Contract No.: \_\_\_\_\_\_\_\_\_

This Agreement is entered as of the date of full execution between Salisbury University, 1101 Camden Avenue, Salisbury, Maryland 21801, a constituent institution of higher education in the University System of Maryland (“USM”) and an agency of the State of Maryland (hereinafter “the University”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Contractor”) a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_ with principal offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and authorized to do business in the State of Maryland. In consideration of the mutual promises and conditions contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby mutually acknowledged, University and Contractor (collectively, the “Parties”) mutually agree as follows:

1. **Scope Of Work**

Contractor will provide \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Term**

The term of this agreement is from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Compensation and Method of Payment**

Contractor shall invoice and be paid \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_) and approved reimbursable expenses. The University agrees to reimburse for travel expenses including coach airfare, hotel accommodations, rental car, meals, gas, parking, tolls and local mileage at the current applicable State of Maryland rate and out of pocket expenses. Travel and per diem expenses directly related to this project will be reimbursed pursuant to Salisbury University travel policies.

Contractor’s Federal Tax Identification Number is \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. **Payment of University Obligations**

Payments to the Contractor pursuant to this Agreement shall be made no later than thirty (30) days after the University’s receipt of a proper invoice from the Contractor. University shall in no event and under no circumstances pay any deposits. Any payments shall be made only after full performance of the Agreement by Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited.

1. **Contractor's Invoices**

Contractor agrees to include on the face of all invoices billed to the University, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations.

One original copy of Invoice(s) shall be sent to Salisbury University, Accounts Payable, P O Box 2195, Salisbury, MD 21802-2195. Payments will be made Net 30 days after receipt of invoice by the University. The Agreement number must appear on all invoices.

1. **Tax Exemption**

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

1. **Specifications**

All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation (if applicable). Any technical specifications required by the Contractor will be attached and incorporated herein and marked as Attachment A.

1. **Delivery and Acceptance**

Delivery shall be made in accordance with the scope of work and specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor’s control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The services listed in the scope of work and specifications shall be delivered to the point or points specified prior to, or on the date specified in this Agreement. Any services that fail to meet the specifications shall be rejected. The University reserves the right to purchase replacement services in the open market and charge the Contractor for any excess price paid for the replacement, plus applicable expenses, if any.

1. **University Project Manager**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name/Title) will serve as the project manager for the University. The project manager will coordinate work directly with the contractor.

1. **Maryland Law Prevails**

This Agreement and its construction shall be governed by the laws of the State of Maryland without regard to conflicts of law principles, and any interpretation, claim or dispute arising out of this Agreement shall be filed in a Maryland court of competent jurisdiction.

1. **Non-Hiring of State Employees**

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

1. **Independent Contractor**

It is understood and agreed that Contractor is an independent contractor and not an employee of the University. The University will not withhold income taxes, social security or any other sums from the payments made to the Contractor herein. The Contractor shall in no way hold himself out to any third person as an agent of the University. All persons furnished by Contractor shall be considered solely its employees or agents and Contractor shall be responsible for payment of all unemployment, social security and other payroll taxes, including making contributions when required by law. The Parties hereto are independent contractors and no Party is an employee, agent, partner, franchise or joint venture or other similar relationship of another Party. No Party hereto shall have the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of another Party. Contractor agrees that except for the terms of this Agreement, it will neither state nor imply, directly or indirectly, that it is supported, endorsed, or sponsored by University and, upon University’s direction, it shall issue express disclaimers to that effect.

1. **Insurance**

If insurance is required by the University, the Contractor shall maintain, during the term hereof, comprehensive general and professional liability insurance policies covering its employees while performing under this Agreement in the following minimum amounts: (i) One Million Dollars ($1,000,000.00) per occurrence and Three Million Dollars ($3,000,000.00) in the aggregate; Workmen’s Compensation in amounts as required by applicable State law, Personal Injury and Property Insurance, and if the Agreement requires use of an automobile, Automobile Liability Insurance, in amounts required by statute. Contractor shall also require its subcontractors, if any, who enter University premises to maintain such insurance. Contractor and its subcontractors shall furnish the University, upon execution of this Agreement and upon request, with copies of policies or other satisfactory proof of insurance.

1. **Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Agreement.

1. **Suspension of Work**

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the University.

1. **Nondiscrimination in Employment**

The Contractor agrees not to discriminate in any manner against an employee or applicant on the grounds of race, color, religion, creed, age, sex, marital status, national origin, ancestry, disability, sexual orientation, gender identity, genetic identity, political affiliation or Veteran status and such other characteristics as may be protected by law during the term of this Agreement.

1. **Disputes**

This Agreement shall be subject to USM Procurement Policies and Procedures. Pending Resolution of a claim, the Contractor shall proceed diligently with the performance of the Agreement in accordance with the procurement officer’s decision

1. **Termination for Default**

When the Contractor has not performed or has unsatisfactorily performed the Agreement, payment shall be withheld at the discretion of the University. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the Agreement and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination. University may terminate this Agreement in the event the Contractor is in default if the Contractor (i) fails to cure the default within ten (10) days after written notice of default by University; (ii) acts in violation of any term of this Agreement including, but not limited to, efforts of assignment or delegation; (iii) is placed in proceedings for bankruptcy, receivership, or insolvency, whether voluntary or involuntary; or (iv) is legally dissolved or liquidated. Termination hereunder, including the determination of the rights and obligations of the Parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

1. **Termination for Convenience**

Upon written notice to the Contractor, the University may terminate this Agreement, in whole or in part, in its sole discretion at any time. The University shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the Contractor may not be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the Parties, shall be governed by the provisions of USM Procurement Policies and Procedures.

1. **Termination for Non-Appropriation of Funds**

If the Legislature or other funding source fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University’s rights or Contractor’s rights under any termination clause of this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the University and Contractor from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. The University shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first fiscal period under this Agreement.

1. **Arrearages**

By signing this Agreement, Contractor represents that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Agreement.

1. **Compliance with Laws**

The Contractor hereby represents and warrants that: **A**. It is qualified to do business in the state of Maryland and that it will take such actions as, fromtime to time hereafter, may be necessary to remain so qualified; **B**. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement: and **C**. it shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. **D**. It shall comply with background checks, training and reporting of suspected child abuse and neglect in accordance with Maryland law and University policy. **E**. The Parties agree to maintain the privacy and security of personally identifiable education records and health information and to prevent disclosure in compliance with Federal laws.

1. **Retention of Records**

The Contractor shall retain and maintain all records and documents relating to this Purchase Order for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.

### EPA Compliance

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

1. **Occupational** **Safety and Health Act (O.S.H.A.).**

All materials, supplies, equipment, or services supplied as a result of this Agreement shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

1. **Protests and Claims**

Any protest regarding the award of this Agreement or claim arising out of this Agreement shall be administered in accordance with the University System of Maryland Procurement Policies and Procedures, Section X - Protests and Claims. Detail is available by accessing the following web site: http://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.html

1. **Intellectual Property**

Work for Hire. Contractor understands and agrees that any and all materials and deliverables that are subject to copyright protection and are developed in connection with the performance of this Agreement (Works) shall constitute a work for hire as that term is defined in the Copyright Act of 1976, as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively to the University, including without limitation all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, Contractor hereby grants, transfers, sells and assigns, free of charge, exclusively to the University, all title, rights and interest in and to said Work, including all copyrights and other intellectual property rights. The Contractor further agrees to execute and deliver to the University a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the University deems necessary to ensure the complete and effective transfer of all rights in Works to the University.

University Ownership of Deliverables and Related Materials. In accordance with the preceding paragraph, Works developed in connection with this Agreement are the exclusive property of the University. Contractor agrees to deliver all Works to the University upon completion of the order. Works include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. Contractor shall be responsible for delivering all Works to the University no later than fifteen (15) working days form the date of final Agreement deliverables. In the event the Contractor fails to return all such materials by this deadline and the University desires to use Works again, Contractor shall provide the University with equivalent materials, at its own expense, or reimburse the University, in full, for the cost of developing equivalent materials.

# Intellectual Property Warranty and Indemnification. The Contractor represents and warrants that any materials or deliverables, including all Works, provided under this Agreement are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, University shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the University under law or equity. Contractor further agrees to indemnify and hold harmless the University, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Agreement, University shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

1. **Changes**

The Procurement Officer may at any time, by written order, make unilateral changes within the general scope of this Agreement in any one or more of the following:

 (1) Description of services to be performed.

 (2) Time of performance (i.e., hours of the day, days of the week, etc.).

 (3) Place of performance of the services.

 (4) Drawings, designs, or specifications when any supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.

 (5) Method of shipment or packing of supplies.

 (6) Place of delivery.

The section entitled “Delays and Extensions of Time” prohibits the Contractor from making charges or claims for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Agreement. If a change, as allowed above, causes an increase or decrease in the cost of the work which is not time-related, the University shall make an equitable adjustment in the Agreement price and shall modify the Agreement. The Contractor must assert its right to an adjustment under this section within 30 days from the date of receipt of the written order. Any request for an adjustment must be submitted in writing to the Procurement Officer.

Failure to agree to any adjustment shall be a dispute under the Disputes section. However, nothing in this section shall excuse the Contractor from proceeding with the Agreement as changed.

1. **Indemnification by University**

The University shall not assume any obligation to indemnify, hold harm­less, or pay any costs, including attorneys' fees that may arise from or in any way be asso­ciated with the performance or operation of this Agreement.

1. **Indemnification by Contractor**

Contractor agrees to indemnify, defend and hold harmless the State of Maryland, USM, its Board of Regents, University, and any officers, employees, servants and agents of each from and against any losses, claims, liability, suits, causes of action, damages, expenses and costs, including attorneys’ fees resulting from any act of intentional, willful, reckless or negligent misconduct by Contractor or its agents or employees arising out of or in any way connected with this Agreement. This provision shall survive termination of the Agreement.

1. **Equal Employment Opportunity**

The Contractor warrants that the contractor shall comply with E.O. 11246, “Equal Employment Opportunity”, as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

1. **Conflicting Terms**

Any proposal for terms in addition to or different from those set forth in this Agreement or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this Agreement is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Con­tractor understands and agrees that the terms and conditions of this Agreement may not be waived.

1. **No Assignment or Delegation**

Neither Party may assign any rights or interests nor delegate its duties under this Agreement, in whole or in part, without the express prior written permission of the other Parties and any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. This Agreement shall not confer any right or benefit upon, or permit enforcement of any provision by, anyone other than the Parties to this Agreement. Contractor may assign this agreement in the event of acquisition, merger, corporate reorganization or similar change of control event; provided that subject to applicable law and confidentiality restrictions, Contractor provides Institution with prompt notice of the assignment and (ii) the successor is bound by the terms of this Agreement. In the event of such an assignment by Contractor, Institution may, in its sole discretion, terminate this Agreement by providing written notice to Contractor within sixty (60) days of notice of the assignment. Contractor may use subcontractors in the performance of this Agreement; however, Contractor shall (i) ensure such subcontractors comply with all relevant terms of this Agreement and (ii) any failure to comply will constitute a breach by Contractor.

1. **Confidentiality/Public Records**

Notwithstanding the foregoing, nothing in this Agreement shall prevent University from complying with its obligations under the Maryland Public Information Act, Maryland Code Annotated, State Government Article, Sections 10-611 to 10-628, and as may be amended from time to time.

1. **Rights Cumulative; No Waiver**

No right or remedy conferred in this Agreement upon or reserved to either Party is intended to be exclusive of any other right or remedy. Each and every right and remedy shall be cumulative and in addition to any other right or remedy provided in this Agreement. The failure by either Party to insist upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy shall not impair any such right or remedy or be construed as a waiver or relinquishment with respect to subsequent defaults.

1. **Force Majeure**

Neither Party shall be held responsible if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by acts of God, wars, acts of enemies, strikes, fires, floods, revolutions or other disorders or, without limiting the foregoing, by any other cause not within the control of the Party whose performance is interfered with, and which by the exercise of reasonable diligence, the Party is unable to prevent, whether of the class of causes hereinbefore enumerated. That Party shall perform such duties within a commercially reasonable time upon termination of the delaying condition or at a mutually agreeable alternative time as evidenced in writing by both Parties.

1. **Headings**

The headings and subheadings of clauses contained in this Agreement are used for the convenience and ease of reference and do not limit the scope or intent of the clauses.

1. **Binding Effect**

The Agreement shall be binding upon, and shall insure to the benefit of, the Parties and their respective legal representatives, successors and permitted assigns.

1. **No Third Party Beneficiaries**

This Agreement shall not confer any right or benefit upon, or permit enforcement of any provision by, anyone other than the Parties to this Agreement.

1. **Merger**

This Agreement signed by all Parties constitutes a final written expression of all terms of this Agreement and is a complete and exclusive statement of those terms.

1. **Severability**

The terms of this Agreement are severable. If any term or provision herein is declared by a court of competent jurisdiction to be illegal, void, unenforceable or otherwise invalid, in whole or in part, the remainder of the terms and provisions of this Agreement which shall remain valid and enforceable in full force and effect.

1. **Notice**

Any notice to either Party hereunder must be in writing and signed by the Party giving notice, unless otherwise stated in this Agreement. Written notice shall be served (1) by hand, (2) through the United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (3) through an expedited mail or package service, if a receipt showing the delivery has been retained, and addressed as identified in this Addendum or to such other addressee as may be hereafter designated by written notice. Notice shall be effective upon receipt.

**43.** **Drug and Alcohol Free Workplace**

The Contractor warrants that the contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this Agreement.

**44.** **Contingent Fees**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

**45. Entire Agreement**

This Agreement, including any referenced attachment, and the University’s standard Agreement terms and conditions, which are hereby incorporated by reference (and are available on the internet at http://www.usmd.edu/Leadership/BoardOfRegents/Bylaws/SectionVIII/VIII300.html – see Policy and Procedures Appendix A) contain the entire agreement of the Parties, shall supersede all prior or contemporaneous agreements and understanding, oral or otherwise, between the Parties. The USM Procurement Terms and Conditions shall govern in the event of any conflict or inconsistency with the terms of this Agreement. No modification or amendment of this Agreement shall be effective unless the same shall be in writing duly executed by all Parties hereto. THE TERMS OF THIS DULY NEGOTIATED AND EXECUTED AGREEMENT SHALL GOVERN THE LICENSE, USE, RIGHTS AND RESPONSIBILITIES OF THE PARTIES AND PREEMPT ANY EULA OR ANY OTHER DOCUMENT, POLICY OR NOTICE IN CONNECTION WITH UNIVERSITY, ITS EMPLOYEES, STUDENTS AND AGENTS. No purchase order, other document, shrinkwrap agreement, clickwrap agreement or any handwritten or typewritten text purporting to modify or supplement the printed text of this Agreement except as expressly incorporated herein will add to or vary the terms of this Agreement. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one document. Original signatures delivered by means of facsimile or other electronic communication shall be considered to be original signatures. Contractor shall provide prior written notice of any proposed change in terms affecting this Agreement and such changes shall not be enforceable against University unless and until University provides prior written consent to those new terms.

**IN WITNESS WHEREOF** the Parties hereto have caused their authorized representatives to execute this Agreement on the date(s) below written.

|  |  |  |
| --- | --- | --- |
| AGREED TO BY: Salisbury University  |  | AGREED TO BY: (Contractor) |
| By: |  |  | By: |  |
| (Signature) |  |  | (Signature) |  |
| Jeff Canada  |  |  |
| (Printed name) |  | (Printed name) |
| Procurement Director  |  |  |  |  |  |  |
| (Title) |  | (date) |  | (Title) |  | (date) |