination and confirmation that the Goods conform to their applicable specifications. FIU retains the right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.
ordered and all work in progress, materials, and other items related to the Agreement until the same are finally Accepted by FIU. Vendor assumes all risk of loss or damage related to the work in progress, work in progress, materials, and other items rejected by FIU until the same are received by Vendor or Accepted by FIU.

f. Warranty. In addition to Vendor's standard warranty relating to the Goods, Vendor warrants that the Goods to be delivered pursuant to the Agreement (i) are of merchantable quality and free from defects in material or manufacture, (ii) conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local rules, laws and regulations (including, without limitation, those concerning health, safety, and environmental standards) which bear upon Vendor's performance, (iv) shall be new and not substantially altered or refurbished, (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 FIU shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Agreement, free of all liens and encumbrances and that no licenses are required for FIU to use such Goods. The terms of this Section shall not be waived by reason of Acceptance or payment of the Goods.

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 Agreement 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 Agreement No. on all invoices, B/L, cases, bundles, packing lists and other shipping documents. Any returns or re-shipments of mispurchased items shall be at Vendor’s expense.

h. Inspection. Payment for the Goods provided under the Agreement shall not constitute Acceptance thereof. FIU may inspect and test such Goods and reject any and all items which do not conform to the specifications set forth in these Terms and Conditions. Invoices must be submitted within 15 days of delivery of Goods. Vendor shall pay for all costs of inspection and testing incurred by FIU in connection therewith. Vendor will be liable for any excess transportation charges if FIU requests that goods be shipped to FIU at any one time.

i. Cancellation. FIU may for any reason and at any time, at its option cancel any unsolicited Goods. A termination penalty may not be charged to FIU. To the extent the Agreement covers stock Goods, FIU’s only obligation is to pay for Accepted Products prior to such cancellation. To the extent the Agreement covers Goods manufactured or fabricated to FIU’s specifications, Vendor shall immediately cease all performance or production of Goods, except for non-refundable expenses incurred in connection with such cancellation, and, if Vendor is not in default, FIU 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 FIU. Unless FIU shall have otherwise instructed Vendor, Vendor agrees that it will not manufacture Goods in an amount greater than the number of manufactured Goods that it has shipped to FIU at any one time.

j. Force Majeure. FIU 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 FIU, and Vendor shall deliver the Goods when the cause affecting the delay is eliminated. FIU shall be responsible only for Vendor’s direct additional costs incurred by holding the Goods at FIU’s request. Causes beyond FIU’s control shall include, but not be limited to, 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. SPECIFIC ADDITIONAL TERMS FOR ENTERTAINMENT AND PERFORMANCE AGREEMENTS.

a. Deposit. Unless non-state funds are being used to pay, FIU cannot make deposits or pay any amounts. Any deposits made by FIU are refundable.

b. Delayed Cancellation. FIU may cancel the contract if written notice is received by FIU at least ten (10) days prior written notice of cancellation. If FIU cancels the Agreement for reasons other than breach by Vendor, FIU shall only be liable for payment of services rendered and accepted by FIU prior to the date of notice of cancellation, and in addition, FIU will reimburse Vendor for all out-of-pocket costs and expenses related to the provision of Goods and services in accordance with the Agreement that were incurred by Vendor prior to notice of cancellation if such expenses are non-refundable/non-retainable. However, such expenses of Vendor will only be reimbursed to the extent permitted by Fla. Stat. §112.061 and FIU Policy 1110.060 and only to the extent such expenses are supported by written, itemized and paid invoices submitted by Vendor to FIU.

c. Limited Use of Tapes/Recordings. FIU is granted the right to tape and/or record the performance; however, such tapes or recordings shall only be used for archiving and promotion purposes. FIU shall not use tapes or recordings for any other purpose.

d. Insurance. In addition to paragraph 12b of these Terms and Conditions, the Vendor shall provide and keep in full force and effect during the term of the Agreement, at the Vendor’s own cost and expense, the following insurance policies for the benefit of and at the peril of Vendor, 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, as additional insureds. The Vendor’s policies shall be primary and any insurance carried by FIU shall be noncontributing with respect thereto.

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 similar unavoidable cause. In the event the Vendor shall notify FIU immediately of any reason which might result in Vendor’s failure to perform on the scheduled date, FIU reserves the right to approve/substitute any other performer for Vendor in the event that Vendor is not able to perform as scheduled.

41. SPECIFIC ADDITIONAL TERMS FOR HOTEL/MEETING SPACES.

a. Deposit. Unless non-state funds are being used to pay, FIU cannot make deposits or pay any amounts. Any deposits made by FIU are refundable.

b. Cancellation. FIU may only be assessed if FIU cancels the Agreement for the sole purpose of holding the event at another location, and FIU fails to give the Vendor 30 days advance notice (72 hours advance notice if Agreement is for meeting rooms only and Vendor is unable to rent the meeting rooms to another person/entity). In any case, cancellation fees shall be limited to the cost of the room rental only, FIU, in lieu of paying cancellation fees, at its sole option, may agree to book another event with the Vendor in order to mitigate damages.

Food/Parking/Incidentals. FIU is not responsible for charges made by event attendees.

C. Insurance. In addition to paragraph 12b of these Terms and Conditions, the Vendor shall provide and keep in full force and effect during the term of the Agreement, at the Vendor’s own cost and expense, the following insurance policies for the benefit of and at the peril of Vendor, 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, as additional insureds. The Vendor’s policy shall be primary and any insurance carried by FIU shall be noncontributing with respect thereto.

e. Americans With Disabilities Act.

i. Compliance by the Vendor. The Vendor is responsible for complying with the public accommodations requirements of the Americans with Disabilities Act (“ADA”) not otherwise allocated to FIU, including: (i) the “readily achievable” removal of physical barriers to access to the meeting rooms (e.g., speakers’ platform and public address system, meeting rooms, common areas (e.g., restaurants, rest rooms, public telephones); (ii) 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 (iii) the modification of the Vendor’s policies, practices, and procedures applicable to all guests and/or groups of guests 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 FIU. FIU is responsible for complying with the following public accommodations requirements of ADA: (i) the “readily achievable” removal of physical barriers within the meeting rooms utilized by FIU which FIU would otherwise create (e.g., set-up of exhibits in an accessible manner) and not controlled or mandated by ADA; (ii) any other special accommodations requested by the group of attendees/FIU shall be borne by FIU provided the Vendor notifies FIU in advance and in writing; and (iii) the modification of FIU’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. FIU 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. When FIU is not at fault, FIU shall copy the Vendor on correspondence with attendees who indicate special needs as covered by ADA. The Vendor shall notify FIU in advance and in writing of requests for accommodations which it may otherwise receive to facilitate FIU’s modification of FIU’s own accommodation obligations or needs as required by ADA.

42. SPECIFIC ADDITIONAL TERMS FOR THE PURCHASE OF SOFTWARE AND INFORMATION SERVICES.

a. Infringement. In accordance with paragraph 10 (Infringement) above, Vendor represents and warrants that its software and any related systems and/or services related to its software (collectively, the “Software”) furnished to FIU will not infringe any copyright, trademark, trade secret, or other proprietary right of any third party. Vendor shall, at its expense, either (a) Procure for FIU the right to continue using the Software; or (b) At no additional cost to FIU, replace or modify the Software so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications of the Software or its use by FIU; or (c) If neither (a) nor (b) above is practical, Vendor shall remove the Software from FIU and shall issue a credit for the Software to FIU, less an equitable refund or adjustment reflecting the value of the exception. The Vendor shall deliver to FIU true and correct copies of certificates of such insurance and/or exemption. The certificate shall indicate that the Commercial General Liability Coverage, to be maintained in an amount equal to or greater than the statutory limits required by the laws of the State of Florida. In the event the Vendor is exempt by law from carrying Worker’s Compensation insurance, Vendor must provide proof of
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43. SPECIFIC ADDITIONAL TERMS FOR INDEPENDENT CONTRACTORS.
   a. Termination. The Agreement may be terminated by FIU by written notice to Vendor of such intent to terminate at least ten (10) days prior to the effective date of such termination. FIU may, upon five (5) days’ written notice to Vendor setting forth with specificity the basis for the termination, terminate the Agreement for Cause (as hereinafter defined). For purposes of the Agreement, “Cause” is defined as Vendor’s failure to perform the services (as defined in the Agreement) within the time specified therein or any extension thereof or Vendor’s failure to adhere to any terms of the Agreement. If the Agreement is terminated, FIU shall only be liable for payment of goods received and services rendered prior to the date of termination and accepted by FIU.
   b. Key Personnel. Vendor may only reassign or substitute Key Personnel upon consent by FIU, 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 FIU. Additionally, Vendor shall substitute Key Personnel upon FIU’s reasonable request.

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