



## TABLE OF CONTENTS

ITEM	PAGE
PROJECT STATEMENT.....	3
SCOPE OF WORK .....	5
SCHEDULE OF SERVICE .....	7
SPECIAL TERMS AND CONDITIONS .....	8
LIST OF REFERENCES.....	9
INSURANCE REQUIREMENTS .....	10
BID PRICE SUMMARY SHEET .....	12
BIDDER'S CHECKLIST .....	14
BIDDING INSTRUCTIONS.....	Attachment A
GENERAL TERMS AND CONDITIONS.....	Attachment B
SAMPLE CONTRACT.....	Attachment C
CAMPUS MAP.....	Exhibit A

## PROJECT STATEMENT

### PURPOSE

Florida Polytechnic University (the "University") intends to purchase Mosquito Control Services (the "Services") in accordance with accompanying specifications. The work is to be performed on the main campus of Florida Polytechnic University, 4700 Research Way, Lakeland, FL 33805.

### CONTRACT PERIOD

The original term contract will be for a period of three (3) years from date of execution. The University may renew for two (2) additional one (1) year periods subject to satisfactory periodic performance reviews and by mutual agreement in writing.

### CONTACTS

The sole contact and representative for this ITB is as follows:

Melek Yazici  
Email: [procurement@flpoly.org](mailto:procurement@flpoly.org)  
Phone: 863-874-8583  
Fax: 863-874-8716  
Web address: <https://floridapolytechnic.org/resources/current-competitive-solicitations/>

Bidders are advised that from the date of release of this ITB until award of the contract, **no contact with University personnel related to this ITB is permitted. All communications are to be directed to the Procurement and Contracts representative and sole contact listed above. Any unauthorized contact may result in the disqualification of the Bidder's submittal.**

### BIDDER RESPONSIBILITY

Bidders are fully responsible for obtaining the complete ITB, including Attachments, Exhibits and any addenda (if applicable), information concerning the bid tabulations, and award by visiting our web site: <https://floridapolytechnic.org/resources/current-competitive-solicitations/>.

It is highly recommended that bidders bookmark this web site and visit it frequently to obtain all applicable information. Lack of signed addenda within the bid package could disqualify your bid.

### REQUIRED PRE-BID CONFERENCE & QUESTIONS

There is a REQUIRED pre-bid conference on **Thursday, May 26, 2016 at 3:00 pm** EST at the Construction Trailer on Campus. Explanation(s) desired by bidder(s) regarding the meaning or interpretation of this ITB must be requested from the above contact person in writing via e-mail and must be received no later than **Wednesday, June 1, 2016 at 3:00 pm** EST. Any questions received after this time will go unanswered. The explanation response will be issued in writing in the form of an Addendum and posted to our web site. Bidders must acknowledge receipt of any and all addenda by signing each addenda in the space provided and returning with the bid submittal. Lack of signed addenda with the bid package could disqualify your bid. Bidders should not rely on any representations, statements, or explanations other than those made in writing by the the University sole contact in the official addenda format. Where there appears to be a conflict between the ITB and any addenda issued, the last written addenda issued shall prevail.

### RESPONSE SUBMISSION

Bidders are to submit:

- one (1) original with the original manual signature of the authorized person signing the bid
- five (5) hard copies of the original
- one (1) electronic copy of the original

Failure to include the original with an authorized manual signature shall be grounds for rejection of your response.

Section 815.045, Florida Statutes makes trade secrets confidential and exempt from public records requests. Trade secrets as defined in section 812.081 Florida Statutes include proprietary information which is (1) secret, (2) of value, (3) for use in your business or in use by your business and which is (4) of advantage to your business, or provides an opportunity for you to obtain an advantage over those who do not know the information or use the information. In order for the information to be considered covered by these statutes, you must take measures to prevent the information from becoming available to persons other than those selected by you to have access to the information.

Ordinarily, information contained in bid submissions is available to the public upon request. If you believe any of the information provided in your submission meets the criteria of a trade secret and you wish to protect it, you must write the word "confidential" on each page, either on the bottom, top or as a watermark BEFORE you provide the submission to the University.

### **BIDDER ELIGIBILITY**

To be eligible to receive an award of contract, bidders are to provide requested information and meet certain requirements which are identified in the bid information documents. Failure to provide the information may be cause to treat the bid as non-responsive. For the convenience of all bidders, a checklist of required information and materials is provided. Bidders are to provide monthly unit prices on the Bid Pricing Summary Sheet, attached hereto.

### **BIDDING INSTRUCTIONS**

See Attachment A.

### **GENERAL TERMS AND CONDITIONS**

See Attachment B.

### **CAMPUS MAP**

Exhibit A contains a list of all the areas which shall be included in the Mosquito Control Services Program.

## SCOPE OF WORK for MOSQUITO MANAGEMENT

1. Personnel:
  - a. Contractor Personnel
    - i. Vendor must clearly define a manager of services to oversee the work and be the main point of contact for the University.
    - ii. Vendor must provide an Organization chart of staff, for reference in times the authorized manager is unavailable.
  - b. Uniforms/Vehicles
    - i. All Contractor personnel working in or around buildings designated under this contract shall wear distinctive uniform clothing. The Contractor shall determine and provide additional personal protective equipment required for the performance of work. Protective clothing, equipment and devices shall, as a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the products being used.
    - ii. No shirtless, or torn attire will be permitted.
    - iii. Vendor Vehicles must be clearly marked, and parked where permitted by the University. No personal work vehicles will be permitted.
    - iv. Vehicles used by the Contractor shall be identified in accordance with state and local regulations and shall be operated in a safe manner on University property. Vehicles must meet Florida Department of Transportation requirements.
  - c. Behavior
    - i. No smoking, loitering or eating in or around buildings is permitted.
    - ii. No fishing in lakes.
    - iii. Discourteous acts towards any person will not be permitted.
2. Billing Schedule:
  - a. Net 30 days after completion of scheduled monthly work
3. Work Schedule:
  - a. Scheduling of applications must be approved by the University.
    - i. All vendors must check in with the point of contact for the University.
    - ii. Vendor must contact the University within 48 hours of the scheduled work, in the event that the planned activity has been rescheduled.
  - b. University may at any time request a reschedule of services, or redirection of efforts for planned events.
  - c. At the point of issuing the Monthly Field Report, the Vendor must provide a schedule of services for the next month of service. Reports/schedules are due to the University on the 25<sup>th</sup> of each month.
  - d. Zone schedule is to be provided by the Vendor for University Approval at the point of the contract review.
  - e. Contractor shall e-mail University contact after each service.
4. Scope of Work:
  - a. General
    - i. Safety
      1. Contractor shall maintain a safety program to ensure the safety of all individuals and property are not affected by the Vendor's work. The safety program should be submitted at the time of contract review.
      2. Contractor shall perform all work, and operate all equipment, in compliance with OSHA Standards.
      3. Vendor must take precautions at all times utilizing safety equipment when required by OSHA (safety vest, cones, etc.).

4. Vendor shall provide all proper Safety Data Sheets for any all chemicals that are used on campus or transported on company vehicles while on campus.
  5. The Contractor shall observe all safety precautions throughout the performance of this contract and shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work and shall hold the University harmless for any action on its part or that of its employees that results in illness, injury or death.
- ii. Emergency Response
    1. Vendor must provide an emergency response plan at the time of contract review.
    2. Emergency response plan must clearly define the point of contact, available 24hrs, in the event of emergencies.
    3. Emergencies could consist but is not limited to the following:
      - a. Damaged property effecting operation of the University.
      - b. Anything requiring immediate response to prevent further damage or harm to persons or property.
    4. In the event of an emergency, the vendor must provide afterhours support, including weekend work.
  - iii. Damages
    1. Contractor must be aware of any potential hazards before work is initiated.
  - iv. Permits
    1. Contractor shall obtain, at its own expense, all necessary permits and licenses required by federal, state, county or local orders, codes, ordinances, regulations, administrative codes and laws, including but not limited to SWFWMD.
  - v. Insurance
    1. Contractor shall provide up to date comprehensive insurance with the university named as a Certificate holder made out to Florida Polytechnic University Board of Trustees. The University shall also be listed as additional insured.
  - vi. Programs
    1. Any additional changes or improvement to the current program must be submitted to the University contact for approval.
5. General Service
    - i. Adult Control
      1. Adulciding in Authorized Spray Zones
        - a. 52 ULV treatments of up to 4 miles treating authorized areas on the property for the purpose of controlling flying adult Midges
    - ii. Adulciding Operational Procedures
      1. Notification of community contact
      2. Weather limit monitoring and compliance
      3. ULV Particle size evaluation
      4. Insecticide dosage and quality control analysis
    - iii. Larval Control
      1. 26 Larval control treatments of up to 18.38 acres of authorized pond areas

## Florida Polytechnic Campus Mosquito Management Schedule

Mosquito Control	Treatment/Year	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
<b>Adult Control</b>													
<b>Spray for Adult Control</b>	42	4	4	2	2	2	4	4	4	4	4	4	4
*ULV Treatment or Equal - Est. 4 Miles (see plan)													
<b>Alternate Program for University Consideration</b>													
<b>Larval Control</b>													
<b>Larviciding</b>	21	2	2	1	1	1	2	2	2	2	2	2	2
*Abate or approved Equal - Est. 19 Acres													
<b>Alternate Program for University Consideration</b>													

## **Program Evaluation**

The University will continually evaluate the progress of this contract in terms of effectiveness and safety and will require such changes as are necessary. The Contractor shall take prompt action to correct all identified deficiencies.

## **Quality Control Program**

The Contractor shall establish a complete quality control program to assure the requirements of the contract are provided as specified. Within five (5) working days of execution of the contract, the Contractor shall submit a copy of such program to the University. The program shall include the following items:

- A. **Inspection System:** The Contractor shall develop a system for monitoring the effectiveness of the services provided to the University. The purpose of this system is to detect and correct deficiencies in the quality of services before the level of performance becomes unacceptable and/or University or health department inspectors identify the deficiencies.
- B. **Quality Control Checklist:** A quality control checklist shall be used in evaluating contract performance during regularly scheduled and unscheduled inspections. The checklist shall include all buildings or sites serviced by the Contractor as well as every task required to be performed.
- C. **Quality Control File:** A quality control file shall contain a record of all inspections conducted by the Contractor and any corrective actions taken. The file shall be maintained throughout the term of the contract and made available to the University upon request.
- D. **Inspectors:** The Contractor shall state the name(s) of the individual(s) responsible for performing the quality control inspections.

## **SPECIAL TERMS AND CONDITIONS**

### **BIDDER REQUIREMENTS**

- 1. Bidder shall be a licensed, certified professional by the state of Florida and provide a copy of license with the bid response.
- 3. Bidder shall provide written evidence specifically stating that its company has been in business for at least five (5) years.
- 4. Bidder shall provide at least three (3) references for local contracts of similar size serviced within the last three (3) to five (5) years, such as hospitals, manufacturing plants, airports and counties. Please list all references on the "List of References" of this bid.



## LIST OF REFERENCES

COMPANY NAME:		
ADDRESS:		
CONTACT PERSON:		
PHONE:	FAX:	E-MAIL ADDRESS:
NAME OF CONTRACTOR'S SUPERVISOR:		
PROJECT DESCRIPTION:		

COMPANY NAME:		
ADDRESS:		
CONTACT PERSON:		
PHONE:	FAX:	E-MAIL ADDRESS:
NAME OF CONTRACTOR'S SUPERVISOR:		
PROJECT DESCRIPTION:		

COMPANY NAME:		
ADDRESS:		
CONTACT PERSON:		
PHONE:	FAX:	E-MAIL ADDRESS:
NAME OF CONTRACTOR'S SUPERVISOR:		
PROJECT DESCRIPTION:		

COMPANY NAME:		
ADDRESS:		
CONTACT PERSON:		
PHONE:	FAX:	E-MAIL ADDRESS:
NAME OF CONTRACTOR'S SUPERVISOR:		
PROJECT DESCRIPTION:		

COMPANY NAME:		
ADDRESS:		
CONTACT PERSON:		
PHONE:	FAX:	E-MAIL ADDRESS:
NAME OF CONTRACTOR'S SUPERVISOR:		
PROJECT DESCRIPTION:		

**FLORIDA POLYTECHNIC UNIVERSITY  
INSURANCE REQUIREMENTS**

**CONTRACTOR'S INSURANCE**

The Contractor shall not commence any work in connection with this agreement until they have obtained all the following types of insurance and such insurance has been approved by the purchaser otherwise known as The Florida Polytechnic University Board of Trustees (FPUBOT), nor shall the Contractor allow any subcontractor to commence work on the subcontracted work until the subcontractor has provided proof of insurance for the same amounts as required of the Contractor by FPUBOT and approved. All insurance policies shall be with insurers qualified and doing business in Florida, and with an A.M. Best rating no less than A-. The FPUBOT shall be furnished proof of insurance by a Certificate of Insurance accompanying the contract documents which shall name The Florida Polytechnic University and Board of Trustees as an additional insured. The insurer shall provide 30 days written notice to the certificate holder if a policy is to be canceled before the expiration date of said Certificate.

The FPUBOT shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or Subcontractor providing such insurance.

**A. Workers Compensation Insurance**

The Contractor shall secure and maintain, during the life of the agreement, Worker's Compensation Insurance to all employees of the contractor working on this project. The Contractor shall also require all subcontractors to provide Worker's Compensation Insurance for their employees working on this project which shall comply fully with the Florida Worker's Compensation Law. In addition, the subcontractor shall list both the Contractor and FPUBOT as an additional insured.

**B. Contractor's Public Liability and Property Damage Insurance**

The Contractor shall secure and maintain, during the life of this agreement, COMPREHENSIVE GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE naming The Florida Polytechnic University Board of Trustees as an additional insured to protect all parties from claims for damages, personal injury, including accidental death, as well as claims for property damages which may arise from operations under this agreement whether such operations be by the Contractor or anyone directly or indirectly employed by the Contractor. The amount of such insurance shall be set at minimum amount no less than the following:

- |  |  |
|--|--|
| 1. Bodily Injury Liability                               | \$1,000,000 each accident/\$2,000,000 aggregate  |
| 2. Auto Property Damage Liability                        | \$1,000,000 each accident/ \$2,000,000 aggregate per occurrence  |
| 3. Property Damage Liability-<br>(other than automobile) | \$1,000,000 each accident/\$2,000,000 aggregate<br>\$2,000,000 aggregate operations<br>\$2,000,000 aggregate protective<br>\$2,000,000 aggregate contractual |
4. "XCU" (Explosion, collapse, underground damage) - The contractor's liability policy shall provide "XCU" coverage for those classifications in which they are excluded.
5. Contractual Liability - Work Contracts - The Contractor's liability policy shall cover such contracts when they are affected.
6. In some cases a Contractor and Subcontractor may be required to provide proof of Environmental Protection Coverage.

**C. Subcontractor's Public Liability and Property Damage Insurance**

The Contractor shall require each of the Subcontractors to secure and maintain, during the life of this contract, insurance of the same type specified above in addition to insuring the activities of the subcontractors in the event the subcontractor does not have a policy, as specified above.

**ADDITIONAL REQUIREMENTS**

The Contractor shall meet the following requirements:

1. Be licensed or approved to do business within the State of Florida.
2. 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”.
3. Include an Additional Insured Endorsement form as the “Additional Insured” on Commercial General Liability, Automobile Liability and any other as specified by the contract.
4. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by the University.
5. 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 the University.
6. Policy may not be non-renewed, cancelled or materially changed or altered unless thirty (30) days advance written notice is provided to the University.
7. Insurance certificates and written endorsements **must** be provided directly by the insurance agency or carrier.
8. Renewal certificates and endorsements are to be provided to the University at least 30 days prior to expiration.
9. Insurer possesses a minimum **A.M. Best’s Insurance Guide rating of no less than “B+”**.

**QUOTE SHEET EXPLANATION**

For item 1, provide the total cost for a total of 42 adult control treatments annually per Mosquito Management Schedule on page 7.

For item 2, provide the total cost for a total of 21 larval control treatments per Mosquito Management Schedule on page 7.

For item 3, fill out the number of treatments you are recommending annually for adult & larval control under the duration column, and also provide the total cost for adult control and larval control under the Total Cost column.

TOTAL ALTERNATE ADULT& LARVAL PROGRAM ANNUAL COST is the sum of two costs listed for item 3.

**BID PRICE SUMMARY SHEET**

**FROM:**

\_\_\_\_\_  
**Bidder's Name**

\_\_\_\_\_  
**Address**

\_\_\_\_\_

\_\_\_\_\_  
**(Florida Corporate Charter Number)**

\_\_\_\_\_  
**(Federal I.D. Number)**

**TO:**

**Florida Polytechnic University  
Procurement Services  
Wellness Center Mail Room  
4700 Research Way Lakeland, FL 33805**

Ladies and Gentlemen:

I, hereinafter called "Bidder", by my signature on the attached "INVITATION TO BID" COVER PAGE, having visited the site of the proposed project and familiarized myself with the local conditions, nature and extent of the work, and having examined carefully the Drawings, Technical Specifications, General and Special Conditions and Scope of Work, propose to furnish all labor, materials, and equipment and other items, facilities, and services for the proper execution and completion of: **Mosquito Control Services ON THE MAIN CAMPUS OF FLORIDA POLYTECHNIC UNIVERSITY IN LAKELAND, FLORIDA AND IN FULL ACCORDANCE WITH ALL SPECIFICATIONS, DRAWINGS, INVITATION TO BID, SPECIAL AND GENERAL TERMS AND CONDITIONS, ADDENDA** and any other documents relating thereto on file at Procurement Services, and if awarded the Contract, to complete said work within the time limits specified for the following bid price.

**QUOTE SHEET  
FOR  
MOSQUITO CONTROL SERVICES  
AND  
SIGNATURE ACKNOWLEDGEMENT**

Item Number	Description	Duration	Total Cost per Treatment
1	Providing all labor, materials and equipment necessary to perform mosquito control services (adult control) for the provision of mosquito and midge population control services as described herein.	Per Mosquito Management Schedule (42 treatments per year)	\$ _____
2	Providing all labor, materials and equipment necessary to perform mosquito control services (larval control) for the provision of mosquito and midge population control services as described herein.	Per Mosquito Management Schedule (21 treatments per year)	\$ _____
		TOTAL ANNUAL COST(1&2):	\$ _____
3	Alternate program for adult control for University consideration (all costs included)	Recommended ___ treatments per year for adult control	\$ _____
	Alternate program for larval control for University consideration (all costs included)	Recommended ___ treatments per year for larval control	\$ _____

TOTAL ALTERNATE ADULT &  
LARVAL PROGRAM ANNUAL COST \$ \_\_\_\_\_

I certify that this quote is made without prior understanding, agreement or connection with any corporation, firm or person submitting a quote for the same service or material and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this quote and certify that I have read and understand the quoting documents. I have completed and submitted all applicable quote forms and I am authorized to sign this quote for the bidder.

\_\_\_\_\_  
BIDDER NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE (MANUAL)

\_\_\_\_\_  
MAILING ADDRESS

\_\_\_\_\_  
NAME (TYPED OR PRINTED)

\_\_\_\_\_  
CITY, STATE AND ZIP CODE

\_\_\_\_\_  
TITLE (TYPED OR PRINTED)

\_\_\_\_\_  
(AREA CODE) TELEPHONE NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

## BIDDER'S CHECKLIST

This list is provided as a guide for the bidder and the University to assure that all required and requested information has been submitted. **Bidder should submit a signed CHECKLIST with the bid response.** If any of the items listed below are not included within the returned bid, it may be cause for the bid to be considered non-responsive and could be disqualified. **It is requested that the bid be submitted in order as listed below.** This will aid in accurately determining that all information has been supplied in accordance with the specifications.

To preclude possible errors and/or misinterpretations, bid prices must be affixed in ink legible or typewritten. Any corrections must be initialed by person making the corrections, or by modification prior to scheduled bid due date. Failure to comply may be sufficient reason to reject bid.

Bidders are to submit:

- one (1) original with the original manual signature of the authorized person signing the bid
- five (5) hard copies of the original
- one (1) electronic copy of the original

Failure to include the original with an authorized manual signature shall be grounds for rejection of your response.

**Save a tree! Please send only those items requested.  
Do not include the entire bid package.**

	Company name on Invitation to Bid Acknowledgement Form
	Original signature on front page of Invitation to Bid Acknowledgment Form <b>(MANDATORY)</b>
	Copy of certified license(s)
	Evidence the company has been in business for at least five (5) years
	List of References
	Evidence of insurance
	Bid Price Summary Sheet
	Acknowledgment of receipt of addenda (if applicable)
	Completed Bidder's Checklist
	The Bid Number & Title written on the outside of the Bid package. The University will not be responsible for unopened Bid packages at the Bid opening when the mailing package is not properly identified.

\_\_\_\_\_  
BIDDER'S SIGNATURE

\_\_\_\_\_  
VENDOR'S NAME

## ATTACHMENT A

### BIDDING INSTRUCTIONS AND INFORMATION

#### PREPARATION AND SUBMISSION OF BIDS

All bid sheets and the ITB Acknowledgment Form must be executed and submitted in a sealed envelope. The outside of your envelope shall contain, in addition to the University's address, **the date and time of the bid due date and the bid number & title**. Submit ONE ORIGINAL complete and signed Bid along with one complete hard copy of the Bid and an electronic copy. The original bid should be marked "original." Failure to submit a copy may cause your bid to be considered non-responsive. Bid must contain a manual signature of an authorized representative in the space provided on the front page of the ITB Acknowledgment Form. Bids must be typed or printed in ink. Use of erasable ink or pencil is not permitted. All corrections made by bidder to the bid price must be initialed.

The company name and FEI number must appear on the ITB Acknowledgment Form. Each bid must give the full business address of the bidder and state whether it is an individual, corporation or partnership. Bids by a corporation must be signed with the legal name and seal of the corporation followed by the name of the state of its incorporation and the manual signature and designation of an officer, agent or other person authorized to bind the corporation.

NOTE: Do not include more than one bid number per envelope. The University will not be responsible for unopened bid packages at the bid opening when the package is not properly identified.

#### NO BID SUBMITTED

If not submitting a bid, respond by returning only the ITB Acknowledgment Form, marking it "NO BID," and explaining the reason in the space provided. Failure to respond to a procurement solicitation without giving reason(s) for such failure, nonconformance to contract conditions, or other pertinent factors deemed reasonable and valid, may be cause for removal of the bidder's name from the notification list.

#### WITHDRAWAL OF BIDS

Bids may be withdrawn by bidders submitting a written request prior to the scheduled bid due date. Negligence on the part of the bidder in preparing the bid confers no right for withdrawal of the bid after it has been opened. No bid may be withdrawn after the opening of bids is commenced.

#### DISQUALIFICATION/REJECTION OF BIDS

More than one bid from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that a bidder has an interest in more than one bid for the same work will cause rejection of all bids in which such bidders are believed to have an interest. Any or all bids will be rejected if there is reason to believe that collusion exists among the bidders; no participants in such collusion will be considered in future bids for the same work. Bids in which prices obviously are unbalanced may be rejected by the University. Falsification of any entry made by the bidder will be deemed a material irregularity and will be grounds for rejection. The University reserves the right to reject any and all bids when in the opinion of the University such rejection is in the best interest of the University.

#### ADDENDA

If the University finds it necessary to supplement, modify or interpret any portion of the bidding documents during the bidding period, written addenda will be issued and will be posted on the University website. Except for minor revisions, corrections, or clarifications, the University will endeavor to issue addenda no less than five calendar days prior to the date scheduled for receipt of bids.

#### ADDITIONS/DELETIONS

The University reserves the right to add to or delete any item from this bid or resulting contract when deemed to be in the University's best interest.

## **ERRORS AND OMISSIONS**

The bidder is expected to comply with the true intent of this ITB taken as a whole and shall not avail itself of any error, omission, or discrepancy in the specifications or instructions. Should the bidder suspect such, it shall immediately notify the University, in writing, and the University shall issue written instruction to be followed. The bidder is responsible for the contents of its bid and for satisfying the requirements set forth in the ITB.

## **INTERPRETATIONS/DISPUTES**

Any questions concerning conditions and specifications shall be directed in writing to the responsible buyer for receipt by the due date listed in the ITB. Inquiries must reference the bid number and title. No interpretation shall be considered binding unless provided in writing by the University in response to requests in full compliance with this provision. Any actual or prospective bidder who disputes the reasonableness, necessity or competitiveness of the terms and conditions of the ITB, selection or contract award recommendation shall file such protest in form of a petition in compliance with written university policy. Failure to file a protest within the time prescribed shall constitute a waiver of proceedings.

## **DELIVERY**

Unless actual date is specified (or if specified delivery cannot be met), show number of days required to make delivery after receipt of Purchase Order in space provided on front page of ITB Acknowledgment Form. Delivery time may become a basis for making an award. Delivery of goods shall be made during normal business hours. Items not delivered as per delivery date in bid and/or Purchase Order may result in bidder being found in default, in which event all re-procurement costs may be charged against the defaulting bidder.

## **CONDITION AND PACKAGING**

It is understood and agreed that any item bid or shipped as a result of this ITB shall be new (current model at the time of this ITB). All containers shall be suitable for storage or shipment and all prices shall include standard commercial packaging and shipping. It is agreed by the parties hereto that delivery by the vendor to the common carrier does NOT constitute delivery to the University. It is further agreed that the University accepts title only when received in acceptable condition, regardless of F.O.B. point.

## **CONFLICT OF INTEREST**

The award hereunder is subject to the provisions of Chapter 112, F.S. All bidders must disclose with their bid the name of any officer, director, or agent who is also an employee of Florida Polytechnic University. Further, all bidders must disclose the name of any University employee who owns, directly or indirectly, an interest of five percent or more in the bidder's firm or any of its branches. Such relationship or ownership may result in disqualification, and any contract entered in violation of such provisions shall be rendered voidable.

No person or firm receiving a contract, to perform a feasibility study of the potential implementation of a subsequent contract, participating in the drafting of an invitation for bid or developing a program for future implementation shall be eligible to contract with the University for any other contracts dealing with that specific project and bidders must disclose with their bid any such conflict of interest.

## **MANUFACTURERS' NAME AND ACCEPTABLE ALTERNATES**

Any manufacturers' names, trade names, brand names information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The bidder may offer any brand which meets the specifications and for which it is an authorized representative. Measurements appearing in these specifications are not intended to preclude items with metric measurements. If bids are based on alternate products, the manufacturer's name and number must be indicated. Bidders shall submit with bid: cuts, sketches, descriptive literature, and/or complete specifications. Reference to literature submitted with a previous bid will not satisfy this provision. The University reserves the right to determine acceptance of item(s) as an acceptable alternate. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to bid an alternate brand will be received and considered in complete compliance with the



specifications as listed in the ITB. Bidder must notify the University of any proposed changes in (a) materials used, (b) manufacturing process, or (c) construction. Changes shall not be binding upon the University unless evidenced by a written Change Order issued and signed by the University's Office of Procurement and Contracts.

## **SAMPLES**

Samples of items, when called for, must be furnished free of expense, on or before bid due date, and if not destroyed may, upon request, be returned at bidder's expense. Each individual sample must be labeled with bidder's name, manufacturer's brand name, bid number and item reference. Request for return of samples shall be accompanied by instructions which include shipping authorization and names of carrier and must be received with the bid. If instructions are not received with bid, the samples shall be disposed of by the University.

## **ADDITIONAL TERMS AND CONDITIONS**

No additional terms and conditions included with the response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this ITB. If submitted either purposely through intent or design or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed the general and special terms and conditions in this solicitation are the only conditions applicable to this solicitation and the bidder's authorized signature affixed to the ITB Acknowledgment Form attests to this.

## **SERVICE AND WARRANTY**

Unless otherwise specified, the bidder shall define any warranty service and replacement that will be provided during and subsequent to this contract. Bidders should explain on an attached sheet to what extent warranty and service facilities are provided.

## **ADDITIONAL QUANTITIES**

For a period not exceeding 90 days from the date of acceptance of this bid, the right is reserved to acquire additional quantities up to the amount shown on the bid at the prices bid in response to this invitation. If vendor does not agree to provide additional quantities, the bid sheets are to be noted "BID IS FOR SPECIFIED QUANTITY ONLY."

## **BIDDER'S RESPONSIBILITY**

It is understood and the bidder hereby agrees that it shall be solely responsible for all goods and services that it bids, notwithstanding the detail present in the ITB.

## **BID CLOSING**

The bid closing shall be public, on the date, place and time specified on the ITB Acknowledgment Form. It is the bidder's responsibility to assure that the bid is delivered to the Procurement and Contracts Office no later than the date and time specified. Bids, which for any reason are not delivered on time, will not be considered. Bids by fax, telegram or telephone ARE NOT ACCEPTABLE. A bid may not be altered after bid closing. NOTE: Only the names of the bidders will be announced at the bid closing.

## **BID OPENING**

Bid openings are exempt from public meeting requirements. In compliance with subsection 2(c) of 286.0113, Florida Statutes, General exemptions from public meetings, bid openings will be recorded. Recordings are exempt from public records laws until such time as the University issues a notice of an intended decision.

After decision is made to proceed, bid tabulations will be posted to the University website. Bid files may be examined during normal working hours by appointment after notice of intended decision is issued. Tabulations WILL NOT be provided by facsimile or telephone.

## **ACCOMMODATIONS**

Persons with a disability who require reasonable accommodation for pre-bid or bid closings should contact Procurement Services at the number provided on the first page.

## **AWARDS**

As deemed in the best interest of The University, the right is reserved to make multiple awards or a single award, to reject any and all bids, or waive any minor irregularity or technicality in bids received. The University further reserves the right to award on the basis of bid options, if applicable. When it is determined there is competition to the lowest responsible bidder, evaluation of other bids is not required. Bidders are cautioned to make no assumptions unless their bid has been evaluated as being responsive. All awards made as a result of this ITB shall conform to applicable Florida Statutes.

## **CONDITIONED AWARD**

The award of this bid shall depend upon the meeting of the specified requirements, price, quality, delivery date, and suitability for the intended purpose of the University. The University reserves the right to solely determine acceptance of item(s) as an acceptable alternate and to award to an individual vendor or multiple vendors in order to obtain the best cost and service.

## **IDENTICAL TIE RESPONSES**

Whenever two or more responses, which are equal with respect to price, quality, and service are received, preference will be given as follows:

- Commodities manufactured in the State.
- Businesses whose principal place of business is the State of Florida.
- Businesses which can document a drug-free workplace program.
- Should a tie remain, award shall be determined by a flip of a coin.

## **BID PROTEST**

In accordance with Board of Governors' Regulation 18.002 (5) (a) (2), any qualified respondent who is adversely affected by the University's decision or intended decision must timely file a written Notice of Intent to Protest with the Procurement Services within 72 hours of the electronic posting of award or notice of intent to award. Failure to timely file a Notice of Intent to Protest within 72 hours of the university's posting of the notice of decision or intended decision being protested shall constitute a waiver of the right to protest proceedings related to that decision or intended decision.

Any qualified respondent that files an action protesting a decision or intended decision pertaining to this solicitation, must post with the University at the time of filing the formal protest, a bond payable to Florida Polytechnic University Board of Trustees. In lieu of a bond, the University may accept a cashier's check or money order in the amount of the bond.

**Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governors' Regulations 18.002 and 18.003 shall constitute a waiver of protest proceedings.**

## **PRICES, TERMS, AND PAYMENT**

Firm prices shall be offered and include all packing, handling, services, shipping charges, delivery and services to the destination shown herein.

**Price Adjustments:** All prices offered shall be firm for 180 days from date of bid. After this date, it shall be the bidder's responsibility to notify the University in writing 30 days in advance of any anticipated changes in prices and submit a request to Procurement Services for a price increase/decrease by furnishing bona-fide manufacturer's documents or price lists reflecting the changes. Increases/decreases shall be limited to

the actual cost increases/decreases to the bidder. Any request for increases must be accepted in writing by the University. Any price decrease effectuated during the contract period by reason of market change shall be passed on to the University. This shall also apply to all in-place equipment on rent or lease plan.

**Taxes:** The State of Florida does not pay Federal Excise and Sales taxes on direct purchases of tangible personal property. See tax exemption number on face of Purchase Order. The exemption does not apply to purchases of tangible personal property made by bidders who use the tangible property in the performance of contracts for the improvement of state-owned real estate as defined in Chapter 192, F.S.

**Discounts:** Cash discounts for prompt payment shall not be considered in determining the lowest net cost for evaluation purposes.

**Mistakes:** Bidders are expected to examine the specifications, delivery schedule, prices, and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk. In case of mistake in the unit price will govern.

### **PURCHASING BY OTHER AGENCIES**

The submission of any offer in response to this Solicitation constitutes an offer made under the same terms and conditions, for the same contract price to other state universities, community colleges, district school boards, other educational institutions, and other governmental agencies unless otherwise stipulated by the bidder on the bid form. If the period of time is not defined within the solicitation, the prices, terms and conditions shall be firm for 120 days from the date of award.

Each governmental agency desiring to accept these offers and make an award thereof, shall do so independently of any other governmental agency. Each agency shall be responsible for its own purchases and each shall be liable only for materials ordered and received by it, and no agency assumes any liability by virtue of this solicitation.

## **ATTACHMENT B**

### **GENERAL TERMS AND CONDITIONS**

#### **LEGAL REQUIREMENTS**

Applicable provisions of all federal, state, county and local laws, and of all ordinances, rules, and regulations shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response hereto and the University by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

#### **PUBLIC RECORD**

This Agreement is subject to the requirements of Chapter 119, Florida Statutes (Public Records Law). The University may unilaterally cancel this Agreement for refusal by Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

Further, Contractor agrees that, to the extent it may meet the definition of a "contractor" within the meaning of Section 119.0701, Florida Statutes, it will:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the University in order to perform the services performed by Contractor under the Agreement.
- B. Provide the public with access to such public records on the same terms and conditions that the University would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. 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.
- D. Meet all requirements for retaining public records and transfer to the University, at no cost, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the University in a format that is compatible with the information technology systems of the University.
- E. The failure of Contractor to comply with the provisions set forth in this (Section)( Paragraph) shall constitute a default and breach of this Agreement and the University shall enforce the default in accordance with the provisions set forth herein.

#### **ABNORMAL QUANTITIES**

If this solicitation is for a term contract, the University reserves the right to solicit separate bids for any unusual or abnormal quantity requirements which may arise during the contract term.

#### **CONTRACT PERIOD AND RENEWAL**

If this solicitation is for a term contract, the contract period will be for an initial period with the option to renew as specified in the solicitation. Renewal of the contract period shall be by mutual agreement in writing.

#### **CANCELLATION**

All contract obligations shall prevail for at least 180 days after effective date of contract. Either party may cancel this contract, in whole or in part, by giving 30 days prior notice in writing to the other party. The University reserves the right of unilateral cancellation for refusal by the bidder to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119 F.S.

#### **DEFAULT**

Failure to perform according to bid and any resulting contract shall be cause for bidder to be found in default in which event any and all re-procurement costs may be charged against the defaulting firm and may result in the

firm being denied future University business. Except for defaults of subcontractors, the Respondent shall not be liable for any excess costs if the failure to perform the contract arises from cause beyond the control and without the fault or negligence of the Respondent.

#### **ASSIGNMENT**

Any Purchase Order or contract issued pursuant to this ITB and any contract amounts, which may become due hereunder, are not assignable except with the prior written approval of the University.

#### **ADVERTISING**

In submitting a bid, bidder agrees not to use the results therefrom as a part of any commercial advertising.

#### **GOVERNMENTAL RESTRICTIONS**

In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered in this bid prior to completion or delivery, it shall be responsibility of the bidder to notify Procurement Services in writing at once, stating the specific regulation which requires an alteration. The University reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the contract at no further expense to the University.

#### **PROMT PAYMENT POLICY**

**Invoicing and Payment:** Payment shall be made upon submission of properly certified invoices to the University at the prices stipulated on the contract at the time the order is placed, after delivery and acceptance of goods, less deductions if any, as provided. Invoices shall contain the contract number, purchase order number and the bidder's FEI Number. An original and one copy of the invoice shall be submitted. Failure to follow these instructions may result in delay in processing invoices for payment. The final payment shall not be made until after the contract is complete unless the University has agreed otherwise. Invoices for fees or other compensation for services or expenses submitted for contractual services shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Travel expenses shall be invoiced in accordance with the rates at or below those specified in s. 112.061.

**Vendor Ombudsman:** Florida Polytechnic University Board of Trustees Prompt Payment Policy provides that the University has five working days to inspect and approve goods and services, unless the solicitation, purchase order or contract specifies otherwise. If payment is not available within 40 days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty in addition to the amount of the invoice, at the rate established in Section 55.03, Florida Statutes, on the unpaid balance shall be paid by the University. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the University. Invoices received from vendors who have failed to supply the University with a complete and accurate W-9, will be deemed insufficient for payment until such information has been provided. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the University, may be contacted at (863) 583- 9050.

**Annual Appropriations:** The University's obligation to pay under any contract resulting from this ITB is contingent upon an annual appropriation by the Legislature.

#### **INSPECTION, ACCEPTANCE, AND TITLE**

Inspection and acceptance will be at destination unless otherwise provided. Title and risk of loss or damage to all items shall be the responsibility of the contract supplier until accepted by the University, unless loss or damage results from negligence by the University. The contract supplier shall be responsible for filing, processing and collecting all damage claims. However, to assist in expeditious handling of damage claims, the University will:

- A. Record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading.
- B. Report damage (visible and concealed) to the carrier and contract supplier, confirming such reports, in writing, within 15 days of delivery, requesting that the carrier inspect the damaged merchandise.
- C. Retain the item and its shipping container, including inner packing material, until inspection is

- performed by the carrier, and disposition given by the contract supplier.
- D. Provide the contract supplier with a copy of the carrier's Bill of Lading and damage inspection report.

### **NONCONFORMANCE TO CONTRACT CONDITION**

Items may be tested for compliance with specifications by the Florida Department of Agriculture and Consumer Services, or by other appropriate testing laboratories. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Chapter 119, F.S. Items delivered not conforming to specifications may be rejected and returned at bidder's expense and all re-procurement costs may be charged against the defaulting bidder. Any violation of these stipulations may also result in bidder being denied future University business.

### **SAFETY STANDARDS**

Unless otherwise stipulated, all manufactured items and fabricated assemblies shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.

### **UNDERWRITERS' LABORATORIES**

Unless otherwise stipulated in the ITB, all manufactured items and fabricated assemblies shall carry U.L. approval and reexamination listing where such has been established.

### **MINORITY BUSINESS COMMODITIES AND SERVICES**

Florida Polytechnic University actively seeks and encourages women and minority business enterprises to compete for the business of the university. The Contractor awarded the contract will be required to use its best efforts in seeking and encouraging participation by women and minority businesses in competing for the opportunity to assist Contractor in providing the goods and/or services to the University. The University will require the Contractor to provide proof in order to substantiate the Contractor's efforts. For more information please contact the Buyer responsible for this bid.

### **PATENTS AND ROYALTIES**

The bidder, without exception, shall indemnify and save harmless the University and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or un-patented invention, process, or alteration of the article. The bidder has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by bidder or is based solely and exclusively upon the University's alteration of the article. The University will provide prompt written notification of a claim of copyright or patent infringement and will afford the bidder full opportunity to defend the action and control the defense. Further, if such a claim is made or is pending, the bidder may, at its options and expense, procure for the University the right to continue use of, replace or modify the article to render it non-infringing. If none of the alternatives are reasonably available, the University agrees to return the article on request to the bidder and receive reimbursement, if any, as may be determined by a court of competent jurisdiction. If the bidder uses any design, device, materials, or services covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, materials, or services in any way involved in the work.

### **LIABILITY**

The successful bidder shall hold and save the University and the State of Florida, its officers, agents and employees harmless against claims by third parties resulting from the bidder's breach of this contract or the bidder's negligence.

### **FACILITIES**

The University reserves the right to inspect the bidder's facilities at any reasonable time with prior notice.

### **EQUAL EMPLOYMENT OPPORTUNITY**

The nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, Veteran's Act 38USC4212, Section 503 - Rehabilitation Act of 1973 Title I of the Americans with Disabilities Act of 1990 42USC12101, Age Discrimination Act of 1975, and the University's policy relative to sexual harassment are incorporated herein.

#### **THE U.S. FAIR LABOR STANDARDS ACT - FLSA**

By signing this bid, bidder certifies that these goods and/or services were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.

#### **PURCHASES FROM CONTRACTORS CONVICTED OF PUBLIC ENTITY CRIMES**

The University shall not accept a competitive solicitation from or purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list.

#### **EMPLOYMENT OF UNAUTHORIZED ALIENS**

The University shall consider the employment of unauthorized aliens by the bidder a violation of Section 274A (e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this contract.

**ATTACHMENT C**  
**Florida Polytechnic University**  
**INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (“Agreement”) is entered into on the date fully executed below, by and between APG Electric, Inc, with a principal place of business at 4825 140<sup>th</sup> Avenue North, Clearwater, Florida 33762. (“CONTRACTOR”) and The Florida Polytechnic University Board of Trustees (“UNIVERSITY”) 4700 Research Way, Lakeland, Florida 33805.

WHEREAS, CONTRACTOR has proposed to provide certain services for UNIVERSITY, and WHEREAS, the parties hereto desire to reduce the terms of their agreement to writing. NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

- 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 services (“Services”) described in the Scope of Work which is labeled as Exhibit A and attached and incorporated by this reference. CONTRACTOR’s individual(s) designated as key personnel for the purposes of this Agreement is/are Dennis Kuhns (“Key Personnel”). CONTRACTOR may reassign or substitute Key Personnel upon consent by UNIVERSITY, such consent shall not be unreasonably withheld, or upon the unavailability of assigned Key Personnel due to illness or other factors beyond CONTRACTOR’s control.
- 3. Term.** The term of this Agreement shall begin on the date this Agreement is signed by both parties and continue, unless otherwise terminated pursuant to the terms hereof, until Services are fully rendered, whichever is later.
- 4. Fee for Services.** As full compensation, inclusive of any and all expenses, for the Services to be provided by CONTRACTOR hereunder, UNIVERSITY agrees to pay CONTRACTOR an all-inclusive fee of six hundred and thirty dollars \$ 630 (“Fee”). CONTRACTOR shall 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 shall submit bills for compensation for services or expenses in sufficient detail for a pre-and post-audit. CONTRACTOR 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 CONTRACTOR, an interest penalty at the rate established pursuant to §55.03(1) Fla. Stat. if the interest exceeds one dollar (\$1.00). Contractors experiencing payment problems may contact the Vendor Ombudsman at (863)583-9050. UNIVERSITY may make payment to CONTRACTOR via the University’s EFT/ACH payment process. Vendor shall provide the necessary information to UNIVERSITY upon request.
- 6. Confidentiality of Information.** If CONTRACTOR is exposed to UNIVERSITY’s confidential information, CONTRACTOR will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as donor information, FERPA and the Gramm-Leach Bliley Act.) UNIVERSITY will respond to public records requests without any duty to give CONTRACTOR prior notice. This provision shall survive termination of the Agreement. Upon termination of this Agreement for any reason, CONTRACTOR shall return to the UNIVERSITY all confidential information received from the UNIVERSITY or created, maintained or received by the CONTRACTOR on behalf of the



UNIVERSITY that the CONTRACTOR still maintains in any form. If CONTRACTOR must retain any of UNIVERSITY'S confidential information, CONTRACTOR shall continue to use appropriate safeguards to prevent the use or disclosure of the UNIVERSITY'S confidential information for as long as CONTRACTOR retains the UNIVERSITY'S confidential information. CONTRACTOR shall report within three (3) business days, to the UNIVERSITY'S General Counsel, any use or disclosure of confidential information not provided for by this Agreement of which it becomes aware, including any privacy or security incident(s) known or suspected of which CONTRACTOR becomes aware. Notice of any breach of confidentiality shall be given to the Florida Polytechnic University General Counsel by fax: (863) 583 9070 or by delivery in hard copy to Florida Polytechnic University at Polk State College, Attention: General Counsel 3433 Winter Lake Road Lakeland, FL 33805.

**7. Indemnification/Copyright and Intellectual Property.** 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. CONTRACTOR will, at its expense, defend any suit brought against UNIVERSITY and will indemnify UNIVERSITY against an award of damages and costs 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. This provision shall survive termination of the Agreement. Any reports or deliverables provided to the UNIVERSITY pursuant to this Agreement shall be considered as works for hire, and the UNIVERSITY may use such reports or deliverables for any purposes.

**8. Indemnification by University.** Nothing in this Agreement shall be construed as an indemnification of the CONTRACTOR by the UNIVERSITY or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

**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 ten (10) days prior to the effective date of such termination.

B. **Termination for Cause.** Notwithstanding the provisions of subsection 9. A. above, UNIVERSITY may, upon five (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 terms of this Agreement.

C. If this Agreement is terminated, UNIVERSITY shall 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 subcontractor'S) 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 shall 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, hostile foreign action, labor strike, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**12. Compliance with Laws.** CONTRACTOR shall 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.

**13. 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 shall, during the term of this Agreement, be that of independent CONTRACTOR. CONTRACTOR is not and shall not be considered as having an employee status. CONTRACTOR is responsible for the payment of any taxes on any monies received by CONTRACTOR.

**14. 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, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of UNIVERSITY.

**15. Indemnification.** CONTRACTOR is responsible for its performance under this Agreement. CONTRACTOR 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, 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 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. This provision shall survive the termination of this Agreement.

**16. Travel.** If UNIVERSITY is specifically responsible for reimbursing CONTRACTOR for travel expenses pursuant to the Agreement, such expenses shall only be paid to the extent permitted by Fla. Stat. §112.061.

**17. Entire Agreement.** This Agreement and any documents incorporated specifically by reference represent the entire agreement between the parties and supercedes all prior oral or written statements or agreements. This Agreement may only be amended by written amendments duly executed by the parties hereto.

**18. Notices.** Any notice to either party hereunder must be in writing and signed by the party giving it, and served: 1) by hand; 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, and addressed as follows:

**To UNIVERSITY:**  
Florida Polytechnic University  
Address: 4700 Research Way  
Lakeland, FL 33805

**To CONTRACTOR:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Notice is effective upon receipt.

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

**19. Assignment.** This Agreement may not be assigned by CONTRACTOR without the express written consent of UNIVERSITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

**20. Governing Law.** This Agreement is governed by the laws of the State of Florida and venue of any actions arising out of this Agreement shall 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 back up and disaster recovery purposes, and for archival purposes for use after this Agreement is terminated. This provision shall survive Termination of the Agreement.

**22. Survival.** Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.

The duly authorized representatives of the parties hereby execute this Independent Contractor Agreement.

UNIVERSITY:

The Florida Polytechnic University  
Board of Trustees

CONTRACTOR:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

FORM Independent Contractor-professional 6.27.13RLD

EXHIBIT A  
TO INDEPENDENT CONTRACTOR AGREEMENT

