

GRANT AWARD AGREEMENT  
(FSU - Apalachicola Bay System Initiative /Project #69)

THIS GRANT AWARD AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”), by and between TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation (“**Triumph**”), and FLORIDA STATE UNIVERSITY (“**FSU**”).

WITNESSETH:

WHEREAS, pursuant to its authority under **Section 288.8017, Florida Statutes**, Triumph has agreed to make a Grant (as defined below) to FSU, on and subject to the terms and conditions set forth in this Agreement, to provide partial funding for the following projects (collectively, the “**Project**”):

1. The purpose of the Apalachicola Bay System Initiative (ABSI) is to develop a science-based plan of action for restoring the health of the Apalachicola Bay ecosystem and the oyster reefs therein and create an overall management plan for the bay that we envision serving as a model for other bays along the Florida Panhandle within the Triumph Gulf Coast Inc. purview.
2. In parallel, ABSI will partner with Franklin County community members as well as government, academic and NGO stakeholders to build lines of communication with the appropriate Federal, State and NGO entities to secure the necessary resources that will ultimately be required for bay restoration.
3. After completion of steps 1 and 2 above, the restoration partners will then implement the restoration plan and monitor its progress using the external resources leveraged using Triumph Gulf Coast funds, the initial FSU cost-share and the FSU long-term commitment (years 6-15) to ABSI.
4. In addition to items 1-3 above, the Project includes the following:
  - a. Formation of the Community Advisory Board (CAB) and development and approval of the broad research plan by the CAB within 18 months of initial funding.
  - b. Completion of assessment of the temporal and spatial changes in oyster communities in Apalachicola Bay within 24 months of initial funding.
  - c. Availability of oyster larvae for experiments on responses to different environmental conditions within 24 months of initial funding.
  - d. Completion and dissemination of a bio-physical model that allows prediction of oyster recruitment and population connectivity with 30 months of initial funding.
  - e. Development of monitoring plan and two full years of data on oyster communities and their environment within 36 months of initial funding.
  - f. Substantial progress towards the ABSI management and restoration plan within 48 months of initial funding.
  - g. Establishment of a restoration partnership working group of private sector, academic, government and NGO entities and development of lines of

communication with potential Federal, State and NGO funders of the restoration effort with 24 months of initial funding.

h. Completion and dissemination of coupled ecosystem-life history model which can be used to forecast oyster productivity under different environmental scenarios within 60 months of initial funding,

all as further described in FSU's Application for Funds submitted to Triumph (the "**Grant Application**"), which Grant Application is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to (i) award the Grant, (ii) state the terms and conditions upon which the Grant will be disbursed, and (iii) set forth certain requirements as to the manner in which the Project will be undertaken and completed.

2. **Grant Award.** On and subject to the terms and conditions set forth herein, Triumph hereby agrees to make a grant to FSU in the aggregate maximum amount of Seven Million Nine Hundred Ninety Eight Thousand Six Hundred Seventy Nine Dollars (\$7,998,678) (the "**Grant**") to provide partial funding for the Project.

3. **Competitive Bids for the Project.** FSU shall issue an invitation to bid to solicit competitive bids for materials and labor for the construction portion of the Project pursuant to Sections 180.24 and 255 et seq., Florida Statutes, or pursuant to the Consultant's Competitive Negotiation Act as set forth in Section 287.055, Florida Statutes, as applicable. In awarding the contract, FSU shall award the contract to the lowest, responsive bidder considering the selection criteria contained within the invitation to bid. Upon determination as to which vendor is the lowest, responsive bidder, FSU shall submit to Triumph for its approval, the name of the proposed vendor and all documentation relating to the evaluation of the various bids submitted. Triumph shall have fifteen (15) days from the receipt of the submitted material to notify FSU of its approval or disapproval of such proposed award. If Triumph fails to approve or disapprove of the election within such fifteen (15) day period, the award shall be deemed approved. Upon approval, FSU shall issue its intent to award to that vendor. Triumph shall have the right to review and approve all Contracts (as defined in Section 5.7 below) in accordance with Section 5.7 below

4. **Disbursement of Grant:**

4.1 **Allocation of Matching Funds and Grant.**

(a) \$250,601 of the Matching Funds (as defined in Section 5.2 below) shall be allocated in years 1 and 2 to the salaries of the ABSI Scientific Director (0.25 FTE) and Project Manager (1.0 FTE).

(b) \$700,000 of the Matching Funds shall be allocated to renovating FSUCML infrastructure specifically needed for the conduct of

ABSI research and outreach operations including; (1) improvements to the capacity and water quality of the sea water system, (2) enhancements to existing research laboratories supporting ABSI functionalities and (3) modifications to space to accommodate net growth of faculty, staff and students at FSUCML.

(c) \$251,322 (year 1) and \$249,399 (year 2) of the Matching Funds (for a total of \$500,721) shall be allocated to research and outreach operations during years 1 and 2 of the Project (excluding salaries for personnel) during years 1 and 2 of the Project. This includes acquisition of materials and equipment need to accommodate algal culture and oyster broodstock maintenance. This will allow preliminary research to be started with oyster larvae prior to the completion of the hatchery. Research and outreach activities may require hiring of additional temporary staff beyond those requested below under short-term staff at FSUCML.

(d) \$50,000 of the Matching Funds shall be allocated to developing the program for the pilot-scale, experimental oyster hatchery at FSUCML. Program development will involve visits to regional oyster hatcheries and the hiring of a design consultant to assemble the program elements for the hatchery.

(e) \$404,806 of the Grant shall be allocated to the salaries of the Scientific Director (0.25 FTE) and Project Manager (1.0 FTE) of ABSI in years 3, 4 and 5. Forty-five (45) days prior to reappointment of staff for the fiscal year, FSU will submit a request to Triumph for salary and fringe benefits. Triumph shall have forty-five (45) days from receipt to review and approve or disapprove of an application for disbursement, and if approved, thirty (30) days to disburse the funds to FSU.

(f) \$380,000 of the Grant shall be allocated to scientific consultants supporting the elements of the on-going research effort. Specific tasks for these consultants include (but are not limited to) development of a bio-physical model for oyster recruitment and population connectivity, analysis of the oyster genetic structure of Apalachicola Bay and adjacent populations and development of a coupled ecosystem life-history model. These costs are reimbursed to FSU on completion of each research contract.

(g) \$1,303,618 of the Grant shall be allocated for the hiring of research faculty at FSUCML (all will be 1.0 FTE). Appointments at FSU extend through each fiscal year (June 30) and are automatically renewed, based on satisfactory performance, at the beginning of each fiscal year

thereafter. FSUCML will provide to Triumph a copy of the initial appointment papers for each new employee, requesting funds in the appointment period for salary and fringe benefits.

(h) \$792,691 of the Grant shall be allocated for the hiring of short-term staff (including graduate students) at FSUCML. Appointments for staff members will be 1.0 FTE while graduate students will be 0.5 FTE appointments with FSU-required tuition and fringe benefits. Appointments at FSU extend through each fiscal year (June 30) and may be renewed at the beginning of each fiscal year thereafter. FSUCML will provide to Triumph a copy of the initial appointment papers for each new employee, requesting funds in the appointment period for salary and fringe benefits.

(i) \$968,297 of the Grant shall be allocated for the hiring of permanent research support personnel at FSUCML. Appointments will be at 1.0 FTE. Appointments at FSU extend through each fiscal year (June 30) and are automatically renewed at the beginning of each fiscal year thereafter. FSUCML will provide to Triumph a copy of the initial appointment papers for each new employee, requesting funds in the appointment period for salary and fringe benefits.

(j) \$200,000 of the Grant shall be allocated for the design and permitting of the pilot-scale, experimental oyster hatchery at FSUCML, and shall be disbursed from time to time as invoices for completed work are submitted to Triumph.

(k) \$2,664,524 of the Grant shall be allocated for the construction of the pilot-scale, experimental oyster hatchery at FSUCML, and shall be disbursed from time to time as invoices for completed work are submitted to Triumph.

(l) \$350,000 (year 3), \$350,000 (year 4), and \$334,743 (year 5) of the Grant shall be allocated for research and outreach operations. FSU will provide a summary of expenditures at the end of each operations year. Research and outreach activities may require the hiring of additional temporary staff beyond those requested above under short-term temporary staff at FSUCML.

(m) \$250,000 of the Grant shall be set aside as a contingency to support responses to unforeseen events, issues or opportunities. FSU will provide a detailed request to Triumph, as necessary for allocation of such funds.

4.2 **Conditions to Triumph's Obligations to Disburse the Grant.** At such time as FSU is entitled to a Grant disbursement in accordance with the Budget (as defined below), FSU shall submit to Triumph one or more Applications for Disbursement on the form attached hereto as **Exhibit "A"** and incorporated herein (an "**Application for Disbursement**"). Each Application for Disbursement shall include reports in budget categories with copies of general ledger detail showing itemized expenditures. Triumph shall have the right to request further detail or copies of any expenditure, including, but not limited to (A) invoices from architects, engineers, contractors, materialmen, and other vendors performing the construction; (B) invoices, purchase orders, or contracts from vendors providing equipment, materials, and services; (C) payroll and other employment data, (D) documentation evidencing the completion of the work that is the subject of the requested disbursement, and (E) such other documents as Triumph shall require in order to determine that the requested disbursement is consistent with the purposes of the Grant. FSU shall notify the Triumph Program Administrator via email each time an Application for Disbursement is submitted. Within forty-five (45) days of notification and receipt of an Application for Disbursement under Section 4.1 above that includes all required supporting documents, Triumph shall either approve or disapprove of the Application for Disbursement. If Triumph approves the Application for Disbursement, then it shall disburse the approved amount to FSU within thirty (30) days after approval. If Triumph disapproves the Application for Disbursement, Triumph shall deliver a notice of disapproval within such forty-five (45) day period that states the reasons for such disapproval. If the stated reasons for disapproval can be cured by FSU's submittal of missing or corrective items, FSU shall have thirty (30) days following receipt of the notice of disapproval to submit such missing or corrective items. If Triumph fails to notify FSU of its disapproval of the Application for Disbursement within forty-five (45) days of receipt, such Application for Disbursement shall be deemed disapproved.

FSU shall not submit more than one (1) Application for Disbursement for each Project category under subparagraphs 4.1(e)-(m) above in any single calendar month, and all Applications for Disbursement for a single month for each Project category under subparagraphs 4.1(e)-(m) above must be submitted simultaneously. All amounts disbursed to FSU pursuant to an Application for Disbursement shall then be paid by FSU to architects, engineers, contractors, materialmen, and other vendors performing work or supplying equipment, materials, or services, or, to the extent that FSU has already paid amounts, the Grant funds disbursed shall be retained by FSU as a reimbursement for such payments. None of the Grant shall be used as a reimbursement of items purchased by FSU prior to the date of this Agreement. None of the amounts paid by FSU in connection with the invoices submitted in an Application for Disbursement and then disbursed by Triumph shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, FSU by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to FSU by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution, it being expressly understood and agreed that FSU shall not receive payments, refunds, reimbursements, rebates or credits from any sources in amounts collectively exceeding 100% of the amounts paid or owing by FSU.

No Grant funds shall be disbursed for Year 2 of the Project unless and until FSU has provided satisfactory evidence to Triumph that all Matching Funds to be spent during Year 1 of

the Project have in fact been spent and/or encumbered for the proposed purposes as shown on the Budget during Year 1. No Grant funds shall be disbursed for Year 3 of the Project unless and until FSU has provided satisfactory evidence to Triumph that all Matching Funds to be spent during Year 2 of the Project have in fact been spent or encumbered for the proposed purposes as shown on the Budget during Year 2.

Reasons for disapproving an Application for Disbursement must include one or more of the following:

- (a) Missing or incomplete documentation required under Section 4.2 above;
- (b) The Application for Disbursement seeks disbursement for more than the amounts actually invoiced by contractors, materialmen, or vendors;
- (c) The amount requested for disbursement under the Application for Disbursement, together with all amounts previously disbursed under the Grant, would exceed the \$7,998,679 maximum amount of the Grant;
- (d) FSU made a misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement;
- (e) There is any pending litigation with respect to the performance by FSU of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement, or disbursement of the Grant;
- (f) FSU has taken any action pertaining to the Project which, under this Agreement, requires the approval of Triumph, and FSU failed to obtain such approval;
- (g) There has been a violation of Sections 9.1, 9.4, and/or 9.5 of this Agreement;
- (h) FSU is in material violation, default, or breach of or under any provision of this Agreement;
- (i) FSU is in breach of any material representation or warranty contained in this Agreement;
- (j) Any federal, state, or local agency (including FSU) providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds;

- (k) The Matching Funds are not being used for the intended purposes and in the amount and at the times as set forth in a schedule of expenses approved by Triumph, unless prior approval for such a change is obtained;
- (l) With respect to previous disbursements of the Grant, FSU has failed to pay, or has failed to provide Triumph with evidence of payment of, the Grant for the purposes of such disbursement;
- (m) Prior to the Completion Deadline (as defined in Section 5.1 below), FSU has abandoned or discontinued the Project, or for any reason the commencement, prosecution, or timely completion of the Project by FSU is rendered improbable, infeasible, impossible, or illegal;
- (n) All or any portion of the requested disbursement includes disbursement for improvements that are outside the scope of the Project that is contemplated under the Budget; or
- (o) One or more of the Contracts previously approved or deemed approved by Triumph have been modified, amended, or terminated without the actual or deemed prior consent or approval of Triumph; provided, however, that any change order under \$25,000 shall not be subject to approval under the Agreement.

## 5 Completion of the Project:

5.1 **General Requirements.** FSU shall commence, and complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement and all applicable laws. FSU agrees to complete the Project on or before June 24, 2024 (the “**Completion Deadline**”). If FSU does not complete the Project by such date, Triumph’s obligation to make the Grant will expire unless an extension of the time period is requested by FSU and granted in writing by Triumph prior to such expiration date. Notwithstanding the foregoing, the Completion Deadline shall be extended on a day-for-day basis by reason of *force majeure* events. The term “*force majeure*” as used herein shall mean that which is beyond the control of FSU, including, but not limited to, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or of the state or any civil or military authority, insurrections, riots, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies, or any acts or omissions of third parties not FSU’s control, and other such events or circumstances which are beyond the control of FSU despite all reasonable efforts to prevent, avoid, delay, or mitigate such causes, and to include acts of God (such as epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts and adverse weather conditions).

5.2 **Total Project Cost.** The total cost of the Project is \$9,500,000, of which (i) \$1,501,322 shall be paid by FSU as matching funds (the “**Matching Funds**”), and (ii) \$7,998,678 shall be provided by the Grant. The total estimated cost of the Project and the allocation of Matching Funds is based upon the budget set forth in **Exhibit "B"** attached to and incorporated into this Agreement (the "**Budget**"). Triumph and FSU acknowledge and agree that by its very nature, research needs change as data and information are accumulated, thus, it may be necessary to adjust the on-going effort by reallocation of resources among Budget categories. Accordingly, the Budget shall be broadly divided between funds to be used for construction (including materials and equipment) and funds to be used for personnel and research/outreach operations. Requests for such changes, coupled with detailed justifications, will be provided to Triumph for approval. Rebudgeting of funds less than 25% of the total budgeted amount within either the construction or personnel and research/outreach operations category shall not require prior approval of Triumph. No funds budgeted for personnel and research/outreach operations shall re-budgeted for construction, and no funds budgeted for construction shall be re-budgeted for personnel and research/outreach operations. Using the Grant, the Matching Funds, its other own funds, and funds from other grants, if any, FSU agrees to bear the entire cost and expense of the Project, including but not limited to, all costs and all expenses in excess of the total estimated cost of the Project, it being expressly understood and agreed that the Grant shall operate only to pay, on and subject to the terms and conditions set forth herein, a portion of the costs and expenses of the Project.

5.3 **Requirement to Provide Reports/Triumph Right to Inspect.** FSU shall submit to Triumph such data, reports, records, contracts and other documents relating to the Project as Triumph may require, which reports shall include, among other things, its most recent audited financial statements within six (6) months after its fiscal year end. FSU shall also, on an annual basis by March 31 or each year, submit to Triumph an activity report which outlines the progress of the Project, costs incurred to date, and the progress of satisfaction of the performance metrics set forth in Section 8.3 below. In connection with its inspection of the Project, FSU shall make available to Triumph copies of any and all invoices, payroll records, job descriptions, contracts, plans and specifications, and other documentation relating to the Project. Triumph shall have the right, at any time and from time to time upon reasonable notice to FSU, to access the Project and inspect any Equipment and work being performed or as completed.

5.4 **Insurance.** Triumph hereby acknowledges and agrees that FSU is a state agency and/or public entity of the State of Florida and is thereby covered for comprehensive general and professional liability by its State Risk Management and/or self-insurance programs pursuant to Florida law and subject to the limitations set forth in Section 768.28, Florida Statutes (\$200,000/\$300,000) and that said coverage shall be deemed sufficient and acceptable in meeting all FSU’s obligations with regard to general and professional liability insurance requirements as required by this Agreement.

5.5 **Compliance with Applicable Laws, Including Environmental Regulations.** FSU shall obtain all required clearances and permits required for the Project from the appropriate permitting authorities. FSU covenants and agrees that the Project will be constructed in conformance with all applicable federal, state and local statutes, rules and regulations, and standards, including, but not limited to, applicable environmental laws and



regulations including the securing of any applicable permits. FSU will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations.

**5.6 Plans and Specifications.** Triumph shall have the right to review and approve the plans and specifications for the Project and any proposed changes to said plans and specifications. Triumph shall have thirty (30) days from receipt of the plans and specifications or proposed change to notify FSU of its approval or disapproval. If Triumph fails to approve or disapprove of the plans and specifications or proposed change within such thirty (30) day period, the plans and specifications or proposed change shall be deemed approved. If FSU fails to obtain approval from Triumph, that failure shall be sufficient cause for nonpayment by Triumph as provided in Section 4.2(g)

**5.7 Contracts:** Triumph shall have the right to review and approve any and all proposed contracts (other than subcontracts with faculty) in connection with the Project (each, a “**Contract**,” and collectively, the “**Contracts**”) and any proposed changes to the Contracts before FSU executes or obligates itself in any manner. Triumph shall have fifteen (15) days from receipt of a proposed Contract or change order to notify FSU of its approval or disapproval of such Contract or change order. If Triumph fails to approve or disapprove of a Contract or change order within such fifteen (15) day period, the subject Contract or change order shall be deemed approved. Triumph also reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of same.

**5.8 Compliance with Consultants' Competitive Negotiation Act.** FSU shall be deemed an “Agency” under, and shall comply in full with, the provisions of Chapter 287.055, Florida Statutes, Consultants' Competitive Negotiation Act with respect to engineering, architecture or surveying services, and shall certify to Triumph that all selections have been accomplished in compliance with said statute.

**5.9 FSU Responsible for Payments.** FSU expressly assumes any and all liability for payment to its agents, employees, contractors, subcontractors, consultants, and subconsultants, and to contractors under the Contracts, and agrees to assume responsibility for any any suits, actions, damages, and costs of every name and description, including attorneys’ fees, arising from or relating to any denial or reduction of any application submitted by FSU to Triumph for disbursement of the Grant under this Agreement.

**5.10 Worker’s Compensation Insurance.** FSU shall carry or cause contractors under the Contracts to carry and keep in force Worker’s Compensation insurance as required for the State of Florida under the Worker’s Compensation Law.

**5.11 Contractual Indemnities.** FSU shall include or cause to be included the following indemnification in the Contracts and all other contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

“The contractor/subcontractor /consultant/subconsultant shall indemnify, defend, save and hold harmless Triumph Gulf Coast, Inc., a Florida not-for-profit corporation, and all of its officers,

directors, agents and employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor / subcontractor/ consultant/ and its officers, agents or employees.”

**6 Representations and Warranties of FSU.** FSU hereby makes the following representations and warranties to Triumph, each of which shall be deemed to be a separate representation and warranty, all of which have been made for the purpose of inducing Triumph to enter into this Agreement, and in reliance on which Triumph has entered into this Agreement, and such representations and warranties shall be deemed made as of the date hereof, as of the dates on which FSU submits an Application for Disbursement, and as of the dates on which FSU receives any disbursement of the Grant:

(a) **Organization; Power and Authority.** FSU is an agency of the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** FSU has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of FSU. This Agreement has been duly executed and delivered by FSU and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of FSU, enforceable against FSU in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) **No Violations.** The execution and delivery by FSU of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of FSU's certificate of incorporation, certificate of formation, bylaws, or similar corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of FSU's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. FSU has not been convicted of a “public entity crime” (as such term is defined in Section 287.133 of the Florida Statutes) nor has FSU been placed on the “discriminatory vendor list” (as such term is defined in Section 287.134 of the Florida Statutes). Neither FSU nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of FSU, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither FSU nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its

behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **No Material Adverse Change.** No event, change or condition has occurred that has had, or would reasonably be expected to have, a material adverse effect on the assets, operations or financial condition of FSU, or the Project, in each case, since the date of the Grant Application.

(e) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental FSU is pending or, to the knowledge of FSU, threatened by or against FSU or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of FSU, the Project, or FSU's ability to perform its obligations under this Agreement. No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, any other prosecutorial or law enforcement authority in the State of Florida, or any regulatory body in the State of Florida is pending or, to the knowledge of FSU, threatened by or against FSU in, or with respect to any conduct in, the State of Florida. No permanent injunction, temporary restraining order or similar decree has been issued against FSU which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of FSU, the Project, or FSU's ability to perform its obligations under this Agreement. Neither FSU, nor any of its material properties or assets has in the last three years been in violation of, nor will the continued operations of its material properties and assets as currently conducted, violate any law, rule, or regulation applicable to FSU (including any zoning or building ordinance, code or approval, or any building permit where such violation or default would be material to FSU), or is in default with respect to any judgment, writ, injunction, decree, or order applicable to FSU of any governmental FSU, in each case, where such violation or default could, individually or in the aggregate, reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of FSU, the Project, or FSU's ability to perform its obligations under this or constitutes a crime under the laws of the United States, Florida, or any other state or territory of the United States.

(f) **Express Representations and Warranties: No Material Misstatements.** All statements made by FSU in the Grant Application were true, complete, and correct. Triumph shall be deemed to have relied upon the express statements, representations and warranties set forth herein and in the Grant Application notwithstanding any knowledge on the part of Triumph of any untruth of any such representation or warranty of FSU expressly set forth in this Agreement, regardless of whether such knowledge was obtained through Triumph's own investigation or otherwise, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement. No information, report, financial statement, exhibit or schedule (other than forward-looking

statements and projections) furnished by FSU to Triumph in connection with the Grant Application and/or the negotiation of this Agreement, or delivered pursuant to this Agreement, when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

(g) **Matching Funds.** FSU has on hand as its own funds of not less than \$1,501,322 for the Matching Funds dedicated to completion of the Project as contemplated in the Grant Application.

(h) **Bonus or Commission.** FSU has not paid, and agrees not to pay, any bonus or commission for the purpose of obtaining an approval of the Grant Application or the entering into of this Agreement.

## **7 Accounting, Audits, and Records.**

**7.1 Establishment and Maintenance of Accounting Records.** FSU shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts with respect to the Project, including, but not limited to, payroll records, class schedules, and job descriptions with respect to personnel used in connection with the Matching Funds. Such accounts are referred to herein collectively as the “**Project account.**” Records of costs incurred under terms of this Agreement shall be maintained in the Project account and made available upon request to Triumph at all times during the period of this Agreement and for eight (8) years after final payment of the Grant is made. Copies of these documents and records shall be made available to Triumph upon request. Records of costs incurred include FSU's general accounting records and the Project records, together with supporting documents and records, of FSU and all consultants performing work on the Project and all other records of FSU and consultants considered necessary by Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the eight (8) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**7.2 Audits.** The administration of the Grant and any federal, state, or local resources awarded to FSU shall be subject to audits and/or monitoring by Triumph, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, and other state agencies, and by the federal government and agencies and representatives thereof. Without limiting the generality of the foregoing, FSU shall comply with all audit and audit reporting requirements as specified below, and such requirements do not limit the authority of Triumph to conduct or arrange for the conduct of additional audits or evaluations of the Grant and federal, state, or local awards or funding, or limit the authority of Triumph or any state or federal official.

(a) In addition to reviews of audits conducted in accordance with Chapter 218, Florida Statutes, monitoring procedures to monitor FSU's use of the Grant may include but not be limited to on-site visits by Triumph and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to the Grant awarded by Triumph by this Agreement. By entering into this Agreement, FSU agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by Triumph. FSU further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by Triumph, the Florida Department of Financial Services (DFS), or the State of Florida Auditor General.

(b) FSU, as a recipient of state financial assistance awarded by Triumph through this Agreement and Section 11.45(2)(d) of the Florida Statutes, is subject to the following requirements:

(i) Chapter 218, Florida Statutes; applicable rules of the Department of Financial Services; and the Rules of the Auditor General.

(ii) If required by applicable statutes and rules, the State of Florida Auditor General shall conduct an annual financial audit of FSU. Once completed, the audit report shall be submitted to Triumph at the address set forth in Section 9.10 below.

(iii) Upon receipt, and within six months, Triumph may review FSU's corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the Grant provided through Triumph by this Agreement. If FSU fails to have an audit conducted consistent with Chapter 218, Florida Statutes, Triumph may take appropriate corrective actions to enforce compliance.

(iv) As a condition of receiving the Grant, FSU shall permit Triumph, or its designee, DFS or the Auditor General access to FSU's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

(v) FSU shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of eight

(8) years from the date the audit report is issued and shall allow Triumph, or its designee, DFS or State of Florida Auditor General access to such records upon request. FSU shall ensure that the audit working papers are made available to Triumph, or its designee, DFS or State of Florida Auditor General upon request for a period of eight (8) years from the date the audit report is issued unless extended in writing by Triumph.

**7.3 Public Records.** The parties acknowledge that each are public entities and, as such, are obligated to comply with the provisions of Chapter 119 of the Florida Statutes applicable to this Agreement as the same may be limited or construed by other applicable law. In the event that either party receives a request for a "public record" (as such term is defined in Section 119.011 of the Florida Statutes) in connection with this Agreement, that party shall provide written notice to the other party of such request as soon as practicable after that parties receipt of such request. If either party submits records to the other party that are confidential and exempt from public disclosure as trade secrets pursuant to Section 288.075(3) of the Florida Statutes, potentially patentable or proprietary confidential business information pursuant to Section 288.075(4) and/or 1004.22 of the Florida Statutes, such records should be marked accordingly by the submitting party prior to submittal to the other party. In the event that either parties claim of exemption asserted in response to the submitting parties' assertion of confidentiality is challenged in a court of law. The submitting party shall defend, assume and be responsible for all fees, cost s and expenses in connection with such challenge. It is expressly understood and agreed that all Back-up Data (as defined in Section 8.3 below) and performance metrics under Section 8.3 below shall be deemed "public records" under Section 119.011 of the Florida Statutes.

## **8 Termination or Suspension of Project/Breach of Agreement/Failure to Achieve Performance Metrics/Clawback of Grant:**

**8.1 Termination, Suspension, or Expiration of Project.** If FSU abandons, suspends, or discontinues the Project, or fails to complete the Project by the Completion Deadline set forth in Section 5.1 above (subject to *force majeure* events), or for any other reason, the commencement, prosecution, or timely completion of the Project by FSU is rendered improbable, infeasible, impossible, or illegal, Triumph shall have the right, by written notice to FSU, to (i) suspend any further disbursements of the Grant and/or any or all of Triumph's other obligations under this Agreement until such time as the event or condition resulting in such abandonment, suspension, or discontinuation has ceased or been corrected, and/or (ii) revoke and terminate the Grant. If Triumph issues a final termination or revocation notice, then in accordance with Section 8.4 below FSU shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by FSU.

**8.2 Breach of Agreement.** In the event FSU shall (i) have made any misrepresentation of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to this Agreement, (ii) have breached a representation or warranty made

in this Agreement, and/or (iii) have breached, violated, or is in any way in default under any of its obligations under this Agreement, and is unable to cure the breach within thirty (30) after receipt of notice of such breach, then in accordance with Section 8.4 below FSU shall upon written demand by Triumph repay to Triumph all portions of the Grant theretofore disbursed to and received by FSU.

**8.3 Performance Metrics.** In the event FSU fails to timely achieve all of the following performance metrics set forth in subparagraphs (a), (b), (c), and (d) below, then in accordance with Section 8.4 below FSU shall upon written demand by Triumph repay to Triumph all portions of Grant theretofore disbursed to and received by FSU:

- (a) **Performance Metric #1:** The addition of two (2) net new FTE faculty positions with primary research specializations supporting the broader objectives of the ABSI project by the end of the Spring 2021.
- (b) **Performance Metric #2:** Submission of Eight Million Dollars (\$8,000,000) in competitively awarded research grant proposals focused on the broader objectives of ABSI within 5 years of the first disbursement of grant funds.
- (c) **Performance Metric #3:** Providing substantive collaborative assistance in entrepreneurial outreach and support to at least 45 different businesses in the impacted counties that are dependent on oysters, other fisheries and the health of Apalachicola Bay of at least 30 contact hours per entity. FSU shall ensure that appropriate credentialing is available for participants in these collaborative assistance activities.

The determination of satisfaction of the performance metrics shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

At any time and from time to time, upon written request by Triumph, FSU shall within thirty (30) days of such request, deliver to Triumph such data, reports, payroll records, financial statements and reporting, and other documents, instruments, and information, as well as its State of Florida employment reporting forms (collectively, “**Back-up Data**”) as Triumph requires in order to determine whether FSU achieved of any or all of the above performance metrics. FSU’s refusal or failure to timely provide any requested Back-up Data shall be deemed FSU’s failure to timely achieve all of the above performance metrics. Notwithstanding the foregoing, so long as FSU is making diligent efforts to obtain the Back-up Data from third parties, the thirty (30) day deadline described above shall be reasonably extended with respect to any Back-up Data needed to be obtained from third parties.

**8.4 Clawback of Grant under Sections 8.1, 8.2, and 8.3:** Upon the occurrence of any of the events described in Sections 8.1 or 8.2 above, or in the event FSU fails to timely achieve all of the performance metrics described in Sections 8.3(a), (b), or (c) above, then, upon written demand by Triumph, FSU shall within ninety (90) days of such demand repay

to Triumph all amounts of the Grant that were theretofore disbursed to and received by FSU, together with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid. Such interest shall accrue commencing on the date of such written demand by Triumph and shall continue to accrue until the amount demanded is repaid in full. Notwithstanding the foregoing, Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under this Section 8.4 if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty herein or in the Grant Application, or a breach, violation, or default of or under any other provision of this Agreement, was not material in nature, (ii) based on quantitative evidence, the performance metrics were not achieved due to negative economic conditions beyond FSU's reasonable control, (iii) FSU made a good faith effort to achieve full performance of at least one of the performance metrics and its failure to do so does not substantially frustrate the general purpose of the Grant, and/or (iv) based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected FSU's ability to achieve at least one of the performance metrics.

**8.5 Maximum Clawback Amount/No Penalty.** Excluding interest, in no event shall the total amount clawed back under Section 8.4 above exceed the total amount of the Grant actually disbursed to FSU. FSU and Triumph acknowledge and agree that any amounts clawed back under Section 8.4 above are intended as a repayment of Grant funds conditionally disbursed to FSU and are due and payable to Triumph as a result of the occurrence of any of the events described in Sections 8.1, 8.2, or 8.3 above. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, FSU and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph, (iii) Triumph would not have a convenient and adequate alternative to the liquidated damages, (iv) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (v) FSU irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

## **9 Other Covenants, Restrictions, Prohibitions, Controls, and Labor Provisions:**

**9.1 No Lobbying/Gifts.** Pursuant to Sections 11.062 and 216.347 of the Florida Statutes, FSU shall use no portion of the Grant for the purpose of lobbying the Florida Legislature, executive branch, judicial branch, any state agency, or Triumph. FSU shall not, in connection with this or any other agreement, directly or indirectly: (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Triumph or State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Triumph or State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of Triumph or any authorized State official, FSU shall provide any type of information Triumph or such official deems relevant to FSU's integrity or responsibility. Such information may include, but shall not be limited to, FSU's



business or financial records, documents, or files of any type or form that refer to or relate to this Agreement.

**9.2 Costs of Investigations.** FSU shall reimburse Triumph for the reasonable costs of investigation incurred by the Auditor General or other authorized State official for investigations of FSU's compliance with the terms of this or any other agreement between FSU and the State which results in the suspension or debarment of FSU. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. FSU shall not be responsible for any costs of investigations that do not result in FSU's suspension or debarment. FSU understands and will comply with the requirements of s. 20.055(5), F.S., including but not necessarily limited to, the duty of FSU and any of FSU's subcontractors to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to s. 20.055, F.S.

**9.3 Equal Employment Opportunity/Labor Laws.** In connection with the carrying out of the Project, FSU shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. FSU will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. In addition, FSU shall comply with all other applicable labor and employment laws and regulations, including, but not limited to, wage and hour and workplace safety laws and regulations

**9.4 Prohibited Interests.** Except as otherwise permitted under Section 112.313(12), Florida Statutes, FSU shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of FSU, or any entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

- (a) "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
- (b) FSU shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before FSU by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of FSU.
- (c) The provisions of this subsection shall not be applicable to any agreement between FSU and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between FSU and an agency of state government.

**9.5 Interest of Members of, or Delegates to, Congress or Legislature.** No member or delegate to the Congress of the United States, or member of the State of Florida legislature, or any director, staff member, or consultant of Triumph, shall be permitted to share in or be a part of this Agreement or any benefit arising hereunder.

**9.6 Grant Funds.** FSU acknowledges and agrees that the funds for the Grant are not and shall not be deemed a general obligation of the State of Florida, nor is the Grant or this Agreement backed by the full faith and credit of the State of Florida. Triumph's obligation to disburse the Grant or any portion thereof is expressly contingent upon Triumph having sufficient funds on hand to fund the Grant. If for any reason such funds are not retained by Triumph, are depleted, are frozen or sequestered, or are in any manner unavailable for full or partial disbursement to FSU and/or other awardees of grants, Triumph shall not be obligated to make disbursements hereunder and shall therefore not be deemed to be in breach of this Agreement. To the extent some funds are available to for disbursement to FSU and other awardees of grants, Triumph shall allocate such funds among FSU and such other awardees in such amounts as it shall determine in its sole and absolute discretion and shall not be deemed to be in breach of this Agreement for failure to fully fund the Grant.

**9.7 Intellectual Property/Royalties.** As between Triumph and FSU, all legal title in and to any patent, trademark or copyright, or application for the same, or any other intellectual property right to, the work developed or produced by FSU with respect to the Project shall be the property of FSU. Notwithstanding the foregoing, FSU agrees that, to the extent that FSU receives any royalties related to such intellectual property and other research conducted in connection with the Project, it shall use such royalties solely for the benefit of the oyster industry in Florida consistent with established FSU policy on distribution of royalties and other commercial proceeds (<http://hr.fsu.edu/PDF/Publications/UFFAgreement-CBA-2016-19.pdf>). FSU shall use its reasonable good faith discretion in determining the beneficial use of such royalties for the oyster industry in Florida, including what parties shall receive them and when, how much a party is to receive, for what purposes the funds may be used, what other conditions or restrictions shall be placed on the use of the funds, and such other factors as it shall deem appropriate.

**9.8 Support Commitments.** Prior to the disbursement of any Grant funds, FSU shall submit to Triumph letters of support for the Project from the Deans/Directors of the Florida Center for Conflict Resolution, the Jim Moran Institute for Entrepreneurship, and the FSU College of Business.

**9.9 Report of Findings.** Upon substantial completion of the Project, FSU shall study and then prepare a report detailing its activities and findings with respect to the Project, as well as recommendations for future activities and research. Such report shall be submitted to Triumph, the Florida Department of Agriculture, and the Florida Legislature.

## **10. Miscellaneous Provisions:**

**10.1 Triumph Not Obligated to Third Parties.** Triumph shall not be obligated or liable hereunder to any party other than FSU. Without limiting the generality of the foregoing, no person or entity providing other funding to the Project (other than FSU), nor any vendor, contractor, subcontractor, or materialman, shall be a third-party beneficiary under this Agreement.

**10.2 When Rights and Remedies Not Waived.** In no event shall the making by Triumph of any payment to FSU constitute or be construed as a waiver by Triumph of any

breach of covenant or any default which may then exist, on the part of FSU, and the making of such payment by Triumph while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to Triumph with respect to such breach or default.

**10.3 Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**10.4 Contractual Indemnity.** To the extent provided by Section 768.28, Florida Statutes, FSU shall indemnify, defend, and hold harmless Triumph and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by FSU, its agents, or employees, during the performance of the Agreement, except that neither FSU, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Triumph or any of its officers, agents, or employees during the performance of the Agreement. Nothing in this Agreement shall be construed as a waiver by FSU of any sovereign immunity protections that may be provided by Section 768.28, Florida Statutes. When Triumph receives a notice of claim for damages that may have been caused by FSU in the performance of services required under this Agreement, Triumph will immediately forward the claim to FSU. FSU and Triumph will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, Triumph will determine whether to require the participation of FSU in the defense of the claim or to require that FSU defend Triumph in such claim as described in this Section 10.4. Triumph's failure to promptly notify FSU of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by FSU. Triumph and FSU will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial. Triumph may, in addition to other remedies available to it at law or equity and upon notice to FSU, retain such monies from Grant amounts due FSU hereunder as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

**10.5 Limitations of Liability.** Neither FSU nor Triumph shall be liable to the other for any special, indirect, punitive, or consequential damages, even if the other party has been advised that such damages are possible. Neither FSU nor Triumph shall be liable for lost profits, lost revenue, or lost institutional operating savings. In addition, Triumph shall not assume or incur any liability related to its approval or deemed approval of any contractor, any Contract, any plans or specifications for the Project, any construction work, or any other matter for which Triumph has the right or obligation to review and/or approve under this Agreement

**10.6 Non-Assignment.** FSU shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times without the consent of FSU be entitled to assign or transfer its rights, duties, or obligations under this Agreement to any other person or entity, or to another governmental entity in the State of Florida, upon giving prior written notice to FSU. Any

attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

**10.7 Construction: Interpretation.** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term “this Agreement” means this Agreement together with all Exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, including any Exhibits, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the parties hereto. Time is of the essence with respect to the performance of all obligations under this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**10.8 Preservation of Remedies; Severability.** No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect.

**10.9 Entire Agreement; Amendment; Waiver.** This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of FSU and the authorized officer of Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or

partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**10.10 Notices.** All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 9.10:

**If to Triumph:**

Triumph Gulf Coast, Inc.  
P.O. Box 12007  
Tallahassee, FL 32317  
Attention: Executive Director

**If to FSU:**

Gary K. Ostrander  
FSU Office for Research  
3012 Westcott Annex North  
Tallahassee, FL 32306-1330

**10.11 Attorney's Fees.** In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

**10.12 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

**10.13 Governing Law.** The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without

reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Escambia. The parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

**10.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

**[signature page follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement be executed as of the day and year first above written.

FSU:

FLORIDA STATE UNIVERSITY

By: \_\_\_\_\_  
Print Name: Gary K. Ostrander  
Title: Vice President for Research

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRIUMPH:

TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Chairman

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Treasurer

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Secretary

EXHIBIT "A"

Form of

# Application for Disbursement of Grant

Disbursement Under (Check One):

- Section 4.2(e)
- Section 4.2(f)
- Section 4.2(g)
- Section 4.2(h)
- Section 4.2(i)
- Section 4.2(j)
- Section 4.2(k)
- Section 4.2(l)
- Section 4.2(m)

Pursuant to Section 4.1 of that certain Grant Award Agreement dated \_\_\_\_\_, 2019 (the "Agreement"), by and between the Florida State University ("FSU") and Triumph Gulf Coast, Inc., a Florida not-for-profit corporation ("Triumph"), FSU hereby requests a disbursement from the Grant (as defined in the Agreement) as follows (all capitalized terms herein shall have the same meanings ascribed to them as set forth in the Agreement):

1. Report in Budget categories with copies of general ledger detail reports attached. These reports show the itemized expenditures. Triumph shall have the right to request further detail or copies of any expenditure.

2. Amount of Grant Disbursement Requested Hereby:

\$ \_\_\_\_\_

3. (a) Amounts of Grant Previously Disbursed Under the Agreement:

\$ \_\_\_\_\_

(b) Amount of Disbursement Requested in Item 2 above:

\$ \_\_\_\_\_

(c) Cumulative Amounts Disbursed from Grant if this request is approved (add (a) and (b) above):

\$ \_\_\_\_\_

(d) Remaining Amount of Grant to be disbursed

\$7,998,679 minus the amounts in (c) above:

\$ \_\_\_\_\_

4. Attached hereto are (1) true, correct, and complete copies of the invoices referenced in Item 1 above, (2) photographs and/or reports evidencing the completion of the work that is the subject of the invoices referenced in Item 1 above, and (3) Project account documentation under Section 7.1 of the Agreement. The following additional information is also attached:



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5. None of the amounts paid by FSU in connection with the invoices described in Item 1 above for which disbursement is requested hereunder shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, FSU by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to FSU by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution.
  6. None of the Contracts under which amounts paid by FSU in connection with the invoices described in Item 1 above have heretofore been modified, amended, or terminated, except as otherwise approved by Triumph.
  7. FSU hereby certifies, represents, and warrants to Triumph that the following statements are true and correct:

(a) This Application for Disbursement does not seek disbursement for more than the amounts actually invoiced by contractors, materialmen, or vendors under the Contracts;

(b) FSU made no misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to the Agreement;

(c) There is no pending litigation with respect to the performance by FSU of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or disbursement of the Grant;

(d) FSU has not taken any action pertaining to the Project which, under the Agreement, requires the approval of Triumph, and FSU failed to obtain such approval;

(e) There has been no violation of the anti-lobbying/gift or prohibited interest provisions of Sections 9.1 and 9.4 of the Agreement;

(f) FSU is not in violation, default, or breach of or under any provision of the Agreement, and all representations and warranties contained in the Agreement are accurate as of the date hereof;

(g) FSU is not in breach of any representation or warranty contained in the Agreement;

(h) No federal, state, or local agency (including FSU) providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds;

(i) With respect to previous disbursements of the Grant and payments under Contracts, FSU has paid, and has provided Triumph with evidence of payment of, the Matching Funds toward completion of the Project. Such evidence shall include, but not be limited to, payroll records and job descriptions;

(j) FSU has not abandoned or discontinued the Project, nor has the commencement, prosecution, or timely completion of the Project by FSU been rendered improbable, infeasible, impossible, or illegal;

(k) No portion of the requested disbursement includes disbursement for items that are outside the scope of the Project that is contemplated under the Budget;

(l) None of the Contracts have been modified, amended, or terminated without the prior consent or approval of Triumph;

(m) Completion of the Project is on schedule for completion by the Completion Deadline;

(n) The Budget has not been amended or increased or decreased or re-budgeted by more than allowed under Section 5.2 of the Agreement;

(o) FSU maintains in full force and effect all insurance required under Section 5.4 of the Agreement;

(p) FSU is in compliance with all applicable environmental laws and regulations in accordance with Section 5.5 of the Agreement;

(q) There have been no change orders under any of the Contracts;

(r) FSU is in compliance with the Consultants' Competitive Negotiation Act as required by Section 5.8 of the Agreement;

(s) FSU is in compliance with the anti-lobbying/gift provisions as required by Section 9.1 of the Agreement

(t) FSU is in compliance with the equal employment opportunity and other labor provisions as required by Section 9.3 of the Agreement;

(u) FSU is in compliance with the prohibited interest provisions as required by Section 9.4 of the Agreement;

(v) FSU is in compliance with the prohibition of benefits to Congress or the Florida Legislature as required by Section 9.5 of the Agreement; and

(w) FSU has submitted to Triumph the support commitment letters as required under Section 9.8 of the Agreement.

The undersigned, in his capacity as \_\_\_\_\_ of FSU, hereby certifies to Triumph that the above statements are true and correct. The undersigned also agrees to provide Triumph with such other documents as Triumph shall require in order to determine that the requested disbursement is consistent with the purposes of the Grant

Date: \_\_\_\_\_

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

## EXHIBIT “B”

### Budget

Allocation of Costs Over the Award Period and Between Funding Sources											
Cost Category	FSU Cost-Share					Triumph					Total Cost
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 1	Year 2	Year 3	Year 4	Year 5	
Science Management Personnel (Scientific Director; Project Manager)	\$ 123,449	\$ 127,152	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130,967	\$ 134,896	\$ 138,943	\$ 655,407
Infrastructure (Renovations to existing buildings and enhancements in research infrastructure)	\$ 450,000	\$ 250,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 700,000
Research Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 80,000.0	\$ 120,000.0	\$ 80,000.0	\$ 80,000.0	\$ 20,000.0	\$ 380,000
Research Faculty (includes fringe and start-up)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 270,151	\$ 394,437	\$ 224,594	\$ 204,156	\$ 210,281	\$ 1,303,618
Short-Term Research Personnel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 128,721	\$ 169,209	\$ 173,611	\$ 178,148	\$ 143,008	\$ 792,691
Permanent Research Support Personnel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 112,662	\$ 204,520	\$ 210,655	\$ 216,975	\$ 223,484	\$ 968,297
Experimental Oyster Hatchery											\$ -
Programming	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000
Design and permitting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ 200,000
Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000,000	\$ 1,664,524	\$ -	\$ -	\$ 2,664,524
Research and outreach operations	\$ 251,322	\$ 249,399	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 350,000	\$ 350,000	\$ 334,743	\$ 1,535,464
Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000	\$ 250,000
<b>Total</b>	<b>\$ 874,771</b>	<b>\$ 626,551</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 591,533</b>	<b>\$ 2,088,159</b>	<b>\$ 2,834,352</b>	<b>\$ 1,164,176</b>	<b>\$ 1,320,459</b>	<b>\$ 9,500,001</b>
<b>Total Cost Allocation by Source</b>	<b>FSU = \$1,501,322</b>					<b>Triumph = \$7,998,678</b>					