

FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

PERSONAL/PROFESSIONAL SERVICES CONTRACT

This CONTRACT is made and entered into this __ day of _____ by and between The Florida Polytechnic University Board of Trustees (“UNIVERSITY”) 4700 Research Way, Lakeland, Florida 33805, and _____ with a principal place of business at _____ (“Contractor”).

- 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.
- 2. Services.** Contractor agrees to perform and provide to UNIVERSITY the following services (“Services”):

- 3.** Contractor key personnel for the purposes of this Agreement is _____. Contractor may not reassign or substitute key personnel without written consent of University; such consent will not be unreasonably withheld.
- 4. Term.** This agreement begins on the date of contract execution and continues until Services are fully rendered, whichever is later.
- 5. Fee for Services.** As full compensation, inclusive of all expenses, including travel, for the Services to be provided by Contractor in this Agreement, University agrees to pay Contractor a not to exceed amount of \$_____ (“Fee”). Exhibit I.
- 6. Payment.** Contractor will submit to the University invoices for the Fee for Services rendered, in arrears. University will designate a representative to serve as University’s point of contact for the Contractor submission of invoices and questions concerning payment status. Contractor must submit invoices for compensation for services or expenses in sufficient detail for a pre- and post-audit.
 1. Contractor is responsible for any taxes due under this Agreement.
 2. University will make payment within 30 days of receipt of a proper invoice.
 3. If University does not issue payment within 30 days of receipt of a proper invoice, University will pay to Contractor an interest penalty at the rate established pursuant to section 55.03(1), Florida Statutes if the interest exceeds \$1.00.

4. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s), may be contacted at 863-874-8448.
 5. University may make payment to Contractor via the University's EFT/ACH payment process. Vendor must provide the necessary information to University upon request.
7. **Public Records, Contract for Services: Compliance with section 119.0701, Florida Statutes.**

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

Florida Polytechnic University

Attention: General Counsel

4700 Research Way

Lakeland, FL 33805

ogc@floridapoly.edu

(863) 874-8412

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

1. Keep and maintain public records required by University to perform the service.
2. 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.
3. Ensure that confidential information or records that are exempt from public records disclosure are not disclosed except as authorized by law for the duration of this agreement, renewals, and following completion of the contract if Contractor does not transfer the records to University.
4. Upon completion of this Agreement, transfer, at no cost, to University all public records in possession of Contractor or keep and maintain public records required by University to perform the service.
 - 1) If Contractor transfers all public records to University upon completion of the contract, Contractor must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If Contractor keeps and maintains public records upon completion of this Agreement, Contractor must meet all applicable requirements for retaining public records.

- 3) All records stored electronically must be provided to University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University.
5. Third parties requesting to inspect or copy public records relating to this agreement must be made directly to University. If University does not possess the requested records, University will notify Contractor of the request, and Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
6. The University may inspect the:
 - 1) Financial records, papers, and documents of the Contractor that are directly related to the performance of the contract or the expenditure of state funds.
 - 2) Contractor's programmatic records, papers, and documents which the University determines are necessary to monitor the performance of this agreement or to ensure that the terms of this agreement are being met.
 - 3) The Contractor must provide such records, papers, and documents requested by the University within 10 business days after the request is made.
 - a) The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.
7. The terms of section 6 are material terms of this agreement, and failure to comply may result in termination and/or civil penalties.

8. Indemnification.

1. Contractor agrees to release, indemnify, defend, and hold harmless: (1) Florida Polytechnic University or The University Board of Trustees; (2) The Florida Board of Governors; (3) The State of Florida and their respective trustees, officers, employees and agents from:
 - a) any and all liability, fines, royalties, fees, taxes, suits, claims, demands and actions, costs, attorney's fees and expenses of any kind or nature whatsoever ("Losses") for any loss of life, personal, bodily or economic injury or damage or loss to property arising out of the negligent or intentional acts, errors or omissions of Contractor, its officers, agents, employees and contractors; and from and against any orders, judgments or decrees which may be entered pursuant thereto.
2. Nothing in this agreement may be construed as an indemnification of the Contractor by the University or as a waiver of sovereign immunity beyond that provided in section 768.28, Florida Statutes.
3. This provision will survive the termination of this agreement.
4. Due to its sovereign immunity, University will not indemnify Contractor.

9. Copyright and Intellectual Property.

1. If Contractor uses copyrighted materials or documents not owned by University (“Copyrighted Materials”) in Contractor’s performance of the agreement, Contractor represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials.
2. Contractor will, at its expense, defend any suit brought against University and will indemnify University against an award of damages and costs, including attorney’s fees, made against University by a settlement or final judgment that is based on a claim that University’s use of the Copyrighted Materials infringes a trademark or copyright of a third party.
3. This provision will survive the termination of this agreement.
4. Any reports or deliverables provided to the University pursuant to this agreement are considered as works for hire, and the University may use such reports or deliverables for any purposes.

10. Termination.

1. Termination at Will. This Agreement may be terminated by University by providing written notice to Contractor of such intent to terminate at least 10 days prior to the effective date of such termination.
2. Termination for Cause. Notwithstanding the provisions of subsection 11(A) above, University may, upon 5 days’ written notice to Contractor set forth with specificity the basis for the termination, terminate this Agreement for Cause. For purposes of this Agreement, “cause” is defined as Contractor failure to perform the Services within the time specified herein or any extension thereof or Contractor failure to adhere to any of the material terms of this Agreement.
3. If this Agreement is terminated, University will only be liable for payment of goods received and services rendered prior to the date of termination and accepted by University.

11. Availability of Funds. The State of Florida’s and University’s performance and obligation to pay under this agreement is contingent upon sufficient appropriation by the Florida Legislature and other entities’ allowance of the University to use such funds. If the entities controlling such funding fail to appropriate funds or to allow University to use funds and University has determined, in University’s sole discretion, that there are insufficient funds available to cover University’s obligation under this Agreement, University has the right to terminate this Agreement for the upcoming year without damage, penalty, cost, or further obligation. University will notify Contractor at least 30 days in advance of a termination pursuant to this provision; University must pay for all services rendered until the date of termination.

12. Insurance. During the term of this contract, Contractor must maintain in full force at its own expense amounts of insurance that at a minimum cover the Contractor (or subcontractors’) exposure in performing this Agreement. University is self-insured and will provide its Certificate of Insurance upon request; University is not required to obtain additional insurance for this Agreement.

13. Force Majeure. Neither party will be deemed to be in default of its obligations if and so long as it is prevented from performing its obligations by an act of war, terrorism, labor strike, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.



- 14. Compliance with Law.** Contractor will comply with all statutes, ordinances, rules, regulations, orders, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority over it. If this agreement is funded in any part with federal funds, the terms of section 202 of Executive Order 11246, as amended, are incorporated as if fully set forth in this agreement. The hyperlink in this agreement is for convenience only and any failure of it to function does not relieve the Contractor of any obligations of this clause.
- 15. Contractor.** Contractor is retained by University only for those purposes and to the extent set forth in this Agreement, and Contractor relation to University will, during the term of this Agreement, be that of independent Contractor. Contractor is not and will not be considered as having an employee status. Contractor is responsible for the payment of any taxes on any monies received by Contractor.
- 16. Prohibitions.** Unless expressly and specifically authorized in writing by University in advance, Contractor is prohibited from engaging in any of the following:
1. Incurring any debt or obligation on behalf of University;
 2. Entering into any contract, arrangement, or transaction which binds University to any extent or creates any obligation on University; and/or
 3. Utilizing University’s name, credit, reputation, goodwill, resources, and/or assets for any purpose.
- 17. Travel.** Not applicable.
- 18. Notices.** Any notice to either party must be in writing and signed by the party giving it, and served:
1. By hand notice; or
 2. Through the United States Mail, postage prepaid, registered or certified, return receipt requested; or
 3. Through expedited mail or package service, if a receipt showing the delivery has been retained; or
 4. By e-mail and addressed as follows:

To UNIVERSITY:

The Florida Polytechnic University
 Board of Trustees
 Address: 4700 Research Way
 Lakeland, FL 33805

To CONTRACTOR:

Name: _____
 Address: _____

Attn: University Procurement
 E-mail: procurement@floridapoly.edu

Attn: _____
 E-mail: _____

CONTRACT MANAGER:

Attn: _____
 Email: _____

Notice is effective upon receipt.

19. **Assignment.** This agreement may not be assigned by Contractor without the express written consent of University.
20. **Governing Law.** This agreement and any amendments to it are governed by the laws of the State of Florida and venue for any actions arising out of this agreement must be in the state courts in Polk County, Florida.
21. **Software.** If Contractor is providing software, University may create and retain a copy of the software and related documentation for backup and disaster-recovery purposes, and for archival purposes for use after this agreement is terminated.
22. **Survival.** Any provision of this agreement providing for performance by either party after termination of this agreement survives termination and continues to be effective and enforceable.
23. **E-Verify.** All terms defined in section 448.095, Florida Statutes are adopted and incorporated into this provision. Pursuant to section 448.095, Florida Statutes, Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this agreement. If Contractor enters into a contract with a subcontractor to perform work or provide services pursuant to this agreement, Contractor must also require the subcontractor to comply with the requirements of section 448.095, Florida Statutes. The subcontractor must provide to Contractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with or to any unauthorized alien. Contractor must maintain a copy of such affidavit for the duration of the contract. University may terminate this agreement immediately upon notice to Contractor for any violation of this provision.
24. **Confidentiality of Information.** If Contractor is exposed to University's confidential information (such as donor information), Contractor will keep such information confidential and will act in accordance with any guidelines and applicable laws including the Family Educational Rights and Privacy Act (FERPA) and the Gramm-Leach Bliley Act.
25. **Conflicts of Interest.** Acceptance of this Agreement certifies that Contractor is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements of Chapter 112, Florida Statutes and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Contractor certifies that its directors and/or principal officers are not employed and/or affiliated with the University unless a current Conflict of Interest (Report of Outside Activity/Employment) form has been completed, executed by such director or officer and approved in accordance with applicable University policies or rules. Violation of this section by Contractor is a ground for cancellation of this Agreement.
26. **Civil Rights.** The Contractor and any subcontractors must abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) prohibiting 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, sexual orientation, gender, identity, 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, sexual orientation, gender identity, national origin, protected veteran status or disability.



27. Entire Agreement. This agreement and any documents incorporated specifically by reference represent the entire agreement between the parties and supersedes all prior oral or written statements or agreements. This agreement may only be amended by signed written amendments.

28. Exhibits. All exhibits listed below are incorporated into this agreement.

A. Exhibit I – _____

UNIVERSITY:

The Florida Polytechnic University
Board of Trustees

CONTRACTOR:

Signature

Print Name

Date

Signature

Print Name

Date