

AGREEMENT

This Agreement (the "Agreement") is made and entered into on the date fully executed by both parties below (the "Effective Date") by and between The Florida Polytechnic University Board of Trustees ("University"), whose principal business address is 4700 Research Way, Lakeland, Florida 33805-8531 and _____ ("Firm"), with a principal business address of _____.

RECITALS

WHEREAS, University has requested proposals to _____ ("Services"), pursuant to ITN-_____ ("Competitive Solicitation"); and,

WHEREAS, Firm submitted a Proposal for the provision of the Services ("Proposal"), certain terms of which were negotiated with University; and,

WHEREAS, University desires Firm to provide the Services as more particularly described herein; and

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, the parties agree as follows:

A. GENERAL TERMS

1. **Recitals.** The above recitals are true and correct and incorporated herein.
2. **Term.** The term of this Agreement shall be from the date of the signing of this Agreement by both parties and continue through the final event occurring on or about _____.
3. **Contract.** University grants Firm the opportunity to provide the Services on the terms provided herein and in accordance with:
 - a. Exhibit "I", Competitive Solicitation ITN xx-xxxx ("ITN") attached and incorporated by reference.
 - b. Exhibit "II", Firm's Solicitation Response attached and by reference; and any addenda thereto.

- c. In the event of conflict between or among terms and conditions in documents pertaining to the Services, such documents govern in the following order of precedence: First, this document; Second, the Competitive Solicitation; and Third, Firm's Solicitation Response. All provisions of this Agreement will be considered as prepared through the joint efforts of the Parties and will not be construed against either Party as a result of the preparation or drafting thereof. No consideration will be given or presumption made on the basis of who drafted any particular provision of this Agreement.

4. **Payment/Fees**

- a. **Payment.** Firm must submit bills for compensation for services or expenses in sufficient detail for a pre-and post-audit. Firm is responsible for any taxes due under this Agreement. University will make within 30 days of receipt of a proper invoice. If University does not issue payment within 30 days of receipt of a proper invoice, University will pay to Firm, an interest penalty at the rate established pursuant to section 55.03(1) Florida Statutes, if the interest exceeds \$1.00. Contractors experiencing payment problems may contact the Vendor Ombudsman at (863) 874-8402. University may make payment to Firm via the University's EFT/ACH payment process. Firm must provide the necessary information to University upon request.
- b. **Fees.** _____

5. **Appropriations.** The University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature of the State of Florida.

6. **Travel.** N/A or Bills for approved travel expenses shall be submitted in accordance with section 112.061, Florida Statutes. The University may establish rates not to exceed the maximum allowed as provided in §112.061, Florida Statutes. The University reserves the right not to pay travel expenses unless the University approves such expenses in advance, in writing. The University has the right to make travel arrangements for Firm.

7. **Indemnification by University.** Nothing in this Agreement may be construed as an indemnification of the Firm by the University or as a waiver of sovereign immunity.

8. **Termination.**

a. Termination at Will. The University may terminate this Agreement or any Project executed under this Agreement, with or without cause, upon written notice of termination at least 10 days prior to the effective date of such termination.

b. Termination for Cause.

1) Notwithstanding the provisions of subsection 6 above, University may, upon 30 days' written notice to Firm set forth with specificity the basis for the termination to terminate this Agreement for Cause. For purposes of this Agreement, "cause" is defined as Firm's failure to perform the Services within the time specified herein or any extension thereof or Firm's failure to adhere to any of the terms of this Agreement.

2) If the University materially breaches the terms of this Agreement, Firm may, upon giving 30 days' written notice to the University identifying specifically the basis for such notice, terminate this Agreement for breach unless the University cures such breach within the thirty (30) day period; provided that failure to pay amounts subject to a good faith dispute between the parties shall not constitute a material breach of the Agreement.

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

9. **Insurance.** Firm will have and maintain types and amounts of insurance that at a minimum cover the Firm's (or subcontractor's) exposure in performing this Agreement. University is insured, and will provide its Certificate of

Insurance upon request; University is not required to obtain additional insurance for this Agreement.

10. **Force Majeure.** Neither party will be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war or terrorism, hurricane, tornado, fire, or other catastrophic natural event or act of God.
11. **Compliance with Laws.** Firm must comply with all laws, ordinances, codes, rules, regulations, 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.
12. **Independent Contractor.** Firm is retained by University only for those purposes and to the extent set forth in this Agreement, and Firm's relation to University will, during the term of this Agreement, be that of independent contractor and no partnership nor joint venture relationship is contemplated. Firm is not and may not be considered as having an employee status.
13. **Prohibitions.** Unless expressly and specifically authorized in writing by the University in advance, Firm is prohibited from engaging in any of the following:
 - a. incurring any debt or obligation on behalf of University;
 - b. entering into any contract, arrangement, or transaction which binds University to any extent or creates any obligation on University; and/or
 - c. utilizing University's name, credit, reputation, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of University.
14. **Indemnification.** Firm is responsible for its performance under this Agreement. Firm agrees to release, indemnify, defend and hold harmless Florida Polytechnic University, the University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, employees and agents of and from any and all liability, fines, taxes, suits, claims, demands and actions, costs, attorney's fees and expenses of any kind or nature whatsoever for any loss of life, personal, bodily or economic injury

or damage or loss to property arising out of the negligent acts, errors or omissions of Firm, its officers, agents, employees and contractors; and from and against any orders, judgments or decrees which may be entered pursuant thereto. This provision survives the termination of this Agreement.

15. **Amendment.** This Agreement and any documents incorporated specifically by reference represent the entire agreement between the parties. This Agreement may only be amended by written amendments duly executed by the parties hereto.

16. **Notices.** Any notice to either party hereunder must be in writing and signed by the party giving it, and served: a) by hand; b) through the United States postal service, postage prepaid, registered or certified, return receipt requested; c) through expedited mail or package service, if a receipt showing the delivery has been retained, and addressed as follows, or d) via e-mail:

To University:

Florida Polytechnic University

Address: 4700 Research Way

Lakeland, FL 33805-8531

Attn: _____

Email: _____

To Firm:

Name: _____

Address: _____

Attn: _____

Email: _____

Contract Manager:

Attn: _____

Email: _____

Notice is effective upon receipt, except if notice is by e-mail, notice is effective upon acknowledgement of receipt by the party to be noticed.

- 17. Assignment.** This Agreement may not be assigned by Firm without the express written consent of University and any attempt to do so will be void. This Agreement is binding upon and inure to the benefit of the parties hereto.
- 18. Conflicts of Interest.** Acceptance of this Agreement certifies that Firm 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. Firm 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 Firm is a ground for cancellation of this Agreement.
- 19. Work for Hire.** Any work specifically created for the University under this Agreement by the Firm or anyone working on behalf of Firm (the term *Firm* encompasses both) is considered a "work for hire." All designs, prints, paintings, artwork, sketches, etchings, drawings, writings, photographs, or any other work or material or property produced, developed or fabricated and any other property created hereunder, including all material incorporated therein and all preliminary or other copies thereof, (the "Materials") are and remain the property of the University, and, unless otherwise specifically set forth herein, are considered specially ordered for the University as a "work made for hire," or, if for any reason held not to be a "work for hire," the Firm who created, produced, developed or fabricated the Materials hereunder assigns all of his/her right, title and interest in the Materials to the University. The University owns all right, title and interest in the Materials. The Firm agrees upon request to execute any documents necessary to perfect the transfer of such title to the University. The Materials must be to the University's satisfaction and are subject to the University's approval. The Firm bears all risk of loss or damage to the Materials until the University has accepted delivery of the Materials. The University is entitled to return, at the Firm's expense, any Materials which the University deems to be unsatisfactory.

On or before completion of the Firm's services hereunder, the Firm must furnish the University with valid and adequate releases necessary for the unrestricted use of the Materials for advertising or trade purposes, including model and property releases relating to the Materials and releases from any persons whose names, voices or likenesses are incorporated or used in the Materials. The Firm hereby represents and warrants that the Materials may be used or reproduced for advertising or trade purposes or any commercial purposes without violating any laws or the rights of any third parties and that no third party has any rights in, to, or arising out of, or in connection with the Materials, including without limitation any claims for fees, royalties or other payments. The provisions of paragraph 12 (indemnification) of this Agreement expressly apply to these regarding (a) the performance or non-performance of the University's order by the Firm, (b) the use or reproduction in any manner, whatsoever, or (c) any breach or alleged breach of any of the Firm's agreements or representations and warranties herein.

20. Public Records, Contract for Services: Compliance with section 119.0701, Florida Statutes.

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

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

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

- A. Keep and maintain public records required by UNIVERSITY to perform the service.
- B. Upon request from the UNIVERSITY’s custodian of public records, provide the UNIVERSITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that confidential information or records that are exempt from public records disclosure are not disclosed except as authorized by law for the duration of this agreement, renewals, and following completion of the contract if CONTRACTOR does not transfer the records to UNIVERSITY.
- D. Upon completion of this Agreement, transfer, at no cost, to UNIVERSITY all public records in possession of CONTRACTOR or keep and maintain public records required by UNIVERSITY to perform the service.
 - 1) If CONTRACTOR transfers all public records to UNIVERSITY upon completion of the contract, CONTRACTOR must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records.
 - 3) All records stored electronically must be provided to UNIVERSITY, upon request from the UNIVERSITY’s custodian of public records, in a format that is compatible with the information technology systems of the UNIVERSITY.

- E. Third parties requesting to inspect or copy public records relating to this agreement must be made directly to UNIVERSITY. If UNIVERSITY does not possess the requested records, UNIVERSITY will notify CONTRACTOR of the request, and CONTRACTOR must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- F. The terms of section 6 are material terms of this agreement, and failure to comply may result in termination and/or civil penalties.

21. Records Inspection.

- A. 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.
 - a) The Contractor must provide such records, papers, and documents requested by the University within 10 business days after the request is made.
- B. The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.

22. Coverage and Participation. The intended coverage of this ITN and any Agreement resulting from this solicitation shall be for the use of the State University System of Florida. With the consent and agreement of the Successful Vendor, other state universities, state or community colleges, district school boards, other educational institutions, and other governmental agencies, may assess and access an Agreement resulting from this solicitation issued and administered by Florida Polytechnic University, ITN xx-xxxx. The University reserves the right to add and/or delete elements, or to change any element of the coverage and participation at any time without prior notification and without any liability of any kind or amount.

23. Civil Rights. The Firm 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.

24. Governing Law. This Agreement and any amendments to it are governed by the laws of the State of Florida and venue of any actions arising out of this Agreement must be in the state courts in Polk County, Florida.

The parties have caused this Agreement to be executed by signing below.

FIRM: _____

THE FLORIDA POLYTECHNIC

UNIVERSITY BOARD OF TRUSTEES

Sign: _____

Sign: _____

Print _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form and legality

By: _____

FPU Attorney

