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# FLORIDA ATLANTIC UNIVERSITY

**Sealed Invitation to Negotiate (ITN) No. & Title:** 2021-ITN-0097-MT, Public-Private Partnership (P3) to Construct and Operate a Marine Testing Research Facility

**Description:** This competitive solicitation is an invitation to negotiate (ITN) with The Florida Atlantic University Board of Trustees (hereinafter referred to as “University”) to issue a ground sublease to a private party to construct, build, and maintain a Marine Testing research facility on University’s Harbor Branch Oceanographic campus using the Public-Private Partnership (P3) method.

**Terms:** Initial term of the ground sublease may not exceed April 21, 2060, with further renewals at FAU’s sole discretion (See Section 2.0, Scope of Services for additional information).

**ITN Posting Date:** Friday, March 26, 2021

**Virtual Pre-Proposal Conference Date/Time:** Monday, April 19, 2021 at 10am EST

**On-Site Visit:** **To be Arranged and Scheduled Via Addendum**

**Proposer’s Questions Due Date on E-Sourcing Platform:** Monday, April 26, 2021 at 5pm EST  
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=FAU>

**ITN Due Date/Time:** Friday, May 21, 2021 at 5pm EST

**For Information Contact:** **Melody Thelwell, MPA**  
**Director of Procurement**  
**Florida Atlantic University**  
[mthelwell@fau.edu](mailto:mthelwell@fau.edu)

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## SECTION 1.0 - PROPOSER ACKNOWLEDGEMENTS

The following Proposer Acknowledgement is required and must be accepted by the proposer:

- 1.1 EXECUTION OF PROPOSAL:** All responses must be submitted using the Florida Atlantic University (“FAU” or “University”) electronic sourcing system. All costs associated with responding to this ITN are the sole responsibility of the Proposer.
- 1.2 DISPOSITION OF PROPOSALS:** All proposals become the property of Florida Atlantic University. The University shall have the right to use all ideas, and/or adaptations of those ideas, contained in any proposal received in response to this ITN.
- 1.3 TAXES:** FAU is a public body corporate of the State of Florida and does not pay Federal Excise and Sales taxes on direct purchases of goods and services.
- 1.4 MISTAKES:** Proposers are expected to examine the conditions, scope of work, proposal prices, extensions and all instructions pertaining to the goods and services involved. Failure to do so will be at the Proposer's risk. Proposers must check their response for any errors and state any applicable discount(s) in the proposal.
- 1.5 CONFLICTS OF INTEREST:** All individuals participating in this procurement process are bound by the Florida Code of Ethics for Public Employees, Chapter 112, F.S. and FAU Regulation 5.011, University Ethics. All proposers must disclose with their proposal the name of any officer, director, or agent who is also an employee of the University. Further, all Proposers must disclose the name of any University employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches.
- 1.6 BID OPENING:** Shall be public, on the date and at the time specified. It is the bidder's responsibility to assure that his bid is posted at the proper time. A bid may not be altered after the closing dates.
- 1.7 WITHDRAWAL/AWARDS:** As the best interest of the University may require, the University expressly reserves the right at any time and for any reason to cancel this **Invitation to Negotiate** or reject any and all bids or waive any minor irregularity or technicality in bids received. The University shall bear no responsibility or liability for any damages or costs associated therewith. Bidders are cautioned to make no assumptions unless their bid has been evaluated as being responsive.
- 1.8 NOT AN OFFER OF PURCHASE:** This solicitation is not an offer of purchase. Statements and information contained within this document should not be construed as binding on the University in any way. All terms and conditions are subject to further interpretation and modification by FAU through the issuance of written addenda. The University has made its best efforts to define existing requirements. This solicitation is a request for information to assist the University in making an acquisition decision and enter into an agreement with the successful Bidder(s) for the effort outlined herein.

This solicitation is neither a commitment nor a guarantee of business volume or revenue to the Bidders. No FAU personnel are authorized to make a commitment, either verbally or in writing, until the contracting process has been completed and a written agreement/Purchase Order is provided to the successful firm signed by an authorized FAU signatory.

- 1.9 INTERPRETATIONS:** Any questions concerning conditions and specifications shall be directed in writing using the Q&A section of this electronic sourcing system by the date indicated within this ITN. Questions received after this time may not be answered prior to the opening of proposals and requests to extend the opening date in order to address questions may not be honored subject to the sole discretion of FAU.
- 1.10 DISPUTES:** Any person protesting a specification must timely file a Notice of Intent to Protest with the University within 72 hours of the University's electronic posting of the specification that is being protested. Failure to timely file a Notice of Intent to Protest within 72 hours of the posting of the specification shall constitute a waiver of the right to protest proceedings related to that specification.
- 1.11 INFORMATION:** Information, including all postings referred to in this ITN, will be posted electronically on the FAU Purchasing website: [http://www.fau.edu/purchasing/bid\\_info.php](http://www.fau.edu/purchasing/bid_info.php). At all times it shall remain the responsibility of the proposer to check the website for postings of addenda, short lists, and award decisions. No further notice will be given.
- 1.12 AMENDMENTS:** Amendments may be issued within the FAU electronic sourcing system prior to the proposal closing, which may modify, supplement or interpret any portion of this ITN. No verbal or written information from other sources are authorized as representing the University.
- 1.13 NOTICE OF BID PROTEST BONDING REQUIREMENT:** Any entity filing an action protesting a decision or intended decision to a competitive solicitation pursuant to Board of Governors' Regulation 18.002 shall, at the time of filing of the formal protest, post with the University, a bond prescribed by Board of Governors' Regulation 18.003. **FAILURE TO FILE THE PROPER BOND AT THE TIME OF FILING THE FORMAL PROTEST WILL RESULT IN A DENIAL OF THE PROTEST.**
- 1.14 PERMITS AND LICENSES.** The Proposer shall be responsible to obtain and maintain, at its sole cost and expenses, all necessary permits and licenses to comply with all federal, state, and local statutes, rules and regulations, and all University regulations, standards and policies.
- 1.15 PUBLIC RECORDS:** Any material submitted in response to this ITN will become a public document pursuant to Section 119.07, F.S. This includes material that the responding Proposer might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Section 119.07, F.S. **(Please see Section 6.0 for additional information regarding Public Records).**
- 1.16 AS SPECIFIED:** All materials and services proposed must meet the specifications stated herein.
- 1.17 PROFESSIONAL CONDUCT:** All persons must govern their conduct in a professional business manner. Sexual harassment, discrimination and/or any other behavior considered unprofessional, disruptive or not conducive to the University environment or in violation of University regulations or policies will not be tolerated. Any person participating in unacceptable activities will not be allowed to continue in the solicitation process.
- 1.18 PUBLIC ENTITY CRIME LAW:** The University shall not accept a competitive solicitation from or purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list.

**1.19 EQUAL OPPORTUNITY STATEMENT:** FAU is committed to equal opportunity practices, which conform to both the spirit and the letter of all laws against discrimination, and is committed to non-discrimination or harassment based on race, color, religion, sex, age, national origin, disability, veteran status, marital status, sexual orientation, gender identity or expression or other protected status.

To be considered for inclusion as a supplier under this agreement, the Proposer commits to the following:

a) The provisions of Executive Order 11246, September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor are applicable to each order placed against this agreement regardless of value. See attached.

b) If the Proposer expects to receive \$10,000 in orders during the first 12 months of this agreement, a complete certificate of non-segregated facilities shall be attached to the bid response. Sample certificate attached.

c) If the Proposer expects to receive \$50,000 in orders during the first twelve months of this agreement and employs more than 50 people, standard form 100 (EEO-1) must be filed prior to March 1 of each year.

d) If the Proposer expects to receive \$50,000 in orders during the first 12 months and employs more than 50 people, a written program for affirmative action compliance must be maintained by the Proposer, subject to review upon request by the user agencies of this agreement.

**1.20 SPECIAL ACCOMMODATION:** Persons with a disability requiring accommodation should contact the FAU Equal Opportunity Programs Office at 561-297-3004 at least five working days in advance to make appropriate arrangements. Persons with hearing or speech impairments should contact the same by using the Florida Dual Party Relay System at 1-800-955-8770 (voice) or 1-800-955-8771 (TDD).

**1.21 CAMPUS PARKING:** All proposers accessing FAU campuses are required comply with all Traffic and Parking rules and regulations. For information concerning parking decals or the University's traffic and safety rules and regulations, please call or (561)-297-2770 or access the Traffic and Parking web site on the Internet at: <http://www.fau.edu/parking/>.

**1.22 SERVICE AND WARRANTY:** Unless otherwise specified, the Proposer shall define any warranty service and replacements that will be provided during and subsequent to a contract award. Proposers must explain to what extent warranty and service facilities are provided.

**1.23 SUBCONTRACTING:** If the Proposer intends to use any second party to perform any work under this solicitation, the Proposer must submit the individual(s) or company(s) names, address, phone number, and contact person for the subcontractor with their proposal. Failure to provide this information may be considered grounds for disqualifications. All subcontractors shall meet all of the requirements set forth in the solicitation and shall not relieve the Proposer of responsibility to the University.

**1.24 WAGE, HOUR AND LEGISLATIVE CHANGES:** No changes will be allowed during the length of any award or contract resulting from this solicitation as a result of changes in the federal or state minimum wage rates, labor laws, or any other legislative rule or law that affects the Vendor's cost of doing business or the salary and benefits paid to their employees. The

only allowable exception to this provision is in services contracts for those labor rates and grades that are specifically identified in the proposal as minimum wage earning positions.

**1.25 GOVERNING LAW AND VENUE:** This solicitation and any resulting contracts or purchase orders, if any, and any disputes thereunder will be governed by the laws of the State of Florida and shall be deemed to have been executed and entered into in the State of Florida. Any such contracts or purchase orders shall be construed, performed, and enforced in all respects in accordance with the laws, rules, and regulations of the State of Florida, and any Proposer's provision in conflict with Florida law and rules shall be void and of no effect. FAU and the Proposer hereby agree that this solicitation and resulting contracts or orders, if any, shall be enforced in the courts of the State of Florida in Palm Beach County, Florida.

**1.26 USE OF THE FAU LOGO AND OTHER SYMBOLS AND PRODUCTS:**

Use of FAU's name, logo or any other symbolic or written reference and/or presentation requires advance written approval by the University.

**1.27 COOPERATIVE AGREEMENT:**

This solicitation and any agreement resulting from this solicitation shall be for the use of FAU unless otherwise indicated. Other state universities, community colleges, district school boards, other educational institutions, and other governmental and public entities may assess orders or agreements resulting from this solicitation. Any such third-party agreements and orders shall not directly nor indirectly change, amend, or affect the validity and construction of FAU's solicitation or agreement, nor shall it alter FAU's ability to obtain goods and services timely and as specified.

**1.28 E-VERIFY**

All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Vendor 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 of Vendor's employees hired by the Vendor during the term of the Agreement and/or while performing work or providing services for FAU. Vendor shall require that all subcontractors performing work or providing services on behalf of Vendor for FAU also comply with the requirements of §448.095, Fla. Stat and utilize the E-Verify system to verify employment eligibility of all employees hired by subcontractor. The Vendor shall require for the subcontractor to provide to Vendor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Agreement. FAU may terminate the Agreement immediately upon notice to Vendor for any violation of this provision. A Vendor whose contract is terminated pursuant to this paragraph is liable for additional costs incurred by FAU due to the termination of the Agreement.

**1.29 SOLE POINT OF CONTACT**

The University's sole point of contact for all matters relating to this solicitation is:

**Name & Title:** Melody Thelwell, MPA, Director of Procurement  
**E-Mail:** [mthelwell@fau.edu](mailto:mthelwell@fau.edu)  
**Florida Atlantic University**  
**Controller's Office**

**Attn: Procurement Services  
Administration Building/AD10, Room 150  
777 Glades Road  
Boca Raton, Florida 33431-0991**

Confidentiality: From the date of issuance of this solicitation, until an award is made, the vendor must not make available or discuss its proposal, or any part thereof, with any employee or agent of the University, unless permitted by the Director of Procurement and/or designee, in writing, for purposes of clarification only, as set forth herein.

Any individual, associated with the company participating in this solicitation, who contacts any other university employee and/or Selection/Evaluation Committee member regarding any aspect of this solicitation, or who attempts to discuss the solicitation with any representative of FAU, other than the person designated as the sole point of contact, whether such contact be in person, telephone, or through electronic or written correspondence, may be determined to have violated the terms and conditions of this solicitation. If that determination is made, any proposal received from such an individual or its company may be rejected as non-responsive and not subject to further evaluation. If there are any changes or additions to the Sole Point of Contact information at any time in the process, participating companies will be notified via an addendum to the solicitation.

Questions regarding the solicitation document and/or process should be written and submitted to the Sole Point of Contact. No oral communications shall be considered as a change to the solicitation. All posting regarding this solicitation will be posted electronically within the University's bid posting system, which can be reached at <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=FAU>. At all times, it shall remain the responsibility of the company participating in the solicitation to check the website for postings of short lists, and award decisions. No further notice regarding solicitations will be given.

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## SECTION 2.0 – SCOPE OF SERVICES

### 2.1 BACKGROUND/GENERAL INFORMATION:

Florida Atlantic University (“University or FAU”) is soliciting Invitations to Negotiate(s) (“proposals/bids”) to issue a ground sublease to a private party to construct, build, and maintain a Marine Testing research facility on University’s Harbor Branch Oceanographic Institute campus using the Public-Private Partnership (P3) method. The University desires its development partner to design, build, finance, operate, and maintain a state-of-the-art Marine Testing Research Facility (the “Facility”). The awarded Proposer of this ITN will be expected to collaborate with the University in research grants and contracts that leverage the infrastructure of the facility and the FAU HBOI campus, as well as collaborating in activities and opportunities at or through the Facility that are expected to enhance the University’s mission of educating and preparing its students and furthering its research activities. The Facility would be an owner-occupied single tenant building. The University’s desire is to enhance the research activities on campus as described herein by bringing a research partner onto its HBOI campus. It is anticipated that the University research faculty and staff will be able to work in the newly constructed and designed Facility in collaboration with the awarded Proposer.

This ITN is open to participation by all eligible bidders. **The resulting award(s) is non-exclusive.**

#### 2.1.1 BIDDERS QUESTIONS

All questions, including the Site Visit and Pre-proposal conference(s), must be submitted using the Question & Answer (“Q&A”) Board in this electronic sourcing system.

#### 2.1.2 UNIVERSITY ENVIRONMENT

Founded in 1961, Florida Atlantic University is a comprehensive public university that is currently serving more than 30,000 undergraduate and graduate students at sites strategically located along the state’s southeastern coastline. Long known as an outstanding teaching institution, FAU is undergoing rapid development as a center of cutting-edge research, particularly in the areas of sensor technology, Artificial Intelligence (AI), data science, ocean sciences and ocean engineering. FAU’s progress in biomedical science research has been accelerated by the University’s partnerships with three internationally known biomedical research organizations, The Scripps Research Institute, and the Max Planck Florida Institute for Neuroscience, as well as a research affiliation agreement with the Memorial Hospital System of Broward County.

Through a well-developed network of partner campuses, FAU serves students at locations and sites throughout its six-county service region in southeast Florida as well as through distance learning. FAU’s student body, which ranks as the most ethnically and culturally diverse in Florida’s State University System, includes men and women of both traditional and non-traditional age. The University community is served by an excellent library system that has more than 3.6 million items, including books, periodicals, government documents, microforms, maps, media and other materials as well as a wealth of electronic resources, including more than 374,000 full-text electronic books and 18,000 full-text electronic journals, plus access to several hundred proprietary databases.

A member of Conference USA, FAU has 19 men’s and women’s intercollegiate teams, including an NCAA Division I football team that has won two bowl games. The Boca Raton campus is home to a new 30,000-seat football stadium.



FAU's 10 academically distinguished colleges are the College of Business, Dorothy F. Schmidt College of Arts and Letters, the College of Education, the College of Engineering and Computer Science, the Graduate College, the Harriet L. Wilkes Honors College, the Charles E. Schmidt College of Medicine, the Christine E. Lynn College of Nursing, the Charles E. Schmidt College of Science, and the College of Social Work and Criminology.

The University currently offers more than 180 undergraduate and graduate degree programs and is accredited by the Southern Association of Colleges and Schools. Additionally, the University holds membership in the National Association of State Universities and Land-Grant Colleges and the Council of Graduate Schools.

While the institution is relatively young compared to many national public institutions, FAU continues to develop as a leading research university with a focus on continually increasing its academic standing. Research at FAU is focused in four areas in the form of matrix research institutes or 'pillars' including (1) Sensor Technology, (2) Harbor Branch Oceanographic Institute, (3) Brain Institute, and (4) Institute for Health and Biomedical Research. In five (5) years, the research expenditures of FAU have more than doubled with 75% of research funding coming from federal agencies. FAU maintains a strong lobbying presence in Washington D.C. and works closely with agency partners including the Office of Naval Research, Department of Defense, DARPA and the U.S. Navy. Each of these research institutes or pillars exist as a matrix drawing of faculty expertise from all colleges of the University. Additional information on FAU research can be accessed at [www.fau.edu/research](http://www.fau.edu/research).

The FAU HBOI campus is 144 acres and located in Ft. Pierce, FL. It has a MARSEC secure port, berthing area and can accommodate vessels that draft up to 9 feet, and can accommodate a 180 degree turn for vessels up to 200'. The campus is engaged in research and training programs focused on applied ocean technologies and related sensor development in optics and acoustics, and is currently supported by DARPA, ONR, Navy and the Department of Defense. The campus has access control and port facilities and is able to dock vessels that would have direct access to the marine environment for testing. FAU HBOI has approximately 200 employees and engages in approximately \$20M of research activity per year. The facility is supported by a high-bay and high-high bay that can be used for ocean engineering and outfitting marine vessels including boats, submarines, and autonomous systems. There is significant technical expertise on the campus in areas such as bioluminescence, LIDAR, acoustic and non-acoustic detection technologies, optics and remote sensing, cubesats and autonomous systems, with university wide expertise in sensors, data science, artificial intelligence, physics and mathematics, as well as other academic fields. The opportunity for a P3 partnership would offer potential access to certain infrastructure of HBOI while engaging in collaborative research and training of mutual interest.

Additional information about FAU is available on the University's website and can be accessed here: <http://www.fau.edu/about/>. To learn more about HBOI see: [www.fau.edu/hboi](http://www.fau.edu/hboi)

## 2.2 OVERVIEW – STATEMENT OF OBJECTIVE

This competitive solicitation is an invitation to negotiate (ITN) with The Florida Atlantic University Board of Trustees (hereinafter referred to as “University”) to issue a ground sublease to a private party to construct, build, and maintain a Marine Testing Research Facility on University’s HBOI campus using the Public-Private Partnership (P3) method. The University desires its development partner to design, build, finance, operate and maintain a Marine Testing Research Facility (the “Facility”) in the location chosen by the University on its HBOI campus, described in Attachment A, and subject to negotiation. The Facility may be up to 40,000 gross square feet and must be operated in such a manner as to support the research and/or educational mission of the University.

Through this ITN process, the University seeks to advance the following objectives:

- a. Enhance the development of stronger academic and research programs related to the areas of ocean sciences and engineering expertise of the University.
- b. Collaborate on potential training programs that expand the University’s mission.
- c. Establish internship, graduate research assistant or similar programs, and/or cooperative programs for University students.
- d. Provide consideration of University students for career opportunities with the partner company, related to their fields of study.
- e. Engage in collaborations with University faculty leading to advancement of research in fields and enhanced education of students related to University areas of focus.
- f. Further development of the research mission of the campus as it relates to the conduct of classified and unclassified research related to the marine environment, ocean engineering and applied technology or other related areas.

University desires private support to build out the Facility which will provide direct access to the ocean, secure MARSEC port facilities, high-bay, high-high bay, fabrication and machining facilities, small boats facilities, and other technology and technical expertise of the campus. This shared environment will provide academic, research and student development opportunities to the University community, as well as opportunities to collaborate with the FAU scientists on research project grants and contracts of mutual interest. Such opportunities include (but are specifically not limited to) student internships, collaboration on research that focuses on protecting the security of the coastline including acoustic and non-acoustic detection technologies, underwater communications, underwater WiFi, sensors, data science and Artificial Intelligence (AI) applications. Entering into a public-private partnership is a viable means of building campus facilities that could result in joint research with the University. This will ultimately lead to increased economic growth for the city of Ft. Pierce, St. Lucie County and the State of Florida.

Respondents must be capable of financing the delivery, operation, and maintenance of the Facility, while accessing FAU HBOI services as agreed upon. Design and construction method of the Facility will be subject to approval by the University to ensure alignment with the University mission, cutting-edge innovation throughout the campus, and for consistency with the other buildings on campus.

The land comprising the HBOI Campus is leased to the University from the State of Florida through the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. The term of this lease expires on April 21, 2060 (“HBOI Lease”). Respondents must provide the minimum required term of the ground sublease needed. The initial term may not exceed the expiration date of the HBOI Lease, but may have renewal options subject to the sole discretion of FAU HBOI and contingent on the renewal of the HBOI Lease.

Through the ITN solicitation process, Responders will need to demonstrate expertise in the planning, construction, and operation of a research facility and management of the accompanying staff, or otherwise prepare a Response that explains how these duties would be addressed. As such, Respondents will demonstrate their own, and any Team Member's, experience in the various aspects of project planning, technical design and specification, operation of a similar facility, management of a similar facility, collaboration with an educational institution, and other relevant information. The University may ask for detailed information or records regarding the relationship of the parties if Respondent submits a Response that includes Team Members.

Respondents will need to provide technical and financial information on the Facility to include but not be limited to the following: gross and net square footage; total acreage required, project timeline, infrastructure needs, project cost, financing plan and capabilities and other relevant information, among other considerations. All costs related to the planning, financing, constructing, operating, and maintaining of the facility will be borne by the Respondent. If the Facility or any part thereof will be subleased to other third parties, the University will have the right to pre-approve any and all potential tenants and terms.

### 2.2.1 DELIVERABLES

#### 1. Basic Information

The University and the awarded Respondent will enter into a ground sublease on the University's HBOI campus sufficient to construct and operate a privately funded and operated Marine Testing Research Facility that will in part, integrate into the University's research and academic mission.

It is highly recommended that any Respondent take a significant amount of time to review and understand the State University System of Florida's Public-Private Partnership Guidelines:

[https://www.flbog.edu/documents\\_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf](https://www.flbog.edu/documents_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf)

2. **Quality and Innovation:** Developing a high-quality building is an important consideration for the University given that the durability and energy efficiency of the premises will have an impact on the ongoing cost of operations and maintenance of the Facility and the high quality of the University's existing research and academic spaces. The University expects for the Respondent to introduce cutting-edge innovation in the design and construction elements of the Project, the research to be conducted therein, and in the relationship between the Respondent and the University.
3. **Schedule:** A description of the Facility, a schedule for the initiation and completion of the Facility, and the total Project cost based on the initially identified project scope and conditions will be required.
4. **Provide a Safe, Secure Facility Environment:** The Project must provide appropriate building access, lighting, circulation, and other safety and security features that meet or exceed University's construction standards. Security may be available through the University, subject to monitoring fees as may be negotiated.
5. **Construction:** The University expects that the Project's buildings and site improvements are to be of Class A institutional quality and commensurate with top-tier American universities. The Project is expected to be designed and constructed in accordance with FAU's established Cost Containment Guidelines (found here) and comply with all

University building codes, standards and regulations. The University's Cost Containment Guidelines contain a Green Credits Worksheet that identifies FAU-established sustainability goals for new projects based on criteria set forth by the US Green Building Council. The Projects must at least meet minimum requirements set forth by FAU's design guidelines.

6. University review and approval of the Project design will be required through all phases of the design process. All construction pertaining to the Facility must, at a minimum, comply with all applicable federal, state and local laws, rules and/or regulations, as may be amended from time to time and will be subject to the oversight and approval of the University's Design and Construction Services Department. Exterior fixtures in the Facility are considered part of the construction requirements under this ITN.

Initial signage costs will be borne by the awarded Respondent(s) and will conform to the University's existing signage design requirements.

**Note:** Per the Florida Board of Governors regulation 14.020, during the design and construction of a project on University property, the University is the authority having jurisdiction for compliance with the requirements of codes and statutes. The Respondent will be responsible for costs associated with design and construction related services, including, but not limited to, University internal permitting and inspection, third-party review and inspection services, and other associated costs.

7. **Project Cost:** The Respondent is expected to pay for any and all costs and expenses pertaining to the construction, operation and maintenance of the Facility (this is in addition to its activities in support of the University's mission and any additional terms as outlined in the ground sublease). Costs of the Facility will include, but is not limited to, the cost of design review, permitting, code compliance, inspection services, construction (including all necessary site utility connections) or additional infrastructure, management, security, emergency response, maintenance and all operational costs for the Facility constructed under the ground sublease (**Please See Section 3 of this Proposal**).
8. **Debt Service.** The University will not provide a financial backstop if revenues decline below what is required to keep the project fiscally sound (i.e., payment of debt service and funding of required reserves). The University will not cover a portion of debt service for the Facility.
9. **Utilities.** The University will need to review the capacity restraints depending on the proposed Facility, but, depending upon capacity, it will allow the Facility to connect to its central utility plant, assuming a connection fee is paid based on the total cost of the system and the expansion. The University is not allowed to resell utilities, but will expect that all connected services be sub-metered to calculate costs for charge back, which may include administrative fees. The University will need to coordinate with other utility providers on any infrastructure that cannot be supported by the University's existing system. If new or additional utility connections and/or infrastructure are needed or desired to support the new facility and/or the HBOI Campus, the Respondent will be expected to pay its fair share costs, including without limitation connecting to the county water system (HBOI currently produces its own potable water).

**10. Research Partnership.** The University expects the Respondent to commit to an ongoing sponsored research partnership with HBOI and the University. *The continuity of the research partnership will be a requirement for continuation of the ground sublease with the Respondent during its term.*

**11. Additional Project Elements**

- a. Single Point of Responsibility: The Facility agreements, including the ground sublease, will require a single point of responsibility between the University and the private party.
- b. If an awarded Respondent is successful in petitioning governmental agencies for a reduction in property taxes as a result of the ground sublease, the awarded Respondent will pay a percentage of the savings (TBD) to the University on an annual basis in the form of additional rent.
- c. Subleased Parcel: The University is prepared to offer the private party a ground sublease, subject to various approvals, for the site of the Facility. The private party will be responsible for paying annual rent and additional rent in amounts to be negotiated with the University. The Shortlisted Respondents will be provided a summary of the material terms of the ground sublease.

The University will determine the actual location of the Facility during the negotiations with any awarded Respondent(s) based on the location(s) described in Attachment A.

- d. Ownership: All improvements constructed by a private party on the subleased parcel will be owned by the private party during the ground sublease term and will transfer to the University at the expiration of the ground sublease.

The ground sublease will specify the extent to which the private party will have the right to modify the Facility during the term.

- e. Parking for Building Occupants: Respondent should outline its parking needs for the Facility. If no additional parking is constructed, the existing parking spaces on campus will not be exclusively for the use of any occupants. Occupants working in the Facility and private party employees working at the Facility would be allowed to obtain parking permits in the University's parking facilities for the main campus, provided they pay parking fees established by the University.

## **2.3 REQUIRED INFORMATION TO BE SUBMITTED BY THE PROPOSER**

The proposal submitted must clearly indicate the name of the responding firms, as well as the name, address and telephone number of the primary contact at the Proposer's organization, as requested in Section 4 of this ITN.

### **2.3.1 Solicitation Response and Overview**

Upon receipt of the responses to Phase One of this solicitation, the University will review all responses to establish a short-list of qualified Respondents to participate in Phase Two of this ITN process and further develop the framework and structure for the project agreement including a ground sublease and a sponsored research agreement with the University. A response to Phase One of this ITN is a prerequisite to participate in future phases of this ITN. Following receipt of responses to Phase One of this ITN, the University will narrow the list of qualified Respondents to continue to Phase Two in the ITN process to further develop the framework for the Project. From the Shortlisted Respondents that submit a response to Phase Two of the ITN, one or all of the Respondents will be asked to submit a best and final offer ("BAFO") to select an intended awardee or awardees. The outline of the ITN process is described below:

1. Phase One is the University evaluation of written responses and/or presentations concerning qualifications and, based on certain criteria outlined in this ITN, development of a "shortlist" of Respondents ("Shortlisted Respondents") whose qualifications best meet the requirements of the project. Respondents will be required to provide a robust plan for how the project will support the University's mission, conceptual design(s), qualifications and project planning.
2. Phase Two may require Shortlisted Respondents to submit a response for advanced conceptual design, construction, programming, leasing, and financing plan which will be used in a series of detailed negotiations between Shortlisted Respondents and University. As part of this process, it is anticipated that the Shortlisted Respondents may engage in the following activities:
  - a. Further discussion(s) relating to how Respondent will support the University's mission.
  - b. May participate in additional interviews and present additional financial information as requested by the University.
  - c. Review and discuss the proposed business terms that will form the relationship with the University.
  - d. Review and discuss terms to be included in the ground sublease agreement and other project agreements.
  - e. Discuss and prepare BAFO proposals.

Following this due diligence process, the University will select which of the Shortlisted Respondents will be asked to submit their BAFO in accordance with procedures and evaluation criteria to be provided to Qualified Respondents in Phase Two of this solicitation. The University reserves the right to ask one, several, or none of the Shortlisted Respondents to submit a BAFO.



Once the University reaches an agreement with a private party, the proposed ground sublease will be submitted to the University's Board of Trustees ("Board of Trustees") for review and approve. If the Board of Trustees approves the ground sublease, the University will submit the ground sublease to the Florida Board of Governors ("Florida BOG") for its review and approval, as well as the Florida Cabinet. No agreement will be binding unless and until it is approved by all required governmental entities.

### **2.3.2 Solicitation Response – Phase One**

In no more than twenty (20) pages, the Proposer must provide the following, using the sequential ordering as noted in Section 4.1:

#### **1. How the Facility Supports the University's Mission**

- a. Provide a thorough description of considerations Respondent will provide in support of the University's mission, and the type(s) of sponsored research that may be contemplated with HBOI and the University in alignment with the objectives as referenced in section 2.2.
- b. Explain any benefits to the University which could be derived from Proposer having worked with other institutions of higher education or other research entities.
- c. Identify which Team Member will be responsible for which elements and the Team Members' experience with other institutions of higher education or other research entities

#### **2. Design Concept**

- a. Address how the Respondent's overall vision ties design intent with project planning and construction, resulting in delivery of a Facility meeting the ITN objectives.
- b. Present a conceptual design illustrating Respondent's understanding of the scope of services, design intent, other goals and considerations and highlighting overall qualifications.
- c. Describe the proposed Design/Construction method to achieve the ITN objectives and the major steps throughout the process.

#### **3. Research Commitment and Qualifications**

Provide a description of the research commitment and qualifications of the Proposer including a minimum of three (3) professional/business references which documents expertise, competence, capability, and capacity in, project(s) similar to the contemplated transaction.

#### **4. Financial Proposal and Support**

Describe the financing plan for the initial costs of design and construction and for costs of operating and maintaining the Facility, as well as financial support for the research mission, noted above in #1.

### **2.3.3 Solicitation Response – Phase Two**

Shortlisted Proposers, as noted previously in Section 2.3.1.2, will provide the following information using the sequential order, noting Phase Two and described in Section 4.1 (Please note, the Evaluation Committee for this ITN may request additional information from the shortlisted vendors as needed):

## 1. Detailed Proposer Information:

- a. **Company Information.** Provide background information, including company history/organizational structure, primary location of the Proposer's office which will have direct responsibility for this project, years in business, number of employees, each proposed Team Member, corporate structure and any other information communicating capabilities and experience, including listing of any memberships to professional organizations.
- b. **Experience and Qualifications.** Provide a list of the Proposer's experience with comparable transactions of size and scope similar to or larger than the proposed transaction. Include a table with (as applicable) the project name, type of project, scope of project, time period for completion of the project, and hard construction costs for the project.
- c. **Capacity to Manage and Implement the Project.** Provide additional information sufficient to demonstrate Proposer's capacity to manage and implement comparable projects.
  - i. Provide descriptions of the three (3) prior projects accomplished by the Respondent and any Team Member which most closely document the Team's capability to satisfy the University's requirements as stated in the ITN. Include overall project information. If any such projects involve a public/private partnership, please identify the public entities and the name, address, telephone, and email of each such project's contract administrator.
- d. **Financial Capacity.** Submit detailed information sufficient to demonstrate the financial capacity of Proposer. Include Proposer's (or, if applicable, the parent company's) most recent annual reviewed/audited financial statement with the auditors' notes. Such statements should include, at a minimum, balance sheets and profit and loss statements. The University reserves the right to request additional information from any Proposer to determine financial capacity.
  - i. Disclose if the Respondent or any Team Member has ever declared bankruptcy, otherwise been declared insolvent, has had a delinquency judgement issued against it in any court of competent jurisdiction, been placed in receivership, or any litigation that could significantly impact your financial operating results or financial position. If yes, attach a statement indicating the date, court jurisdiction, trustee or receiver's name, telephone number, amount of liabilities, amount of assets, and current status of the bankruptcy, insolvency, delinquency, or receivership.
  - ii. Describe in detail any projects within the last three years where liquidated damages, penalties, liens, judgments, defaults, cancellations of contract or termination of contract were imposed, sought to be imposed, threatened, or filed against the Respondent or any Team Member.
  - iii. Describe financial capacity for a long-term research commitment with the University.



- e. Financial Information. The method of payment with accompanying proof of funds or evidence of a definitive loan commitment and such other information as necessary to demonstrate the capacity of the Proposer to finance the purchase and/or the proposed development of Contemplated Improvements.

## **2. Design & Construction**

- a. Address how the Respondent's overall vision ties design intent with project planning and construction, resulting in delivery of a Facility meeting the ITN objectives.
- b. Present a conceptual design illustrating Respondent's understanding of the scope of services, design intent, other goals and considerations and highlighting overall qualifications.
- c. Describe the proposed Design/Construction method to achieve the ITN objectives and the major steps throughout the process.
- d. Provide information regarding proposal Team members and their experience in completing comparable projects.

## **3. Management**

- a. Describe in depth how the Facility will be managed over the term of the ground sublease including the relationship with the University.
- b. Identify which Team Member(s) will be responsible for managing management of the Facility and the relationship with the University, specifically experience managing, operating and maintaining research facilities and specifically highlight facilities of similar size and complexity completed within the last ten (10) years.

## **4. Disclosure**

- a. Make disclosures regarding: (a) Proposer/Respondent, or Proposer's/Respondent's team, employees having employment relationship with (or holding an office at) University, State of Florida or any State of Florida agencies AND/OR (b) any University, or State employee(s) or officers owning an interest of 5% or more of Respondent's company or its affiliates or branches.

## 2.4 Calendar of Events

The anticipated dates and times by which stated actions will be taken or completed are listed below. If the University determines, in its sole discretion, that it is necessary to change any of these dates and times, an Addendum to this ITN may be issued and posted on the website (as later referenced). All times listed are Eastern Time (ET) and public notices for all applicable meetings will be available using the web address as follows: <https://fau.edu/controller/purchasing/bid-info/>.

Date/Time	Action Steps
Friday, March 26, 2021	ITN solicitation Advertised and Released on e-sourcing platform JAGGAER, <a href="https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=FAU">https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=FAU</a>
Monday, April 19, 2021, 10am EST	Virtual Pre-proposal Meeting at Florida Atlantic University  The web address will be posted within JAGGAER and on the following website: <a href="https://fau.edu/controller/purchasing/bid-info/">https://fau.edu/controller/purchasing/bid-info/</a> , specifically Public Notices
To Be Announced (TBA) via Addendum	Site Visit: Proposers may visit the proposed site and tour the HBOI campus location.
Monday, April 26, 2021 5pm EST	Proposers written questions' due date on JAGGAER
TBA	Addendum posted regarding the Proposer's written questions
Friday, May 11, 2021 5pm EST	Phase One – Proposals Due date
TBA	Public Opening of Responses
TBA	First Selection Committee Meeting
TBA	Shortlisted Firm(s) Posted on FAU's Procurement Services website
TBA	Due date of Phase Two Proposals from Shortlisted Firm(s)
TBA	Anticipated completion of contract negotiations
TBA	Award Recommendation presented to the Board of Trustees (BOT), Board of Governors (BOG) and Governor's Cabinet for review and final approval.

**SECTION 3.0 – PROJECT COST PROPOSAL – SUBMITTED IN PHASE ONE**

**3.1.**

The proposed Suppliers shall offer all of the elements of this ITN and meet all service requirements and specifications listed within Section 2.0 - Scope of Services, to include furnishing all construction, supervision, equipment and materials necessary for this work.

**The information in this ITN is to be utilized solely for preparing the proposal response to this ITN and does not constitute a commitment by the University to procure any product in any volume.**

**3.2 REQUIRED SIGNATURE**

\_\_\_\_\_  
Signature of Bidder's Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Date:

## **SECTION 4.0 – PROPOSAL SUBMISSION AND FORMAT**

### **4.1 CONTENTS OF PROPOSAL**

The University utilizes the electronic sourcing system, JAGGAER. As such, all bidders MUST submit the following documents utilizing the above-referenced system.

The inability or denial expressed in a proposal, or omission in the proposal, to offer to comply/conform with the technical requirements of this section of the ITN may result in proposal being considered non-responsive.

### **4.2 PHASE ONE PROPOSAL RESPONSES**

All proposals must contain the following tabs/sections for **Phase One**, as described in Section 2.3:

#### **1. Cover Page**

Exhibit 1, found in latter part of this Section, is to be used as the cover page for the Proposal. This form must be fully completed and signed by an authorized officer of the Proposer submitting the proposal.

#### **2. Table of Contents**

The Table of Contents should outline in sequential order the major areas of the proposal. All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.

#### **3. Executive Summary**

Provide a brief summary of no more than two (2) pages, describing the basic services offered, experience and qualifications of the Proposer, staff and any other relevant information.

The following sections, as described in Section 2.3, MUST be responded to and submitted in the initial Phase One proposers' responses:

#### **4. How the Facility Supports the University's Mission**

#### **5. Design Concept**

#### **6. Research Commitment and Qualifications**

#### **7. Financial Proposal and Support**

### **4.3 PHASE TWO PROPOSAL RESPONSES**

As noted in Section 2.3.3, all shortlisted proposers MUST submit additional information using the following sequential ordering noted below:

#### **1. Detailed Proposer Information**

#### **2. Design and Construction**

#### **3. Management**

#### **4. Disclosure**

**During the reviews of Phase One and Two submissions, additional information may be requested by the Evaluation/Selection Committee of this ITN, if needed.**

**SECTION 4, Exhibit 1, Cover Page For Proposal**

BIDDER'S NAME (Name of firm, entity or organization):		
FEDERAL EMPLOYER IDENTIFICATION NUMBER:		
NAME AND TITLE OF BIDDER'S CONTACT PERSON: Name: _____ Title: _____		
TELEPHONE: (____) _____	FAX: (____) _____	E-MAIL ADDRESS _____
BIDDER'S ORGANIZATIONAL STRUCTURE: _____ Corporation    _____ Partnership    _____ Proprietorship    _____ Joint Venture _____ Other (Explain) _____		
IF CORPORATION: Date Incorporated/Organized: _____ State Incorporated/Organized: _____ States registered in as foreign corporation: _____		
BIDDER'S SERVICE OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR:		
LIST NAMES OF BIDDER'S SUBVENDORS OR SUBCONSULTANTS FOR THIS PROJECT		

## SECTION 5.0 – EVALUATION/SELECTION PROCESS

### 5.1 COMPETITIVE ITN PROCESS

The selection process under this ITN shall be a competitive process that shall utilize and be governed by the authority, methodology and guidance established within respective University Regulation, including 6.008 Procurement. Proposals will be evaluated by an ITN Evaluation Committee to determine which responses most closely adhere to the ITN requirements and whose proposals best address the University's priorities, as previously stated. The committee members may consist of University Faculty, Staff, Students and designated experts. The short list may be comprised of as few as a single vendor or as many as all vendors. Those selected for the short list will continue in the evaluation process, which may involve at the University's sole and absolute discretion site visits, vendor presentations, vendor management team interviews, negotiations, and evaluation of the vendor's best and final offer.

The determination of the vendors selected for the short list with which negotiations may continue will be based on evaluation of the written response submitted, in **Phase One of this ITN**. During the negotiation phase, there will be no opportunity for presentations at this stage. Any response that is not complete, detailed, and accurate, or that indicates the company prefers to defer providing complete details until a later stage in the process, may be declared non-responsive at the University's discretion and rejected without further evaluation.

The Committee may meet with the short-listed vendors to discuss their capabilities, plans for servicing FAU and satisfying FAU's requirements. After negotiations, if any, have been completed, the short-listed vendors will be given a deadline for submission of "best and final" offers (BAFOs). BAFOs may not be withdrawn within ninety (90) days of submission and Vendors will not be allowed to make further adjustments to their offer, except to respond to requests for clarification from the Committee. The recommendation of the Evaluation Committee will be based upon the initial written response, interviews (if any), negotiations (if any), and best and final offers.

The University reserves the right, in its sole and absolute discretion, to skip the short list process, to award this ITN in full or in part, or make no award at all, or cancel or modify this ITN at anytime. (Note: Florida Atlantic University reserves the right to cancel this solicitation and acquire the products and services contained within via a pre-existing agreement, such as State of Florida Contract, Cooperative Contract, etc. if it is determined to be in the best interest of the University.)

The University also reserves the right to award to another responsive and responsible Proposer of this ITN in the event of vendor default, non-performance, non-compliance or similar issues affecting the University at any time throughout the development agreement and any renewal period.

Award shall be based upon a responsible Proposer whose proposal is responsive to the ITN, demonstrates a clear understanding of the priorities, and demonstrates the capabilities to perform satisfactorily based on service and price matters. FAU reserves the right in its sole and absolute discretion to select the proposal deemed to be in the best interests of the University.

Confidentiality: From the date of issuance of this ITN, until an award is made, the vendor must not make available or discuss its proposal, or any part thereof, with any employee or agent of the University, unless permitted by the Procurement Director, in writing, for purposes of clarification only, as set forth herein. Any individual associated with the company participating in this ITN who contacts any other university employee and/or Evaluation Committee member regarding any aspect of this ITN, who attempts to discuss the ITN with any representative of FAU other than the person designated as the sole point of contact, whether such contact be in person, telephone, or through electronic or written correspondence, may be

determined to have violated the terms and conditions of this solicitation (See Section 1.29). If that determination is made, any proposal received from such an individual OR their company may be rejected as non-responsive and not subject to evaluation. If there are any changes or additions at any time in the process, participating companies will be notified via an amendment to the ITN.

Questions regarding the ITN document and/or process should be submitted in the Q&A Board section of this electronic sourcing system. No oral communications shall be considered as a change to the ITN. All postings referred to in this ITN will be posted electronically on the Purchasing website: <http://www.fau.edu/controller/purchasing/bid-info/> . At all times it shall remain the responsibility of the company participating in the ITN to check the website for postings of short lists, and award decisions. No further notice will be given.

## **5.2 AWARD**

Contract award shall be made to the responsive and responsible Proposer(s), whose proposal is determined to be the most advantageous to the University. No other factors or criteria shall be used in the evaluation.

## **5.3 POSTING OF RECOMMENDED AWARDS**

The official bid/proposal recommended award(s) shall be submitted through the Procurement Department and posted on the electronic sourcing system, JAGGAER, for review and will remain posted for a period of seventy-two (72) hours, excluding weekends and holidays.

Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governor's Regulations 18.002 and 18.003 and FAU Regulation 6.008 shall constitute a waiver of protest proceedings.

## SECTION 6.0 – ADDITIONAL UNIVERSITY TERMS AND CONDITIONS

- 6.1 **INCORPORATION BY REFERENCE.** The Florida Atlantic University Board of Trustees (“FAU”) and the undersigned (“Vendor”) hereby incorporate this Supplemental Addendum - General (“Addendum”) into the agreement between FAU and Vendor (the “Agreement”).
- 6.2 **PAYMENT.** In the event University owes payment to the Vendor, the University shall initiate payment via Automated Clearing House (ACH) direct deposit batch processing within forty (40) days after 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 applicable purchase order/agreement. Failure to initiate or mail the payment within 40 days may subject the University to accrue interest at a rate established pursuant to §55.03(1), Florida Statutes from the expiration of such 40-day period. Invoices shall cite the Contract and shall be submitted in detail sufficient for a proper pre-audit and post-audit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. Payment will be tendered only for services or the portion of services completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission. The University has established a "Vendor Ombudsman" for vendors who may be experiencing problems in obtaining timely payment(s). The University's ombudsman may be contacted at (561) 297- 3693. Invoices which have been returned because of vendor 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. The University is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Vendor is responsible for and shall pay any taxes due under the Contract. The University may require Vendor to accept payments via the University's EFT/ACH payment process. If Vendor is making any payment to the University, Vendor shall pay timely and not offset any amounts. The University shall not make any deposits or prepay any amounts; any deposits are refundable.
- 6.3 **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 Vendor of the non- availability of such funds when University has knowledge. Upon receipt of such notice by Vendor, Vendor shall be entitled to payment only for those services performed prior to the date notice is received.
- 6.4 **SOVEREIGN IMMUNITY.** Any and all indemnification, liability, governing law, arbitration, attorneys' fees, venue and jurisdictional provisions applicable to the University in the Contract, shall be replaced with the following: "To the extent provided under Section 768.28 of the Florida Statutes, the University assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the University and its officers, employees, servants, and agents while acting within the scope of their employment. Nothing in the Contract shall be construed as an indemnification of Vendor. Additionally, nothing contained herein or in any term or condition contained within the Contract or any sub-contract referenced shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the University, the State of Florida or their officers, employees,



servants, agents, agencies, or public bodies corporate to be sued; (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28 of the Florida Statutes; or (4) the consent of the University, the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to the jurisdiction or authority of any laws, forum or court outside the State of Florida; and any such term or condition purporting to do so shall be null and void and of no force or effect."

- 6.5 **NO GUARANTEES.** Vendor acknowledges that the Contract is not a guarantee of any work.
- 6.6 **VENDOR STATUS.** Vendor will supply the University with a complete vendor application and accurate W-9 or W8-BC (Foreign Vendor); if Vendor 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.
- 6.7 **AUDIT & RECORD KEEPING.** The Vendor 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 the Vendor.
- 6.8 **CONFIDENTIALITY OF INFORMATION.** The Vendor acknowledges and agrees that (a) all documents, studies, materials and information furnished to the Vendor by the University or the University's affiliates in connection with the Contract and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for the University in connection with the Contract or which reflect any of the documents, studies, materials or information furnished to the Vendor 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. The Vendor agrees that it shall not use the Information and will not share the Information with its employees, except as necessary to the Vendor's performance under the Contract. The Vendor shall not disclose Information to third parties unless it obtains the University's written consent to such disclosure or is required to pursuant to applicable law or court order.
- 6.9 **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 Vendor any notice. The Vendor 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 the Vendor in conjunction with the Contract. Refusal by the Vendor to allow such public access shall be grounds for cancellation of the Contract by the University. If the Contract is for services and the Vendor is acting on behalf of the University, the Vendor 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 the Vendor 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 the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the University upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Contract, the Vendor 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 THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, [publicrecords@fau.edu](mailto:publicrecords@fau.edu), Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.**

- 6.10 **CANCELLATION.** This Contract shall be subject to cancellation by University upon 30 days written notice to Vendor. 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.
- 6.11 **GOVERNING LAW.** The validity, construction and effect of the Contract shall be governed by the laws of the State of Florida. Exclusive venue of any actions shall be in the state courts of 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. The parties acknowledge that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands.
- 6.12 **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 FAU preapproves such expenses in writing. FAU has the right to make travel arrangements for Vendor.
- 6.13 **CONFLICTS OF INTEREST.** In accordance with Section 112.3185, Florida Statutes, the Vendor 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 Vendor shall be grounds for cancellation of the Contract by the University.
- 6.14 **INDEMNITY.** Vendor 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 Vendor 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 Vendor 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 property properly caused by Licensor's negligence or willful misconduct.

- 6.15 **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. Vendor also assumes such risk with respect to the willful or negligent acts or omissions of persons subcontracting with Vendor or otherwise acting or engaged to act at the instance of Vendor in furtherance Vendor's obligations under the Contract.
- 6.16 **RELATIONSHIP OF THE PARTIES.** The Vendor 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 Vendor as the agent or representative of University for any purpose in any manner whatsoever. Vendor is not authorized to bind University to any contracts or other obligations.
- 6.17 **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. Vendor shall not make any announcements relating to the Agreement, nor shall Vendor use FAU's name, trademarks, logos or marks, without the prior written approval from FAU's Office of Trademark Licensing and Marketing in each instance.
- 6.18 **THIRD PARTIES.** The University is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third-party beneficiary to the Contract.
- 6.19 **PRECEDENCE.** In the event of inconsistency between the Contract and the provisions of these Additional University Terms, the provisions of these Additional University Terms will govern. These Terms and the Contract embody the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between University and Vendor other than are set forth. Any renewals, amendments, alterations or modifications to the Contract must be signed or initialed and approved by all signatories of the Contract. There shall be no unilateral modification of the Contract or any supplemental terms/policies (e.g., the Vendor's Privacy Policy). The term of the Contract shall not auto-renew unless such auto-renewal is expressly agreed upon in writing by the University. All non-solicitation, non-compete, and/or exclusivity provisions shall be ineffective unless expressly agreed upon in writing by the University.
- 6.20 **WARRANTIES.** Vendor, at a minimum, warrants that the goods, products and/or services to be provided by Vendor 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.

- 6.21 **INTELLECTUAL PROPERTY.** If Vendor uses copyrighted materials or documents not owned by FAU (“Copyrighted Materials”) in Vendor’s performance of the Agreement, Vendor represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials. Vendor will, at its own expense, defend any suit brought against FAU and will indemnify FAU against an award of damages and/or costs made against FAU by a settlement or final judgment of a court that is based on a claim that FAU’s use of the Copyrighted Materials infringes a trademark or copyright of a third party.
- 6.22 **COMPLIANCE.** Vendor agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all 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. Vendor shall have all applicable permits, licenses, consents, and approvals necessary to provide the goods and/or services during the Term of the Contract. The University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act.
- 6.23 **E-VERIFY.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Vendor 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 of Vendor’s employees hired by the Vendor during the term of the Agreement and/or while performing work or providing services for FAU. Vendor shall require that all subcontractors performing work or providing services on behalf of Vendor for FAU also comply with the requirements of §448.095, Fla. Stat and utilize the E-Verify system to verify employment eligibility of all employees hired by subcontractor. The Vendor shall require for the subcontractor to provide to Vendor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Agreement. FAU may terminate the Agreement immediately upon notice to Vendor for any violation of this provision. A Vendor whose contract is terminated pursuant to this paragraph is liable for additional costs incurred by FAU due to the termination of the Agreement.
- 6.24 **EXPORT CONTROL COMPLIANCE.** The Vendor acknowledges they 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 Vendor provides export controlled products, technology and/or software (“goods”) to the University, Vendor 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.
- 6.25 **INFORMATION TECHNOLOGY.** If the Vendor has access to the University’s information technology infrastructure, or will be providing such infrastructure to the University, Vendor 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. Vendor further agrees: (a) that any websites hosted by Vendor 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 Agreement and shall not be distributed, repurposed or shaped across other applications, environments, or business units of Vendor, and that no University data of any kind shall be transmitted, exchanged or otherwise passed to other vendors 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 Vendor's security obligations or other event requiring notification under applicable law, Vendor 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.

- 6.26 **COMPLIANCE WITH PCI-DSS.** Vendor represents and warrants that while Vendor 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. Vendor 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. Vendor 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 Vendor is continuously operating in full compliance with PCI-DSS and is not relying on the University for any aspect of that compliance. Vendor shall, upon written request, furnish proof of compliance with PCI DSS within 10 business days of the request. Vendor agrees to provide to the University a current and complete copy of their Attestation of Compliance (AOC). Further, Vendor 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 Vendor loses any required certification or the certification lapses, Vendor shall immediately notify the University, and the University will have an option to terminate this contract and receive a refund for unrendered services.
- 6.27 **CERTIFICATION.** 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. By entering into the Contract, Vendor is certifying that Vendor is not on any convicted vendor list (see § 287.133(2)(a), F.S.).
- 6.28 **PRIVACY.** Vendor 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). Vendor 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 Vendor of any protected health information ("PHI"), the University and Vendor enter into a separate business associate agreement which will

govern the use of the PHI. Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts

- 6.29 **EQUAL OPPORTUNITY.** The Vendor and subcontractors shall abide by the requirements of 41 CFR, Section 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
- 6.30 **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. Any provision requiring the University to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure in performing the Contract and name the University as additional insured and be primary and non-contributory on Vendor'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. Vendor, 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 Vendor. 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, the Vendor 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 any additional contractual Terms.
- 6.31 **BREACH; ASSIGNMENT.** Each term and condition of the Contract is material and any breach or default by Vendor shall be a material breach of the entire Contract for which University shall have the right to terminate the Contract upon notice to Vendor and without termination penalty. Vendor 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.
- 6.32 **WAIVER.** No default, delay or failure to perform 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. In the event of such default, delay or failure to perform, any date or times by which either party is scheduled to

perform shall be extended for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

6.33 **PERMITTING.** In the event the Vendor is providing any on-site service that requires local permitting, the University shall be the permitting authority. The Vendor 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.

6.34 **NOTICES.** All notices required to be given under the Contract shall be sent by certified mail to: Florida Atlantic University, Attn: Procurement Services, ADM 150, 777 Glades Road, Boca Raton, FL 33431-0991.

6.35 **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 the Vendor; (b) Restrictions on the hiring of the Vendor'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 Contractor's liability; (h) that the University performs reporting functions and/or maintains certain types of operations Granting the Vendor any right to audit the University; (j) Attorneys' or collection fees provisions; (k) Arbitration and mediation clauses; (l) Indemnification of the Vendor by the University; (m) non-compete provisions; 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).

6.36 **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 Vendor. 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.

**6.37 ADDITIONAL TERMS RELATED TO THE PURCHASE OF GOODS.**

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

**6.37.2** 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 Vendor, the University must be notified and must accept in writing any variation prior to shipment or delivery.

**6.37.3** Delivery of Goods. Vendor 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, Vendor shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from the University that prevents Vendor from achieving the Delivery Date shall not constitute a breach of the Contract by Vendor. If Vendor anticipates a delay in the delivery of the Goods,

Vendor shall immediately notify the University. In the event that Vendor fails to deliver the Goods by the Delivery Date not due to the fault of the University, or Vendor fails to deliver conforming Goods, the University may purchase substitute Goods elsewhere and charge Vendor for any additional expense incurred relating to the purchase of such substitute Goods. Vendor 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 Vendor, 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.

- 6.37.4** 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 Vendor, the Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by the University to Vendor within a reasonable period of time, or (ii) upon timely delivery of the Goods identified herein to the shipping address specified on the face of the 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.
- 6.37.5** Risk of Loss. Vendor 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. Vendor 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 Vendor or Accepted by the University.
- 6.37.6** Warranty. In addition to Vendor’s standard warranty relating to the Goods, Vendor 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 Vendor’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, Vendor 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.
- 6.37.7** Shipping. Vendor shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Contract and the requirements of common carriers. If no shipping instructions are included, Vendor will ship goods FOB Destination. Vendor shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. Vendor must include Contract No. on all: invoices, B/L,



cases, bundles packing lists and correspondence. Vendor 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. Vendor 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.

- 6.37.8** 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 be in compliance with the law and accompanied by a Material Safety Data Sheet.
- 6.37.9** 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 Vendor at its expense. Failure by the University to inspect and/or test the Goods shall not be deemed Acceptance by the University.
- 6.37.10** 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, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, the University shall reimburse Vendor for the actual, direct cost to Vendor of such Goods which have, at the time of such cancellation, been wholly or partially manufactured and title to all such Goods shall pass to the University. Unless the University shall have otherwise instructed Vendor, Vendor 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.
- 6.37.11** Delay. The University may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its control. Vendor shall hold such Goods at the direction of the University, and Vendor shall deliver the Goods when the cause affecting the delay is eliminated. The University shall be responsible only for Vendor'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.

**6.38 ADDITIONAL TERMS RELATED TO PERFORMERS, SPEAKERS AND ENTERTAINERS.**

- 6.38.1** 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.
- 6.38.2** 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.
- 6.38.3** Cancellation. The University may cancel the Contract by giving Vendor 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, Vendor shall return such amounts to the University. If the University cancels this Contract for reasons other than breach by Vendor, the University will reimburse Vendor for Vendor's out-of-pocket expenses related to the performance of the Contract that were incurred by Vendor 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 Vendor to the University. Vendor may not cancel the Contract except for in the event of Force Majeure Conditions as defined below.

**6.38.4** 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.

**6.38.5** Failure to Perform. Any failure of Vendor to perform may be excused only for proven sickness or injury, civil tumult or riot, epidemics, acts of God, or other conditions beyond the control of the Vendor ("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. Vendor must notify the University immediately of any reason which might result in Vendor's failure to perform on the scheduled date. The University reserves the right to approve/substitute any other Vendor for Vendor in the event that Vendor is not able to perform as scheduled.

**6.39 ADDITIONAL TERMS FOR HOTEL/MEETING SPACES.**

- 6.39.1** Purpose. The University is likely entering into the Contract with Vendor 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)”).
- 6.39.2** 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.
- 6.39.3** Charges. No additional charges or fees (including, but not limited, to parking, security, amenities, wifi, 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.
- 6.39.4** Room Block. Vendor 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.
- 6.39.5** 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. Vendor 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. Vendor may not reassign the meeting rooms specified in the Contract without the University’s prior written consent, not to be unreasonably withheld.
- 6.39.6** Hotel Points. Vendor 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.
- 6.39.7** 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 the Vendor at least ten (10) days advance notice (72 hours if the Contract is for meeting rooms only) and Vendor 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 the Vendor that will generate revenue in an amount equal to or greater than the lost revenue. Vendor 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.
- 6.39.8** 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.

- 6.39.9** Insurance. In addition to the earlier Insurance provision of these Additional Terms, the Vendor shall provide and keep in full force and effect during the term of the Contract, at the Vendor's own cost and expense, the following insurance policy for the joint benefit of the Vendor 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. The Vendor 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. The Vendor's policy shall be primary and any insurance carried by the University shall be noncontributing with respect thereto.
- 6.39.10** Americans With Disabilities Act ("ADA"). (i) Compliance by the Vendor. The Vendor 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 the Vendor other than other individuals (e.g., Braille room services menus or reader); and (c) the modification of the Vendor'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 the Vendor; (b) any extraordinary costs for special auxiliary aids requested by the attendees/the University shall be borne by the University provided the Vendor 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 the Vendor. 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 the Vendor on correspondence with attendees who indicate special needs as covered by ADA. The Vendor 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.

**6.40 ADDITIONAL TERMS FOR INDEPENDENT CONTRACTORS.**

- 6.40.1** Key Personnel. Vendor 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 Vendor's control, provided that prior notice of such reassignment or substitution is delivered to the University. Additionally, Vendor shall substitute Key Personnel upon the University's reasonable request.
- 6.40.2** 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 the Vendor or jointly with the University, on or off premises. If Vendor is providing software, the University may create and retain a copy of the Vendor 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.
- 6.40.3** Access to Work. Although Vendor 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.
- 6.40.4** Non-Compete. If Vendor is acting as a consultant to the University and is representing the University's interests in dealings with other third parties, Vendor 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.

**6.41 ADDITIONAL TERMS FOR ADVERTISING & MARKETING SERVICES.**

- 6.41.1** Advertising Materials. FAU will, at its sole cost and expense, unless otherwise outlined in the Agreement, create and deliver all advertising materials required for any Ad ("Advertising Materials") according to the technical specifications provided by Vendor. If the delivered Advertising Materials do not reasonably conform to Vendor's technical specifications, Vendor shall notify FAU immediately so FAU may correct any errors and ensure the Ad timely runs. If FAU is unable to correct the Advertising Materials or does not provide the Advertising Materials to Vendor timely enough to deliver the Ad on any agreed dates, then Vendor, 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.
- 6.41.2** Content. FAU 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.

**6.42 SPECIFIC ADDITIONAL TERMS FOR ROYALTY CONTRACTS.**

- 6.42.1** Warranties. Vendor represents and warrants that Vendor 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 Vendor’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 Vendor has not sold, assigned, leased licensed or in any manner disposed of or encumbered the rights herein granted to the University; and that Vendor has the right to enter into the Contract. Vendor agrees to indemnify and hold the University harmless from all loss, liability, damages and expenses due to breach of said representations and warranties.
- 6.42.2** Royalties. The term “Vendor” is deemed to mean all of the undersigned persons. Any and 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.
- 6.42.3** Likeness. Vendor grants the University the right to use Vendor’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.
- 6.42.4** 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.
- 6.42.5** Cancellation. The University’s only obligation shall be to pay Vendor the Royalty outlined in the Contract and is not obligated to actually use the Material.

**6.43 ADDITIONAL TERMS RELATED TO ACCESSING STUDENT DATA.**

- 6.43.1** a) Vendor acknowledges and agrees that any data or information provided to or made accessible to the Vendor by either the student or University personnel regarding University students in connection with this Agreement shall at all times constitute education records of the University. Vendor 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 §(a)(2)), Florida Statutes §1006.52, FAU Regulation 4.008, and with the terms set forth herein:
- 6.43.1.1** 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 Vendor. Vendor agrees to hold CDI in strict confidence.
- 6.43.1.2** Vendor 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. Vendor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
- 6.43.1.3** Vendor 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 Vendor.
- 6.43.1.4** Vendor 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). Vendor'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 Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Institution.

**6.43.1.5** Vendor 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 Vendor's failure to meet any of its obligations hereunder.

**6.44 ADDITIONAL TERMS FOR LEASES.**

**6.44.1** Premises. Vendor/Landlord represents that the Premises described in the Lease/Contract may be used for any lawful purpose, and FAU represents that it shall not use the Premises for any unlawful purposes. To the extent applicable, FAU may set its own hours of operation subject to applicable municipal regulations. FAU shall not make any structural alterations to the Premises without receipt of Vendor/Landlord's consent. Vendor/Landlord warrants that if FAU adheres to the terms of the Lease/Contract, FAU 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 Vendor/Landlord or any other person(s). In the event FAU is disturbed, then, in addition to any other remedies, FAU shall be entitled to an equitable proration of the rent according to the duration of the disturbance.

**6.44.2** Maintenance and Repair. Vendor/Landlord, at Vendor/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 Vendor/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. Vendor/Landlord, upon reasonable prior written notice to FAU, 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 Lease/Contract.

**6.44.3** Utilities. Vendor/Landlord shall provide and promptly pay for all utilities required by FAU 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 FAU cannot, in its reasonable discretion, operate for business for a period of more than twenty-four (24) hours, the rent payable under the Lease/Contract shall abate during the remaining period of disruption.

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

- 6.44.5** Liability. In addition to the earlier Insurance provision of these Additional Terms, Vendor/Landlord shall carry property insurance on the Premises with Causes of Loss-Special Form coverage at full replacement value and commercial general liability insurance. Vendor/Landlord'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. Vendor/Landlord shall provide FAU with the appropriate insurance certificates confirming the existence of all required insurance coverage. Vendor/Landlord agrees to defend and indemnify FAU for losses that occur in the common area of the Premises owned/controlled by Vendor/Landlord. Vendor/Landlord hereby waives all rights to recover against FAU for any loss or damage arising from any cause that would be covered by the insurance required by the Lease/Contract or actually carried by Vendor/Landlord. Vendor/Landlord will cause its insurer to issue appropriate waiver of subrogation rights endorsements and supply FAU with appropriate information from its insurer confirming such waiver to be in effect. Vendor/Landlord will reimburse FAU, at replacement value, for damages to FAU's property as a result of Vendor/Landlord's negligence. FAU 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. FAU shall keep in full force and effect and throughout the Term the aforementioned insurance program. Upon the request of Vendor/Landlord, FAU will provide Vendor/Landlord with proof of self-insurance.
- 6.44.6** FAU's Property. All equipment, inventory, trade fixtures, and other property owned by FAU and located in the Premises shall remain the personal property of FAU and shall be exempt from the claims of Vendor/Landlord or any mortgagee or lienholder of Vendor/Landlord without regard to the means by which they are installed or attached. Vendor/Landlord specifically waives any statutory or common law Vendor/Landlord's lien and any and all rights granted under present or future laws to levy or distrain for rent against the aforesaid property of FAU on the Premises.
- 6.44.7** Termination & Breach. If FAU shall fail to perform pursuant to the Lease/Contract and such failure shall continue for a period of thirty (30) days after the receipt of written notice thereof from Vendor/Landlord to FAU, then Vendor/Landlord lawfully may seek and enforce any lawful remedies to which it may be entitled. If Vendor/Landlord fails to perform any of its obligations under the Lease/Contract, within thirty (30) days after receipt of notice of such failure from FAU (except in the event of an emergency, in which case only reasonable notice is required), then FAU may, at FAU's option: (1) cure such violation on Vendor/Landlord'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. FAU shall have the right to terminate the Lease/Contract, without penalty, upon giving thirty (30) days prior written notice to Vendor/Landlord for any reason, including in the event a State-owned building becomes available to FAU for occupancy during the Term for the purposes for which this space is being leased,. FAU shall not be liable for any early termination charges.



**6.45 ADDITIONAL TERMS FOR DISASTER AND EMERGENCY (“DE”) SERVICES.**

**6.45.1** 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.

**6.45.2** Compliance. All Vendors providing DE Services to the University ("DE Service Providers") 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 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.

**6.45.3** All DE Services and DE Service Providers shall comply with the following provisions and standards, as applicable, (i) Equal Employment Opportunity - E.O. 11246; (ii) Affirmative Action - 41 C.F.R. §§ 60-1.4(a), 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; (iii) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act Executive Order 11738 and EPA regulations 40 CFR 15; (iv) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); (v) Debarment and Suspension (E.O.s 12549 and 12689); (vi) Energy Policy and Conservation. P.L. 94-163; 42 U.S.C. 6201-6422; (vii) Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act; (viii) Waste Disposal Act. Section 6002 of the Solid Waste Disposal Act; (ix) Rights to Inventions Made Under a Contract or Agreement. 2 C.F.R. 200 Appendix II [F]; (x) General Procurement Standards, 2 C.F.R. Section 200.318; (xi) Competition, 2 C.F.R. Section 200.319; and (xii) Procurement Methods and Requirements incl. 2 C.F.R. Sections 200.320 through 200.326.

**6.45.4** In addition to the above, the following provisions shall apply with regards to DE Service Providers performing DE Services involving construction or repair: (i) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c); (ii) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-70; and (iii) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

**6.46 ADDITIONAL TERMS RELATED TO PROCUREMENT OF GOODS/SERVICES USING FEDERAL FUNDS.**

**6.46.1** Standard. All Agreements or POs made or entered into by FAU, 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.

## 6.46.2 NON-CONSTRUCTION CONTRACT OR PURCHASE ORDER

- 6.46.2.1 Equal Employment Opportunity – Vendor 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." Vendor 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, Vendor shall abide by the requirements of 41 CFR § 60-741.5. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. **Vendor shall abide by the requirements of 41 CFR § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- 6.46.2.2 Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216) – Vendor represents and warrants 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 CFR §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.
- 6.46.2.3 Rights to Inventions Made Under a Contract or Agreement – If the purchase order includes the performance of experimental, developmental, or research work, Vendor 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.
- 6.46.2.4 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 Purchase Order amount exceeds \$100,000, Vendor 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).
- 6.46.2.5 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – If the Purchase Order amount is for \$100,000 or more, Vendor (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. Vendor (and, if required, any sub-contractors) shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

6.46.2.6 Debarment and Suspension (E.O.s 12549 and 12689) – Vendor represents and warrants that neither it (nor any other person or entity affiliated with Vendor and for whom the standing under these laws is imputed to Vendor) is 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 purchase order amount exceeds the small purchase threshold (currently, \$100,000), the Vendor shall provide the University with the required certification regarding its exclusion status and that of its principal employees.

6.46.2.7 Records Access – (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 the Vendor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

6.46.2.8 Energy Policy and Conservation – Vendor 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;

6.46.2.9 Procurement of Recovered Materials – Vendor 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;

6.46.2.10 Waste Disposal Act – Vendor 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.

6.47 **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:

6.47.1 Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) – (Applies to contracts or purchase orders in excess of \$2000 for construction or repair). Vendor 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 Vendor 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.

6.47.2 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, Vendor covenants and agrees that all laborers and mechanics employed by Vendor 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, Vendor 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, Vendor is required to pay wages not less than once a week.

6.47.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – (Applies to purchase orders in excess of \$2000 for construction projects and purchase orders in excess of \$2500 for other contracts that involve the employment of mechanics or laborers). Vendor 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, Vendor 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.

**6.48 IN THE EVENT OF VENDOR'S NONCOMPLIANCE WITH THE NONDISCRIMINATION CLAUSES OF THIS CONTRACT OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THE CONTRACT/PURCHASE ORDER MAY BE CANCELED, TERMINATED, OR SUSPENDED BY FAU IN WHOLE OR IN PART.**

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ATTACHMENT A – Aerial Image of Harbor Branch Oceanographic Institute



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