

PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE

Acceptance of this order serves as certification that the vendor or its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have not within a three-year period preceding this purchase order been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of government entity (federal, state or local) with commission of any of the offenses enumerated; and (c) have not within a three-year period preceding this purchase order had one or more public transactions (federal, state or local) terminated for cause or default.

CONTRACT REFERENCE

Any government contract, which may be referenced as a part of this Purchase Order, its terms and conditions, are here incorporated.

TERMINATION FOR CONVENIENCE

The University by written notice may terminate this purchase order, in whole or in part, when it is in the University's best interest. If this purchase order is terminated, the University shall be liable only for payment for services rendered or goods received before the effective date of termination.

PUBLIC RECORDS

This Purchase Order/Agreement may be unilaterally cancelled by FAMU for the refusal by **Contractor** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received in conjunction with this Agreement.

AVAILABILITY OF FUNDS

FAMU's performance and obligation to pay under the Agreement/Purchase Order is contingent upon an annual appropriation by the Florida Legislature and funds lawfully appropriated annually by the FAMU Board of Trustees for its purposes and/or obligation of funds by the prime funding agency. A termination penalty may not be charged to FAMU.

FORCE MAJEURE

No default, delay or failure to perform on the part of vendor or the University 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, but not limited to, strikes, lockouts, or inaction of governmental authorities; epidemics; war; embargoes, fire; earthquakes; terrorism; acts of God; default of common carrier. The parties shall be excused from such performance until such time as the reason giving rise to such delayed or prevented performance no longer exists.

SEVERABILITY

In the event any provision of this purchase order/contract shall be held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of the contract goes to the whole of the contract, the contract is unenforceable.

LIABILITY

Vendor/Contractor hereby covenants and agrees to indemnify and hold the harmless FAMU from and against any and all claims, losses, liens, fines, demands, suits, actions, taxes, penalties, expenses, assessments, premiums or liability and settlements of any kind or nature, arising from or in any way connected with this Agreement, or any of the rights and responsibilities required, or referred to, in this Agreement, including reasonable attorneys fees, expert witness fees, and court/arbitration costs. These indemnifications shall survive the term and any renewals of this Agreement. **University's duty to notify does not relieve Vendor of duty to defend.**

INDEPENDENT CONTRACTOR

Contractor is and shall be, in the performance of work/services hereunder, an independent contractor and not an employee, agent, partner or joint venture of FAMU. FAMU shall have neither supervision nor control over **Contractor's** employees, agents, and representatives in the performance of their duties hereunder; such persons shall at all times and in all places be subject to **Contractor** sole direction, supervision and control. Said employees, agents, representatives and any other persons in or about the premises at the instance or request of **Contractor**, shall conform to all rules established by FAMU to govern the general conduct of persons in or about said premises. **Contractor** shall not have the power or authority to bind FAMU in any promise, agreement or representation other than as specifically provided for in this Agreement.

Contractor shall not in any manner use the credit, name, logo trademarks and/or copyrights of FAMU in connection with its business or affairs except as specifically authorized in this Agreement or as approved by FAMU in writing prior to such use by **Contractor**. **Contractor** shall carry all necessary/appropriate insurance including statutory workers' compensation and unemployment insurance for itself, its employees and agents and pay all federal, state and local taxes and withholdings.

Waiver

Waiver by either party of any breach is not to be deemed a waiver of subsequent breach of the same or any other covenant.

LOBBYING

Vendor/Contractor agrees to comply with the provisions of Sections 11.062 and 216.347, Florida Statutes, which prohibit the expenditure of contract funds for the purpose of lobbying the State Legislature or a state agency.

ASSIGNMENT

Neither party may sell, assign, transfer, sublet or convey this Purchase Order/Agreement or any rights and obligations hereunder without the prior written consent of the other party, which will not be unreasonably withheld.

GOVERNING LAW/VENUE

This purchase order shall be governed, interpreted and construed and the rights of the parties determined in accordance with the laws of the State of Florida. Venue for any litigation arising out of or in connection with this Agreement shall be in Leon County, Florida.

PAYMENT PROVISION

Within 40 days of receipt of an invoice and after receipt and approval of goods and services, payments and applicable interest for late payments will be made in accordance with the University's Prompt Payment Compliance Policy.

AUDIT

Contractor shall submit bills for fees or other compensation for services or expenses in detail sufficient for a proper pre and post audit thereof.

TAXES

FAMU is a tax immune entity and exempt from the payment of all sales, use or excise taxes (§212.08(6), (F.S.)). Vendor shall pay all personal property taxes on leased equipment and all taxes based upon net income.

TRAVEL

When travel is specifically permitted under this purchase order, travel, meals, and lodging expenses shall be paid in accordance with Section 112.061, Florida Statutes (F.S.).

GRATUITIES

Pursuant to §112.313(2), Florida Statutes, Vendor agrees that it will not offer to give or give anything of value, including a gift, loan, reward, promise of future employment, favor or service to any FAMU employee based upon any understanding that the official action or judgment of the employee would be influenced thereby. Vendor will ensure that its subcontractors comply with these rules.

EQUAL OPPORTUNITY EMPLOYER

The nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

FEDERAL TRADE COMMISSION (FTC)

All service providers shall implement and maintain adequate safeguards to comply with FTC rules (16 CFR Part 314) and University policies regarding the safeguarding of customer information.

RED FLAG RULES

Contractor acknowledges that FAMU has adopted an Identity Theft Prevention Program as required under 16 C.F.R. Part 681 for certain covered accounts that may be assessed in accordance with this agreement. Accordingly, **Contractor** will conduct its activities in accordance with reasonable policies and procedures to detect, prevent and mitigate the risk of identity theft.

Contractor agrees that all acts to be performed by it in connection with this Agreement shall be performed in strict conformity with all applicable laws of the State of Florida.

The Agreement/Purchase Order and this Addendum constitute the entire agreement between the parties hereto, and supersede all representations, understanding or agreements prior to execution thereof. The Agreement and this Addendum may only be modified in writing signed by an authorized representative of both parties and attached hereto.

E-verify.

The Contractor and its subcontractors have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees in accordance with section 448.095, F.S. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees in accordance with section 448.095, F.S. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. The Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five (5) days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one (1) year after the date of such termination. The Department will promptly notify the Contractor and order the immediate termination of the contract between the Contractor and a subcontractor performing work on its behalf for this Contract should the Department have a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S.