FLORIDA ATLANTIC UNIVERSITY
PO TERMS

These FAU Purchase Order Terms ("PO Terms") are incorporated into the Purchase Order ("PO") issued by FAU, together with any invoices, attachments, appendices, specifications, drawings, notes, instructions, and other information, whether physically attached or otherwise issued in connection therewith (the "Contract"). The Contract constitutes the entire and exclusive agreement between the Florida Atlantic University Board of Trustees (the "University" or "FAU") and Supplier referenced on the PO ("Supplier"). The University's approval and acceptance of the Contract is conditioned on Supplier's understanding and agreement that any of Supplier's Terms differing from or in addition to these PO Terms, 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 Contract, even if Supplier purports to condition its acceptance of these PO Terms on the University's agreement to such different or additional terms. Supplier's electronic acceptance, receipt of payment, acknowledgement of these PO Terms, or commencement of performance, constitutes Supplier's acceptance of these PO Terms. If any discrepancy, difference, or conflict exists between the various provisions of these PO Terms and the Contract, these PO Terms shall control.

1. **CERTIFICATION**: Acceptance of this order serves as certification that Supplier or its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any state or federal department or agency; (b) have not within a three-year period preceding this PO been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or PO under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in paragraph (b) of this certification; (d) have not within a three-year period preceding this application/PO had one or more public transactions (federal, state or local) terminated for cause or default; and (e) are not employed and/or affiliated with the University unless an outside activity report has been approved.

2. **Payment**. Supplier 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 goods, services, and expenses for which compensation is sought. The University shall make payment in accordance with FAU Policy 5.1 – Prompt Payment. If the University 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 Contract, the University may pay Supplier an interest penalty at the rate established pursuant to § 55.03(1), F.S. Payments may be withheld until all deliverables and any necessary adjustments have been approved by the University. Invoices which have been returned because of Supplier preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to the University. Suppliers experiencing payment problems may contact the University's Vendor Ombudsman at (561) 297-3693. The University may require Supplier to accept payments via the University's EFT/ACH payment process. The University is a tax immune sovereign and exempt from the payment of sales, use, or excise taxes. Supplier is responsible for and shall pay any taxes due under the Contract. The University will be responsible for paying only for any goods/services it receives; Supplier must refund any payment for goods/services that are unused upon the termination of the Contract. The University shall not make any deposits or prepay any amounts; any deposits are refundable. If the University is required to reimburse Supplier for costs or expenses under the Agreement, the University shall only reimburse Supplier for expenses directly related to Supplier's provision of services to the University, and such invoice must be accompanied by proof of such expenditure. If Supplier is making any payment to the University, Supplier shall pay timely and not offset any amounts.

3. **Appropriation of Funds**. The performance of the University of any of its obligations under the Contract shall be subject to and contingent upon the availability of funds appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the purpose of the Contract for the current and future periods. The University shall give notice to Supplier of the non- availability of such funds when University has knowledge. Upon receipt of such notice by Supplier, Supplier shall be entitled to payment only for those services performed prior to the date notice is received.

4. **Right to Cancel**. The University reserves the right to cancel placed orders, return goods, or cancel services at any time if unforeseen costs, price increases or fees (such as tariffs) are not disclosed on the proposal or included in the purchase order. In such an event, Supplier shall promptly refund all pre-paid amounts, as applicable.

5. **Final/Timely Invoices**. Supplier shall submit all final invoices for payment to the University no more than ninety (90)

days after the Contract's expiration or termination. Additionally, all goods/services received complete on or before June 30 of any fiscal year must be invoiced to the University and dated on or before June 30 of that fiscal year. Supplier acknowledges and agrees that University shall not be required to make any payments which may otherwise be owed to Supplier by the University for Supplier's failure to submit invoices as required in this paragraph.

6. **Retention of Payments**. The University may, in addition to other remedies available to it at law or equity and upon written notice to the Supplier, retain such monies from amounts due to the Supplier as may be necessary to satisfy any claim for payment, including under the indemnification clause, payment for financial consequences, and payment for damages and the like asserted by or against the University. The University reserves the right to set off any liability or other obligation of the Supplier or its affiliates to the State against any payments due to the Supplier under any contract with the State. The exercise of these rights will not be a breach of the Contract, nor will they in any way entitle the Supplier to a claim against the University, including for damages.

7. **No Guarantees or Exclusivity**. Supplier acknowledges that the Contract is not a guarantee of any work. The Contract is not an exclusive license to provide the goods and/or services described in the Contract. The University may, without limitation and without recourse by the Supplier, contract with other vendors to provide the same or similar goods and/or services.

8. **Supplier Status**. Supplier will supply the University with a complete vendor application and accurate W-9 or W8-BC (Foreign Vendor); if Supplier fails to supply the University with a complete and accurate W-9 or W8-BC, the invoice will be deemed insufficient for payment until such information has been provided.

9. **Audit & Record Keeping**. Supplier 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 Contract. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Contract. The University or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Contract, upon reasonable notice to Supplier. The University shall have the authority to inspect, within 10 business days of making a request, the: (a) Financial records, papers, and documents of Supplier that are directly related to the performance of the Contract or the expenditure of Florida State funds; and (b) Programmatic records, papers, and documents of the contractor which the University determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. If Supplier meets the definition of "nonprofit organization" as defined in Section 215.97(2)(m), Florida Statutes, Supplier shall provide documentation, including receipts indicating amounts and recipients, that indicates the amount of Florida state funds: 1. Allocated to be used during the full term of the Contract for remuneration to any member of the board of directors or an officer of Supplier; and 2. Allocated under each payment by the University to be used for remuneration of any member of the board of directors or an officer of Supplier.

10. **Confidentiality of Information**. Supplier acknowledges and agrees that (a) all documents, studies, materials and information furnished to Supplier by the University or the University's affiliates in connection with this Agreement; and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for the University in connection with this Agreement or which reflect any of the documents, studies, materials or information furnished to Supplier by the University (the materials described in (a) and (b) are collectively referred to as the "Information") are and shall remain at all times confidential, proprietary, and the sole property of the University. Supplier shall not use the Information, nor shall it disclose the Information to third parties unless Supplier: (i) obtains the University's prior written consent, or (ii) is required by law or court order, or (iii) the production of the Information is relevant to the performance of the Agreement and is being disclosed to members or staff of the Senate or the House of Representatives.

11. **Public Records**. The University is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. The Contract and any related documents and/or correspondence shall also become a public record subject to the Florida Public Records Law, regardless of any confidentiality provision outlined in the Contract. The University may respond to public records requests without providing Supplier any notice. Supplier shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Supplier in conjunction with the Contract. Refusal by Supplier to allow such public access shall be grounds for cancellation of the Contract by the University. If the Contract is for services and Supplier is acting on behalf of the University, Supplier further agrees to: (i) keep and maintain public records required by the University to perform the service, (ii) upon request from the University's custodian of public records, provide the University with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that

are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if Supplier does not transfer the records to the University, and (iv) upon completion of the Contract, transfer, at no cost, to the University all public records in possession of Supplier or keep and maintain public records required by the public agency to perform the service. If Supplier transfers all public records to the University upon completion of the Contract, Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Supplier keeps and maintains public records upon completion of the Contract, Supplier shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University. This provision shall survive the expiration or termination of the Contract.

IF SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, publicrecords@fau.edu, Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.

12. **Cancellation**. This Contract shall be subject to cancellation by University upon 30 days written notice to Supplier. A termination penalty may not be charged to the University. The University shall be liable only for payment for service rendered prior to the effective date of termination.

13. **Governing Law.** The validity, construction and effect of the Contract shall be governed by the laws of the State of Florida, as amended, without regard to any conflict of law principles. Exclusive venue of any actions or proceedings shall be tried and litigated exclusively in the state courts located in Palm Beach County, Florida. The University, as a public entity of the State of Florida, is entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation.

14. **Security Interests.** The parties acknowledge Supplier is not permitted to retain security interests in state property or liens on state lands.

15. **Sovereign Immunity**. Nothing in the Agreement shall be construed as the University's indemnification of the Supplier or as a waiver of sovereign immunity as set forth and limited by Florida Statutes §768.28. This provision shall survive the expiration or earlier termination of the Agreement.

16. **Travel.** If the Contract includes reimbursement for travel expenses, such reimbursement must comply with Section 112.061, Florida Statutes and will be processed in accordance with University travel policies. The University reserves the right not to pay travel expenses unless the University preapproves such expenses in writing. The University has the right to make travel arrangements for Supplier.

17. **Conflicts of Interest**. In accordance with Section 112.3185, Florida Statutes, Supplier certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services. Violation of this section by Supplier shall be grounds for cancellation of the Contract by the University.

18. **Access to Work**. If applicable, the University shall at all times have access to review the ongoing work of Supplier for purposes of inspecting the same and determining that the Supplier's performance is in accordance with the terms of the Contract.

19. **Indemnity**. Supplier agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys' fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of Supplier or its officers, employees, agents and contractors, in connection with the Contract, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right. Any limitations of liability of Supplier set forth in the Contract shall not

apply to: (a) claims for infringement or misappropriation of a copyright, patent, trade secret or other third-party proprietary right or (b) claims for personal injury or damages to real or personal properly caused by Licensor's negligence or willful misconduct. Nothing in the Agreement shall be construed as the University's indemnification of the Supplier or as a waiver of sovereign immunity as set forth and limited by Florida Statutes §768.28. This provision shall survive the expiration or earlier termination of the Agreement.

20. **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. Supplier also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Supplier or otherwise acting or engaged to act at the instance of Supplier in furtherance Supplier's obligations under the Contract.

21. **Attorneys' Fees**. In the event of any legal or equitable proceeding by the University for the enforcement of any of the terms or conditions under the Contract, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision under the Contract, the University shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs, paid or incurred in good faith at the pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto. Any award, judgment or order entered in any such proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such award or judgment, including without limitation (a) post-award or post-judgment motions, (b) contempt proceedings, (c) garnishment, levy, and debtor and third-party examinations, (d) discovery and (e) bankruptcy litigation.

22. **Relationship of the Parties**. Supplier is an independent contractor pursuant to Florida law. It is understood and agreed that nothing contained is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Supplier as the agent or representative of the University for any purpose in any manner whatsoever.

23. **Prohibitions**. Supplier is prohibited from (a) incurring any debt on behalf of the University; (b) entering into any contract, arrangement, or transaction which binds the University to any extent or creates any obligation on the University; or (c) utilizing the University's name, credit, reputation, good-will, resources, or assets for any purpose.

24. **Publicity**. Use of the University's name, logo or any other symbolic or written reference and/or presentation, including without limitation any public display or advertising, requires advance written approval by the University. Supplier shall not make any announcements relating to the Contract, nor shall Supplier use the University's name, trademarks, logos or marks, without the prior written approval from the University's Office of Trademark Licensing and Marketing in each instance.

25. **Third Parties**. The University is not liable for the acts of third parties or the consequences of the acts of third parties.

26. **Precedence**. In the event of inconsistency between or amongst any of the parts of the Contract, these PO Terms will govern. The Contract, specifically including these PO Terms, embodies the entire agreement of the parties, and there are no other representations, promises, agreements, conditions, or understandings, either oral or written, between University and Supplier other than are set forth.

27. **Modifications**. Any renewals, amendments, alterations, or modifications to the Contract must be signed or initialed and approved by the signatories to the Contract. There shall be no unilateral modification of the Contract or any supplemental terms/policies (e.g., Supplier's Privacy Policy).

28. **Warranties**. Supplier, at a minimum, warrants that the goods, products and/or services to be provided by Supplier 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 Contract. This warranty shall be in addition to any warranties provided in the Contract.

29. **Infringement**. Supplier represents that any goods or services furnished or provided to the University, if any, will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Supplier will, at its own expense, defend any suit brought against the University and will indemnify the University against an award of damages and costs made against the University by a settlement or final judgment of a court that is based on a claim that the use of the Supplier's goods or services by the University infringes a trademark or copyright of a third party; provided that the University notifies Supplier in writing of the suit or any claim of infringement within 20 days after receiving notice thereof. Such defense and indemnity shall survive expiration or earlier termination of the Agreement.

30. **Certification; Public Entity Contracting Prohibitions**. Pursuant to 287.133, Florida Statutes, 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 transact business with any public entity in excess of the threshold amount provided in Florida Statutes § 287.017, for CATEGORY TWO for a period of 36 months from the date being placed on the convicted vendor list. Supplier represents, warrants, and covenants that it is not currently and, throughout the term of this Agreement shall not be, ineligible for the award or continuation of this Agreement under Sections 287.133, 287.134 and 287.135, Florida Statutes, including that Supplier is not on any convicted vendor list (see § 287.133(2)(a), F.S.). Supplier understands and accepts that this Agreement may be void, voidable or subject to immediate termination by the University if the representation, warranty, and covenant set forth above is violated. the University, in the event of such termination, shall not incur any liability to Supplier for any work or materials furnished. Per 287.135, F.S., the University may terminate the Contract if Supplier is found to have submitted a false certification or has been placed on a list created pursuant to s. 215.473, F.S..

31. **Compliance**. Supplier agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all Florida Board of Governors' and University regulations and policies, specifically including without limitation the University's sexual harassment regulations and policies and those pertaining to the privacy of student records. Supplier shall have all applicable permits, licenses, consents, and approvals necessary to provide the goods and/or services during the Term of the Contract. Specifically, this shall mean to include, but is not limited to, Supplier's compliance with Section 889 of the John S. McCain National Defense Authorization Act, prohibiting the University from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Additionally, the University shall consider the employment by any supplier of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act. The University has the right to immediately cancel any Contract if it knows or has reason to believe that Supplier is in breach of any of these obligations.

32. **E-Verify.** Supplier shall register with and use and shall require its subcontractors to register with and use, the E-Verify system operated by the United States Department of Homeland Security to verify the work authorization status of all new employees of Supplier or subcontractor, as applicable, hired during the term of this Agreement. If Supplier meets the definition of a "contractor", Supplier shall fulfill all requirements of a "contractor", including requiring all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement and obtaining and maintaining affidavits from subcontractors. Failure to comply with this provision is a material breach of the Agreement, and the University may terminate the Agreement at its sole discretion without liability. Supplier shall be liable for all costs incurred by the University resulting from Supplier noncompliance with the requirements of this section.

33. **Foreign Countries of Concern**. Pursuant to § 287.138, F.S. and BOG Regulation 9.012 (as they may be updated), the University may not knowingly enter into, extend, or renew contracts which would grant Supplier access to an individual's PII (as defined elsewhere in these PO Terms) if: i) Supplier is owned by the government of a Foreign Country of Concern; (ii) the government of a Foreign Country of Concern has a controlling interest in the entity; (iii) Supplier is organized under the laws of or has its principal place of business in a Foreign Country of Concern; or (iv) Supplier is a Foreign Principal. The University shall be entitled to immediately terminate the Contract without liability to ensure the University's continued compliance with the statute.
    a) *Definitions.* Undefined Capitalized terms used in this subsection (specifically including "Controlling Interest," "Foreign Country of Concern," and "Foreign Principal") shall have the meaning ascribed by the Florida Statutes, specifically including § 287.138, F.S., as well as BOG Regulation 9.012, as they may be updated.
    b) *Affidavit*. Pursuant to § 287.138, F.S., effective January 1, 2024, the University may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with Supplier which would grant Supplier access to an individual's PII unless Supplier submits a Foreign Entity Affidavit signed by an officer or representative of Supplier under penalty of Perjury to the University, attesting that Supplier does not meet any of the criteria defined above and therein. Additionally, effective July 1, 2025, Supplier shall submit a Foreign Entity Affidavit to the University prior to any renewals or extensions of an existing Contract. Failure or refusal to timely submit a Foreign Entity Affidavit shall be cause for immediate termination of the Contract by the University.
    c) *Camera Systems.* Beginning July 1, 2025, the University shall not enter into or renew a contract with such a supplier if the contract is for the provision of a school bus infraction detection system, speed detection system, traffic infraction detector, or any other camera system. Supplier shall immediately provide notice to the University, and the University shall be entitled to immediately terminate the Contract, without further liability.

34. **Human Trafficking Affidavit**. When executing, renewing, or extending a Contract with the University, Supplier acknowledges that it is required to submit a sworn affidavit to the University, signed by an officer or representative of Supplier under penalty of perjury, attesting that Supplier does not use coercion for labor or services as defined in § 787.06, Florida Statutes. Failure to timely submit the sworn affidavit shall be cause for immediate termination of the Contract by the University, without liability.

35. **Export Control Compliance**. Supplier acknowledges that it must comply with export control laws, including the International Traffic in Arms Regulations (ITAR); the Export Administration Regulations (EAR); and the Office of Foreign Assets Control Regulations (OFAC). If Supplier provides export-controlled products, technology and/or software to the University, Supplier will provide the University with a list of ECCNs (Export Control Classification Numbers) or the United States Munitions List (USML) Category Numbers, for such goods. This provision shall survive the expiration or earlier termination of the Contract.

36. **Common Carrier**. If Supplier meets the definition of common carrier or contracted carrier, Supplier agrees that the University may terminate for cause if Supplier is found in violation of its attestation that it is not willfully providing and will not willfully provide any service during the Contract term in furtherance of transporting a person into Florida knowing that the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from Florida or the United States. Common carrier or contracted carrier must also complete the "Common Carrier or Contracted Carrier Attestation Form" (PUR 1808).

37. **Information Technology**. If Supplier has access to the University's information technology infrastructure, or will be providing such infrastructure to the University, Supplier agrees at all times to maintain network security that, at a minimum, includes: industry-accepted network firewall provisioning, intrusion detection, encryption, current security patches, virus protection measures and access controls, and regular third-party penetration testing. Supplier further agrees: (a) that any websites hosted by Supplier on behalf of the University shall be on an encrypted domain in compliance with the minimum security standards; (b) that all data exchanged shall be used expressly and solely for the purpose enumerated in the Contract and shall not be distributed, repurposed or shaped across other applications, environments, or business units of Supplier, and that no University data of any kind shall be transmitted, exchanged or otherwise passed to other Suppliers or interested parties except on a case-by-case basis as specifically agreed to in writing by the University; and (c) that it shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification in accordance therewith, and in the event of a data breach of any Supplier's security obligations or other event requiring notification under applicable law, Supplier shall assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend the University against any claims, damages, or other harm related to such notification event.

38. **Compliance With PCI-DSS**. Supplier represents and warrants that while Supplier has involvement with the University customer cardholder data, the software and services used for processing transactions shall be compliant with the most recent version of the Payment Card Industry Security Standards Council (https://www.pcisecuritystandards.org/) in effect at the time of service delivery. Supplier will treat all of the University provided infrastructure and resources as public and non-secure, regardless of measures the University may choose to put in place. Supplier will also maintain all required qualifications and periodically furnish proof of ongoing compliance in the form of an Attestation of Compliance to demonstrate to the University that Supplier is continuously operating in full compliance with PCI-DSS and is not relying on the University for any aspect of that compliance. Supplier shall, upon written request, furnish proof of compliance with PCI DSS within 10 business days of the request. Supplier agrees to provide to the University a current and complete copy of their Attestation of Compliance (AOC). Further, Supplier agrees to provide to the University a proof of a recent (no more than 3 months old) passing quarterly external vulnerability scan as submitted by an Approved Scanning Vendor (ASV). If Supplier loses any required certification or the certification lapses, Supplier shall immediately notify the University, and the University will have an option to terminate this contract and receive a refund for unrendered services.

39. **Camera Systems**. Pursuant to § 316.0078(2), F.S., the University, as a governmental entity, may not enter into or renew a contract with Supplier for the provision of a school bus infraction detection system, speed detection system, traffic infraction detector, or any other camera system used for enforcing Chapter 316 of the Florida Statutes ("State Uniform Traffic Control'), if Supplier is owned by a government of a foreign country of concern, or the government of a foreign country of concern has a controlling interest in Supplier, as defined by § 287.138(1)(a), F.S..

40. **National security state and federal statutes, rules and regulations banning sales of certain products/services.** If Supplier's products and/or services are banned, or the use thereof is limited by the State of Florida or federal

government on account of national security considerations, then the University may terminate this Agreement on thirty (30) days' notice.

41. **Preference to commodities grown or produced in Florida**. The Supplier acknowledges that, pursuant to s. 287.0823, Florida Statutes, effective 2025, all food commodities purchased by the University or any contracted food service provider must be grown or produced in Florida when available, practical, and feasible. Notwithstanding any other provision of this section, and to the extent authorized by federal law, the University and any contracted food service providers thereof shall give preference to food commodities grown or produced in Florida when purchasing food commodities, including farm products as defined in s. 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

42. **Privacy**. Supplier shall comply with all applicable state and federal laws and University 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). Supplier shall obtain, in advance, all necessary permissions and consents required related to its collection and/or receipt of any such information. In the event that the University will share with or provide access to Supplier of any protected health information ("PHI"), the University and Supplier enter into a separate business associate agreement which will govern the use of the PHI. Supplier agrees to include all such terms and conditions contained in any subcontractor or agency contracts.

43. **Equal Opportunity. The University is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference.**

44. **Use of goods and services produced in correctional work programs**. In accordance with section 946.515(6), F.S., if the Supplier is a private contract vendor and a product or service is required on behalf of the University, is certified by or is available from the corporation in a correctional work program, and has been approved in accordance with section 946.515(2), F.S., the following statement applies:

    IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

    The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at http://www.pride-enterprises.org.

45. **Products Available from the Blind or Other Handicapped (RESPECT)**. In accordance with section 413.036(3), F.S., if the Supplier is a private contract vendor, and if a product or service required on behalf of the University for the performance of the Contract is on the procurement list established pursuant to section 413.035(2), F.S., the following statement applies:

    IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, F.S.; IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), F.S.; AND FOR PURPOSES OF THIS CONTRACT, THE PERSON, FIRM OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

46. **Florida Sexual Predators Act.** Any Supplier or subcontractor who the University contracts with must comply with F.S.

775.21 relative to the registration of any employee who is a convicted sexual offender or predator. For additional information, contact the FAU Police Department.

47. **Insurance**. The University, 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 the University. The parties agree that the University's self-insurance coverage described above shall be deemed sufficient and acceptable in all respects whatsoever. Any provision requiring the University to provide or acquire insurance coverage other than such self-insurance shall not be effective.

    Supplier shall have and maintain the types and amounts of insurance that, at minimum, will cover Supplier's (or subcontractor's) exposure in performing the Contract and name the University as additional insured and be primary and non-contributory on Supplier's policies (except for workers' compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to the University, with insurance companies authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with the University prior to the date of the Contract. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving the University thirty (30) days' written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to the University as coverage renews. Supplier, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against the University for any loss or damage arising from any cause covered by any insurance required to be carried under the Contract by any other insurance actually carried by Supplier. 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 Contract. The insurance shall have a retroactive date of placement by the effective date of the Contract. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, Supplier must purchase Extended Reporting ("Tail") coverage for a minimum of three (3) years following the expiration or termination of the Contract. These insurance requirements shall be in addition to any other applicable insurance requirements outlined in the PO Terms.

48. **Force Majeure**. No default, delay or failure to perform on the part of the either party shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, without limitation, strikes; accidents; labor disputes; riots; governmental action; epidemics; pandemics; acts of terrorism or war; civil or military disturbances; sabotage; embargoes; fire; earthquakes; hurricanes; floods; acts of God; acts of civil or military authority power failure; or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform. Alternatively, the University may terminate the Agreement without further obligation or penalty.

49. **Breach; Assignment**. Each term and condition of the Contract is material and any breach or default by Supplier shall be a material breach of the entire Contract for which University shall have the right to terminate the Contract upon notice to Supplier and without termination penalty. Supplier may not, without the advance written approval of University, assign any right or duties under the Contract, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the Contract.

50. **Waiver; Severability**. A party's waiver of any breach or violation of any Agreement provisions shall not operate as, or be construed to be, a waiver of any later breach of the same or other Agreement provision. If any term, provision, covenant or restriction of these PO Terms is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts o find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction.

51. **Permitting**. In the event Supplier is providing any on-site service that requires local permitting, the University shall be the permitting authority. Supplier agrees to comply with all applicable project guidelines, policies and protocols, including without limitation the University's Facilities Project Manual and the standards and cost containment guidelines set forth therein.

52. **Lobbying and Integrity**. The Supplier shall not use funds provided under the Contract in a manner that violates the provisions of sections 11.062 and 216.347, F.S. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Supplier from lobbying the executive or legislative branch concerning the scope of services, performance, term, or Supplier regarding the Contract during the Contract's term. In addition to any applicable statutory restrictions, the

Supplier shall not, in connection with this or any other agreement with the State, directly or indirectly (i) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercises of discretion, or violation of a known legal duty; or (ii) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (ii), "gratuity" means any payment in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

53. **Materially interested supplier; prohibition on certain activities**. Pursuant to 287.075, Florida Statutes, Supplier or its employees, agents, or subcontractors, may not knowingly participate, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or contractual services by the University from an entity in which the contractor, or its employees, agents, or subcontractors, has a material interest.

54. **Background Checks**. Section 1002.32(2) of the Florida Statutes established the public schools of the FAU School District, which includes A.D. Henderson University School, Palm Pointe Educational Research School, and FAU High School, as Developmental Research (Laboratory) Schools (individually and collectively, "the "School(s)"). The School District is organized as a department of the University's College of Education as a vehicle for the conduct of research, demonstration and evaluation regarding management, teaching and learning and is the 72nd school district under the Florida Department of Education. All Supplier officers, employees, personnel, agents, or other representatives, both instructional and noninstructional, who may have direct contact with students, or who are permitted access to a School when students are present, or who have direct contact with students, or who have access to, or control of School funds, must undergo level 2 screening, as set forth in Chapter 1012.32, F.S., including fingerprinting, at no cost to the University. Supplier warrants and represents that no Supplier employee who meets the above conditions and who has been convicted or is under investigation for a crime per § 435.04, F.S., will be permitted such access.

55. **Use of state funds for associations**. The Supplier acknowledges that, pursuant to 1011.90, F.S., state funds may not be used to join or maintain membership in an association whose decisions or proposed decisions are a result of, or in response to, actions proposed or adopted by the Legislature, if such decisions or proposed decisions will result in a negative fiscal impact to the state. The University shall be entitled to immediately terminate the Contract without liability to ensure the University's continued compliance with the statute.

56. **Supplier's Interests Notice**. Pursuant to 287.05701, Florida Statutes, the University shall not: (a) Request documentation of or consider Supplier's social, political, or ideological interests, or (b) Give preference to Supplier based thereon.

57. **Boycott**. Pursuant to 287.135, Florida Statutes, the University shall be entitled to terminate the Contract at its option if Supplier: is found to have been placed on the Scrutinized Companies or Other Entities that Boycott Israel List; engaged in a boycott of Israel; is found to have submitted a false certification; been placed on the Scrutinized Companies with Activities in Sudan List; been engaged in business operations in Cuba or Syria; or been placed on a list created pursuant to 215.473 relating to scrutinized active business operations in Iran.

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

59. **Deletion**. Any term and/or condition in the Contract on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by the University to Supplier; (b) Restrictions on the hiring of Supplier's employees; (c) the University's responsibility to pay intangible taxes, property taxes, or sales taxes; (d) the University's tort liability; (e) Automatic renewals of the term of the Contract; (f) Limitation of time to bring suit; (g) Limitation of Supplier's liability; (h) that the University performs reporting functions and/or maintains certain types of operations (i) Granting Supplier any right to audit the University; (j) Attorneys' or collection fees provisions; (k) Arbitration and mediation clauses; (l) Indemnification of Supplier by the University; (m) restrictions on competition or solicitation on the University; waiver of jury trials, notices or hearings; (n) personal guaranties; and (o) unilateral modification of the Contract or any supplemental terms/policies (e.g., a Privacy Policy).

60. **Signatures**. The parties represent and warrant that any person signing the Contract has the authority to do so and that such signature shall be sufficient to bind Supplier. The Contract 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.

61. ADDITIONAL TERMS. In addition to the foregoing terms, the following "Additional Terms" outlined in the remaining paragraphs of these PO Terms may apply to Supplier, and Supplier agrees and accepts such terms. More than one "Additional Terms" provision may apply, based upon the scope of goods/services being provided to the University.

62. ADDITIONAL TERMS RELATED TO "PIGGYBACKING" AGREEMENTS.

63. *Background.* The Florida Board of Governors' Regulation 18.001(1)(c) and FAU Regulation 6.008 allow the University to utilize contracts that are entered into after a public and open competitive solicitation issued by the Federal Government, the State of Florida, other states, political subdivisions or entities, colleges, universities, cooperatives, or consortia (collectively, the "Procuring Party"), for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of the University to make purchases under contracts let by such other entities. If the parties are utilizing such a competitive solicitation awarded to Supplier by a Procuring Party to "piggyback" and enter the Contract and/or issue the Purchase Order, all such documents related to the Procuring Party's competitive solicitation are herein incorporated by this reference, including the initial solicitation, Supplier's response(s), the final agreement, and any exhibits related thereto (collectively, the "Piggyback Agreement").

a) *Beneficiary*. The parties agree that all obligations of Supplier under the Piggyback Agreement, and all benefits to be provided by Supplier to the Procuring Party under the Piggyback Agreement, specifically including, but not limited to, its indemnity obligations, insurance obligations, and work product ownership rights, shall inure to the benefit of the University, and Florida Atlantic University, the University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, agents, employees, successors and assigns, pursuant to this Contract. All references in the Piggyback Agreement to the Procuring Party shall mean the University where appropriate.

b) *Insurance*. In addition to any other applicable Insurance provisions contained in these PO Terms, requiring Supplier to maintain that coverage necessary to protect both Supplier and the University against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from Supplier's performance of the Contract, Supplier shall also have and maintain the types and amounts of insurance outlined in the Piggyback Agreement.

c) *Precedence*. In the event of any conflicts between or among the terms hereof, the documents (to the extent applicable) shall govern in the following order of precedence: (1) these PO Terms; (2) the Piggyback Agreement; (3) Supplier's terms, if any. Supplier warrants that the Master Agreement is active and valid, and Supplier may only provide the goods/services detailed on the Proposal to FAU so long as the Master Agreement remains as such.

64. ADDITIONAL TERMS FOR THE PURCHASE OF GOODS.

a) *Goods*. As used in these PO Terms, "Goods" shall mean all those items and/or products specified in the Contract.

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 cost and/or time required for performance of the Goods, an equitable adjustment shall be made and the Contract shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Contract cannot be achieved or met by Supplier, the University must be notified and must accept in writing any variation prior to shipment or delivery.

c) *Delivery of Goods*. Supplier agrees to on-time delivery based upon the timeline set forth in the Contract. If the Contract does not specify a delivery date (the "Delivery Date") or timeline, Supplier shall provide the Goods as if time is of the essence. Changes, modifications, or any delay resulting from the University that prevents Supplier from achieving the Delivery Date shall not constitute a breach of the Contract by Supplier. If Supplier anticipates a delay in the delivery of the Goods, Supplier shall immediately notify the University. In the event that Supplier fails to deliver the Goods by the Delivery Date not due to the fault of the University, or Supplier fails to deliver conforming Goods, the University may purchase substitute Goods elsewhere and charge Supplier for any additional expense incurred relating to the purchase of such substitute Goods. Supplier shall deliver all Goods in accordance with the terms of the Contract. If delivery of the Goods is not complete by the Delivery Date, the University may, without liability, and in addition to its other rights and remedies, terminate the Contract, by notice effective when received by Supplier, as to Goods not yet delivered or rendered. Acceptance (as defined below) of any part shall not bind the University to Accept any future shipments nor deprive it of the right to return Goods already Accepted.

d) *Acceptance*. For purposes of these Terms, "Acceptance" means the point at which the University accepts or is deemed to *accept* the Goods in accordance with the terms set forth in the Contract. Acceptance shall include the terms "Accept" and "Accepted." As a condition precedent to payment for the Goods by the University to Supplier, the Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by the University to Supplier 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 Contract and the examination and confirmation that the Goods conform to their applicable specifications. The University retains the right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.

e) *Risk of Loss.* Supplier assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Contract until the same are finally Accepted by the University. Supplier assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by the University until

the same are received by Supplier or Accepted by the University.

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

g) *Shipping*. Supplier 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 Contract and the requirements of common carriers. If no shipping instructions are included, Supplier will ship goods FOB Destination. Supplier 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. Supplier must include Contract No. on all: invoices, B/L, cases, bundles packing lists and correspondence. Supplier will include a packing list showing contents of that container in each container shipped. the University will accept delivery of goods only between 8:30 A.M. and 4:30 P.M.EST Mondays through Fridays at Central Receiving; no deliveries will be accepted on University and State of Florida holidays. Supplier must get prior approval from a purchasing agent at the Purchasing Department for changes in delivery times. The Parties agree to assist each other in the prosecution of claims against carriers.

h) *Toxic Substances*. In compliance with 29 CFR 1910.1200, if the Contract involves the shipping of any item designated as a toxic substance such shipment must comply with the law and accompanied by a Material Safety Data Sheet.

i) *Inspection*. Payment for the Goods provided under the Contract shall not constitute Acceptance thereof. The University may inspect and test such Goods and reject any/all items that are, in the University 's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Supplier at its expense. Failure by the University to inspect and/or test the Goods shall not be deemed Acceptance by the University.

j) *Cancellation*. the University may for any reason and at any time, at its option, cancel any unshipped Goods. A termination penalty may not be charged to the University. To the extent the Contract covers stock Goods, the University's only obligation is to pay for Accepted Products prior to such cancellation. To the extent the Contract covers Goods manufactured or fabricated to the University's specifications, Supplier shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Supplier is not in default, the University shall reimburse Supplier for the actual, direct cost to Supplier 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 the University. Unless the University shall have otherwise instructed Supplier, Supplier agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to the University at any one time.

k) *Delay*. The University may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its control. Supplier shall hold such Goods at the direction of the University, and Supplier shall deliver the Goods when the cause affecting the delay is eliminated. The University shall be responsible only for Supplier's direct additional costs incurred by holding the Goods at the University's request. Causes beyond the University's control shall include, without limitation, 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.

65. ADDITIONAL TERMS FOR PERFORMERS, SPEAKERS, AND ENTERTAINERS.

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

b) *Tapes/Recordings*. The University has the right to tape and/or record the performance; however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of the University's students, faculty and staff.

c) *Cancellation*. The University may cancel the Contract by giving Supplier at least ten (10) days prior written notice of cancellation, without penalty. The University shall only be liable for payment of goods received and services rendered and accepted by the University prior to the date of notice of cancellation. If the University has made any advance payments or deposits, Supplier shall return such amounts to the University. If the University cancels this Contract for reasons other than breach by Supplier, the University will reimburse Supplier for Supplier's out-of-pocket expenses related to the performance of the Contract that were incurred by Supplier prior to notice of cancellation if such expenses are non-refundable/non-returnable, to the extent permitted by Fla. Stat. §112.061 and University Policy 11110.060 and only to the extent such expenses are supported by written, itemized and paid invoices submitted by Supplier to the University. Supplier may not cancel the Contract except for in the event of Force Majeure Conditions as defined below.

d) *Public Officials*. To the extent applicable, in accordance with state and federal election laws, regulations and guidelines, public officials visiting a University campus for nonpartisan events or functions sponsored or hosted by the University shall comply with the following guidelines: (i) All appearances, questions/answers sessions, speeches or similar communications should be made in an academic setting and should not involve any campaign speeches, rallies or events; (ii) Campaigning, including fundraising, is prohibited; (iii) A nonpartisan atmosphere must be maintained in the premises; and (iv) If the public official is also a candidate for an upcoming or future election: (A) The public official shall appear and speak in a non-candidate capacity; (B) The public official shall appear and speak for reasons other than his or her candidacy; (C) The public official shall not refer to his or her own candidacy or that of any other candidate in his or her speech; (D) The public official's campaign staff shall not be permitted to solicit campaign contributions or campaign support; (E) Neither the public official or his/her staff will be permitted to coordinate or encourage the display of campaign banners or decorations or encourage distribution of the public official's campaign materials; (F) Any communications of the public official related to the public official's attendance at the event, before, during or after the event, shall clearly indicate the capacity in which the public official is appearing or appeared and should not mention the candidacy or the upcoming election; and (G) Any communication of the public official related to the public official's attendance at the event, before, during or after the event, shall not insinuate, imply or suggest the appearance of the University's support or opposition of the public official in his/her capacity as a candidate.

e) *Failure to Perform*. Any failure of Supplier to perform may be excused only for proven sickness or injury, civil tumult or riot, epidemics, acts of God, or other conditions beyond the control of Supplier ("Force Majeure Conditions"). Failure or delay of transportation shall not be considered a Force Majeure Condition. In the event of such default, delay or failure to perform due to a Force Majeure Condition, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform. Supplier must notify the University immediately of any reason which might result in Supplier's failure to perform on the scheduled date. The University reserves the right to approve/substitute any other supplier for Supplier if Supplier is not able to perform as scheduled.

66. ADDITIONAL TERMS FOR HOTEL USE AND MEETING SPACES.

a) *Purpose*. The University is likely entering into the Contract with Supplier to acquire hotel venue and services associated with a game, event, match, meet, meeting, conference, or other event related to the University (collectively, "Event(s)").

b) *Deposit*. Unless non-state funds are being used to pay, the University cannot make deposits or prepay any amounts. Any deposits made by the University are refundable.

c) *Charges*. No additional charges or fees (including, but not limited, to parking, security, amenities, wi-fi, storage fees, or early checkout charges) may be charged to the University without the University's express written approval, regardless of whether they are outlined in the Contract. Service charges may be modified depending upon level of service provided. The University is not responsible for any individual charges made by event attendees and/or individual room block guests.

d) *Room Block*. Supplier shall honor all reservations guaranteed by attendees and if it cannot meet its obligation, it shall find the attendee a room at a comparable hotel and providing transportation to and from that location, in addition to all other concessions.

e) *Facility*. The facility will be in the same or better condition over the meeting/room block dates as it was when the Contract was entered into. Supplier shall disclose any current or future plans for construction and renovation and shall control other groups so they do not cause undue noise or other disturbances that would materially affect the attendees. Supplier may not reassign the meeting rooms specified in the Contract without the University's prior written consent, not to be unreasonably withheld.

f) *Hotel Points*. Supplier acknowledges that, pursuant to § 112.313(2), F.S., it may not award "points" to any individuals or University employees under the Contract. Points may only be awarded, if at all, to the University generally or the University team or department.

g) *Cancellation*. Attrition, cancellation fees and/or liquidated damages, as outlined in the Contract (collectively, "Cancellation Fees"), if any, may only be assessed if the University fails to give Supplier at least ten (10) days advance notice (72 hours if the Contract is for meeting rooms only) and Supplier is unable to rent the rooms(s) to another person/entity. Additionally, Cancellation Fees may not be assessed if such cancellation is due to Event cancellation. Cancellation Fees shall not exceed twenty percent (20%) of estimated value of the Contract. The University, in lieu of paying Cancellation Fees, may agree to book another event with Supplier that will generate revenue in an amount equal to or greater than the lost revenue. Supplier will use its best, commercially reasonable efforts to mitigate any Cancellation Fees which may be owed by the University. Cancellation Fees shall be billed separately and not posted to the Master Account.

h) *Force Majeure*. Neither party shall be deemed in default of its obligations hereunder if and so long as such default, delay or failure to perform is due to causes beyond either party's reasonable control, which shall specifically mean to include, but is not limited to, Event cancellation or rescheduling, act of war, pandemic, epidemic, restrictions promulgated by an applicable state or federal agency (including the University) or other governing body or agency, or act of God. In such

an event, the University may terminate the Contract without further obligation or penalty. Cancellation Fees shall not be charged and any deposits made shall be refunded.

i) *Insurance*. In addition to any other applicable Insurance provisions contained in these PO Terms, Supplier shall provide and keep in full force and effect during the term of the Contract, at Supplier's own cost and expense, the following insurance policy for the joint benefit of Supplier and the University, with an insurer reasonably acceptable to the University: (i) Commercial General Liability which includes coverage for bodily injury, property damage, personal injury, products/completed operations and contractual liability in the minimum amounts of $1,000,000 per occurrence and $2,000,000 in the aggregate. Supplier shall deliver to the University true and correct copies of certificates of such insurance. The certificates shall indicate that the Commercial General Liability policy carries an endorsement which names The Florida Atlantic University Board of Trustees, Florida Atlantic University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. Supplier's policy shall be primary and any insurance carried by the University shall be noncontributing with respect thereto.

j) *Americans With Disabilities Act ("ADA").* (i) Compliance by Supplier. Supplier is responsible for complying with the public accommodations requirements of the ADA not otherwise allocated to the University, including: (a) the "readily achievable" removal of physical barriers to access to the meeting rooms (e.g., speakers' platform and public address systems), sleeping rooms, common areas (e.g., restaurants, rest rooms, and public telephones); (b) the provision of auxiliary aids and services where necessary to ensure that no disabled individual is treated differently by Supplier other than other individuals (e.g., Braille room services menus or reader); and (c) the modification of Supplier's policies, practices, and procedures applicable to all guests and/or groups 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 the University. The University is responsible for complying with the following public accommodations requirements of ADA: (a) the "readily achievable" removal of physical barriers within the meeting rooms utilized by the University which the University would otherwise create (e.g., set-up of exhibits in an accessible manner) and not controlled or mandated by Supplier; (b) any extraordinary costs for special auxiliary aids requested by the attendees/the University shall be borne by the University provided Supplier notifies the University in advance and in writing; and (c) the modification of the University'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. the University shall attempt to identify in advance any special needs of disabled registrants, faculty, and guests requiring accommodations by Supplier. Each party will notify the other party in writing of such needs for accommodation as soon as the University is aware of such needs. Whenever possible, the University shall copy Supplier on correspondence with attendees who indicate special needs as covered by ADA. Supplier shall notify the University in advance and in writing of requests for accommodations which it may otherwise receive to facilitate identification by the University of its own accommodation obligations or needs as required by ADA.

67. ADDITIONAL TERMS FOR CONSULTING SERVICES AND PROFESSIONAL SERVICES.

a) *Key Personnel*. Supplier shall use qualified individuals with suitable training, education, experience, and skill to perform the services ("Key Personnel"). Supplier may only reassign or substitute Key Personnel upon consent by the University, not to be unreasonably withheld, or upon the unavailability of assigned Key Personnel due to illness or other factors beyond Supplier's control, provided that prior notice of such reassignment or substitution is delivered to the University. Supplier shall further substitute Key Personnel upon the University's reasonable request.

b) *Ownership of Work Product*. All right, title and interest in and to any invention, work product, idea or creation conceived, developed or produced during the performance of services under the Contract (including but not limited to creative, copy, scripts, story boards, writing, copyrights, trademarks, art, music, software and documentation, business systems or ideas, and research projects) shall be property of the University whether created individually by Supplier or jointly with the University, on or off premises. If Supplier is providing software, the University may create and retain a copy of Supplier and related documentation for back up and disaster recovery purposes, and for archival purposes for use after the Contract is terminated. This provision shall survive the expiration or earlier termination of the Contract.

c) *Access to Work*. Although Supplier has the authority to control and direct the performance of the details of the work, the work contemplated herein must meet the University's standards and approval and shall be subject to the University's general right of inspection to secure the satisfactory completion thereof.

d) *Non-Compete*. If Supplier is acting as a consultant to the University and is representing the University's interests in dealings with other third parties, Supplier shall not accept employment with or act as an independent contractor for such third parties for a period of one (1) year after the Contract is terminated.

e) *Warranty*. Supplier represents and warrants: (a) that it is possessed of superior knowledge with respect to the Services; (b) that it knows the particular purpose for which the Services are required; (c) that it is aware that the University is relying upon its skill and judgment in providing the Services; (d) that the Services shall be provided with the highest professional degree of care and skill; and (e) that the Services and any other work performed by Supplier hereunder

shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, trade secret or other proprietary right, or misappropriate any trade secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title or interest to any technology or intellectual property right that would conflict with its obligations under this Contract. In the event of a breach of any of the foregoing warranties, Supplier shall, in addition to any other remedies which may be available to University, supply services to correct such defect at no cost to University.

68. ADDITIONAL TERMS FOR TRAINING SERVICES

a) *Equipment*. Supplier shall notify the University in writing at least three (3) days in advance of the services for any needs for space, equipment, or materials to be provided by the University. Supplier's failure to timely notify the University of such needs shall be cause for rescheduling of the services by the University without cost or liability.

b) *Training Materials*. Supplier shall provide each attendee with a set of training materials. If and to the extent that any preexisting rights are embodied or reflected in the materials, Supplier grants to the University the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof, and (b) authorize others to do any or all of the foregoing.

c) *Warranties*. Supplier hereby represents and warrants the following: (a) that it is possessed of superior knowledge with respect to the services; (b) that it knows the particular purpose for which the services are required; (c) that it is aware that the University is relying upon its skill and judgment in providing the services; (d) that the services shall be provided with the highest professional degree of care and skill; (e) that Supplier has the right to provide the services; and (f) that the services, materials, and any other work performed by Supplier hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, trade secret or other proprietary right, or misappropriate any trade secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement.

d) *Tapes/Recordings*. The University has the right to tape and/or record the performance; however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of the University's students, faculty, and staff.

69. ADDITIONAL TERMS FOR ADVERTISING & MARKETING SERVICES.

a) *Advertising Materials*. the University will, at its sole cost and expense, unless otherwise outlined in the Contract, create and deliver all advertising materials required for any Ad ("Advertising Materials") according to the technical specifications provided by Supplier. If the delivered Advertising Materials do not reasonably conform to Supplier's technical specifications, Supplier shall notify the University immediately so the University may correct any errors and ensure the Ad timely runs. If the University is unable to correct the Advertising Materials or does not provide the Advertising Materials to Supplier timely enough to deliver the Ad on any agreed dates, then Supplier, in its reasonable discretion, may: (a) reject such Ad and refund any applicable amounts paid in advance; or (b) postpone running such Ad until a reasonable period of time after (i) the non-conforming Advertising Materials are corrected, or (ii) the late-arriving Advertising Materials are received.

b) *Content*. the University agrees that no part of the Ad or Advertising will: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false advertising or unfair competition; (c) be defamatory or libelous; (d) be pornographic or obscene; or (e) contain viruses or other similar harmful or deleterious programming routines.

70. ADDITIONAL TERMS FOR ROYALTY CONTRACTS.

a) *Warranties*. Supplier represents and warrants that Supplier is the sole author and/or lyricist and/or composer and/or arranger of the works detailed in the Contract (the "Material"); that said Material is Supplier's own original work and creation (except such part thereof as is taken from public domain) and is not a copy of any other copyrighted work; that Supplier has not sold, assigned, leased licensed or in any manner disposed of or encumbered the rights herein granted to the University; and that Supplier has the right to enter into the Contract. Supplier agrees to indemnify and hold the University harmless from all loss, liability, damages and expenses due to breach of said representations and warranties.

b) *Royalties*. All Royalties to be paid under the Contract shall be paid jointly to the said persons if there be more than one and shall be divided equally among them unless otherwise indicated on the Contract.

c) *Likeness*. Supplier grants the University the right to use Supplier's name, photograph, likeness, facsimile signature and biographical material in, on and in connection with publications, recordings, and advertisements of, containing or relating to the Material.

d) *Tapes/Recordings*. The University shall be entitled to tape and/or record the performance(s); however, such tapes or recordings shall only be used for archival and/or educational purposes for the benefit of the University's students, faculty

and staff.

e) *Cancellation*. The University's only obligation shall be to pay Supplier the Royalty outlined in the Contract and is not obligated to actually use the Material.

71. ADDITIONAL TERMS FOR PERSONALLY IDENTIFIABLE INFORMATION.

a) *Personally Identifiable Information; Generally.* If provided for under the Contract, Supplier may access, receive, transmit, or maintain non-public data from or on behalf of the University or its students, faculty, employees, or agents, including, without limitation, student information, education records (as defined by 20 U.S.C. § 1232g(a)(4)(A) and 34 CFR § 99.3), Personally Identifiable Information, Protected Health Information, and/or other non-public information (collectively, "PII"). The term "PII" specifically includes metadata, user content, placement information, placement site information, and any communications transmitted or stored in the service. Supplier shall treat all PII as confidential and protected.

i. *Compliance*. Supplier shall comply with all applicable laws, regulations, rules, and policies in connection with its access to or handling of PII. Supplier shall indemnify and hold the University, and its trustees, employees, and agents, harmless from any claims, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising out of any failure by Supplier to be in compliance with any applicable laws or Supplier's breach of the Contract.

ii. *Foreign Countries of Concern*. Pursuant to § 287.138, F.S. and BOG Regulation 9.012 (as they may be updated), the University may not knowingly enter into, extend, or renew contracts which would grant Supplier access to an individual's PII (as defined elsewhere in these PO Terms) if: i) Supplier is owned by the government of a Foreign Country of Concern; (ii) the government of a Foreign Country of Concern has a controlling interest in the entity; (iii) Supplier is organized under the laws of or has its principal place of business in a Foreign Country of Concern; or (iv) Supplier is a Foreign Principal. The University shall be entitled to immediately terminate the Contract without liability to ensure the University's continued compliance with the statute*. Undefined Capitalized terms used in this subsection (specifically including "Controlling Interest," "Foreign Country of Concern," and "Foreign Principal") shall have the meaning ascribed by the Florida Statutes, specifically including § 287.138, F.S., as well as BOG Regulation 9.012, as they may be updated.*

iii. *Affidavit*. Pursuant to § 287.138, F.S., effective January 1, 2024, the University may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with Supplier which would grant Supplier access to an individual's PII unless Supplier submits a Foreign Entity Affidavit signed by an officer or representative of Supplier under penalty of Perjury to the University, attesting that Supplier does not meet any of the criteria defined above and therein. Additionally, effective July 1, 2025, Supplier shall submit a Foreign Entity Affidavit to the University prior to any renewals or extensions of an existing Contract. Failure or refusal to timely submit a Foreign Entity Affidavit shall be cause for immediate termination of the Contract by the University.

iv. *Breaches*. If any Supplier has any reason to believe that a breach of the Contract has occurred or that the security, confidentiality, or integrity of any PII could have been compromised or subject to unauthorized access, Supplier shall (a) immediately notify the University; (b) in cooperation with the University, take prompt action to thoroughly investigate the incident or potential incident and mitigate any harm flowing from the incident in conjunction with the University; (c) in cooperation and consultation with the University, make any required notifications to third parties at Supplier's expense; and (d) take prompt action to prevent any similar incidents from occurring, including, without limitation, the installation of appropriate patches or software within 24 hours of Supplier's discovery of the incident. In the event of material breach of this Contract by Supplier or a security breach for which Supplier is responsible, the University shall have the right to terminate the Contract without penalty upon written notice to Supplier. Supplier shall cooperate with the University in responding to the breach and shall reimburse the University for any out-of-pocket expenses the University incurs in its response, including, without limitation, expenses incurred in notifying individuals affected by the breach and/or costs incurred in procuring or providing alternative services.

b) *Student Data.* Supplier acknowledges and agrees that any data or information provided to or made accessible to Supplier by either the student or University personnel regarding University students in connection with this Contract shall at all times constitute education records of the University. Supplier agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)), §1006.52, F.S., FAU Regulation 4.008, and with the terms set forth herein:

i. Covered data and information (CDI) includes paper and electronic student education record information supplied by the University, as well as any data provided by the University students to Supplier. Supplier agrees to hold CDI in strict confidence.

ii. Supplier shall not use or disclose CDI received from or on behalf of the University or its students except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by University or the student. Supplier agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

iii. Supplier shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the University or its students. These measures will be extended by contract to all

subcontractors used by Supplier.

iv. Supplier shall, within one day of discovery, report to the University any use or disclosure of CDI not authorized by this Contract or in writing by the University or the applicable student(s). Supplier's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Supplier has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Supplier has taken or shall take to prevent future similar unauthorized use or disclosure. Supplier shall provide such other information, including a written report, as reasonably requested by Institution.

v. Supplier shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including University's costs and attorney fees, which arise as a result of Supplier's failure to meet any of its obligations hereunder.

vi. In the course of providing services under the Contract, if Supplier is performing an institutional service or function for which the University would otherwise use employees and have access to CDI, Supplier shall be considered an FAU "School Official" pursuant to 34 CFR § 99.31(a)(1)(i)(B). Supplier shall remain subject to and comply with all requirements of FERPA applicable to its services, specifically including, but not limited to, § 99.33(a) governing the use and re-disclosure of CDI from education records. Any CDI held by Supplier will be made available to the University upon request by the University. Supplier acknowledges that it is under the University's direct control with respect to use and maintenance the handling of CDI. Supplier shall also take any action reasonably requested by the University to adhere to its obligations under FERPA or otherwise protect the privacy and confidentiality of CDI.

72. ADDITIONAL TERMS FOR THE UNIVERSITY'S LEASING OF SPACE.

a) *Competitive Solicitation.* The Premises described in the Contract (lease) shall not exceed 5,000 square feet of space in a privately-owned building except upon advertisement for and receipt of competitive bids or proposals as determined by the University in accordance with BOG Regulation 17.001 and FAU Regulation 6.010. Competitive bidding shall not be required for leases of space as set forth in BOG Regulation 17.001. Any Contracts in excess of 5,000 square feet which are not competitively sourced are subject to cancellation by the University.

b) *Premises*. Supplier (Landlord) represents that the Premises may be used for any lawful purpose, and the University represents that it shall not use the Premises for any unlawful purposes. To the extent applicable, the University may set its own hours of operation subject to applicable municipal regulations. the University shall not make any structural alterations to the Premises without receipt of Supplier/Landlord's consent. Supplier warrants that if the University adheres to the terms of the Contract, the University shall freely and quietly occupy and enjoy the full possession of the Premises, together with all appurtenances and other rights and privileges, without hindrance or interruption by Supplier or any other person(s). In the event the University is disturbed, then, in addition to any other remedies, the University shall be entitled to an equitable proration of the rent according to the duration of the disturbance.

c) *Maintenance and Repair*. Supplier/Landlord, at Supplier/Landlord's expense, shall maintain the Premises in good condition and repair throughout the Term. This shall include, but not be limited to, the requirement that Supplier/Landlord maintain, repair, replace, and service, as necessary, all exterior and interior portions of the Premises, including, but not limited to, the roof, windows, floor slabs, exterior walls, gutters, HVAC, parking lot, driveways, sidewalks, carpeting, light fixtures, pest control, paint, and other elements. Supplier/Landlord, upon reasonable prior written notice to the University, may enter the Premises during regular business hours for the purposes of inspecting the same and making any repairs as it is required to make under the Contract.

d) *Utilities*. Supplier/Landlord shall provide and promptly pay for all utilities required by the University for its use and operation of the Premises, including, but not limited to, gas, heat, water, sewer, power, internet, and electricity. In the event any utility is disrupted to such an extent that the University cannot, in its reasonable discretion, operate for business for a period of more than twenty-four (24) hours, the rent payable under the Contract shall abate during the remaining period of disruption.

e) *Term*. At the expiration of the Term, the University will peaceably yield to Supplier/Landlord the Premises in good order and condition, ordinary wear and tear, damage from casualty and condemnation excepted. If the University fails to surrender the possession of the Premises at the expiration or termination of the Contract, the University shall pay, as holdover rent, an amount equal to the rent payable during the last month of the Term, prorated for each day that the University fails to surrender possession of the Premises, and the Contract shall thereafter continue on a month-to-month basis, terminable by either party upon thirty (30) days' notice.

f) *Liability*. In addition to the earlier Insurance provision of these PO Terms, Supplier shall carry property insurance on the Premises with Causes of Loss-Special Form coverage at full replacement value and commercial general liability insurance. Supplier's insurer shall be licensed to do business in the State of Florida and have a minimum A.M. Best's financial rating of A-/VII. Supplier shall provide the University with the appropriate insurance certificates confirming the existence of all required insurance coverage. Supplier agrees to defend and indemnify the University for losses that occur in the common area of the Premises owned/controlled by Supplier. Supplier hereby waives all rights to recover against the University for any loss or damage arising from any cause that would be covered by the insurance required by the

Contract or actually carried by Supplier. Supplier will cause its insurer to issue appropriate waiver of subrogation rights endorsements and supply the University with appropriate information from its insurer confirming such waiver to be in effect. Supplier will reimburse the University, at replacement value, for damages to the University's property as a result of Supplier's negligence. The University is a self-insured entity with a general liability risk management program, including the administration of general liability claims, settlement of claims, a claims prevention program, and trust fund pursuant to Florida law. The University shall keep in full force and effect and throughout the Term the aforementioned insurance program. Upon the request of Supplier, the University will provide Supplier with proof of self-insurance.

g) *University Property*. All equipment, inventory, trade fixtures, and other property owned by the University and located in the Premises shall remain the personal property of the University and shall be exempt from the claims of Supplier or any mortgagee or lienholder of Supplier without regard to the means by which they are installed or attached. Supplier specifically waives any statutory or common law Supplier's lien and any and all rights granted under present or future laws to levy or distrain for rent against the aforesaid property of the University on the Premises.

h) *Termination & Breach*. If the University shall fail to perform pursuant to the Contract and such failure shall continue for a period of thirty (30) days after the receipt of written notice thereof from Supplier to the University, then Supplier lawfully may seek and enforce any lawful remedies to which it may be entitled. If Supplier fails to perform any of its obligations under the Contract, within thirty (30) days after receipt of notice of such failure from the University (except in the event of an emergency, in which case only reasonable notice is required), then the University may, at the University's option: (1) cure such violation on Supplier's behalf and offset the cost thereof against the rent; or (2) seek and enforce any other lawful remedies to which it may be entitled. The University shall have the right to terminate the Contract, without penalty, upon giving thirty (30) days prior written notice to Supplier for any reason, including in the event a State-owned building becomes available to the University for occupancy during the Term for the purposes for which this space is being leased. The University shall not be liable for any early termination charges.

73. ADDITIONAL TERMS FOR CONSTRUCTION AND PUBLIC WORKS CONTRACTS.

a) **Steel**. Supplier shall comply with Florida Statute Section 255.0993 in the performance of any projects for the University. Should the obligation to use iron or steel products produced in the United States in the project present any concerns regarding the project budget or schedule or otherwise present any concerns related to the completion of a successful project, the Supplier shall so notify the University promptly inwriting so that the University can make a determination about whether any exception to the requirements in Florida Statute Section 255.0993 is applicable.

74. ADDITIONAL TERMS FOR DISASTER AND EMERGENCY ("DE") SERVICES.

a) *DE Services.* DE Services include, without limitation, any professional and/or technical services required by the University in the preparedness, response, recovery, and mitigation phases of any natural or man-made disaster or emergency situation.

b) *Compliance*. All Suppliers providing DE Services to the University must abide by the Federal Emergency Management Agency ("FEMA") and the State of Florida Public Assistance Program requirements and work in cooperation and communication with the University administration and any disaster management consultant(s) employed or retained by the University. These requirements are critical in ensuring that the University will be considered an eligible applicant should public assistance be made available.

c) *Access to Records*.

i. Supplier agrees to provide the University and as applicable the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Supplier which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

ii. Supplier agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. Supplier agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

iv. In compliance with the Disaster Recovery Act of 2018, the University and the Supplier acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

d) *Changes*. Any changes to the method, price, schedule of the work shall be mutually agreed to by the parties in writing.

e) *DHS Seal, Logo and Flags*. Supplier shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

f) *Compliance with Federal Law, Regulations and Executive Orders*. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. Supplier will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

g) *No obligation by the Federal Government*. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting

from the contract."

h) *Program Fraud and False or Fraudulent Statements or Related Acts*. Supplier acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this contract."

i) **ANY PROVISION REQUIRED TO BE IN THE CONTRACT UNDER APPENDIX II TO THE UNIFORM RULES (CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS UNDER 2 C.F.R. § 200.326 AND 2 C.F.R. PART 200 WHICH ARE NOT OUTLINED ABOVE ARE HEREIN INCLUDED IN THIS ADDENDUM BY THIS REFERENCE.**

j) **IN THE EVENT OF SUPPLIER'S NONCOMPLIANCE WITH THIS ADDENDUM OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT MAY BE CANCELED, TERMINATED, OR SUSPENDED BY THE UNIVERSITY IN WHOLE OR IN PART. ADDITIONALLY, UPON GIVING AT LEAST THIRTY (30) DAYS' WRITTEN NOTICE TO SUPPLIER, THE UNIVERSITY MAY TERMINATE THE AGREEMENT, AT ANY TIME, FOR ANY REASON, WITH NO FURTHER OBLIGATION TO SUPPLIER, OTHER THAN TO PAY FOR ANY GOODS RECEIVED OR SERVICES RENDERED IN COMPLIANCE WITH THE CONTRACT PRIOR TO THE EFFECTIVE DATE OF TERMINATION. THE UNIVERSITY SHALL NOT BE LIABLE FOR ANY EARLY TERMINATION CHARGES.**

75. ADDITIONAL TERMS FOR THE PROCUREMENT OF GOODS/SERVICES USING FEDERAL FUNDS: THE 'FEDERAL FUNDS ADDENDUM'.

a) *Standard.* All Contracts or POs made or entered into by the University, which is paid in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, shall contain the following terms and conditions.

b) *General Terms.*

i. **Equal Employment Opportunity** – Supplier shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Supplier agrees to abide by the provisions of the following related to equal employment opportunity, to the extent applicable, which are incorporated herein by reference: 41 C.F.R. §§ 60-1.4, 60-300.5(a), 60-741.5(a), 61-300.10, Executive Orders 11246 and 13465, and Appendix A to Subpart A of Executive Order 13496. As applicable, **Supplier shall abide by the requirements of 41 CFR § 60-741.5, . prohibiting discrimination against qualified individuals on the basis of disability, 41 CFR § 60-300.5(a) prohibiting discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

ii. **Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216) –** Supplier certifies that no part of the equipment, services or systems provided to the University hereunder uses or consists of covered telecommunications equipment or services (as defined by 2 CRF §200.216) as a substantial or essential component of any equipment, service or system provided, or as a critical technology as part of any system provided. Supplier will include a requirement not to use such "covered telecommunications equipment or services" in any subcontracts for the provision of "covered telecommunications equipment or services" let under the Contract.

iii. **Rights to Inventions Made Under a Contract or Agreement** – If the Contract includes the performance of experimental, developmental, or research work, Supplier shall provide for the rights of the Federal Government and the University in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

iv. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** – If the Contract amount exceeds $150,000, Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

v. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – If the Contract amount is for $100,000 or more, Supplier (and, if required, any subcontractors) shall file the certifications required by this law and related regulations, certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Supplier (and, if required, any subcontractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

vi. **Debarment and Suspension (E.O.s 12549 and 12689)** – Supplier represents and warrants that Supplier (or any other person or entity affiliated with Supplier and for whom the standing under these laws is imputed to Supplier) is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains

the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If the Contract amount exceeds the small purchase threshold (currently, $100,000), Supplier shall provide the University with the required certification regarding its exclusion status and that of its principal employees.

vii. **Records Access** – (Applies to all Contracts in excess of $100,000). University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of Supplier which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

viii. **Energy Policy and Conservation** – Supplier will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

ix. **Procurement of Recovered Materials** – Supplier will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

x. **Waste Disposal Act** – Supplier shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

xi. **Federal Water Pollution Control Act -** (Applies to Contracts in excess of $150,000). Supplier agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Supplier agrees to report each violation to the University and understands and agrees that the University, in turn, shall report each violation as required to assure notification to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. Supplier agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

xii. **Domestic Preferences for Procurements -** As appropriate and to the extent consistent with law, the University, to the greatest extent practicable under a Federal award, provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

xiii. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms -** Supplier agrees to comply with the provisions of 2 C.F.R. Section 200.321.

xiv. **No Obligation by Federal Government** - The Federal Government is not a party to the Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Supplier, contractor, or any other party pertaining to any matter resulting from the Agreement.

xv. **Program Fraud and False or Fraudulent Statements or Related Acts** - Supplier acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Supplier's actions pertaining to the Agreement.

xvi. **Simplified Acquisition Threshold**. Simplified Acquisition Procedures shall be used to the maximum extent practicable for all purchase of supplies or services not exceeding the simplified acquisition threshold. Contracts for more than the simplified acquisition threshold, currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).

xvii. **ANY PROVISION REQUIRED TO BE IN THE CONTRACT UNDER APPENDIX II TO THE UNIFORM RULES (CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS UNDER 2 C.F.R. § 200.326 AND 2 C.F.R. PART 200 WHICH ARE NOT OUTLINED ABOVE ARE HEREIN INCLUDED IN THIS ADDENDUM BY THIS REFERENCE.**

xviii. **IN THE EVENT OF SUPPLIER'S NONCOMPLIANCE WITH THIS ADDENDUM OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT MAY BE CANCELED, TERMINATED, OR SUSPENDED BY THE UNVIERSITY IN WHOLE OR IN PART. ADDITIONALLY, UPON GIVING AT LEAST THIRTY (30) DAYS' WRITTEN NOTICE TO SUPPLIER, THE UNVIERSITY MAY TERMINATE THE**

AGREEMENT, AT ANY TIME, FOR ANY REASON, WITH NO FURTHER OBLIGATION TO SUPPLIER, OTHER THAN TO PAY FOR ANY GOODS RECEIVED OR SERVICES RENDERED IN COMPLIANCE WITH THE CONTRACT PRIOR TO THE EFFECTIVE DATE OF TERMINATION. THE UNVIERSITY SHALL NOT BE LIABLE FOR ANY EARLY TERMINATION CHARGES.

c) *Construction and/or Repair*. In addition to the above provisions, the following provisions shall apply in relation to Contracts or purchase orders for construction or repair:

i. **Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – (Applies to Contracts in excess of $2000 for construction or repair). Supplier shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Supplier is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

ii. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) (projects in excess of $2,000.00)** – If required by the Federal program legislation, Supplier covenants and agrees that all laborers and mechanics employed by Supplier and its subcontractors on this project will be paid in compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Supplier is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Supplier is required to pay wages not less than once a week.

iii. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** – (Applies to all Contracts in excess of $100,000 that involve the employment of mechanics or laborer). Supplier shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Supplier shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence**.**

d) *Cancelation.* **IN THE EVENT OF SUPPLIER'S NONCOMPLIANCE WITH THIS ADDENDUM OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT MAY BE CANCELED, TERMINATED, OR SUSPENDED BY THE UNVIERSITY IN WHOLE OR IN PART. ADDITIONALLY, UPON GIVING AT LEAST THIRTY (30) DAYS' WRITTEN NOTICE TO SUPPLIER, THE UNVIERSITY MAY TERMINATE THE AGREEMENT, AT ANY TIME, FOR ANY REASON, WITH NO FURTHER OBLIGATION TO SUPPLIER, OTHER THAN TO PAY FOR ANY GOODS RECEIVED OR SERVICES RENDERED IN COMPLIANCE WITH THE CONTRACT PRIOR TO THE EFFECTIVE DATE OF TERMINATION. THE UNVIERSITY SHALL NOT BE LIABLE FOR ANY EARLY TERMINATION CHARGES.**