Fairleigh Dickinson University Purchase Order General Terms and Conditions

1. TERMS AND CONDITIONS: This purchase order, along with any exhibits, appendices, addendums, schedules, attachments and amendments hereto (**Order**), encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. In the event of a conflict in terms and conditions between this Order and any other contract document, the most stringent terms and conditions in favor of Fairleigh Dickinson University (**FDU)** shall prevail. No modification of this Order or assignment of any interest in this Order, shall be effective without FDU's written consent.

2. DEFINED TERMS: **Deliverables** shall mean the goods or services that are the subject of this Order. **Supplier** shall mean the provider of the goods or services identified in the Order. **Price** shall mean the entire compensation to be paid to Supplier including, but not limited to, delivery charges, insurance, packaging and container charges; and all quoted prices are for F.O.B. delivery point, unloaded and assembled.

3. ACCEPTANCE AND TERMINATION: All Deliverables shall be subject to the right of inspection and acceptance or rejection by FDU. FDU reserves the right to terminate this Order in whole or in part at any time upon 30 days' advance written notice (and any prepaid amounts shall be refunded to FDU pro rata, based on the remaining term of this Order). FDU shall have no liability for failure to perform under this Order due to events or conditions beyond the reasonable control of FDU, or which make an essential purpose of this Order impractical for FDU to achieve, including, without limitation, by reason of governmental order or regulation issued after the execution of this Order, state of emergency, act of war, terrorist activity, storm or other weather related or natural disaster, fire, labor shortage, Coronavirus or other communicable diseases, viruses or illnesses requiring quarantine or significant curtailment of activities, or other pandemics or epidemics.

4. DELIVERY: Time is of the essence in this Order and if delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, FDU reserves the right, in addition to its other rights and remedies, to terminate this Order, to reject such goods or services in whole or in part and/or to purchase substitute goods or services elsewhere and charge Supplier with any loss incurred. Shipments sent C.O.D. without FDU's prior written consent will not be accepted and will be at Supplier's risk. Title and all risk of loss or damage in transit shall remain with Supplier.

5. PRICE: FDU shall not be billed at a Price higher than stated herein. Supplier represents that the Price charged for the goods or services covered by this Order comply with all applicable laws and government regulations in effect at the time of the quotations, sale, delivery and performance. Supplier agrees to notify FDU of any price reduction made in goods or services covered by this Order subsequent to the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this Order.

6. WARRANTIES: In addition to all warranties established by law, Supplier hereby warrants and agrees that all Deliverables (i) meet in all respects the highest applicable standards of the industry and conform to the specifications and requirements set forth in the Order; (ii) are merchantable and fit for the purposes for which similar goods and services are ordinarily employed; (iii) are free from defects in materials and workmanship; (iv) do not infringe or misappropriate the rights of third parties; (v) were not manufactured, sold, performed, or delivered in violation of any law or regulation, including but not limited to those relating to health and safety. Supplier warrants that it has the authority to convey ownership of the Deliverables to FDU and it will protect and defend FDU's title to the Deliverables. Supplier warrants that any services provided pursuant to the Order shall be performed in a diligent, timely, and highly professional manner, in accordance with applicable law, and through individuals qualified to perform the services. The forgoing warranties shall survive acceptance of goods and performance of services hereunder and payment for same.

7. CONFIDENTIALITY: Any proprietary, technical, or other non-public information furnished or made available to Supplier by or on behalf of FDU pursuant to this Order, including without limitation information regarding FDU's students, employees, trustees (and prospective students, employees, and trustees), financial data, projections, and forecasts, facilities, information technology systems, processes, intellectual property, plans, and operations shall be treated by Supplier as FDU's confidential information, shall be used by Supplier only for the purpose of performing the Order for FDU, and shall not be disclosed by Supplier to any other person without FDU's prior written approval.

8. OWNERSHIP: All Deliverables to be provided to FDU under this Order shall be owned exclusively by FDU, and Supplier hereby assigns, transfers, and conveys to FDU the ownership of the Deliverables, including all copyright, patent, and other intellectual and proprietary rights therein. Notwithstanding the foregoing, Supplier shall retain ownership of its preexisting materials, including copyright, patent, and other intellectual property and proprietary rights therein, that may be incorporated into Deliverables; provided that, (i) Supplier shall not include any of its preexisting materials in any Deliverables that are to be custom-developed for FDU unless FDU has approved in writing in advance and (ii) Supplier hereby grants FDU a nonexclusive, perpetual, irrevocable, worldwide, transferable, fully paid-up right and license in and to the Supplier's preexisting materials incorporated into any Deliverables, including a right and license to reproduce, publish, create derivative works, publicly display and perform, make, have made, sell, and otherwise freely use and transfer such materials. Any materials provided to or made available to Supplier by or on behalf of FDU will remain the sole property of FDU, shall be held at Supplier's risk and shall be returned upon completion of the work and no disclosure or reproduction thereof in any form shall be made without FDU's prior consent in writing. No disclosure, description or other communication of any sort shall be made by Supplier to any third person of the fact of FDU's purchase of goods or services hereunder, or the details and characteristics thereof, without FDU's prior written consent. Unless otherwise specifically agreed by an authorized representative of FDU, Supplier will not use the name, insignia, trademarks, or symbols of FDU for any purpose other than as reasonably necessary for the performance of this Order.

9. INDEMNIFICATION: Supplier agrees to defend, hold harmless, and indemnify FDU, its trustees, officers and employees, from and against all liability, loss, cost and expense, including reasonable attorneys' fees, arising out of Supplier's performance of the Order or Supplier's provision of the Deliverables, including but not limited to claims alleging Supplier's provision of the Deliverables violates a law or regulation, violates or misappropriates a third party's intellectual property rights, or has resulted in an injury (including death) or property damage to any person. Without limitation, to the fullest extent permitted by applicable law, Supplier's indemnity of FDU extends to any injury (including death) or property damage suffered by any of Supplier's employees, agents, or contractors. In the performance of any and all services, Supplier, as an independent contractor, accepts responsibility for all persons and entities engaged by Supplier in connection with services rendered.

10. INSURANCE: Supplier must maintain at its own cost and expense the types and amounts of insurance set forth below with an insurer licensed to provide insurance in the State of New Jersey. Insurance Coverage shall be maintained for a minimum of two years following completion of all activities under this Order. A Certificate of Insurance in compliance with the following must be submitted to the Office of Risk Management, Fairleigh Dickinson University, 1000 River Road; H-DH1-01, Teaneck, NJ 07666, prior to Supplier performing, selling or distributing products and services under this Order. Supplier shall name FDU as additional insured on all liability policies except Workers Compensation, Employer Liability, and Professional Liability. The Certificate must also evidence waiver of subrogation on all policies. Supplier shall provide FDU with 30 days prior written notification if the required insurance is cancelled or materially changed. Required insurance includes:

    a. Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability in an amount not less than $1,000,000 per occurrence, and an aggregate amount not less than $2,000,000. Supplier's coverage shall be primary and non-contributory and shall include a severability of interest provision or endorsement, as applicable. If work is onsite and services involve any work with minors, coverage shall also include sexual abuse and molestation in an amount not less than $1,000,000 per occurrence.
    b. Workers' Compensation: If Supplier will be working onsite at FDU or at an FDU-sponsored event, policy with minimum limits of liability in accordance with state law, including an all states endorsement and Employer's liability coverage B, in an amount not less than $1,000,000 annual aggregate.
    c. Business Automobile Liability: Automobile Liability in an amount not less than $1,000,000 per occurrence for bodily injury including death and property damage, including owned, hired and non-owned vehicle coverage, and personal injury protection where applicable, if Supplier will own, hire or lease an Auto in connection with the services or goods provided under this Order.

d. Excess (Umbrella) Liability: If Supplier is performing work onsite, Excess Liability insurance all on an occurrence basis with an occurrence/aggregate minimum limit of $5,000,000 all to be following form over underlying Commercial General Liability, Business Automobile and Employer's Liability policies.
e. Professional Liability: $1,000,000 each claim, for all professional services including, but not limited to, architects, engineers, and consultants and testing services; must include Contractual Liability Coverage and Defense and Indemnification.
f. For Charter Bus Companies: The following additional requirements shall be met: (i) a minimum limit of $5,000,000 for Auto Liability; (ii) Medical payments insurance coverage; and (iii) a Satisfactory Safety Rating on the Federal Motor Carrier Safety Administration's website.
g. Liquor Liability: If Deliverables include supplying or serving alcoholic beverages, or if Supplier requires a liquor license in connection with the Order, Supplier must maintain liquor liability insurance in an amount not less than $1,000,000 per occurrence, and $1,000,000 in the aggregate.
h. Cyber/Network Security & Privacy Liability: If Supplier is handling FDU data and confidential, sensitive, or personally identifiable information is involved, a minimum of $2,000,000 per incident/claim/$2,000,000 aggregate covering the activities under this Order to include, but not be limited to, Data Breach, security and privacy violations, first party damage, third party liability, regulatory fines and penalties, and crisis management costs which include customer notification expenses and credit monitoring.

11. PAYMENT: All amounts due hereunder will be mailed to the Supplier's address listed herein, after Supplier's compliance with this Order and FDU's Finance Department payment processes, including delivering a timely invoice and the relevant IRS withholding forms. Upon FDU's request, Supplier shall execute any additional documents necessary for FDU to perfect or otherwise achieve the rights and benefits to be granted under this Order, without additional payment.

12. APPLICABLE LAW AND POLICY: This Order shall be governed by the laws of the State of New Jersey. Supplier consents to the jurisdiction of the courts located within the State of New Jersey. FDU reserves the right to require Supplier to restrict any Supplier personnel from its property for any reason, including those deemed by FDU to be in in violation of any FDU policy, including but not limited to, the Non-Discrimination and Anti-Harassment and Drug-free Workplace Policies, as well as those personnel deemed by FDU to be unqualified, disorderly, or otherwise apparently unable or unwilling to perform required services. Supplier represents that it is not suspended, debarred, or ineligible from entering into contracts with any agency of the United States and is not itself (and is not owned or controlled by) a specially designated national or blocked person or other sanctioned or restricted party under United States law.

13. NON-DISCRIMINATION**:** FDU is an Equal Opportunity Employer. SUPPLIER hereby represents that it is an Equal Opportunity Employer. The provisions of 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60-250.5(a), 41 C.F.R. § 60-741.5(a), and 29 C.F.R. Part 470 are, if applicable, hereby incorporated by reference.

14. CONFLICT OF INTEREST: Supplier represents and warrants that (a) neither Supplier nor any person acting on behalf of Supplier has offered, provided, or promised to provide anything of value (including without limitation, cash, stock or other equity interests, gifts, tickets, or offers of employment) to any employee, agent, or representative of FDU ("FDU Agent") to influence any act or decision of the FDU Agent related to the selection of Supplier or the issuance, administration, or enforcement of this Order and (b) to Supplier's knowledge, no FDU Agent in a position to affect or to influence the award of the Order to Supplier or the administration or enforcement of the Order has any financial interest in Supplier. A "financial interest" in Supplier includes (i) ownership by an individual or any member of that individual's immediate family of more than 5% of equity in Supplier, whether directly or beneficially; (ii) being a creditor or debtor of Supplier (except a home mortgage obtained on market terms from a bank or similar lending organization shall not be so considered); (iii) an offer of employment from Supplier or being the employer of (or retaining as a contractor) Supplier or its personnel; or (iv) having the ability to direct the management of Supplier, whether directly or indirectly.