

ITN #56-001

CONTRACT

THIS CONTRACT (the "Contract") is made and entered into on as of the date fully entered below (the "Effective Date"), by and between **THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES ("FIU")** and **THE SPELMAN & JOHNSON GROUP, INC.**, a MASSACHUSETTS corporation, whose address is 3 Chapman Avenue, Easthampton, Massachusetts 01027, who is authorized to do business in the State of Florida (the "Contractor").

RECITALS

WHEREAS, FIU requested solicitation responses for Competitive Solicitation ITN No.56-001 ("ITN #56-001") to provide the following goods and/or services: Search Firm services (the "Services");

WHEREAS, the Contractor submitted a solicitation response for ITN #56-001 to perform the Services ("Contractor's Solicitation Response"), which was accepted by FIU.

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Term.** This Contract commences on the Effective Date and will continue for an initial term of three (3) years (the "Initial Term") and may be renewed in writing by the parties for two (2) additional, two (2) year term(s) (each, "Renewal Term"). The Initial Term and the Renewal Term(s) shall be known, collectively, as the "Term."

2. **Contract.** The Contractor will provide to FIU the Services pursuant to the terms and conditions described in the following: the Competitive Solicitation for ITN #56-001 (including Addendum 1), attached hereto as Exhibit I and incorporated herein by reference; the Contractor's Solicitation Response, attached hereto as Exhibit II and incorporated herein by reference; and the Contractor's Best and Final Offer, attached hereto as Exhibit III and incorporated herein by reference. In the event of conflict between or among terms and conditions contained in the foregoing documents with regards to the Services, such documents shall govern in the following order of precedence: first, this Contract; second, Exhibit I (the Competitive Solicitation for ITN #56-001, including Addendum 1); third, Exhibit III (the Contractor's Best and Final Offer); and fourth, Exhibit II (the Contractor's Solicitation Response).

3. **Payment.** The Contractor shall provide the Services to FIU pursuant to the pricing set forth in Exhibit III. The Contractor shall submit invoices for fees or other compensation for services or expenses in detail sufficient for a proper pre-audit and post-audit. FIU will make payment in accordance with FIU Regulation FIU-2202, which states the Contractor's rights as a vendor and FIU's responsibilities concerning interest penalties and time limits for payment of invoices. Upon receipt, FIU 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, FIU will pay to the Contractor, in

ITN #56-001

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 FIU. The Vendor Ombudsman may be contacted at (305) 348-2101.

The Contractor shall cooperate with FIU and provide specific records and/or access to all of the Contractor's records related to the Contract for purposes of conducting an audit or investigation. FIU will provide Contractor with reasonable notice of the need for such records or access.

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

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

6. **Governing Law; Venue.** This Contract is governed by the laws of the State of Florida and exclusive venue of any actions arising out of this Contract shall be in the courts in Miami-Dade County, Florida.

7. **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 FIU's employees or agents. The Contractor shall not use FIU's name, trademarks, logos, or marks without FIU'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 the Contract.

8. **Compliance with Public Records Law.** FIU is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and FIU 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 FIU to perform the service; (2) Upon request from FIU's custodian of public records, provide FIU 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

ITN #56-001

for the duration of the contract term and following completion of the contract if Contractor does not transfer the records to FIU; and (4) upon completion of the contract, transfer, at no cost, to FIU all public records in possession of Contractor or keep and maintain public records required by FIU to perform the Service. If Contractor transfers all public records to FIU 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 FIU, upon request by FIU's public records custodian, in a format that is compatible with FIU's information technology systems. If FIU receives a request for public records, and FIU does not possess such records, FIU shall immediately notify Contractor of such request, and Contractor must provide them to FIU or allow the records to be inspected or copied within a reasonable time. If Contractor does not comply with the request for records, FIU 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. FIU 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 THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, BY EMAIL AT rose.nicholson@fiu.edu, OR BY MAIL at 11200 SW 8 ST., GL 460, MIAMI, FLORIDA 33199.**

9. **Annual Appropriations.** FIU's performance and obligation to pay under the Contract 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. FIU will give notice to the Contractor of the non-availability of funds when FIU has knowledge thereof. Upon receipt of such notice by Contractor, Contractor is entitled to payment only for those services performed and accepted by FIU prior to the date such notice is received.

10. **Taxes.** FIU 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.

11. **Travel Expenses.** Contractor shall not charge FIU for any travel expenses, meals, and lodging unless otherwise provided in this Contract and FIU'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 FIU, but only to the extent permitted in Florida Statutes § 112.061 and the FIU Policy 1110.060 Travel: University Travel Expense Policy, which

ITN #56-001

is available at <http://policies.fiu.edu/record_profile.php?id=548&s= travel>. Contractor is responsible for any expenses in excess of these prescribed amounts.

12. **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.

13. **Indemnification.** The Contractor is responsible for its performance under the Contract. The Contractor will indemnify and hold harmless, assume liability for and defend, the State of Florida, the Florida Board of Governors, FIU 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 FIU premises in performance of the Contract. This provision shall survive termination or expiration of the Contract.

14. **Trademark or Copyright Infringement.** Contractor will, at its expense, defend any suit brought against FIU and will indemnify FIU against an award of damages and costs made against FIU 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 FIU 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. FIU will provide reasonable cooperation in the defense of the suit at Contractor's expense. Such defense and indemnity shall survive termination or expiration of the Contract.

15. **Confidentiality of Information.** The Contractor acknowledges and agrees that (a) all documents, studies, materials and information furnished to the Contractor by FIU or FIU's affiliates in connection with this Contract and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for FIU in connection with this Contract or which reflect any of the documents, studies, materials or information furnished to the Contractor by FIU (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 FIU. 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 Contract, and the Contractor shall at all times comply with all state and federal laws governing the use and/or safe-keeping of confidential and/or personally identifiable information. The Contractor shall not disclose Information to third parties unless it obtains FIU's written consent to such disclosure.

ITN #56-001

In the event the Contractor is required by subpoena or other judicial or administrative process or by law to disclose such records, the Contractor shall (i) provide FIU with prompt notice thereof; (ii) consult with FIU on the advisability of taking steps to resist or narrow such disclosure; (iii) furnish only that portion of the information that is responsive to the request; (iv) comply with the requirements of all state and federal privacy laws applicable to the Information, which may include but is not be limited, to Florida Public Records laws, FERPA, 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); and (v) reasonably cooperate with FIU in any attempt that FIU may make to obtain an order or other reliable assurance that confidential treatment will be accorded the records. Upon termination of this Contract or upon request by FIU, the Contractor shall promptly return the Information to FIU. Notwithstanding the foregoing, if FIU will share or provide access to protected health information or "PHI" to FIU for the Contractor to perform this Contract, FIU and the Contractor will enter into a separate business associate agreement which will govern the confidentiality and non-use obligations of the Contract regarding the PHI (in lieu of this provision). This provision shall survive the termination or expiration of this Contract.

16. **Lobbying.** Contractor is prohibited from using funds provided under this Contract 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.

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

18. **Notice.** Any notices required under this Contract shall be sent via U.S. Mail, return receipt requested, to the parties at the following addresses:

Notices to Contractor:

Julie D. Smith
Administrative Director
The Spelman and Johnson Group, Inc.
3 Chapman Avenue
Easthampton, MA 01027

Notices to FIU:

Purchasing Director
FIU- Purchasing Services Department
Campus Support Complex, CSC 411
11200 S.W. 8th Street
Miami, Florida 33199

With copy to:

Florida International University
Office of the General Counsel
Modesto A. Maidique Campus

ITN #56-001

11200 S.W. 8th Street, PC 511
Miami, Florida 33199

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

20. **No counterparts; facsimile signatures allowed.** This Contract may not be executed in counterparts. The Contract, 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.

21. **Compliance with Laws.** In the performance of this Contract, Contractor shall, at its own expense, at all times during the Term, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and all other governmental requirements. Contractor acknowledges and agrees that Contractor has and will at all times during the Term maintain all governmental permits, licenses, consents, and approvals necessary to perform its obligations under this Contract.

22. **Clarifications/negotiated points (if any) are:** None.

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ITN #56-001

IN WITNESS WHEREOF, the duly authorized representatives of the parties have affixed their signatures, effective on the Effective Date first written above.

FOR THE CONTRACTOR:

**THE SPELMAN AND JOHNSON GROUP,
INC.**

BY: 

Ellen T. Heffernan, President

NAME & TITLE:

DATE: June 29, 2016

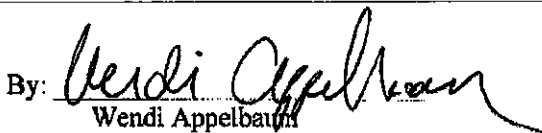
FOR FIU:

**THE FLORIDA INTERNATIONAL UNIVERSITY
BOARD OF TRUSTEES**

BY: 

NAME & TITLE: Dr. Jaffus Hardrick
Vice President of Human Resources

DATE: 7/12/16

By: 
Wendi Appelbaum
Assistant General Counsel

Date: 6-21-16