



Florida Polytechnic University
MASTER SUPPLEMENTAL ADDENDUM

1. INCORPORATION BY REFERENCE.

This Master Supplemental Addendum (“Addendum”) is incorporated into the agreement (“Agreement”) between (“Supplier”) and The Florida Polytechnic University Board of Trustees (“University”). If this Addendum conflicts with any portion of the Agreement’s terms, this Addendum controls. **In addition, it also applies to future agreements between the parties where incorporated by reference into those agreements.**

2. PAYMENT.

Payment will be made in arrears based on actual services and/or goods provided. Supplier will submit bills for compensation for goods, services, or expenses in sufficient detail sufficient for a pre- and post-audit. Supplier is responsible for any taxes due under this Agreement. Any contract for the purchase of services or tangible personal property for a period in excess of one fiscal year shall include the following statement: “The State of Florida’s and University’s performance and obligation to pay under this agreement is contingent upon sufficient appropriation by the Florida Legislature and other entities’ allowance of the University to use such funds.” If the University does not issue payment within 30 days of receipt of a proper invoice, the University will pay Supplier an interest penalty at the rate established pursuant to section 55.03(1), Florida Statutes if the interest exceeds \$1.00. The University may require Supplier to accept payments via the University’s EFT/ACH payment process.

3. RELATIONSHIP OF THE PARTIES.

Supplier is an independent contractor, and neither Supplier nor Supplier’s employees, agents, or other representatives will be considered the University’s employees or agents. Supplier may not use the University’s name, trademarks, logos, or marks without the University’s prior written approval. Supplier represents and warrants that it is not on the convicted vendor list (as described in section 287.133(2)(a), Florida Statutes). Each party hereby assumes any and



all risk of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents of that party. Supplier also assumes such risk with respect to the willful or negligent acts or omissions of Supplier's subcontractors or persons otherwise acting or engaged to act by Supplier in furtherance of Supplier fulfilling Supplier's obligations under the Agreement.

4. CONFIDENTIALITY OF INFORMATION.

If Supplier is exposed to University's confidential information (such as donor information), Supplier will keep such information confidential and will act in accordance with any guidelines and applicable laws including the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and the Gramm-Leach Bliley Act.

5. PUBLIC RECORDS, CONTRACT FOR SERVICES: COMPLIANCE WITH SECTION 119.0701, FLORIDA STATUTES.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Florida Polytechnic University
Attention: General Counsel
4700 Research Way
Lakeland, FL 33805
ogc@floridapoly.edu
(863) 874-8412**

To the extent that Contractor meets the definition of "contractor" under section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Contractor must comply with public records laws, including the following provisions of section 119.0701, requiring Contractor to:

- A. Keep and maintain public records required by University to perform the service.



- B. 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.
- C. Ensure that confidential information or records that are exempt from public records disclosure are not disclosed except as authorized by law for the duration of this agreement, renewals, and following completion of the contract if Contractor does not transfer the records to University.
- D. Upon completion of this Agreement, transfer, at no cost, to University all public records in possession of Contractor or keep and maintain public records required by University to perform the service.
 - 1) If Contractor transfers all public records to University upon completion of the contract, Contractor must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If Contractor keeps and maintains public records upon completion of this Agreement, Contractor must meet all applicable requirements for retaining public records.
 - 3) All records stored electronically must be provided to 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.
- E. Third parties requesting to inspect or copy public records relating to this agreement must be made directly to University. If University does not possess the requested records, University will notify Contractor of the request, and Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- F. The University may inspect the:



- 1) Financial records, papers, and documents of the Contractor that are directly related to the performance of the contract or the expenditure of state funds.
 - 2) Contractor's programmatic records, papers, and documents which the University determines are necessary to monitor the performance of this agreement or to ensure that the terms of this agreement are being met.
 - 3) The Contractor must provide such records, papers, and documents requested by the University within 10 business days after the request is made.
 - a) The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.
- G. The terms of section 6 are material terms of this agreement, and failure to comply may result in termination and/or civil penalties.

6. INDEMNIFICATION.

A. Contractor agrees to release, indemnify, defend, and hold harmless: (1) Florida Polytechnic University or The University Board of Trustees; (2) The Florida Board of Governors; (3) The State of Florida and their respective trustees, officers, employees and agents from any and all liability, fines, royalties, fees, taxes, suits, claims, demands and actions, costs, attorney's fees and expenses of any kind or nature whatsoever ("Losses") for any loss of life, personal, bodily or economic injury or damage or loss to property arising out of the negligent or intentional acts, errors or omissions of Contractor, its officers, agents, employees and contractors; and from and against any orders, judgments or decrees which may be entered pursuant thereto.

B. Nothing in this agreement may be construed as an indemnification of the Contractor by the University or as a waiver of sovereign immunity beyond that provided in section 768.28, Florida Statutes.

C. This provision will survive the termination of this agreement.

D. Due to its sovereign immunity, University will not indemnify Contractor.



7. COPYRIGHT AND INTELLECTUAL PROPERTY.

If Supplier uses copyrighted materials or documents not owned by the University in Supplier's performance of the Agreement ("Copyrighted Materials"), Supplier represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials. Supplier will, at its 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 that is based on a claim that the University's use of the Copyrighted Materials infringes a trademark or copyright of a third party. This provision will survive termination of the Agreement and Supplier's liability for the above is not limited by any limitation of liability clauses in the Agreement.

8. GENERAL PROVISIONS.

- A. Nothing in this Agreement may be construed as an indemnification of the Supplier by the University or as a waiver of sovereign immunity beyond that provided in section 768.28, Florida Statutes.
- B. This Agreement may not be assigned or modified by either party except as agreed to in writing and signed by the parties, and this Agreement will be binding upon the parties' successors and assigns.
- C. Renewals of this Agreement are not automatic and must be agreed to by the parties in writing.
- D. Any clauses in the agreement regarding: arbitration or mediation, restrictions on the hiring of vendor's employees, imposing a limitations-on-claims period, or grants of exclusivity to Supplier are null and void.
- E. Supplier will have and maintain types and amounts of insurance that at a minimum cover the Supplier's (or subcontractor's) exposure in performing this Agreement. The University is self-insured and is not required to obtain additional insurance for this Agreement.



- F. If the University is specifically responsible for reimbursing Supplier for travel expenses pursuant to the Agreement, such expenses will only be paid to the extent permitted by section 112.061, Florida Statutes.
- G. If Supplier is providing software, the University may create and retain a copy of the software and related documentation for back up and disaster recovery purposes and for archival purposes for use after the Agreement is terminated.
- H. Pursuant to section 448.095, Florida Statutes, Supplier certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Supplier during the term of this agreement. If Supplier contracts with a subcontractor to perform work or provide services pursuant to this agreement, Supplier must also require the subcontractor to comply with the requirements of section 448.095, Florida Statutes. The subcontractor must provide to Supplier an affidavit stating that the subcontractor does not employ, contract with, or subcontract with or to any unauthorized alien. Supplier must maintain a copy of such affidavit for the duration of the contract. University may terminate this agreement immediately upon notice to Supplier for any violation of this provision. All terms defined in section 448.095, Florida Statutes are adopted and incorporated into this provision.
- I. This Agreement is governed by the laws of the State of Florida and venue of any actions arising out of this Agreement will be in the state courts in Polk County, Florida.

9. TERMINATION.

- A. Termination at Will. This Agreement may be terminated by University by providing written notice to Contractor of such intent to terminate at least 10 days prior to the effective date of such termination.
- B. Termination for Cause. Notwithstanding the provisions of subsection 10(A) above, University may, upon 5 days' written notice to Contractor set forth with specificity the basis for the termination to terminate this Agreement for Cause. For purposes of this



Agreement, "cause" is defined as Contractor's failure to perform the Services within the time specified herein or any extension thereof or Contractor's failure to adhere to any of the material terms of this Agreement.

- C. If this Agreement is terminated, University will only be liable for payment of goods received and services rendered prior to the date of termination and accepted by University.

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

THE FLORIDA POLYTECHNIC UNIVERSITY

SUPPLIER:

BOARD OF TRUSTEES:

By: _____

By: _____

Name: _____

Name _____

Title: _____

Title: _____

Date: _____

Date: _____

