

CONTRACT

This Contract (the “Contract”) 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, a public body corporate (“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 Contract, 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 Contract shall be from the date of the signing of this Contract by both parties and continue through the final event occurring on or about ____.
3. **Contract.** The University grants the Firm the opportunity to provide the Services on the terms provided herein and in accordance with:
 - a. Exhibit “I”, Competitive Solicitation and any addenda thereto, which is hereby attached and incorporated by reference.
 - b. Exhibit “II”, Firm’s Final Proposal which is attached and incorporated 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 Final Proposal. All provisions of this Contract 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 Contract.

4. Payment/Fees

- a. **Payment.** The Firm must submit bills for compensation for services or expenses in sufficient detail for a pre-and post-audit. The Firm is responsible for any taxes due under this Contract. The University will make payment within 30 days of receipt of a proper invoice. If the University does not issue payment within 30 days of receipt of a proper invoice, the University will pay to the Firm, an interest penalty at the rate established pursuant to section 55.03(1) Florida Statutes, if the interest exceeds \$1.00. Firms experiencing payment problems may contact the Vendor Ombudsman at 850-413-5516. The University may make payment to the Firm via the University's EFT/ACH payment process. The 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 preapproved additional unanticipated 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 the Firm.

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

8. Termination.

- a. **Termination for convenience.** The University may terminate this Contract, or any Project executed under this Contract, with or without cause, by providing written notice of termination.
- b. **Termination for Cause/Default.**
 - 1) Notwithstanding the provisions of subsection 8.a above, University may, upon 30 days' written notice to Firm set forth with specificity the basis for the decision to terminate this Contract for Cause. For purposes of this Contract, "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 Contract.

- 2) If the University materially breaches the terms of this Contract, Firm may, upon giving 30 days' written notice to the University identifying specifically the basis for such notice, terminate this Contract 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 Contract.
 - c. If this Contract is terminated, the University will only be liable for payment of goods received and services rendered prior to the date of termination and accepted by the University. In the event of termination, all documents, data and reports prepared by the Successful Respondent under the contract shall become the property of and delivered to the University. The Firm shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials when such work and materials is accepted before the effective date of termination. Such compensation shall be the Firm's sole remedy against the University in the event of termination.
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 Contract. University is insured and will provide its Certificate of Insurance upon request; University is not required to obtain additional insurance for this Contract.

Minimum Insurance Requirements

Firm shall obtain and maintain the minimum insurance coverage set forth below. By requiring such minimum insurance, the University shall not be deemed or construed to have assessed the risk that may be applicable to Firm. Firm shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Firm is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

COVERAGES

1. Commercial General Liability–ISO CG 001 Form or equivalent. Coverage to include:
Premises and Operations
Personal/Advertising Injury Products/Completed Operations
Liability assumed under an Insured Contract (including defense costs assumed under contract)
2. Automobile Liability including all:
Any Auto Owned
Auto Non-owned
Auto Hired Auto
Personal Injury Protection (when applicable)
3. Workers' Compensation
Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

MINIMUM LIMITS REQUIRED

Firm shall carry the following minimum limits of liability as required below: Dollar amounts may change in accordance with the event or project.

Commercial General Liability	
General Aggregate	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000
Personal/Advertising Injury	\$ 1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Payments (Any One Person)	\$ 5,000
Automobile Liability	
Bodily Injury/Property Damage (Each Accident)	\$ 1,000,000
Personal Injury Protection	Statutory
Workers' Compensation	
Coverage A (Workers' Compensation)	Statutory
Coverage B (Employers Liability)	\$100,000 \$500,000 \$100,000

ADDITIONAL REQUIREMENTS

Firm shall meet the following requirements:

- a. Be licensed or approved to do business within the State of Florida.
- b. Name the State of Florida, Florida Board of Governors, Florida Polytechnic University Board of Trustees, and Florida Polytechnic University, its officers, employees, agents, and volunteers as "Additional Insured".
- c. Include an Additional Insured Endorsement form as the "Additional Insured" on Commercial General Liability, Automobile Liability and any other as specified by the contract.
- d. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by the University.
- e. Include a Waiver of Subrogation Clause that clearly states that the insurer paying any claim

arising by reason of any operations under the contract will not seek reimbursement from Florida Polytechnic University.

- f. Policy may not be non-renewed, cancelled or materially changed or altered unless thirty (30) days advance written notice is provided to the University.
 - g. Insurance certificates and written endorsements must be provided directly by the insurance agency or carrier.
 - h. Renewal certificates and endorsements are to be provided to the University at least 30 days prior to expiration.
 - i. Insurer possesses a Best's Insurance Guide rating of no less than "B+".
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 event of Force Majeure as defined in the competitive solicitation.
11. **Compliance with Laws.** The 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.** The Firm is retained by the University only for those purposes and to the extent set forth in this Contract, and the Firm's relation to University will, during the term of this Contract, be that of independent contractor and no partnership nor joint venture relationship is contemplated. The 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, the Firm is prohibited from engaging in any of the following:
- a. incurring any debt or obligation on behalf of the University;
 - b. entering into any contract, arrangement, or transaction which binds the University to any extent or creates any obligation on the University; and/or
 - c. utilizing the University's name, credit, reputation, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of the University.
14. **Indemnification.** The Firm is responsible for its performance under this Contract. The Firm agrees to release, indemnify, defend and hold harmless the University, the Florida Polytechnic 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 the 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 Contract.

15. **Amendment.** This Contract and any documents incorporated specifically by reference represent the entire agreement between the parties. This Contract 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: _____

Contract Manager: Email: _____

Attn: _____ Email: _____

To Firm:

Name: _____

Address: _____

Attn: _____

Notice is effective upon acknowledgement of receipt by the party to be notified.

17. **Assignment.** This Contract may not be assigned by the Firm without the express written consent of the University and any attempt to do so will be void. This Contract is binding upon and inures to the benefit of the parties hereto.
18. **Conflicts of Interest.** Acceptance of this Contract certifies that the 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. The 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 the University policies or rules. Violation of this section by the Firm is a ground for cancellation of this Contract.
19. **Work for Hire.** Any work specifically created for the University under this Contract by the Firm

or anyone working on behalf of the Firm (the term *Firm* encompasses both) is considered a "work for hire." All designs, prints, paintings, artwork, sketches, etchings, drawings, writings, reports, studies, 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 14 (indemnification) of this Contract 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 FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC

**RECORDS RELATING TO THIS CONTRACT, THE FIRM SHOULD 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 the Firm meets the definition of “contractor” under section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, the Firm must comply with public records laws, including the following provisions of section 119.0701, requiring the Firm to:

- (a) Keep and maintain public records required by the 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 Contract, renewals, and following completion of the Contract if the Firm does not transfer the records to the University.
 - (d) Upon completion of this Contract, transfer, at no cost, to the University all public records in possession of the Firm or keep and maintain public records required by the University to perform the service.
 - 1) If the Firm transfers all public records to the University upon completion of the Contract, the Firm must destroy any duplicate confidential information or records that are exempt from public records disclosure.
 - 2) If the Firm keeps and maintains public records upon completion of this Contract, the Firm must meet all applicable requirements for retaining public records.
 - 3) 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 .
- B. Third parties requesting to inspect or copy public records relating to this Contract must be made directly to the University. If the University does not possess the requested records, the University will notify the Firm of the request, and the Firm must provide the

records to the University or allow the records to be inspected or copied within a reasonable time.

- C. The terms of this section are material terms of this Contract, 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 Firm that are directly related to the performance of the contract or the expenditure of state funds.
- 2) The Firm's programmatic records, papers, and documents which the University determines are necessary to monitor the performance of this Contract or to ensure that the terms of this Contract are being met.

a) The Firm 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. 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.

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

The parties have caused this Contract 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: _____

University Attorney

