

## **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 \_\_\_\_\_ (“Contractor”), with a principal business address of \_\_\_\_\_.

### **RECITALS**

**WHEREAS**, University has requested proposals to \_\_\_\_\_ (“Services”), pursuant to ITN- \_\_\_\_\_ (“Competitive Solicitation”); and,

**WHEREAS**, Contractor submitted a Proposal for the provision of the Services (“Proposal”), certain terms of which were negotiated with University; and,

**WHEREAS**, University desires Contractor 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:

1. **Recitals.** The above recitals are true and correct and incorporated herein.
2. **Term.** This agreement begins on \_\_\_\_\_ and continues through \_\_\_\_\_ or until Services are fully rendered, whichever is later. Agreement may be renewed \_\_\_\_\_.
3. **Contract.** University grants Contractor 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”, Contractor’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, Contractor’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. **Fee for Services.** As full compensation, inclusive of any and all expenses, for the Services to be provided by Contractor in this Agreement, University agrees to pay Contractor an all-inclusive maximum fee of US \_\_\_\_\_ (“Fee”). Contractor will submit to University invoices for the Fee for those Services rendered, in arrears. University will designate a representative to serve as University’s point of contact for the Contractor’s submission of invoices and questions concerning payment status.
5. **Payment.** Contractor must submit bills for compensation for services or expenses in sufficient detail for a pre- and post-audit, and in accordance with Payment Schedule which is labeled as Exhibit III.
  - A. Contractor is responsible for any taxes due under this Agreement. University will make payment within 30 days of receipt of a proper invoice.
  - B. 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.
  - C. 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.
  - D. University may make payment to Contractor via the University’s EFT/ACH payment process. Vendor must provide the necessary information to University upon request.
6. **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 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.
- 4) The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.

G. The terms of section 6 are material terms of this agreement, and failure to comply may result in termination and/or civil penalties.

#### **7. Indemnification.**

A. 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:

- 1) 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.

B. 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.

C. This provision will survive the termination of this agreement.

D. Due to its sovereign immunity, University will not indemnify Contractor.

#### **8. Copyright and Intellectual Property.**

A. 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.

- B. 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.
- C. This provision will survive the termination of this agreement.
- D. 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.

**9. Termination.**

- A. 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.
- B. Termination for Cause. Notwithstanding the provisions of subsection 10(A) above, University may, upon 5 days' written notice to Contractor set forth with specificity the basis for the termination to terminate this Agreement for Cause. For purposes of this Agreement, "cause" is defined as Contractor's failure to perform the Services within the time specified herein or any extension thereof or Contractor's failure to adhere to any of the material terms of this 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.

**10. Insurance.** Contractor will have and maintain types and amounts of insurance that at a minimum cover the Contractor's (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.

**11. 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.

**12. 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 Supplier of any obligations of this clause.

13. **Availability of Funds.** University's financial obligations continue under this Agreement are conditioned upon the appropriation of funds on an annual basis, which is not controlled by the University. In the event that 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 will have the right to terminate this Agreement for the upcoming year without damage, penalty, cost, or further obligation. University will notify Contractor at least 30 day in advance of a termination pursuant to this provision; University must pay for all services rendered until the date of termination.
14. **Independent Contractor.** Contractor is retained by University only for those purposes and to the extent set forth in this Agreement, and Contractor's 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.
15. **Prohibitions.** Unless expressly and specifically authorized in writing by University in advance, Contractor 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, goodwill, resources, and/or assets for any purpose.
16. **Travel.** N/A or Invoices/bills for approved travel expenses will 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 Contractor.
17. **Notices.** Any notice to either party must be in writing and signed by the party giving it, and served:
  - A. By hand notice; or
  - B. Through the United States Mail, postage prepaid, registered or certified, return receipt requested; or
  - C. Through expedited mail or package service if a receipt showing the delivery has been retained; or
  - D. 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: Procurement Department  
E-mail: procurement@floridapoly.edu

Attn: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**CONTRACT MANAGER:**

Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

Notice is effective upon receipt.

- 18. **Assignment.** This agreement may not be assigned by Contractor without the express written consent of University.
- 19. **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
- 20. **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.
- 21. **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.
- 22. **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.

23. **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.
24. **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.
25. **Work for Hire.** Any work specifically created for the University under this Agreement by the Contractor or anyone working on behalf of Contractor (the term *Contractor* 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 Contractor 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 Contractor 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 Contractor 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 Contractor's expense, any Materials which the University deems to be unsatisfactory. On or before completion of the Contractor's services hereunder, the Contractor 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 Contractor 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 Contractor, (b) the use or reproduction in any manner, whatsoever, or (c) any breach or alleged breach of any of the Contractor's agreements or representations and warranties herein.

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. **Coverage and Participation.** The intended coverage of this ITN and any Agreement resulting from this solicitation will 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.
29. **Exhibits.** All exhibits listed below are incorporated into this agreement.
  - A. Exhibit I – Competitive Solicitation ITN xx-xxxx
  - B. Exhibit II - Contractor's Solicitation Response
  - C. Exhibit III – Payment Schedule

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

UNIVERSITY:

CONTRACTOR:

The Florida Polytechnic University  
Board of Trustees

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form and legality:

BY: \_\_\_\_\_  
Florida Poly Attorney

DATE: \_\_\_\_\_

Approved by University Board of Trustees  
DATE: \_\_\_\_\_

President on behalf of the  
University Board of Trustees

BY: \_\_\_\_\_

DATE: \_\_\_\_\_