



PIGGYBACK AGREEMENT

THIS PIGGYBACK AGREEMENT (the “Agreement”) is made and entered on the last date signed below by and between **The Florida A&M University Board of Trustees** (“FAMU”), 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.

RECITALS

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

WHEREAS, _____, a [**Choose one: TYPE OF CONSORTIUM:**], [**Choose one: DID THE CONSORTIUM ISSUE OR PROCURE THE SOLICITATION:**] from [**Choose one**] pursuant to the aforementioned solicitation requirements, awarded the Solicitation to Contractor, and [**Choose one**] that certain Contract with the Contractor; and

WHEREAS, FAMU desires to obtain the Services contemplated in the Solicitation.

NOW THEREFORE, FAMU and Contractor agree to utilize the Solicitation and Contract and enter into this Agreement for Contractor to provide the Services, as may be required by FAMU, pursuant to the following details:

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

The aforementioned Exhibits are attached to this Agreement and are herein incorporated by this reference. In the event of any conflicts between the terms thereof, the documents (to the extent applicable) shall govern in the following order of precedence: (1) this Agreement; (2) the Price Sheet (Exhibit IV); (3) the Scope of Work (Exhibit V); (4) the Award Letter (Exhibit III); (5) the Solicitation (Exhibit I); and (6) the Response (Exhibit II). Notwithstanding the foregoing, the terms of the Terms and Conditions attached to this Agreement are incorporated into this Agreement and shall govern. ***(INTERNAL NOTE: YOU MAY NEED TO ADD THE “OTHER” DOCUMENT REFERENCED ABOVE TO THIS PRIORITY LIST, AND/OR YOU MAY NEED TO DELETE THOSE DOCUMENTS WHICH AREN’T APPLICABLE TO THIS AGREEMENT. PLEASE DELETE THIS COMMENT WHEN DONE DRAFTING.)***

BY SIGNING BELOW, CONTRACTOR REPRESENTS THAT CONTRACTOR ACCEPTS ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN. THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HEREBY EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

[Company]

Signature: _____
Name: _____
Title: _____
Date: _____

**FLORIDA A&M UNIVERSITY BOARD OF
TRUSTEES**

Signature: _____
Name: _____
Title: _____
Date: _____

TERMS AND CONDITIONS

1. **Effective Date.** The “Effective Date” of this Agreement shall be [Choose one].
2. **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.”
3. **Payment.** FAMU shall pay Contractor pursuant to [Choose One:].
4. **Payment Terms.** Contractor shall submit invoices for fees or other compensation for services or expenses in detail sufficient for a proper pre-audit and post-audit. FAMU will make payment in accordance with in accordance with the University’s Prompt Payment Compliance Policy. Upon receipt, FAMU has five (5) business days to inspect and approve the goods or services. If a payment is not issued within **forty (40) days of receipt** of a proper invoice and receipt and inspection and approval of the goods and services, FAMU will pay to the Contractor, in addition to the amount of the invoice, an interest penalty at the rate established pursuant to Florida Statutes §55.03(1), provided the interest penalty is in excess of one dollar (\$1.00). A Vendor Ombudsman has been established within the Office of Business and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment from FAMU. The Contractor shall cooperate with FAMU and provide specific records and/or access to all of the Contractor’s records related to this Agreement for purposes of conducting an audit or investigation FAMU will provide Contractor with reasonable notice of the need for such records or access.
5. **Beneficiary.** The parties agree that all obligations of Contractor under the Contract, and all benefits provided therein by Contractor pursuant to the Solicitation and the contract resulting therefrom, shall inure to the benefit of FAMU, and, as applicable Florida A&M University, the FAMU 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.
6. **No Guarantees.** Contractor acknowledges that this Agreement is not a guarantee of any work.
7. **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 FAMU 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 A&M University Board of Trustees, Florida A&M 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 FAMU shall be noncontributing with respect thereto. FAMU, as a public body corporate entity, is self-insured, and will provide its Certificate of Insurance upon request; FAMU will not purchase additional insurance coverage for this Agreement. FAMU is not liable for the acts of third parties or the consequences of the acts of third parties.
8. **Relationship of the Parties.** The Contractor is an independent contractor, and neither the Contractor nor the Contractor’s employees, agents, or other representatives shall be considered FAMU ‘s employees or agents. Contractor represents that Contractor and Contractor’s spouse or child are not employees of the University, and Contractor does not have an employment or contractual relationship with an employee of the University pursuant to FAMU Regulation The Contractor shall not use FAMU’s name, trademarks, logos, or marks without FAMU’s prior written approval. The Contractor represents and warrants that it is not on the Convicted Vendor List (see Fla. Stat. § 287.133(2)(a)). 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.

9. 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 FAMU:

Florida A&M University

[Department Name]

[Department Address]

Attn: [Manager], [Title]

With a copy to:

Florida A&M University

Office of the General Counsel

1700 S Adams St, #304

Tallahassee, FL 32301

10. Annual Appropriations. FAMU'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. FAMU will give notice to the Contractor of the non-availability of funds when FAMU has knowledge thereof. Upon receipt of such notice by Contractor, Contractor is entitled to payment only for those services performed and accepted by FAMU prior to the date such notice is received.

11. Taxes. FAMU is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. The Contractor shall pay all personal property taxes on leased equipment and all taxes based upon net income.

12. Travel Expenses. Contractor shall not charge FAMU for any travel expenses, meals, and lodging unless otherwise provided in this Agreement and FAMU'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 FAMU, but only to the extent permitted in Florida Statutes § 112.061. Contractor is responsible for any expenses in excess of these prescribed amounts.

13. 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, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; acts of terrorism; war; embargoes; fire; earthquakes; hurricanes; acts of God; 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.

14. Sovereign Immunity. Nothing in this Agreement shall be construed as an indemnification of the Contractor by FAMU or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

15. Indemnification. The Contractor is responsible for its performance under this Agreement. The Contractor will indemnify and hold harmless, assume liability for and defend, the State of Florida, the Florida Board of Governors, FAMU and their officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which may arise in any manner or are alleged to have arisen, from the acts, omissions or wrongful conduct of Contractor or Contractor's officers, employees, agents, guests, patrons, licenses, invitees or subcontractors in connection with or related to their operations, activities, and/or occupancy or use of the

FAMU premises in performance of this Agreement. This provision shall survive termination or expiration of this Agreement.

16. Trademark or Copyright Infringement. Contractor will, at its expense, defend any suit brought against FAMU and will indemnify FAMU against an award of damages and costs made against FAMU by settlement or final judgment of a court that is based on a claim that the use of the Contractor's product infringes a trademark or copyright of a third party; provided that FAMU notifies Contractor in writing of the suit or any claim of infringement within thirty (30) days after receiving notice thereof, and further provided that Contractor is permitted to control the defense in any litigation or settlement of the suit. FAMU will provide reasonable cooperation in the defense of the suit at Contractor's expense. Such defense and indemnity shall survive termination or expiration of this Agreement.

17. 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 FAMU 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).

18. Compliance with Public Records Law. This Agreement may be unilaterally cancelled by the University for the refusal by Provider to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., made or received in conjunction with this Agreement. Specifically, PROVIDER agrees that it will, to the extent required by law: (1) keep and maintain public records that ordinarily and necessarily would be required by UNIVERSITY in order to perform the services performed by PROVIDER under the Agreement; (2) provide the public with access to such public records on the same terms and conditions that 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; (3) ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer to UNIVERSITY, at no cost, all public records in possession of PROVIDER upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to UNIVERSITY in a format that is compatible with the information technology systems of UNIVERSITY. The failure of PROVIDER to comply with the provisions set forth in this provision shall constitute a default and breach of this Agreement. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 561-2499, (850)599-3413, public records@famu.edu, or 1601 S. Martin Luther King Blvd., 200 Lee Hall, Tallahassee, Florida 32307.** If Provider is exposed to FAMU's confidential information, Provider will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as FERPA, HIPAA and the Grammy Leach Bliley Act.) FAMU will respond to public records requests without any duty to give Contractor prior notice.

20. Third Party Beneficiaries. The Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to the Agreement.

21. Confidentiality of Information. Provider agrees to keep confidential and not to disclose to third parties any information provided by University pursuant to this Agreement unless Provider has received prior written consent of University to make such disclosure. This obligation of confidentiality does not extend to any information that:

- 1 Was in the possession of Provider at the time of disclosure by University, directly or indirectly;
- 2 Is or shall become, through no fault of Provider, available to the general public, or
- 3 Is independently developed and hereafter supplied to Provider by a third party without disclosure restriction.
- 4 This provision shall survive expiration and termination of this Agreement.

22. 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.

23. Termination for Cause. Either party may terminate this Agreement for cause by giving the other party thirty (30) calendar-days written notice setting forth with specificity the basis for the termination of this Agreement for cause. For purposes of this Agreement, "cause" shall mean the failure by either party to: (i) provide the goods or perform the services within the time specified in this Agreement; or (ii) adhere to any terms of this Agreement.

24. Termination without Cause. FAMU may terminate this Agreement by giving Contractor at least ninety (90) days prior written notice of termination. FAMU shall only be liable for payment of goods received and/or services rendered and accepted by FAMU prior to the effective date of termination.

25. E-Verify: All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement. If Contractor enters into a contract with a subcontractor to perform work or provide services pursuant to this Agreement, Contractor shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Contractor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of the contract. FAMU may terminate this Agreement immediately upon notice to Contractor for any violation of this provision.

26. Deletion. Any term and/or condition in the Exhibits on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by FAMU to Contractor; (b) Restrictions on the hiring of Contractor's employees; (c) FAMU's responsibility to pay intangible taxes, property taxes, or sales taxes; (d) FAMU'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 FAMU performs reporting functions and/or maintains certain types of operations (i) Granting Contractor any right to audit FAMU; (j) Attorneys' or collection fees provisions; (k) Arbitration and mediation clauses; and (l) Indemnification of Contractor by FAMU.

27. No counterparts; facsimile signatures allowed. This Agreement may not be executed in counterparts. The Agreement, along with any and all Exhibits, may be executed and delivered by facsimile signature by any of the parties to the other parties; to the extent permissible under Florida law, a facsimile signature shall have the same legal force and effect as an original signature and the receiving party may rely on the receipt of such document so executed and delivered by facsimile signature as if the original had been received.

28. Assignment/Modification of Contract. This Agreement may not be assigned or modified by either party except as agreed to in writing and signed by both parties. This Agreement shall be binding upon the parties' successors and assigns.

29. Governing Law; Venue. This Agreement is governed by the laws of the State of Florida and exclusive venue of any actions arising out of this Agreement shall be in the courts in Tallahassee in Leon County, Florida.

30. 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.

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