**PIGGYBACK AGREEMENT**

**This Piggyback Agreement** (the “Agreement”) is made and entered on the last date signed below by and between **The Florida Atlantic University Board of Trustees** (“FAU”), a Florida public body corporate, and [Company] (“Contractor”), a [State and Type of Entity] located at [Company Address], to provide the Services (as hereinafter defined) pursuant to the terms and conditions of this Agreement.

**EXHIBITS**

|  |  |
| --- | --- |
| **Services:** | [Detail the Services provided under the Solicitation here] |
| **Solicitation:** | [Enter the Solicitation Name and # here] | (“Exhibit I”) |
| **Response:** | [Solicitation Response – *write “Attached” if included; write “N/A” if none*] | (“Exhibit II”) |
| **Contract:** | [Contract – *write “Attached” if included; write “N/A” if none*] | (“Exhibit III”) |
| **Price Sheet:** | [FAU Price Sheet – *write “Attached” if included; write “N/A” if none*] | (“Exhibit IV”) |
| **Scope of Work:** | [FAU Scope of Work – *write “Attached” if included; write “N/A” if none*] | (“Exhibit V”) |
| **Other:** | [Write name and type of document, if any, are attached here; write N/A if none] | (“Exhibit VI”) |

**RECITALS**

**WHEREAS**, [name of governmental entity/consortium], a [Choose one: TYPE OF ENTITY:], issued the Solicitation, awarded the Solicitation to Contractor, and entered into the Contract with the Contractor;

**WHEREAS**, FAU desires to obtain the Services contemplated in the Solicitation;

**WHEREAS**, the Florida Board of Governors’ Regulation 18.001(1)(c) and FAU Regulation 6.008 allow FAU to utilize contracts that are entered into after a public and open competitive solicitation issued by the Federal Government, the State of Florida, other states, political subdivisions or entities, colleges, universities, cooperatives, or consortia, for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of FAU to make purchases under contracts let by such other entities;

**NOW THEREFORE**, FAU and Contractor agree to utilize the Solicitation and the Contract and enter into this Agreement, including the Terms and Conditions attached hereto, for Contractor to provide the Services to FAU, as may be required by FAU, pursuant to the following details:

**By signing below. The duly authorized representatives of the parties hereby execute this Agreement, including the terms and conditions attached herto, as of the Effective Date.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Contractor:** |  |  | **The Florida Atlantic** **University Board of Trustees** |
| [Company] |
| Signature: |  |  | Signature: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |
| Date: |  |  | Date: |  |

**TERMS AND CONDITIONS**

1. **Precedence**. The Exhibits detailed on the front page of this agreement are attached hereto and are herein incorporated into the Agreement by this reference. In the event of any conflicts between or among the terms thereof, the documents (to the extent applicable) shall govern in the following order of precedence: (1) this Agreement, including these Terms and Conditions; (2) the Contract (Exhibit III); (3) the Price Sheet (Exhibit IV); (4) the Scope of Work (Exhibit V); (5) the Solicitation (Exhibit I); and (6) the Response (Exhibit II).
2. **Effective Date**. The “Effective Date” of this Agreement shall be [Choose one].
3. **Term**. This Agreement shall commence on [Choose start date]: and shall continue [Choose One: FOR OR UNTIL] [Enter end date *(e.g., UNTIL December 3, 2020)* **OR** term length *(e.g.,* *FOR* *three (3) years)*] (the “Initial Term”). The Agreement may be renewed [Enter # of Renewal Terms (if none, write “N/A”)] times for a period of [Enter length of each Renewal Term *(if none, write “N/A”)*] each (each, a “Renewal Term”). The Initial Term and any Renewal Term(s) shall be known, collectively, as the “Term.”
4. **Compensation**. FAU shall pay Contractor pursuant to the rates outlined in [Choose One:]. In the event FAU owes payment to Contractor, Contractor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre-and post-audit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. If FAU does not issue payment within forty (40) days of receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the Agreement, FAU may pay Contractor an interest penalty at the rate established pursuant to § 55.03(1), F.S. Vendors experiencing payment problems may contact Vendor Ombudsman at (561) 297-3693. FAU will be responsible for paying only for any goods/services it receives; Contractor must refund any payment for goods/services that are unused upon the termination of the Agreement. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to FAU. FAU is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Contractor is responsible for and shall pay any taxes due under the Agreement. FAU may require Contractor to accept payments via FAU’s EFT/ACH payment process. If Contractor is making any payment to FAU, Contractor shall pay timely and not offset any amounts. FAU shall not make any deposits or prepay any amounts; any deposits are refundable.
5. **Beneficiary**. The parties agree that all obligations of Contractor under the Exhibits, and all benefits to be provided by Contractor to [name of governmental entity/consortium] therein, specifically including, but not limited to, its indemnity obligations, insurance obligations, and work product ownership rights, shall inure to the benefit of FAU, and Florida Atlantic University, the FAU Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, agents, employees, successors and assigns, pursuant to this Agreement. All references in the Exhibits to [name of governmental entity/consortium] shall mean FAU where appropriate.
6. **No Guarantees**. Contractor acknowledges that this Agreement is not a guarantee of any work.
7. **Annual Appropriations**. FAU’s performance and obligation to pay under this Agreement is subject to and contingent upon the availability of funds appropriated by the Florida Legislature or otherwise lawfully expendable for the purposes of such Contract for the current and future periods. FAU will give notice to the Contractor of the non-availability of funds when FAU has knowledge thereof. Upon receipt of such notice by Contractor, Contractor is entitled to payment only for those services performed and accepted by FAU prior to the date such notice is received.
8. **Insurance**. Contractor shall, at minimum, have and maintain the types and amounts of insurance outlined in the Solicitation, in addition to that which is necessary to protect both Contractor and FAU against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance of the Agreement, in any and all forms. Contractor shall name and shall require all providers, partners, suppliers, subcontractors and anyone else providing services relating to this Agreement to name, as appropriate, The Florida Atlantic University Board of Trustees, Florida Atlantic University, the State of Florida, The Florida Board of Governors, and their respective trustees, directors, officers, employees and agents, as additional insureds. The policies of the Contractor, its providers, partners, suppliers and subcontractors and anyone else providing services to the University shall be primary and any insurance carried by FAU shall be noncontributing with respect thereto. FAU, as a public body corporate entity, is self-insured, and will provide its Certificate of Insurance upon request; FAU will not purchase additional insurance coverage for this Agreement. FAU is not liable for the acts of third parties or the consequences of the acts of third parties.
9. **Relationship of the Parties**. Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Contractor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Contractor is not authorized to bind FAU to any contracts or other obligations.
10. **Notices**. Any notices required under this Agreement shall be sent via U.S. Mail, return receipt requested, to the parties at the following addresses:

 **To Contractor**:

[Company]

[Company Address]

 Attn: [Manager], [Title]

 **To FAU**:

 **Florida Atlantic University**

 Procurement Services

777 Glades Road

Admin. Bldg., Room 121

Boca Raton, Florida 33431

 Attn: Purchasing Director

*With a copy to:*

 **Florida Atlantic University**

 Office of the General Counsel

777 Glades Road

Admin. Bldg., Room 370

Boca Raton, Florida 33431

1. **Travel Expenses**. Contractor shall not charge FAU for any travel expenses, meals, and lodging unless otherwise provided in this Agreement and FAU's prior written approval of the expenses has been obtained. Under such circumstances, Contractor is authorized to incur the agreed to travel expenses which will be payable by FAU, but only to the extent permitted in Florida Statutes § 112.061.  Contractor is responsible for any expenses in excess of these prescribed amounts.
2. **Force Majeure**. No default, delay or failure to perform on the part of the either party shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party’s reasonable control including, without limitation, strikes; accidents; labor disputes; riots; governmental action; epidemics; pandemics; acts of terrorism or war; civil or military disturbances; sabotage; embargoes; fire; earthquakes; hurricanes; floods; acts of God; acts of civil or military authority power failure; or default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.
3. **Compliance with Laws**. In the performance of the Agreement, Contractor shall, at its own expense, at all times during the term of the Agreement: (A) comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and all other governmental requirements as applicable and required within Contractor's industry standard, as well as all applicable FAU regulations; and (B) have all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under the Agreement. This obligation shall specifically include, but is not limited to, Contractor’s compliance with applicable export control laws, including the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Office of Foreign Assets Control Regulations (OFAC).
4. **Privacy**. Contractor shall, at its own expense, at all times during the term of the Agreement, comply with any and all applicable state and federal laws and FAU policies and procedures governing the use and/or safe-keeping of confidential, highly sensitive, personally identifiable and/or protected health information (“PHI”) (as the terms may be defined by state or federal law), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act, the Federal Trade Commission’s Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003) (collectively, “Privacy Laws”). Contractor shall obtain in advance all necessary permissions and consents, as applicable, in regards to its collection/receipt of any such information. Further, if Contractor is assuming duties that would otherwise be provided by FAU and will have access to student data, Contractor shall notify FAU’s Office of the General Counsel and receive appointment to receive such information, in writing, prior to accessing any such student data. In the event that FAU will share with or provide access to Contractor of any PHI, FAU and Contractor shall enter into a separate business associate agreement which will govern the use of the PHI (in lieu of this provision). Contractor agrees to include all of such terms and conditions contained in any subcontractor or agency contracts providing services on behalf of Contractor
5. **Compliance with Public Records Law**. FAU is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and FAU will respond to such public records request without any duty to give the Contractor prior notice. If Contractor is a “contractor” as defined under Section 119.0701, Florida Statutes, Contractor shall comply with all applicable public records laws. Specifically, Contractor shall: (1) keep and maintain public records required by FAU to perform the service; (2) upon request from FAU’s custodian of public records, provide FAU with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under that section, or as otherwise provide by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Contractor does not transfer the records to FAU; and (4) upon completion of the contract, transfer, at no cost, to FAU all public records in possession of Contractor or keep and maintain public records required by FAU to perform the Service. If Contractor transfers all public records to FAU upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to FAU, upon request by FAU’s public records custodian, in a format that is compatible with FAU’s information technology systems. If FAU receives a request for public records, and FAU does not possess such records, FAU shall immediately notify Contractor of such request, and Contractor must provide them to FAU or allow the records to be inspected or copied within a reasonable time. If Contractor does not comply with the request for records, FAU shall enforce the terms of the contract, and Contractor may be subject to civil action under Section 119.0701, Florida Statutes, and the penalties outlined under Section 119.10, Florida Statutes. FAU may unilaterally cancel the Agreement for Contractor’s refusal to allow public access to all public records that were made or received in conjunction with the Agreement. This provision shall survive the expiration or earlier termination of the Agreement.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS, CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452,** **publicrecords@fau.edu****, Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.**

1. **Confidentiality of Information**. The Contractor acknowledges and agrees that (a) all documents, studies, materials and information furnished to the Contractor by FAU or FAU’s affiliates in connection with this Agreement and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for FAU in connection with this Agreement or which reflect any of the documents, studies, materials or information furnished to the Contractor by FAU (the materials described in (a) and (b) are collectively referred to as the “Information”) are and shall remain at all times confidential, proprietary, and the sole property of FAU. The Contractor agrees that it shall not use the Information and will not share the Information with its employees, except as necessary to the Contractor’s performance under this Agreement. The Contractor shall not disclose Information to third parties unless it obtains FAU’s written consent to such disclosure or is required to pursuant to applicable law or court order.
2. **Records**. Contractor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. FAU or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to Contractor.
3. **Sovereign Immunity**. Nothing in this Agreement shall be construed as an indemnification of the Contractor by FAU or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.
4. **Assumption of Risk**. Each party hereby assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and the officers, employees, and agents thereof. The Contractor also assumes such risk with respect to the willful or negligent acts or omissions of the Contractor’s subcontractors or persons otherwise acting or engaged to act at the instance of the Contractor in furtherance of the Contractor fulfilling the Contractor’s obligations under this Agreement.
5. **Indemnification**. Contractor agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys’ fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities and promotions of every kind and nature of Contractor or its officers, employees, agents and contractors, in connection with the Contract, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right. Any limitations of liability of Contractor set forth in the Contract shall not apply to: (a) claims for infringement or misappropriation of a copyright, patent, trade secret or other third-party proprietary right or (b) claims for personal injury or damages to real or personal properly caused by Contractor’s negligence or willful misconduct.
6. **Third Parties**. FAU is not liable for the acts of third parties or the consequences of the acts of third parties. The Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to the Agreement.
7. **Lobbying**. Contractor is prohibited from using funds provided under this Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.
8. **Federal Funds**. If FAU has entered into an agreement with the United States of America, or any Department thereof, and this Agreement is entered into with Contractor to further the performance of the work required in such federal agreement, Contractor shall comply with the terms required to be in all such contracts.
9. **Termination for Cause**. Each term and condition of the Agreement is material and any breach or default by Contractor shall be a material breach of the entire Agreement for which FAU shall have the right to terminate the Agreement upon notice to Contractor and without termination penalty.
10. **Termination** **without Cause**. FAU may terminate this Agreement by giving Contractor at least ninety (90) days prior written notice of termination. FAU shall only be liable for payment of goods received and/or services rendered and accepted by FAU prior to the effective date of termination.
11. **Information Technology**. If Contractor has access to the University’s information technology infrastructure, or will be providing such infrastructure to the University, Contractor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor further agrees: (a) that any websites hosted by Contractor on behalf of FAU shall be on an encrypted domain in compliance with the minimum security standards; (b) that all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement and shall not be distributed, repurposed or shaped across other applications, environments, or business units of Contractor, and that no FAU data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by FAU; and (c) that it shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification in accordance therewith, and in the event of a data breach of any Contractor’s security obligations or other event requiring notification under applicable law, Contractor shall assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend FAU against any claims, damages, or other harm related to such notification event.
12. **PCI DSS**. If Contractor’s provision of services involve the acceptance of funds on behalf of the University or involve credit card services, Contractor shall be responsible for the security of all FAUcustomer cardholder data in its possession. Contractor represents and warrants that for the life of the Agreement and/or while Contractor has involvement with FAUcustomer cardholder data, the software and services used for processing transactions shall be compliant with standards established by the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>). Contractor shall, upon written request, furnish proof of compliance with the Payment Card Industry Data Security Standard (PCI DSS) within 10 business days of the request. Contractor agrees to provide to FAUa current and complete copy of their Attestation of Compliance (AOC). Further, Contractor agrees to provide to FAUa proof of a recent (no more than 3 months old) passing quarterly external vulnerability scan as submitted by an Approved Scanning Vendor (ASV).
13. **Warranties**. Contractor, at a minimum, warrants that the goods, products and/or Services to be provided by Contractor will be free of any material defects and will operate and conform to the specifications provided in all material aspects throughout the term of the Agreement. This warranty shall be in addition to any warranties provided in the Agreement.
14. **Permitting**. In the event Contractor is providing any on-site service that requires local permitting, FAU shall be the permitting authority. Contractor agrees to comply with all applicable project guidelines, policies and protocols, including without limitation FAU’s Facilities Project Manual and the standards and cost containment guidelines set forth therein.
15. **Security Interests/Liens**. The parties acknowledge that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands and any such provisions in the Agreement are null and void.
16. **Conflicts**. Contractor certifies that to the best of its knowledge no individual employed by it or subcontracted by it has an immediate relation to any employee of FAU who was directly or indirectly involved in the procurement of the services. Violation of this section shall be grounds for cancellation of the Agreement by FAU per § 112.3185, F.S. FAU shall consider the employment by any vendor of unauthorized aliens a violation of the Immigration and Naturalization Act.
17. **Publicity**. Contractor shall not make any announcements relating to the Agreement, nor shall Contractor use FAU’s name, trademarks, logos or marks, without the prior written approval from FAU’s Office of Trademark Licensing and Marketing in each instance.
18. **Governing Law; Venue**. The Agreement is governed by the laws of the State of Florida, without regards to its conflicts of law principles. Exclusive venue of any actions shall be in the state courts of Palm Beach County, Florida. FAU is entitled to the full benefits of sovereign immunity.
19. **Deletion**. Any term and/or condition in the Agreement or any of the Exhibits on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by FAU to Contractor; (b) Restrictions on the hiring of Contractor’s employees; (c) FAU’s responsibility to pay intangible taxes, property taxes, or sales taxes; (d) FAU’s tort liability; (e) Automatic renewals of the term of the Agreement; (f) Limitation of time to bring suit; (g) Limitation of Contractor’s liability; (h) that FAU performs reporting functions and/or maintains certain types of operations (i) Granting Contractor any right to audit FAU; (j) Attorneys’ or collection fees provisions; (k) Arbitration and mediation clauses; and (l) Indemnification of Contractor by FAU.
20. **Assignment/Modification of Contract**. Contractor may not, without the advance written approval of FAU, not to be unreasonably withheld, assign any right or duties under the Agreement, or transfer, pledge, surrender or otherwise encumber its interest in any portion of the Agreement. Any assignment made without FAU’s consent shall be, at FAU’s option, null and void. No subcontracting or delegation shall in any event relieve Contractor of any obligation or liability under the Agreement.
21. **Entire Agreement**. This Agreement, along with the Exhibits and any other appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement.
22. **Signatures**. The parties represent and warrant that any person signing the Agreement has the authority to do so and that such signature shall be sufficient to bind Contractor. The Agreement may be signed electronically and shall be considered signed if/when a party’s signature is delivered by facsimile or e-mail transmission of a “.pdf” format date file, including via DocuSign. Such signature shall be treated in all respects as having the same force and effect as an original.

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