

Sample Contractor Agreement

This Agreement is made as of [Month, XX, 2017] (the "Effective Date") between Florida Polytechnic University Board of Trustees, a public body corporate (the "University" or "FPU"), and _____ ("Contractor"), Federal I.D. No. _____.

This Agreement shall consist of this Agreement, formal solicitation number XXITN-XXXX [Title], including all attachments and addenda (the "ITN"), and Contractor's response to the ITN (the "Response"), which all are hereby incorporated by reference.

In consideration of the mutual promises contained herein, the University and Contractor agree as follows:

ARTICLE 1 – GOVERNING LAW

This Agreement is governed by the laws of the state of Florida and any provisions herein, in conflict therewith, shall be void and of no effect. Venue for all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Polk County, Florida. This choice of venue is intended by the parties to be mandatory. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section. The federal or state courts of the State of Florida shall have exclusive jurisdiction of any claims arising out of this Agreement.

ARTICLE 2 – SERVICES & TERM

- A. Contractor's responsibility under this Agreement is to [Scope Description] as more specifically set forth in the ITN, the Response, and the Scope of Services, hereby incorporated by reference and attached as Attachment A.
- B. Services of Contractor shall be under the general direction of _____, who shall act as the University's representative during the performance of this Agreement.
- C. This Agreement shall commence on the Effective Date and continue for an initial contract period of xxxx years with the University having the option to renew for x (x) additional xxx (x)-year period. This Agreement may be renewed under the same terms and conditions as the original Agreement, at the sole and exclusive discretion of the University. The University and Contractor will agree upon renewals in writing.

ARTICLE 3 – PAYMENTS TO CONTRACTOR

- A. The total amount to be paid by the University under this Agreement for services, materials, and "out of pocket" expenses shall be determined on a project by project basis based on the rates set forth in the Fiscal Summary, hereby incorporated by reference and attached as Attachment B. Where incremental billings for partially completed items are permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date. The University reserves the right to make payments via ECard, check, and/or direct deposit.
- B. Invoices received from the Contractor pursuant to this Agreement will be reviewed and approved by the initiating University department, indicating that products and services have been rendered in conformity with the Agreement. Invoices will then sent to Accounts Payable for payment. Invoices must reference the current purchase order number (if applicable). All payments are to be made in accordance with FPU Regulation 8.002 Prompt Payment.

Attachment C

1. All requests for payment will be submitted in sufficient detail for a proper pre-audit and post-audit thereof.
2. In order for both parties herein to close their books and records, the Contractor will clearly state "final invoice" on the Contractor's final/last billing to the University. This certifies that all services have been properly performed and all charges and costs have been invoiced to University. Since this account will thereupon be closed, any and all further charges if not properly included on this final invoice are waived by the Contractor.

ARTICLE 4 – TRUTH-IN-NEGOTIATION CERTIFICATE

- A. Signature of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement and no higher than those charged the Contractor's most favored customer for the same or substantially similar service.
- B. The said rates and costs shall be adjusted to exclude any significant sums should the University determine that the rates and costs were increased due to inaccurate, incomplete, or non-current wage rates or due to inaccurate representations of fees paid to outside Contractors. The University shall exercise its rights under this "Certificate" within one (1) year following final payment.

ARTICLE 5 – TERMINATION

- A. Termination without Cause [may have to negotiate]: The University may terminate this Agreement without cause by giving Contractor thirty (30) days written notice of termination.
- B. Termination for Cause. This Agreement may be terminated in the event of a breach of the Agreement. The non-breaching party will notify the other party in writing and describe the breached provision. The breaching party will have ten (10) days from receipt of notice to correct the deficiency. If the deficiency is not corrected within the ten (10)-day allotted time period, then the non-breaching party may terminate this Agreement by providing ten (10) days written notice of termination to the other party.
- C. The University shall be reimbursed by the Contractor for paid services that the University did not or will not receive from the Contractor. The Contractor shall be paid for services rendered to the University's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the University the Contractor shall:
 1. Stop work on the termination date and to the extent specified.
 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
 3. Transfer all work in process, completed work, and other material related to the terminated work to the University.
 4. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 – PERSONNEL

- A. The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the University.
- B. All of the services required herein shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.
- C. Any changes or substitutions of the Contractor's key personnel as may be listed herein must be made known to the University's representative prior to execution, and written approval granted by the University before said change or substitution can become effective.
- D. The Contractor warrants that skilled and competent personnel held to the highest professional standards in the field shall perform all services.

ARTICLE 7 – SUBCONTRACTING

The University reserves the right to accept in writing the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The Contractor is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the Contractor shall promptly do so, subject to written acceptance of the new subcontractor by the University.

ARTICLE 8 – TAXES

The University is exempt from the payment of all Federal Tax and State Tax for sales, use or excise taxes. The Contractor shall pay all personal property taxes on leased equipment and all taxes based upon net income. The University will furnish an exemption certificate as appropriate to the Contractor. The Contractor shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the University, nor shall the Contractor be authorized to use the University's Tax Exemption Number in securing such materials. The Contractor shall be responsible for payment of its own and its share of FICA and Social Security benefits with respects to this Agreement.

ARTICLE 9 – AVAILABILITY OF FUNDS

The University's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the State and/or the University. The University shall give notice to Contractor of the non-availability of such funds when the University has knowledge thereof. Upon the Contractor's receipt of such notice, the Contractor is entitled to payment for only those services performed prior to the date notice is received.

ARTICLE 10 – INSURANCE

- A. Contractor shall not commence work under this Agreement until it has submitted all insurance required and the University has approved such insurance. The Contractor is required to maintain the insurance for the life of the project plus one (1) year.
- B. Contractor must provide within five (5) calendar days of award notification from the University, an original ACORD Certificate of Insurance evidencing the insurances provided by the Contractor, and signed by the insurance companies or their authorized agents, certifying to the name and address of the party insured, the description of the work covered by such insurance, the insurance policy numbers, the limits of liability of the policies and the dates of their expirations with a further certification from the insurance companies that their policies will not be materially modified, amended, changed, canceled or terminated without thirty (30) days business days prior written notice to the University. Certificate must list the following entities as certificate holder and additional insured: The State of Florida, Florida Board of Governors, Florida Polytechnic University Board of Trustees and Florida Polytechnic University.
- C. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Agreement.
- D. Contractor shall maintain, during the term of this Agreement, coverages and requirements in accordance with the University's Minimum Insurance Coverage and Requirements, hereby incorporated by reference and attached as Attachment C.

ARTICLE 11 – INDEMNIFICATION

- A. The Contractor agrees to indemnify and hold harmless, assume liability for and defend, the University, the State of Florida, the Florida Board of Education, Florida Polytechnic University Board of Trustees and their officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which in any manner arise or are alleged to have arisen, from the acts, omissions or wrongful conduct of Contractor or Contractor's officers, employees, agents, guests, patrons, licensees, invitees or subcontractors in connection with or related to their operations, activities, occupancy or use of the facilities or property of the University in connection with the performance of this Agreement.
- B. The Contractor shall construe nothing in this Agreement as an indemnification of the Contractor. The University warrants and represents that as a sovereign entity, it is self-insured. Contractor and University agree that nothing contained herein shall be construed or interpreted as (a) the consent of the University or the State of Florida or

its agents and agencies to be sued; or (b) a waiver of sovereign immunity of the University or the State of Florida.

ARTICLE 12 – SUCCESSORS AND ASSIGNS

The University and the Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the University nor the Contractor shall assign any right or delegate any duties hereunder nor may it transfer, pledge, surrender, or otherwise encumber or dispose of its interest in any portion of this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the University, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the University and the Contractor.

ARTICLE 13 – AFFIRMATIVE ACTION & ADA

- A. As a condition of this Agreement, the Contractor agrees to comply with Section 202, Executive Order 11246, as amended by Executive Order 11375, and regulations published by the U.S. Department of Labor implementing Section 503 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, which are incorporated herein by reference.
- B. The Contractor agrees to comply with the Americans with Disability Act (ADA) of 1990.

ARTICLE 14 – UNIFORM COMMERCIAL CODE

The Uniform Commercial Code shall prevail as the basis for contractual obligations between the Contractor and the University for any terms and conditions not specifically stated in this Agreement.

ARTICLE 15 – CONFLICT OF INTEREST

- A. In accordance with Section 112.3185, Florida Statutes, the Contractor hereby certifies that to the best of its knowledge and belief no individual employed by it or subcontracted by it has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services and would conflict in any manner with the performance of services required hereunder. Violation of this section by Contractor shall be grounds for cancellation of this Agreement by the University.
- B. The Contractor shall promptly notify the University in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the University as to whether the association, interest or circumstance would, in the opinion of the University, constitute a conflict of interest if entered into by the Contractor. The University agrees to notify the Contractor of its opinion in writing within 30 days of receipt of notification by the Contractor. If, in the opinion of the University, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the University shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the University by the Contractor under the terms of this Agreement.

ARTICLE 16 – FORCE MAJEURE/EXCUSABLE DELAYS

- A. The Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the Contractor's control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the University's failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions.
- B. Upon the Contractor's request, the University shall consider the facts and extent of any failure to perform the work and, if the Contractor's failure to perform was without its or its subcontractor's fault or negligence, the Agreement Schedule and/ or any other affected provision of this Agreement shall be revised accordingly; subject to the University's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 17 – ARREARS

The Contractor shall not pledge the University's credit or make it a guarantor of payment or surety for any contract,

debt, obligation, judgment, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 18 – PUBLIC RECORDS PROVISIONS

- A. To the extent that Contractor meets the definition of "Contractor" under Section 119.0701, Florida Statutes, and in addition to other contract requirements provided by law, the Contractor agrees that it is acting as a Contractor on behalf of the University as provided under s. 119.0701(a) and as such it will comply with Florida's Public Records Law. Specifically, Contractor agrees that it will:
1. Keep and maintain public records that ordinarily and necessarily would be required by the University in order to perform the services performed by the Contractor under the Contracts;
 2. Provide the public with access to such public records on the same terms and conditions the University would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
 3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
 4. Meet all requirements for retaining public records and transfer to the University, at no cost, all public records in possession of the Contractor upon termination of the Contracts and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the University in a format that is compatible with the information technology systems of the University.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF RECORDS AT: Procurement Department: (863) 874-8428, procurement@floridapoly.edu 4700 Research Way, Lakeland, FL 33805-8428

ARTICLE 19 – INDEPENDENT CONTRACTOR RELATIONSHIP

- A. The Contractor is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor, and not an employee, agent, or representative of the University. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision, and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the University shall be that of an Independent Contractor and not as employees or agents of the University.
- B. The Contractor does not have the power or authority to bind the University in any promise, agreement, or representation other than specifically provided for in this Agreement.

ARTICLE 20 – CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 21 – ACCESS AND AUDITS

The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The University shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Contractor's place of business.

ARTICLE 22 – EQUAL OPPORTUNITY IN EMPLOYMENT

Contractor affirms, without reservation, the principles of equal opportunity employment. Contractor will not discriminate against qualified candidates for any unlawful reasons, including race, religion, gender, national origin, age or disability.

ARTICLE 23 – ENTIRETY OF CONTRACTUAL AGREEMENT

- A. The University and the Contractor agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- B. Any amendments, alterations or modifications to this Agreement must be in writing, signed or initialed and approved by all signatories of this Agreement to be effective.

ARTICLE 24 – ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 25 – AUTHORITY TO PRACTICE

The Contractor hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the University upon request.

ARTICLE 26 – SEVERABILITY

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or by an Administrative Law Judge in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof. However, where a breach of this Agreement goes to the whole of this Agreement, this Agreement is unenforceable.

ARTICLE 27 – MODIFICATIONS OF WORK

- A. The University reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the Contractor of the University's notification of a contemplated change, the Contractor shall (1) if requested by the University, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the University of any estimated change in the completion date, and (3) advise the University in writing if the contemplated change shall effect the Contractor's ability to meet the completion dates or schedules of this Agreement.
- B. If the University so instructs in writing, the Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the University's decision to proceed with the change.
- C. If the University elects to make the change, the University shall issue a written amendment or Change Order and the Contractor shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties, as applicable.

ARTICLE 28 – NOTICE

- A. All notices required in this Agreement shall be sent in writing by electronic copy via email or by hard copy via a delivery service requiring evidence of receipt of delivery.
- B. Notices sent to the University shall be emailed to lmarrone@floridapoly.edu with copy to procurement@floridapoly.edu mailed to the following physical address:

Florida Polytechnic University
Procurement Department
Attn: David O'Brien, Director
11000 University Parkway Building 20W, Room 159
Lakeland, FL 32514

- C. Notices sent to Contractor shall be emailed to _____ at _____, or mailed to the following physical address:

TBD

ARTICLE 29 – PUBLIC ENTITY CRIME

In accordance with Florida Board of Governors Regulation 18.001(5), any person or affiliate who has been placed on the Convicted Contractor List following a conviction for a Public Entity Crime, may not participate in bids or proposals.

ARTICLE 30 – ASSIGNMENT OF ANTITRUST CLAIMS

By signature of duly authorized agent below, Contractor hereby conveys, sells, assigns, and transfers to Florida Polytechnic University all rights, title and interest in and all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State of Florida for price fixing, relating to the particular goods or services purchased or acquired pursuant to this Agreement.

ARTICLE 31 – TOBACCO FREE CAMPUS POLICY

Effective August 1, 2016, Florida Polytechnic University is a tobacco-free campus. The use of cigarettes (electronic or traditional) or other tobacco products is prohibited in all FPU-owned buildings and outdoors on all FPU campus properties. The Contractor must fully comply with this tobacco free policy.

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EXHIBIT A

Scope of Services

EXHIBIT B

Fiscal Summary