



# Salisbury University

## Invitation for Bid (IFB)

IFB NO. SU-2617-SS

PROJECT NO./NAME: SU-IT-27-26 IT Building - Dehumidifiers

### MAINTENANCE

The only official source for obtaining Salisbury University solicitation documents is [Bid Locker](#) or the Issuing Procurement Office. Any other source is not considered official. Offerors are responsible for regularly checking Bid Locker for any updates related to this solicitation. Salisbury University is not obligated to notify offerors by email or any other means.

### KEY INFORMATION

IFB Issue Date: 05/07/2026

IFB Issuing Office:	Elaine Allnutt	Procurement Department
	Phone: 410-543-6506	Salisbury University
	E-mail: <a href="mailto:SUProcurement@salisbury.edu">SUProcurement@salisbury.edu</a>	1101 Camden Ave
		Salisbury, MD 21801

Link to campus map: <https://www.salisbury.edu/discover-su/campus-map/>

**Note:** If you are planning to come to campus for any reason, you are required to register your vehicle on [SU's Parking Portal](#) to avoid tickets. All campus buildings are locked. Please be on time for this meeting as Procurement will need to grant you access to the building and once the meeting begins, we will not be able to monitor the door for access.

**Pre-Bid Conference:** 05/14/2026 – 10:00 AM; Local Time  
Salisbury University  
Front entrance of B1 Building – Information Technology (IT)  
125 Bateman Street  
Salisbury, MD 21804

**Site Visit):** To be held immediately after Pre-Bid Conference

**There will not be any additional site visits conducted / offered.**

**Deadline for Questions:** 05/19/2026 – 4:00 PM; Local Time

**Bid Due Date via Bid Locker:** 05/28/2026 – 2:00 PM; Local Time

**Contract Term:** The initial contract term shall begin upon full execution of the contract, which will be the **Notice to Proceed (NTP)** date, projected to be **06/11/2026**. The Contractor shall have **44** calendar days from the NTP date to reach Substantial Completion with an additional **14** calendar days to reach Final Acceptance.

The University is committed to providing equal access to its programs and services for individuals with disabilities. If you require reasonable accommodations under the Americans with Disabilities Act (ADA) to participate in any meeting related to this solicitation, please contact the Issuing no later than **five (5) business days prior** to the scheduled meeting.

**UNIVERSITY SYSTEM OF MARYLAND  
SALISBURY UNIVERSITY  
NOTICE TO BIDDERS/OFFERORS**

To help improve the quality of bid and proposal solicitations and to make our procurement process more responsive and “business friendly”, we ask that you provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your bid, proposal or “no bid” response, as the case may be. Thank you for your assistance.

**IF YOU ARE NOT PROVIDING AN OFFER, YOU MAY EMAIL THIS FORM PRIOR TO THE DUE DATE  
TO THE UNIVERSITY PROCUREMENT OFFICE – [SUPROUREMENT@SALISBURY.EDU](mailto:SUPROUREMENT@SALISBURY.EDU)**

**Bid/Proposal No.:** \_\_\_\_\_ **Entitled:** \_\_\_\_\_

I. If you have responded with a “no bid”, please indicate the reasons below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we normally provide
- ☐ We are inexperienced in the work/commodities required.
- ☐ The specifications are either unclear or too restrictive (Explain below).
- ☐ The scope of work is beyond our current capacity.
- ☐ Doing business with Maryland Government agencies is simply too complicated (Explain below).
- ☐ We cannot be competitive (Explain below).
- ☐ Time allotted for completion of the bid/proposal response is insufficient.
- ☐ Startup time is insufficient.
- ☐ Bonding/Insurance requirements are prohibitive (Explain below).
- ☐ MBE requirements (Explain below).
- ☐ Bid/Proposal requirements (other than specifications or scope) are unreasonable or too risky (Explain below).
- ☐ Prior experience with Salisbury University contracts was unprofitable or otherwise unsatisfactory (Explain below).
- ☐ Payment schedule too slow.
- ☐ Other: \_\_\_\_\_

II. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the remarks section below.

**Remarks:** \_\_\_\_\_

\_\_\_\_\_

Offeror Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_ Telephone: \_\_\_\_\_

# Salisbury University

## **FYI ONLY - SMALL BUSINESS RESERVE NOTICE**

### **THIS IS NOT A SMALL BUSINESS RESERVE ONLY SOLICITATION**

Maryland is committed to the growth and success of our small business community. In 2004, the state created the Small Business Reserve (SBR) Program, providing small businesses with the opportunity to participate as prime contractors on state contracts by establishing a unique marketplace where small businesses compete against other small businesses instead of larger, more established companies.

Maryland is currently involved in a statewide procurement modernization effort to make the state contracting arena more transparent and user friendly to the small business community. As a result, several significant legislative changes took effect on October 1, 2017, that directly impact the SBR Program.

Under state procurement law, the SBR Program directs 70 participating agencies/department (increased from 23) to spend at least 15% (increased from 10%) of its fiscal year procurement expenditures with qualified small businesses. See Md. Code Ann., State Fin. & Proc. Art. §14-501 - 14-505 (2011 Supp).

Once a solicitation has been designated as "SBR," an award can only be made to a registered SBR vendor. Registration is an online process through eMaryland Marketplace (*see the Quick Reference Guide for Certification and Re-Certification in the column to the right.*). Vendors attest to meeting the eligibility standards and must re-certify annually.

There is no cost to participate in the SBR Program.

This is a race- and gender-neutral program. Minority status is not a criterion for participation in the SBR Program. The small business eligibility standards for for-profit businesses, other than a broker, participating in this program are:

- The business is independently owned and operated
- The business is not a subsidiary of another business
- The business is not dominant in its field of operation
- The wholesale operations of the business did not employ more than 50 persons, or the gross sales of the business did not exceed an average of \$4,000,000 in its most recently completed three fiscal years\*
- The retail operations of the business did not employ more than 25 persons, or the gross sales of the business did not exceed an average of \$3,000,000 in its most recently completed three fiscal years\*
- The manufacturing operations of the business did not employ more than 100 persons, or the gross sales of the business did not exceed an average of \$2,000,000 in its most recently completed three fiscal years\*
- The service operations of the business did not employ more than 100 persons, or the gross sales of the business did not exceed an average of \$10,000,000 in its more recently completed three fiscal years\*
- The construction operations of the business did not employ more than 50 persons, or the gross sales of the business did not exceed an average of \$7,000,000 in its most recently completed three fiscal years\*
- The architectural and engineering operations of the business did not employ more than 100 persons, or the gross sales of the business did not exceed an average of \$4,500,000 in its most recently completed three fiscal years\*

*\*If a business has not existed for three years, the gross sales average is computed for the period of the business's existence. For newly formed businesses the determination will be based upon employment levels*

**SALISBURY UNIVERSITY ASKS THAT IF YOU MEET THE ABOVE CRITERIA, PLEASE GO ON-LINE AND COMPLETE THE SELF CERTIFICATION PROCESS. IT IS FREE AND IT TAKES LESS THAN 10 MINUTES TO COMPLETE!**

**\*If a business has not existed for three years, the gross sales average is computed for the period of the business's existence. For newly formed businesses the determination will be based upon employment levels and projected gross sales.**

To register in the SBR program, vendors register in eMaryland Marketplace and complete the optional SBR screens:

- eMaryland Marketplace: <https://emma.maryland.gov/>
- To Register: click on the "New Vendor: Register Now" button. You can scroll down to view FAQs and QRGs.
- For vendor training and support go to: <https://procurement.maryland.gov/vendor-training-and-resources/>
- For more information go to: <https://gomdsmallbiz.maryland.gov/Pages/sbr-Program.aspx>

For website technical support, call Maryland Department of General Services at 410-767-4270 or [sbadmin@dgs.state.md.us](mailto:sbadmin@dgs.state.md.us)

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## SECTION I. PROCUREMENT OBJECTIVE

### A. SUMMARY STATEMENT

Salisbury University is seeking a qualified mechanical contractor to provide and install supplemental dehumidification in the Information Technology (IT) Building. The project includes a noninvasive visual survey of existing HVAC conditions, installation of eight (8) new dehumidifiers (four ducted units and four wall-mounted units) per construction drawings, and integration with the building's existing electrical and drainage systems. Work also includes installation of wall-mounted humidistats, condensate pumps where required, and coordination with the University's Project Manager throughout the project.

The successful Contractor / Offeror shall furnish all supervision, labor, materials, equipment, services, utilities, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the contract as required for work as described.

### B. ISSUING OFFICE AND PROCUREMENT OFFICER

The sole point of contact in the State for purposes of this IFB is the Procurement Officer or his/her representative (hereinafter referred to as Procurement Officer) noted on the Key Information. Only the information communicated by the Procurement Officer shall be deemed the official position of the University; no other State or University employee, official, or representative has authority to change the requirements of this solicitation. Attempts by Bidder/Offeror to contact the requester, evaluator, or otherwise circumvent this procedure in any manner may be grounds for disqualification.

### C. PRE-BID CONFERENCE

A pre-bid conference may be held as noted on the Key Information. Offerors are encouraged to attend.

The University is committed to ensuring that persons with disabilities are given equally effective opportunities to participate in and benefit from the University's programs and services. Persons who may require reasonable ADA accommodations should contact the Issuing Office at least 72 hours prior to any meeting scheduled in connection with this solicitation.

### D. SITE INVESTIGATION

By submitting a bid, the vendor acknowledges that he/she has investigated and satisfied themselves as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, and electric power. Any failure by the contractor to acquaint themselves with the available information will not relieve them of responsibility for estimating properly the cost of successfully performing the work. The University shall not be responsible for any conclusions or interpretations made by the contractor regarding the information made available by the University.

### E. QUESTIONS AND INQUIRES

Bidders/Offerors shall direct all communications regarding this solicitation in writing (email preferred), to the Issuing Procurement Officer at [SUProcurement@salisbury.edu](mailto:SUProcurement@salisbury.edu), not later than the date indicated on the Key Information and referencing **IFB No. SU-2617-SS**. Addenda or amendments, if required, will be made available on the Bid Locker website.

**F. BID DUE DATE**

Bids must be received via [Bid Locker](#) by date and time indicated on the Bid Locker website for this Solicitation, in order to be considered susceptible for award. Requests for extensions will not be granted. Late bids, late requests for modification, or late requests for withdrawal will not be considered.

**G. OPENING OF BIDS**

The bids will be opened remotely on the Bid Locker site immediately after the Due Date and Time indicated for this Solicitation. An email invitation with a link to gain access to the results will be sent within 15 minutes and only to the Offeror's email address used for submittal. The Bid Opening will not be held in-person or on-site. A Bid tabulation will be posted for public viewing after review by the University.

**H. DURATION OF BID OFFER**

Bids submitted are irrevocable for 90 days after the bid due date. This period may be extended by mutual written agreement between the Bidder/Offeror and the University.

**I. BID SECURITY – BID BOND, PAYMENT BOND AND PERFORMANCE BOND**

Bonds **ARE NOT** Required for this Solicitation.

**J. LICENSES AND QUALIFICATIONS – THIS IS ONLY FOR CONSTRUCTION SOLICITATIONS**

Construction contractors must be licensed as Md. Code Ann., Bus: Reg. § 17-601, and shall submit proof of current licensing upon request. Only required if this is designated as a Construction Project and UPON REQUEST.

The University reserves the right to require that a contractor demonstrate that it has the skills, equipment and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project within the proposed contract schedule.

**K. INSURANCE**

Upon award, the successful Bidder/Offeror shall furnish certificates of insurance as required in Exhibit A, Required Contract Provisions, Section 51, naming the "*State of Maryland, the University of Maryland System and Salisbury University as additional insured.*" The certificate shall reflect 1 of the following: Solicitation, JOB ID # and Name and/or the Contract #. The Certificate Holder is to read "*Salisbury University, 1101 Camden Avenue, Salisbury MD 21801*".

**L. PREVAILING WAGE RATES**

Not applicable to this solicitation.

**M. PROCUREMENT METHOD**

This solicitation shall be conducted in accordance with the provisions of the *University System of Maryland (USM) Procurement Policies and Procedures*. The procurement method is Competitive Sealed Bidding.

**N. BASIS OF AWARD**

The University will recommend for award a responsive bid from the responsible Bidder/Offeror submitting the most favorable evaluated bid price for the requirement(s) herein.

**O. TIME OF COMPLETION**

The initial contract term shall begin upon full execution of the contract, which will be the **Notice to Proceed** (NTP) date, projected to be **06/11/2026**. The Contractor shall have **44** calendar days from the NTP date to reach Substantial Completion with an additional **14** calendar days to reach Final Acceptance.

**P. MULTIPLE BID OR ALTERNATE BIDS**

Unless multiple or alternate bids are specifically requested in the solicitation, they will not be accepted.

**Q. MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION**

There are NO MBE Participation Goals required/set for this Solicitation. Minority businesses are encouraged to respond.

**END OF SECTION I**



## **SECTION II. GENERAL INFORMATION FOR VENDORS**

### **A. PURPOSE**

The overall purpose of this solicitation is to provide information to vendors interested in preparing and submitting bids to meet the requirements herein. Bidders/Offerors shall familiarize themselves with each section and subsection of this document.

### **B. REVISIONS TO IFB**

The University reserves the right to amend this solicitation at any time prior to the bid due date and time. If it becomes necessary to amend any part of this solicitation, the Procurement Officer will furnish amendments or addenda on the Bid Locker website. It is the responsibility of each participating respondent ("Respondent" or "Respondents") to refer daily to the Bid Locker website to check for any available amendments or addenda, responses to inquiries and/or questions, cancellations, and any and all additional information regarding this opportunity. It is not Salisbury University's responsibility to notify participating Respondents by email or by any other means of any of the above.

Each Bidder/Offeror/Offeror shall acknowledge the receipt of all amendments and addenda issued by completing **Exhibit K, Addendum Acknowledgement Form**, and submitting as part of the bid response.

### **C. CANCELLATION OF SOLICITATION / REJECTION OF ALL BIDS**

The University reserves the right to cancel this IFB, to accept or reject any or all bids, in whole or in part, received in response to this IFB, and to waive or permit cure of minor irregularities as its best interests may require.

### **D. DISCREPANCIES, EXPLANATIONS AND CLARIFICATIONS**

Bidders/Offerors finding discrepancies in the specifications or other provisions included in this solicitation, or in doubt as to the meaning or intent of any section or subsection herein, shall request clarification from the Procurement Officer. Failure to request clarification prior to the due date shall be a waiver of any claim by the Bidder/Offeror for expenses made necessary by reason of later interpretation of the contract documents, and Bidder/Offeror shall be bound to the University's interpretation. Request clarifications in accordance with the instructions above.

### **E. SUBSTITUTIONS / APPROVED EQUALS**

When several products or manufacturers are named in the specifications for the same purpose or use, then the Bidder/Offeror may select any of those so named. However, all of the units required for, and used in the project must be the same in material and manufacturer.

Should the Bidder/Offeror desire to substitute another material for one or more specified by name he shall apply, in writing, for such permission and state the credit or extra cost involved by the use of such material. The architect will not consider the substitution of any material different in type or construction methods unless such substitution effects a benefit to the University.

Bidder/Offeror shall not submit materials for approval other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material", by architect when the Bidder/Offeror has not designated such material as a "substitute", shall not be binding on the University, nor release Bidder/Offeror from any obligations of his contract unless the University approves such "substitute" in writing.

The terms "Or Equal", "Equal", "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully equal in all details will be considered. The University is the final judge as to equality. The University does not represent or warrant under any circumstances, including by use of the words "or equal", that there exists an equal to any item specified.

#### **F. EXECUTION OF BIDS / SUBMITTAL FORMS**

Bids shall be typewritten or written legibly in ink, and signed in ink as follows, depending on the bidder's form of business organization:

1. Sole Proprietorship. Proprietor shall sign full name, with address.
2. Partnership and Joint Venture. Submit the bid/price proposal form in the name of the partnership or joint venture. Clearly state the partnership name and the identity of each general partner and execute all affidavits and certificates on behalf of the partnership, or on behalf of each general partner. No provision of any agreement among partners will be binding on the University unless it is disclosed in the Bidder's proposal. Reasonable evidence satisfactory to the University of the authority of one partner to bind other purported partners is required. Include a copy of the partnership agreement if one exists. If no partnership agreement exists, and if the number of general partners is reasonably small, each general partner should execute all required documents. At the University's option, all general partners may be required to sign. Failure to present the University with satisfactory information concerning a purported partnership or joint venture may be grounds for bid rejection.
3. Corporation. An officer or authorized agent of the corporation shall sign with full name, indicate title, and include the name and address of the corporation. In the case of an authorized agent, enclose a letter from an officer of the corporation authorizing said individual to act on behalf of the corporation.

#### **G. PRE-BID MODIFICATION OR WITHDRAWAL OF OFFERS**

Bidders/Offerors may modify or withdraw their bid submittal prior to the Bid Due Date and time through Bid Locker; however, all bids are considered final after the date and time for receipt of bids. Final bids may not be altered, withdrawn, or canceled for a period of 90 days after the time and date designated for receipt of bids.

#### **H. ECONOMY OF PREPARATION**

Bids should be prepared simply and economically, providing a straight-forward, concise description of the Bidder/Offeror's ability to fulfill the requirements of this solicitation.

#### **I. INCURRED EXPENSES**

The University assumes no responsibility for expenses incurred in preparing and submitting bids in response to this solicitation.

#### **J. ARREARAGES**

By submitting a response to this solicitation, a Bidder/Offeror 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 contract if selected for contract award.

#### **K. VERIFICATION OF REGISTRATION AND TAX PAYMENT**

Each prospective Bidder/Offeror is encouraged to ensure that it is appropriately registered to do business in the State of Maryland, and in good standing with respect to taxes, personal property returns, unemployment insurance, etc., before the bid opening date. Failure to complete registration with the State Department of Assessments and Taxation (SDAT) may disqualify an otherwise successful bidder from recommendation for contract award.

#### **L. PUBLIC INFORMATION ACT NOTICE**

Bidder/Offeror shall give specific attention to identification of those portions of its bid considered confidential, or containing proprietary information or trade secrets. Upon request, bidder shall provide justification for why such material should not be disclosed by the University under the Public Information Act, Title 4, Subtitle 3 of the General Provisions Article, Annotated Code of Maryland.

#### **M. REQUIRED CONTRACT PROVISIONS**

Bids submitted, and contract(s) executed with the successful Bidder/Offeror, are subject to Exhibit A and Exhibit A-1 (if applicable).

By submitting a bid, the Bidder/Offeror is deemed to have accepted the terms of this IFB, including exhibits; a bid that takes exception to the terms of the IFB may be rejected. Mutually agreeable modifications of the solicitation provisions, if allowed by law, will be documented by express identification in the final contract as superseding the pertinent provisions of the solicitation.

#### **N. ORDER OF PRECEDENCE**

The contract to be entered into as a result of the IFB (the "Contract") will consist of the following contract documents listed in their order of precedence:

1. The contract executed by the parties and/or Purchase Order issued by the University.
2. The solicitation, including Exhibit A (Required Contract Provisions) and all other Exhibits; and
3. The bid, as submitted by Bidder/Offeror and accepted by the University.

No modifications to this order of precedence will be accepted.

#### **O. FALSE STATEMENTS**

Bidders/Offerors are advised that the Annotated Code of Maryland provides that in connection with a procurement contract, a person may not willfully: Falsify, conceal or suppress a material fact by any scheme or device; make a false or fraudulent statement or representation of a material fact; use a false writing or document that contains a false or fraudulent statement or entry of a material fact; or aid or conspire with another person to commit any of the aforementioned acts. A person who violates these provisions is guilty of a felony, and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years, or both.

#### **P. PAYMENT TO THE CONTRACTOR**

Payment is governed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland. The State of Maryland is exempt from Maryland Retail Sales tax and Federal Excise Tax.

The Contractor shall submit one (1) itemized invoice for work completed and approved by the Project Manager upon substantial completion or as agreed upon with the University. The invoice

should indicate a retainage of five percent (5%) of the amount due and approved until 100% completion and final acceptance of all work covered by the contract, if applicable and final acceptance has not been achieved. An appropriate amount of money shall be retained, but no less than 5%, by the Owner to cover the completion of significant items listed as deficient or incomplete in the Substantial Completion Punch List until the item(s) has been corrected, rectified, or replaced. A second itemized invoice is to be submitted upon final acceptance for 100% of the balance left on the contract, to include all submittals. Payment is NET 30 Days. Unless otherwise agreed upon between the SU Project Manager and Awardee.

**Q. VENDOR ELECTRONIC FUNDS TRANSFER (EFT) REGISTRATION**

The State of Maryland requires all contractors to register for **Electronic Funds Transfer (EFT)** to receive payments for any contract exceeding **\$200,000**. All vendors are strongly encouraged to register for EFT regardless of contract size. The State processes vendor payments electronically using CCD, CCD+, and CTX payment formats. For more information and to register, visit: <https://www.marylandtaxes.gov/divisions/gad/eft-program.php>.

**R. RECIPROCAL PREFERENCE**

While Maryland law does not authorize state agencies to favor resident Bidders/Offerors, other states grant preferences to their residents over Maryland businesses. Therefore, a resident business preference may be given to a Maryland firm if: A responsible Bidder/Offeror whose headquarters, principal base of operations, or principal site that will provide the services required by this IFB is located in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a Federal law or grant affecting the contract. The preference given shall be identical to the preference that the other state gives to its residents.

**S. NON-VISUAL ACCESS**

Contractors must comply with Maryland's IT Non-Visual Access Standards as required by COMAR 21.05.08.05. These standards ensure IT solutions are accessible to individuals with disabilities and may be updated periodically. Contractors are responsible for incorporating all revisions.

**T. PARKING**

The Contractor shall comply with Salisbury University's visitor parking regulations, available at <http://www.salisbury.edu/parking/visitors.html>.

**U. SMOKING / VAPING**

The Contractor shall comply with Salisbury University's Smoke-Free Campus Policy, available at <https://www.salisbury.edu/smoke-free/policy.aspx>.

**END OF SECTION II**

### SECTION III. BID SUBMISSION REQUIREMENTS

#### A. ORGANIZATION OF BIDS

1. Bids must be submitted via Bid Locker no later than the date and time indicated on the Bid Locker site for this solicitation.
2. If technical data, product literature or brochures are needed to supplement the bid, enclose those materials after the last required form.
3. Bids that are incomplete or that deviate from the format required in this section or that are submitted in any manner other than Bid Locker will be rejected.

#### B. SUBMITTAL REQUIREMENTS CHECKLIST

Each bid submittal must include the following documents, completed typewritten or in ink and executed in accordance with Section II requirements. All signatures must be original (in ink), no stamps or electronic signatures.

1. **Bid/Price Proposal Form**, typewritten or completed in ink and executed in accordance with the requirements in Section II. All signatures must be live, original in ink. No stamps or electronic signatures. Each alteration to the Bid/Price Proposal Form must be initialed, in ink, by the signatory.
2. **Exhibit B – Bid/Proposal Affidavit**
3. **Exhibit G – Firm Experience**
4. **Exhibit K – Addenda Acknowledgment Form**, Should one or more addenda be issued, each bidder must acknowledge receipt using this form, identifying each addendum by number and date, and signing the document. All signatures must be live, original in ink. No stamps or electronic signatures.

**Important:** Failure to submit any required document may result in your bid being deemed non-responsive and rejected.

#### C. SAMPLE CONTRACT FORMS/EXHIBITS

These forms are being provided for information purposes only. The following forms may be required by the Awardee:

**Exhibit D – Independent Contractor Agreement (ICA)**

**Exhibit N – Modification of Contract**

#### D. EVIDENCE OF BIDDERS RESPONSIBILITY

The University reserves the right to request any bidder to provide supplemental details regarding past performance, financial capacity, technical expertise, or other qualifications relevant to contract execution. The University may also consider other available information or conduct additional investigations as necessary to verify a bidder's responsibility.

**END OF SECTION III**

**SECTION IV SPECIFICATIONS AND DRAWINGS**

**ISSUED UNDER SEPARATE COVER**

**BID/PRICE PROPOSAL FORM**

**AND**

**OTHER SUBMITTAL FORMS**

**SALISBURY UNIVERSITY  
BID/PRICE PROPOSAL FORM**

**BIDDER/OFFEROR NAME:** \_\_\_\_\_

**SOLICITATION NO.:** SU-2617-SS **PROJECT TITLE:** SU-IT-27-26 IT Building - Dehumidifiers

Having carefully examined the entire Request For Proposal, all Attachments and Exhibits, any Amendments, and having received clarification on all items of conflict or upon which any doubt arose, the undersigned proposes to furnish all labor, equipment, materials, etc., required by the documents for the entire work, all in strict accordance with the contract documents, for the stipulated sum of:

**1. TOTAL BASE CONTRACT PRICE:**

\_\_\_\_\_ \$ \_\_\_\_\_  
WORDS FIGURES

**2. PROVIDE MANUFACTURER & MODEL NO. OF PROPOSED DUCTED UNITS:**

\_\_\_\_\_  
MANUFACTURER NAME MODEL NO.

**3. PROVIDE MANUFACTURER & MODEL NO. OF PROPOSED WALL-MOUNTED UNITS:**

\_\_\_\_\_  
MANUFACTURER NAME MODEL NO.

**SPECIAL TERMS AND CONDITIONS:**

1. Failure to properly and completely fill in all blanks may be cause for rejection of this bid.
2. It is understood that the bid price will be firm for a period of Ninety (90) calendar days from the bid opening date.
3. The Offeror shall bid on all prices, exclusive of unit prices, in whole dollars. Should the offeror fail to bid; accordingly, the University will round up or down to the nearest dollar of all prices (excluding unit prices) quoted. The prices shall be stated in both words and figures.

**CONTRACT TERM / TIME OF COMPLETION:** The initial contract term shall begin upon full execution of the contract, which will be the **Notice to Proceed (NTP)** date, projected to be **06/11/2026**. The Contractor shall have **44** calendar days from the NTP date to reach Substantial Completion with an additional **14** calendar days to reach Final Acceptance.

\_\_\_\_\_  
Construction Firm License Number  
(If Applicable)

\_\_\_\_\_  
Date Issued

\_\_\_\_\_  
Place of Issuance



Minority Business Enterprises:        The undersigned certifies that the Bidder:

\_\_\_\_\_ IS NOT a Certified Minority Business Enterprise.

\_\_\_\_\_ IS a Minority Business Enterprise (MBE), certified by the Maryland Department of Transportation, and assigned the following certification number:

\_\_\_\_\_  
(Certification Number)

Small Business Reserve: If you are registered with the State of Maryland as a Small Business, please provide the following information:

**MD SBR CERT. NO.** \_\_\_\_\_ **DATE EXP.** \_\_\_\_\_

**Our Company has been actively engaged in business and doing this type of work as  
specified for \_\_\_\_\_ years.**

If the undersigned is notified by the Procurement Officer/Representative of the acceptance of the bid within 90 days after the bid date, Contractor agrees to guarantee the completion of this work as specified in the Contract Documents.

\_\_\_\_\_  
The undersigned affirms, and it is a condition precedent to acceptance of this bid, that the bidder has not been a party to any agreement to bid a fixed or uniform price.

**Name of Company:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Contact Name/Title:** \_\_\_\_\_

**Contact E-Mail Address:** \_\_\_\_\_

**FEIN / SSN:** \_\_\_\_\_

**AUTHORIZED AGENT OR OFFICER OF THE COMPANY:**

**Printed Name / Title:** \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

***SIGNATURE MUST BE LIVE AND IN INK PRIOR TO ELECTRONIC SUBMITTAL***

**BID/PROPOSAL AFFIDAVIT****A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT: I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. NOT USED****B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES (*applicable if an MBE goal is set*)**

The undersigned bidder or offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract;  
or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES (*if applicable to the solicitation*)**

The undersigned bidder or offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)—(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded *nolo contendere* to a charge of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its

employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of a criminal offense incident to obtaining or attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
  - (2) Been convicted of any criminal violation of a state or federal antitrust statute;
  - (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
  - (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
  - (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
  - (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), (4) or (5), above;
  - (7) Been found civilly liable under a state or federal antitrust statutes for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
  - (8) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):
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#### **E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with

the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT: Neither I, nor to the best of my knowledge, information, and belief, the above business, has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**I. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT: I am aware of, and the above business will comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT: I am aware of and that the above business will comply with, Election Law Article, §§14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**K. DRUG AND ALCOHOL-FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meaning when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs and alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace,

(ii) The business' policy of maintaining a drug and alcohol-free workplace,

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by K(2)(b), above;

(h) Notify its employees in the statement required by §K(2)(b) above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement, and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than five (5) days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination, or

(ii) Require an employee to satisfactorily participate in a *bona fide* drug or alcohol abuse assistance or rehabilitation program; and,

(k) Make a good faith effort to maintain a drug and alcohol-free workplace through implementation of §K(2)(a)-(j), above.

(3) If the business is an individual, the individual shall certify and agree, as set forth in K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### **L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_\_)(foreign\_\_\_\_) [check one] corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

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

Address: \_\_\_\_\_

(If not applicable, so state.)

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.



**M. CONTINGENT FEES**

I FURTHER AFFIRM THAT: The business has not employed or retained any person, partnership, corporation, or other entity, other than a *bona fide* employee or agent working for the business, to solicit or secure the Contract, and that the business 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 the Contract.

**N. CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

(1) "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(2) "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

(3) The bidder or offeror warrants that, except as disclosed in §(4), below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

(4) The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):

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(5) The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

**O. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(1) The undersigned bidder or offeror certifies that, in accordance with State Finance & Procurement Article, §17-705:

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.

(2) The undersigned bidder or offeror is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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**P. ACKNOWLEDGMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and, (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any right or remedy conferred by the Constitution and the laws of Maryland in respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business in respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Authorized Representative and Affiant)

Printed name of Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

FEIN No: \_\_\_\_\_

**EXHIBIT G**  
**FIRM EXPERIENCE**  
**PROVIDE PAST CONTRACTS SIMILAR IN SCOPE AND SIZE TO PROJECT SPECIFIED.**  
**REFERENCES SHOULD SPAN THE PAST 3 YEARS MINIMUM UNLESS OTHERWISE SPECIFIED.**

**BIDDER/PROPOSER:** \_\_\_\_\_

Name & Location of Project			
Owner Name, Contact Person, Phone # / Email Address			
Brief description of the Project			
List similarities between this project and SU project			
Start Date of Contract / Project and Completion Date			
Contract Total			

**DO NOT USE SU MORE THAN ONCE**

**SALISBURY UNIVERSITY  
EXHIBIT K  
AMENDMENT ACKNOWLEDGEMENT**

NAME OF BIDDER: \_\_\_\_\_

SOLICITATION NO: \_\_\_\_\_

PROJECT TITLE/NO.: \_\_\_\_\_

DUE DATE: \_\_\_\_\_

**ACKNOWLEDGMENT**

I hereby acknowledge receipt of the following amendment which has been issued regarding the above referenced solicitation:

Amendment #1, issue date \_\_\_\_\_

Amendment #2, issue date \_\_\_\_\_

Amendment #3, issue date \_\_\_\_\_

Amendment #4, issue date \_\_\_\_\_

Amendment #5, issue date \_\_\_\_\_

Amendment #6, issue date \_\_\_\_\_

Amendment #7, issue date \_\_\_\_\_

Amendment #8, issue date \_\_\_\_\_

Amendment #9, issue date \_\_\_\_\_

Amendment #10, issue date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

## **EXHIBITS**

## **EXHIBIT A REQUIRED CONTRACT PROVISIONS**

The provisions contained in this exhibit will be incorporated and be a part of the contract entered into between Salisbury University and any contractors as a result of this procurement.

### **1. Amendment**

The contract documents, as defined within the contract, constitute the entire agreement between the parties hereto. All other communications between the parties prior to execution of the contract, whether written or oral, with reference to the subject matter of the contract are superseded by the agreement contained therein. No amendment of this contract shall be binding unless in writing and signed by the parties.

### **2. Non-Hiring of Employees**

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

### **3. Maryland Law Prevails**

The contract shall be governed by the laws of the State of Maryland. The parties agree that exclusive jurisdiction shall reside with the state and federal courts in the State of Maryland.

### **4. Affirmation Regarding Bribery Convictions**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding bribery convictions in the form required by University System of Maryland (USM) Procurement Policies and Procedures.

### **5. Affirmation Regarding Other Convictions**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding other convictions in the form required by USM Procurement Policies and Procedures.

### **6. Debarment Affirmation**

The Contractor shall submit with its bid/proposal a Procurement Affirmation in the form required by USM Procurement Policies and Procedures.

### **7. Affirmation Regarding Debarment of Related Entities**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding debarment of related entities in the form required by USM Procurement Policies and Procedures.

### **8. Affirmation Regarding Sub-Contractors**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding debarment of sub-contractors in the form required by USM Procurement Policies and Procedures.

### **9. Non-Collusion Affirmation**

The Contractor shall submit with its bid/proposal a Non-Collusion Affirmation in the form required by USM Procurement Policies and Procedures.

### **10. Financial Disclosure Affirmation**

The Contractor shall submit with its bid/proposal a Financial Disclosure Affirmation in the form required by USM Procurement Policies and Procedures.

### **11. Political Contribution Disclosure Affirmation**

The Contractor shall submit with its bid/proposal a Political Contribution Disclosure Affirmation in the form required by USM Procurement Policies and Procedures.

### **12. Drug and Alcohol Free Workplace**

The Contractor shall submit with its bid/proposal a certification concerning a drug and alcohol free workplace in the form required by USM Procurement Policies and Procedures.

### **13. Certification of Corporation Registration and Tax Payment**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding certification of corporation registration and tax payment in the form required by USM Procurement Policies and Procedures.

### **14. Contingent Fees Affirmation**

The Contractor shall submit with its bid/proposal a Procurement Affirmation regarding contingent fees in the form required by USM Procurement Policies and Procedures.

### **15. Contract Affidavit**

The successful bidder shall submit, prior to contract award, a Contract Affidavit in the form required by USM Procurement Policies and Procedures.

### **16. Disputes**

a. The contract shall be subject to the provisions of Title 15, Subtitle 2, Part III of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision. Unless a lesser period is provided by applicable statute or regulation, the Contractor must file a written notice of claim with the procurement officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the contract, the Contractor must submit to the procurement officer its written claim containing the information specified in COMAR 21.10.04.02.

b. Except as may otherwise be provided in the aforesaid regulations, all disputes arising under or as a result of a breach of the contract which are not disposed of by mutual agreement shall be resolved in accordance with this clause.

c. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(1) A voucher, invoice or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause.

(2) A claim by a Contractor shall be made in writing and submitted to the procurement officer for decision. A claim by the State shall be the subject of a decision by the procurement officer.

d. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

e. In connection with any claim under this clause, the Contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of its claim.

f. The procurement officer shall promptly render a written decision on all claims. This decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State. If a decision is not issued within 180 days, the procurement officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension.

g. The procurement officer's decision shall be final and conclusive unless the Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within thirty-(30) days of receipt of the decision.

## **17. Non-Discrimination**

The Contractor will comply with all applicable Federal and State laws, rules and regulations involving non-discrimination on the basis of race, color, creed, religion, national origin, age, sex, political affiliation, marital status, veteran status, condition of disability, or other non-merit factor. In addition, Salisbury University's policies, programs, and activities comply with federal and state laws and University System of Maryland regulations prohibiting discrimination on the basis of race, color, religion, age, national origin, sex, disability, and sexual orientation. Provisions for reasonable accommodations shall be made by the Contractor for handicapped applicants and qualified handicapped individuals.

## **18. Termination of Contract for Default**

If the Contractor fails to fulfill its obligation under the contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the Contractor shall, at the University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the

Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. The term "damages" as used in this paragraph may include attorney's fees and litigation costs. 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.

## **19. Termination of Contract for Convenience**

The performance of work under the contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with the contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the Contractor shall not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. 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.

## **20. 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 services specified in this contract. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the University may decide. Time extensions will be granted only for excusable delays such as delays beyond the control and without the fault or negligence of the Contractor, provided the Contractor shall have given notice in writing of the cause of the delay within five (5) days after the delay begins. Any extension granted shall not require the consent and approval of the Contractor's bondsman or surety.

## **21. Set-Off**

The University may deduct from and set off against any amounts due and payable to the Contractor any back-charges or damages sustained by the University by virtue of any breach of the contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

## **22. Responsibility of Contractor**

a. The Contractor shall perform the services with that standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar to the services hereunder.

b. Notwithstanding any review, approval, acceptance or payment for the services by the University, the Contractor shall be responsible for professional and technical accuracy of its work, design drawings, specifications and other materials furnished by the Contractor under the contract.

## **23. Dissemination of Information**

a. During the term of the contract, the Contractor shall not release any information related to the services or performance of the services under the contract nor publish any final reports or documents without the prior written approval of the University.

b. The Contractor shall indemnify and hold harmless the State and the University, its officers, agents and employees, from all liability which may be incurred by reason of dissemination, publication, distribution or

circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to the contract by the Contractor, its agents or employees.

#### **24. Ownership of Documents and Materials**

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of the contract shall at anytime during the performance of the services be made available to the University upon request by the University and shall become and remain the exclusive property of the University upon termination or completion of the services. The University shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by the contract. The University shall be the owner for purposes of copyright, patent or trademark registration.

#### **25. Retention of Records**

The Contractor shall retain and maintain all records and documents relating to the contract for a minimum period of three years after payment by the University of the final invoice and shall make them available for inspection and audit by the State of Maryland.

#### **26. Patents, Copyrights and Trade Secrets**

- a. If the Contractor furnishes any design, device, material, process or other item which is covered by a patent or copyright or which is proprietary to or a trade secret of another, Contractor shall obtain the necessary permission or license to use such item.
- b. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorneys' fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph c.
- c. If any products furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

#### **27. 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 action, as from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies and owing the State of Maryland, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract;
- c. It shall comply with all federal, State and local laws, ordinances applicable to its activities and obligations under the contract; and;
- d. It shall procure, at its expense, all licenses, permits, insurance and governmental approval, if any, necessary to the performance of its obligations under the contract.

Exhibit A (Revised 5/15/2019)

#### **28. Subcontracting or Assignment**

The benefits and obligations hereunder shall take effect and be binding upon the parties hereto and neither the contract nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the University.

#### **29. Responsibility for Claims and Liability**

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under the contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the University, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the services of the Contractor under the contract.

#### **30. 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 will 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 the contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

#### **31. Specifications**

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations and to the specifications contained in the solicitation. No asbestos, lead, or PCB-containing materials (0%) are to be utilized/installed on campus unless prior written approval has been received from the University's Department of Environmental Health & Safety (410-704-2949).

#### **32. Delivery**

Delivery shall be made in accordance with the specifications. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the specifications shall be delivered FOB the point or points specified prior to or on the date specified in the solicitation. Any material that is defective or fails to meet the terms of the specifications may be rejected. Rejected materials shall be promptly replaced. The State reserves the right to purchase replacement materials in the open market. Vendors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

#### **33. Cooperation with University and State Representatives**

Before any of the work shall begin, the Contractor shall confer with the University's representative at the site and agree on a sequence of procedure, means of access to the premises, space for storage of materials and equipment, use of approaches, use of facilities, etc.

#### **34. Inspection by the University**

The University may provide for inspection, at any time, of any part of the Contractor's work, and of any of the materials, supplies or equipment which the Contractor may have on hand or in the building. The Contractor shall provide adequate cooperation with any inspector assigned by the University to permit the inspector to determine the Contractor's conformity with these specifications and the adequacy of the work being performed.



### **35. Local Conditions Covering Work**

The Contractor shall cooperate with those in authority on the premises to prevent the entrance and exit of all workmen and/or others whose presence is forbidden or undesirable and in bringing, storing or removal of all materials and equipment, to observe all rules and regulations in force on the grounds, to avoid unnecessary dust or accumulated debris or the undue interference with the convenience, sanitation or routine of the University and to prevent the loss of, or damage to the property of the University and/or its employees. The Contractor shall repair any and all damage he may cause to the building or property, to the full satisfaction of the University.

### **36. Responsibility for Damage**

- a. The Contractor shall repair and restore to its original condition any equipment, materials or surfaces damaged by its operations.
- b. The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies, and equipment, and to the personal property of its employees while they are in the building.
- c. The Contractor shall be solely responsible for any damage to the building or its contents for any loss or damage to any property belonging to the University or the University employees when such loss or damage may be attributable to their actions or negligence or the actions or negligence of their employees.

### **37. Contractor's On-Site Representative**

The Contractor is required to maintain on site at all times when the work is in progress on this project an individual who represents the Contractor, is responsible for the entire project, and can communicate in English with the University's representative.

### **38. 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 may determine to be appropriate for the convenience of the University.

### **39. Payment of State Obligations**

Payments to the Contractor pursuant to this contract shall be made no later than 30 days after the University's receipt of a proper invoice from the Contractor. Charges of late payment of invoices, other than as prescribed by Title 15, subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

### **40. Cost and Price Certification**

The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- a. A negotiated contract, if the total contract price is expected to exceed \$100,000 or a smaller amount set by the procurement officer; or
- b. A change order or contract modification, expected to exceed \$100,000 or a smaller amount set by the procurement officer.
- c. The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

Exhibit A (Revised 5/15/2019)

### **41. Intellectual Property**

Contractor agrees to indemnify and save harmless the University, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by the contract.

### **42. Civil Rights Act of 1964**

Contractors providing materials, equipment, supplies or services to the State under the contract herewith assure the State that they are conforming to the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1988, the Civil Rights Act of 1991, and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

### **43. Termination of Multi-Year Contracts**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the contract succeeding the first fiscal period, the contract 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 State's rights or the Contractor's rights under any termination clause in the contract. The effect of termination of the contract hereunder will be to discharge both the Contractor and the State from future performance of the contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the contract. The State will notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

### **44. Contract Changes**

a. The procurement officer unilaterally may, at any time, without notice to the sureties, if any, by written order designed or indicated to be a change order, make any change in work within the general scope of the contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the State-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

b. Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

c. Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

d. Subject to paragraph f., if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (b.) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable

adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

e. If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under a. above or the furnishing or written notice under b. above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the University. The statement of claim hereunder may be included in the notice under b. above.

f. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

g. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the contract.

#### **45. Affirmative Action**

The Contractor and all subcontractors shall develop and maintain affirmative action plans directed at increasing the utilization of women and members of minority groups on State public works projects, pursuant to the Executive Order 11246 of the President of the United States of America and guidelines on Affirmative Action issued by the Equal Employment Opportunities Commission (EEOC) 29 C.F.R. part 1608 and the Governor of Maryland's Executive Order 01.01.1993.16.

#### **46. Conflict of Interest Law**

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he, his spouse, parent, child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of State Government Article § 15-501 et seq. of the Annotated Code of Maryland.

#### **47. Compensation and Method of Payment**

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 Employee Identification Number for all other types of organizations.

#### **48. Use of Contractor's Forms Not Binding on State**

a. Except as provided in b., the use or execution by the State of any forms, orders, agreements, or other documents of any kind, other than the contract documents, used pursuant to or in the administration of any contract awarded by the State to Contractor, shall not bind the State to any of the terms and conditions contained therein except those provisions:

(1) generally describing, for the purposes of ordering: Equipment or services to be provided, locations, quantities, delivery or installation

dates, and, to the extent consistent with the contract documents, prices; and

(2) not otherwise inconsistent with the contract documents.

b. Any such form, order, agreement or other document shall not vary, modify, or amend the terms and provisions of the contract documents, notwithstanding any provision to the contrary in such document, unless all of the following conditions are met:

(1) the document expressly refers to the particular document and provision of the contract documents being modified and plainly and conspicuously identifies any modification thereto as a modification:

(2) the document is executed on behalf of the State by the procurement officer; and

(3) execution of the document is approved by the procurement authority whose approval is required by law.

#### **49. Indemnification**

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

#### **50. EPA Compliance**

Materials, supplies, equipment and services shall comply in all respects with the federal Noise Control Act of 1972, where applicable. Power equipment, to the greatest extent possible, shall be the quietest available. Equipment certified by the US EPA as a Low Noise Emission Product pursuant to the Federal Noise Control Act of 1972 shall be considered to meet the intent of the regulation.

The Contractor must supply and have immediately available to their employees spill containment equipment/supplies necessary to contain any hazards it may introduce to the job site. The Contractor is responsible for any and all costs incurred by the University in remediating spills or releases of materials introduced onto the job site.

Depending on the nature of the contract, the additional environmental and safety provisions contained in Exhibit A-1 may also be required.

#### **51. Insurance and Indemnification Provisions**

a. The Contractor shall defend, indemnify and save harmless the University System of Maryland, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the performance by the Contractor, employees or agents, of the work covered by the contract.

b. The Contractor shall secure, pay the premiums for, and keep in force until the expirations of the contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under the contract.

(1) Commercial General Liability Insurance including all extensions –  
\$2,000,000 each occurrence;  
\$2,000,000 personal injury;  
\$2,000,000 products/completed operations;  
\$2,000,000 general aggregate

(2) Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.

(3) Owner's, Landlord's and Tenant's and Contractor's bodily injury liability insurance, with limits of not less than \$500,000 for each person and \$2,000,000 for each accident, if applicable.

(4) Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.

(5) If automotive equipment is used in the operation of this ICA, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

(6) Food products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, if applicable.

c. Each policy for liability protection, bodily injury or property damage must specifically name, on its face, the State of Maryland, the University System of Maryland and Salisbury University as additional named insured as respects operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items b(1)-b(6) above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

d. Each insurance policy shall contain the following endorsements: "It is understood and agreed that the Insurance Company shall notify in writing procurement officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the procurement officer. With the exception of Workmen's Compensation, upon the request of the procurement officer, a certified true copy of each policy of insurance, including the above endorsement, manually countersigned by an authorized representative of the insurance company, shall be furnished to the procurement officer. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of contract award, the requested certificates and policies shall be delivered as directed by the procurement officer. Notices of policy changes shall be furnished to the procurement officer.

e. All required insurance coverages must be acquired from insurers authorized to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of *Best's Insurance Reports*.

## **52. Prohibition Against Shifting Maryland Income to Out-of-State Affiliates:**

Contractor may not, for any period during the contract term, seek to reduce the amount of Contractor's income subject to Maryland income tax by payments made to an affiliated entity or an affiliate's agent for the right to use trademarks, trade names, or other intangible property associated with Contractor. Contractor agrees that during the course of the contract it shall not make any such royalty or similar payments to any affiliated company; and if any such royalty or similar payments are made, Contractor and the affiliated company shall file separate Maryland income tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the Contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof.

## **53. Software Contracts:**

As specifically provided by § 21-104, Commercial Law Article, Annotated Code of Maryland, the parties agree that this Agreement shall not be governed by the Uniform Computer Information Transactions Act (UCITA), Title 21 of the Commercial Law Article of the Annotated Code of Maryland, as amended from time to time. This Exhibit A (Revised 5/15/2019)

Agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA, which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland.

Contractor agrees that as delivered to buyer, the software does not contain any program code, virus, worm, trap door, back door, timer or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically upon the occurrence of selected conditions, or manually on command of Contractor.

## **54. Gramm-Leach-Bliley Act of 1999**

The Contractor agrees that in performing its obligations under this contract, the Contractor shall comply with all requirements of a non-affiliated third-party who receives a financial institution's consumer or customer information, under the Gramm-Leach-Bliley Act of 1999 and applicable regulations thereto (the "GLB Act") and other applicable federal and state consumer privacy acts, rules and regulations. Nonpublic personal information shall have the same meaning as that term is defined in the GLB Act.

a. The Contractor agrees to disclose such nonpublic personal information for the sole purpose of facilitating the Contractor's performance of its duties and obligations under the contract and will not disclose such nonpublic personal information to any other party unless such disclosure is (i) allowed by the GLB Act and consented to by the University, or (ii) compelled by law, in which case the Contractor will provide notice of such disclosure to the University.

b. The Contractor represents and warrants that it will, for so long as it retains nonpublic personal information, implement and maintain in place the necessary information security policies and procedures for (i) protecting the confidentiality of such nonpublic personal information, (ii) protecting against any anticipated threats or hazards to the security or integrity of such nonpublic personal information, and (iii) protecting against the unauthorized access to or use of such nonpublic personal information. These terms apply to all subcontractors employed by the Contractor who perform work under the scope of the agreement.

## **55. I-9 Requirement**

Contractor warrants and represents that it is currently in compliance, and that during the term of the contract it will remain in compliance, with the Immigration Reform and Control Act of 1986, and that it will obtain original valid employment verification documentation from all its employees on a timely basis as required by law and regulation. This requirement also applies to all subcontractors hired by Contractor.

## **56. Mandated Contractor Reporting of Suspected Child Abuse & Neglect**

Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – Policy on the Reporting of Suspected Child Abuse & Neglect, as well as the University Procedures for Reporting Suspected Child Abuse and Neglect. The above-referenced USM/University Policy and Procedures are available in full at the following link: [http://www.salisbury.edu/president/bor\\_policies/section\\_VI/Child\\_Abuse\\_and\\_Neglect\\_Policy\\_SU\\_FINAL.pdf](http://www.salisbury.edu/president/bor_policies/section_VI/Child_Abuse_and_Neglect_Policy_SU_FINAL.pdf), and are incorporated herein. The University reserves the right to terminate the contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of the University, termination is necessary to protect the safety and welfare of children who come into contact with the University community.

# **EXHIBIT O - GENERAL CONDITIONS FOR CONSTRUCTION AND MAINTENANCE**

## **SALISBURY UNIVERSITY**

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## **SECTION 1 - DEFINITIONS AND RESPONSIBILITIES**

### **1.01 DEFINITIONS (FEBRUARY 2007)**

- A. "Contract". The written agreement executed between the University and the Contractor, covering the performance of the work and furnishing of labor, services, equipment, and materials, and by which the Contractor is bound to perform the work and furnish the labor, services, equipment and materials, and by which the University is obligated to compensate him therefore at the mutually established and accepted rate or price. The contract documents shall include the proposal, contract forms and bonds, general conditions, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notice to proceed; also any written change orders/modification of contract and supplemental agreements that are required to complete the work in an acceptable manner, including authorized extensions thereof. (Said documents are sometimes referred to as the "contract documents").
- B. "Contractor". The person or organization having direct contractual relation with the University for execution of the "Work. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable under the Contract.
- C. "Contract Time and Completion Date". The number of working or calendar days shown in the proposal indicating the time allowed for the completion of the work contemplated in the contract. In case a calendar date of completion is shown in the proposal, in lieu of the number of working or calendar days, such work shall be completed on or before that date.
- D. "Day". Means calendar day unless otherwise designated.
- E. "Salisbury University" or "the University". Refers to Salisbury University, an agency and instrumentality of the State of Maryland. In particular, the University refers to the campus or administrative unit of the University or its authorized representative that issues information relative to a particular transaction.
- F. "Notice to Proceed". A written notice to the Contractor of the date on or before which it shall begin the prosecution of the work to be done under the contract.
- G. "Procurement Officer:" The person identified at the work initiation conference and designated by the University to make decisions with respect to the administration of the work.
- H. "Repair". Where used in these contract documents repair shall be taken to mean to restore after injury, deterioration, or wear; to mend, to renovate by such means as appropriate, and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair it must be, unless otherwise stated, rendered to such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish, to be applied without extra cost to the University. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.
- I. "Owner" or "State" or "University." The State of Maryland acts only through its Board of Public Works. No action or representation is binding upon the State or Salisbury University unless it is made by, or ratified by, or delegated by the Board of Public Works. Actions or representation made by the University staff do not bind the State or the University unless so provided in law.

- J. "Subcontractor." As employed herein includes only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work, but excludes one who merely furnishes material not so worked.
- K. "Supplemental Agreement." A written agreement covering added or changed work which is beyond the scope of the contract and the changes clause. A supplemental agreement becomes a part of the contract when approved and properly executed by all parties to the contract.
- L. "Surety." The corporate body bound with and for the Contractor for the full and complete performance of the Contract and payment of all debts pertaining to the Work.
- M. "Work." Work shall be understood to mean the furnishing of all labor, materials, equipment, services, utilities and other incidentals necessary to successful completion of the project and all the duties and obligations imposed upon Contractor by the contract.
- N. "Written Notice." Shall be deemed to have been duly served if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or if delivered to or sent by registered mail, to the last business address known to him who gives notice.

#### 1.02 OWNER'S RESPONSIBILITIES

- A. To the best of its abilities, the University will provide all relevant information relating to the project's buildings, structures, and their nearby utility infrastructure, including underground utilities. This information is not guaranteed to be accurate, however, and must be field verified by the Contractor through inspection, investigation, utility locating, etc. MISS UTILITY will not locate underground utilities on University property.
- B. Information or services under the Owner's control shall be furnished by the University with reasonable promptness to avoid delay in the orderly progress of the work.

#### 1.03 CONTRACTOR RESPONSIBILITIES

- A. Contractor shall supervise and direct the work, using his best skill and attention, and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.
- B. Contractor shall be responsible to the University for the acts and omissions of his Contractor employees, subcontractors and their agents and employees, and other persons performing any of the Work under the Contract.
- C. Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by inspections, tests, or approvals required or performed by persons other than the Contractor.
- D. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.
- E. Contractor shall design and coordinate its installation with sensitivity to aesthetics, particularly where exterior systems or components must be installed in a prominent location. The University has the right to reject or amend intended installations that are not considered within the intent of this guidance.

F. Cutting and Patching of Work

1. Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly in a workmanlike manner. Contractor shall clearly show on his installation drawings the locations proposed to be cut, penetrated, or otherwise altered, and provide details as to their final closure or condition.
2. Contractor shall not damage or endanger any portion of the Work or the work of the University or any separate contractors by cutting, patching or otherwise altering any work or by excavation. Contractor shall not cut or otherwise alter the work of the University or any separate contractor except with the written consent of the University and of such separate contractor. Contractor shall not unreasonably withhold from the University or any separate contractor its consent to cutting or otherwise altering the Work.

G. Indemnification

1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the University, the State of Maryland, Wicomico County, (if requested by the University), and their agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in the paragraph.
2. In any and all claims against the University or the State of Maryland or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under worker's or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

H. Security

1. Doors to the work areas and/or buildings shall be kept locked before, during and after normal work hours, except as necessary to provide reasonable access to the Work.
2. Contractor will provide, when necessary, temporary closures at door, window, and louver openings to secure the area and building from theft, damage, and weather.
3. Contractor shall be responsible for the security of the work area, and security deficiencies in the work area shall be immediately corrected as required by the University.
4. The SU Project Manager may, at his/her discretion, issue keys or access cards to Contractor for the duration of the job or require Contractor to sign out keys/cards at Facilities Management's Work Control Office on a daily basis, Contractor must request



access to other areas through the SU Project Manager. At closeout, Contractor must return all keys or access cards to the SU Project Manager. Contractor will be held responsible for all expenses related to the replacement of lost keys and all lock cylinders that can be opened with lost keys.

## **SECTION 2 – CONTRACT DOCUMENTS**

### **2.01 CONTRACT DOCUMENTS**

- A. The Contract Documents are complementary unless specified otherwise in the solicitation notice; that which is called for by any one document shall be as binding as if called for by all.
1. Intent of the documents is to include all work necessary for proper completion of the project ready for continual efficient operation. It is not intended, however, to include any work not properly inferable.
  2. Clarification. Contractor shall obtain clarification of all questions as to intent of the Contract Documents, or any conflict between two or more items in the Contract Documents. If Contractor fails to obtain such clarification, University may direct that the Work proceed by any method indicated, specified, or required by the Contract Documents in the interest of maintaining the best construction practice, and such direction not constitute the basis of Contractor claims for extra cost.
  3. Jargon: Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
- B. University-Provided Drawings. Original drawings of the building are available for viewing; however, the University will not vouch for their accuracy in regard to present day conditions.
- C. Contractor Drawings. Contractor shall do no work without proper drawings and/or instructions that have been approved by the University. Drawings in general shall be drawn to scale and symbols used to indicate materials and architectural, structural, mechanical, and electrical requirements. Contractor shall keep on the job site a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the University.
- D. Dimensions. Contractor shall carefully check all dimensions prior to execution of the particular work affected and, if inaccuracies or discrepancies are found, consult the University prior to any construction or demolition. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents, and obvious requirements dictated by conditions existing or being constructed, supersedes dimensions or notes that may be in conflict therewith. Whenever a stock size manufactured item or piece of equipment is specified by its normal size, it is Contractor's responsibility to determine the actual space requirements for setting or entrance to the setting space. No extra will be allowed by reason of work requiring adjustments in order to accommodate a particular item of equipment.

### **2.02 SHOP DRAWINGS:**

See Specifications for instructions of submittal of Shop Drawings.

## **SECTION 3 – SCOPE OF WORK**

### **3.01 INTENT OF THE CONTRACT DOCUMENTS**

It is the intent of the Contract Documents to show all of the work necessary to complete the project.

### **3.02 GENERAL CONDITIONS CONTROLLING**

In event of a conflict between these General Conditions and any other provision of the Contract Documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

### **3.03 DIFFERING SITE CONDITIONS**

- A. Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) Subsurface or latent physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The Procurement Officer shall promptly investigate the conditions, and if he finds that such conditions materially differ and cause an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- B. No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required in A. above, provided, however, the time prescribed therefore may be extended by the University.

### **3.04 SITE INVESTIGATION**

Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment, and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing this work. The University assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of the information made available by the University.

### **3.05 CONDITIONS AFFECTING THE WORK**

Contractor shall be responsible for having taking steps reasonably necessary to ascertain the nature and location of the work or the cost thereof. Any failure by the Contractor to do so will not relieve it of responsibility for successfully performing the work without additional expense to the University. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any University employee or agent prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

### **3.06 CHANGES IN THE WORK (see Exhibit A, Section 44)**

## **SECTION 4 – CONTROL OF THE WORK**

### **4.01 CONFORMITY WITH CONTRACT REQUIREMENTS**

All work performed and all materials furnished shall be in conformity with the contract requirements.

### **4.02 ADJACENT WORK**

- A. The University shall have the right, at any time, to contract for and/or perform other work on, near, over, or under the work covered by this contract. In addition, other work may be performed under the jurisdiction of another State agency. Contractor shall cooperate fully with such other Contractors and carefully fit his own work to such other work as may be directed by the architect.
- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors, the decision of the University will be binding. Contractor agrees to make no claims against the University or the State of Maryland for any inconvenience, delay, or loss attributable to the presence and operations of other Contractors.

### **4.03 CONTROL BY THE CONTRACTOR**

Contractor shall constantly maintain efficient supervision of the Work, using its best skill and coordinating ability. It shall carefully study and compare all drawings, specifications, and other instructions, and check them against conditions existing or being constructed on the project. He shall at once report any error, inconsistency, or omission discovered.

### **4.04 COOPERATION WITH UTILITIES**

- A. It is understood and agreed that Contractor has considered in its price all of the permanent and temporary utility appurtenances in their present or relocated positions, and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference, from the said utility appurtenances, the operation of moving them, or the making of new connections thereto if required by the contract documents.
- B. Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities, and shall cooperate with them in achieving the desired results. Contractor shall be responsible for all damage to utility facilities caused by Contractor's operations.
- C. At points where Contractor's operations are adjacent to properties of railway, telegraph, telephone, water, and power companies, or are adjacent to other property, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until Contractor makes all arrangements necessary for the protection thereof.
- D. Contractor shall cooperate with the owners of any underground or overhead utility lines in removal and rearrangement operations, so that these operations may progress in a reasonable manner, duplication or rearrangement is minimized, and services rendered by those parties are not unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage, or as a result of utility lines being exposed or unsupported, Contractor shall promptly notify the proper authority, and shall cooperate with the said authority in restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

- F. Utility outages shall be kept to a minimum, and will be permitted only with the written approval of PROJECT MANAGER. All requests for outages shall include identification of all the areas to be affected by the proposed outage, and shall be made not less than 48 hours in advance of the need.
- G. Contractor may not use the University's sanitary facilities unless otherwise stated in the Specifications or by the University Project Manager.

#### 4.05 AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS

- A. University inspectors are authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter or waive any requirements of the contract, nor to approve or accept any portion of the complete project. He is authorized to call to Contractor's attention any failure of the work or materials to conform to the Contract. He is authorized to reject materials or suspend the work until any questions or issues are resolved. Inspectors shall perform their duties at such times and in such times and in such manner as will not unnecessarily impede progress on the Contract.
- B. Inspector shall in no case act as foreman, or perform other duties for Contractor, nor interfere with management of the work by Contractor.
- C. Any advice the inspector may give Contractor shall not be construed as binding the University in any way, or releasing Contractor from fulfilling all of the terms of the Contract. The duty of the inspector is to observe the progress of the Work and report any deviations from the requirements of the Contract Documents; however, should the inspector fail to report any such deviation from the Contract requirements, Contractor is not released from its obligation to fulfill all terms of the Contract.
- D. Where there is disagreement between Contractor and the inspector, the inspector will immediately direct the University's attention to the issues of disagreement, and if Contractor still refuses to make corrections, comply or suspend work, the University will prepare and deliver in writing to Contractor a written order suspending the work. As soon as the inspector is advised of delivery of the shutdown order, the inspector shall immediately leave the site, and any work performed during the inspector's absence will not be accepted or paid for, and may be required to be removed and disposed of at Contractor expense.

#### 4.06 INSPECTION OF THE WORK

- A. All work, including the fabrication and source of supply, is subject to observation by the University and by those agencies required by law to inspect specific items.
- B. Contractor shall provide facilities for access and inspection as required by the University.
- C. If the specifications, the University's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give the University timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the University shall be made promptly, and where practicable, at the source of supply. Any work covered without approval must, if required by the University, be uncovered for examination at Contractor's expense.

#### 4.07 REMOVAL OF DEFECTIVE WORK

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause shall be removed and replaced by work and materials that conform to the contract requirements or shall be remedied otherwise in an acceptable manner authorized by the University.
- C. If Contractor fails to comply promptly with any order made under provisions of this section, the University shall cause defective or unacceptable work to be remedied or replaced and unauthorized work to be removed, and shall hold Contractor responsible for the cost thereof.

#### 4.08 MAINTENANCE OF WORK DURING CONSTRUCTION

- A. Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, and prosecuted with adequate equipment and forces to the end that all parts of the Work be kept in satisfactory condition at all times, and protected from damage of any kind from external sources.
- B. Particular attention shall be given to drainage, both permanent and temporary. Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such waters and such drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures, or property. Contractor shall take suitable measures to prevent erosion in all construction areas where the existing ground cover has been removed. All such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.
- C. All cost of maintenance during construction and before final acceptance shall be included in the bid price; Contractor will not be paid additional amounts for such work.
- D. If Contractor's work is halted by the University for failure to comply with the Contract, Contractor shall maintain the entire project as provided herein, and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work, or until Contractor has been declared in default.
- E. On projects where traffic flow is maintained, Contractor shall be responsible for repair and restoration of all traffic damage to the work, either partially or totally completed, until the University accepts the work.

#### 4.09 FAILURE TO MAINTAIN ENTIRE PROJECT

Contractor's failure to comply with Section 4.4.08 shall result in notice by the University r to comply with the required maintenance provisions. If Contractor fails to remedy unsatisfactory maintenance within twenty four (24) hours after receipt of such notice, the University will immediately proceed to maintain the project, and the entire cost of this maintenance will be charged to Contractor.

#### 4.10 UNIVERSITY'S RIGHT TO DO WORK

If Contractor fails to prosecute the Work properly or to perform any provision of the Contract, the University, after three (3) days' written notice to Contractor may make good such deficiencies and deduct the cost thereof from the monies then or thereafter due to Contractor.

### SECTION 5 – MATERIALS

#### 5.01 GENERAL

- A. All materials shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the architect in writing of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon possible after receipt of notification of award of the contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the contract. The Contractor, in accepting the contract, is assumed to be thoroughly familiar with the materials required and their limitations as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material, or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed, or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any Work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval. All materials are subject to the architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be used until written approval is given by the architect. Approval of a subcontractor or supplier as such does not constitute approval of material which is other than that included in the specifications.
- D. New Materials. Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the architect.
- E. Quality. Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. Samples. The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- G. Proof of Quality. The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions", as set forth in paragraph 5.03 of these General Conditions.
- H. Standard Specifications. When no specification is cited and the quality, processing, composition, or method of installation of a thing is only generally referred to, then:
  - 1. For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials (ASTM) specification is the applicable specification.

2. For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the BOCA Code apply.
  3. For items generally considered as heating, refrigerating, air conditioning, or ventilating, the applicable portions of the latest edition of the ASHRAE Handbook published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., apply.
  4. For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications apply.
  5. For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical Code apply.
  6. For items generally considered as fire protection, the applicable portions of the latest edition of the National Fire Protection Association Code (NFPA) code apply.
- I. Contractor is solely responsible for safeguarding its tools, materials and equipment at the work site and elsewhere on the campus. The University shall not assume responsibility for vandalism and/or theft of Contractor materials, tools, or equipment.
  - J. Existing equipment and materials removed from the project shall become the property of the Contractor, who shall be responsible for removing same from the campus, absent a written agreement with the University. Contractor shall be responsible for proper handling of all materials removed for the purpose of recycling or salvage. Salvaged materials shall not be release to University staff without written approval from the Associate Vice President of Facilities & Capital Management. Under no circumstances shall Contractor provide salvage service on behalf of or for the benefit of University employees.
  - K. No asbestos, lead, or PCB-containing materials shall be used or installed on campus without prior written approval from the University's Director of Campus Sustainability and Environmental Safety @ 410-546-6485.

## 5.02 STORAGE AND HANDLING OF MATERIALS

- A. Materials shall be so stored and handled so as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection.
- B. Contractor shall confine his tools and equipment and the storage of materials to the area delineated by the SU Project Manager, and will not load or permit any part of the structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- C. Explosives:
  1. Explosives shall not be stored anywhere on University owned property.
  2. Contractor may use explosives only upon written approval from the University. Approval will stipulate time, place, and quantity of explosives to be used, and manner of use.
  3. Contractor assumes all responsibility for injury to persons or damage to property resulting from the use or transportation of explosives, and for complying with any and all ordinances, regulations, and restrictions in relation to the use of explosives.

D. Paints:

1. Contractor shall not store oil-based paints or flammable liquids on the project site in containers larger than five (5) gallon size. Any liquid with a flash point of less than one hundred (100) degrees shall be contained in the UL-approved safety cans; liquids with higher flash points shall be stored in rigid cans. Glass containers shall not be used.
2. Contractor shall remove all oily rags, waste, etc., from the work site at the close of each working day.

5.03 TESTS

- A. If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give timely notice of its readiness so the University may observe such inspection, testing, or approval. Contractor shall bear all costs of such inspections, tests, or approval conducted by public authorities.
- B. If the University determines that any work requires special inspection, testing, or approval in addition to that required by the Contract Documents, Contractor will, upon written authorization from the University, order such special inspection, testing or approval, and give notice as provided in 5.03 A. If such special inspection or testing reveals that work does not comply with the Contract, Contractor shall bear all costs of testing; otherwise the University shall bear such costs.
- C. Contractor shall secure all required certificates of inspection, testing, or approval and promptly delivered same to the University.

5.04 BUY AMERICAN STEEL

Only steel products made in the United States shall be used or supplied in the performance of the contract or any subcontract thereunder. Steel products include products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from steel made in the United States. This requirement shall not apply if the University shall have determined that the cost of such steel products is unreasonable or inconsistent with the public interest. The provisions of this paragraph shall not apply where they are in conflict with any Federal grant or regulation affecting this contract.

**SECTION 6 – LEGAL RELATIONSHIPS AND RESPONSIBILITIES**

6.01 LAWS TO BE OBSERVED

- A. Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or in which any way affect the conduct of the Work. He shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees. He shall protect and indemnify the University and its representatives against such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees or subcontractors.
- B. Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State, and Local laws relating to hours of labor.
- C. The provision of the Contract shall be governed by the Laws of Maryland.



- D. Contractor shall give all notices and comply with all State and Federal laws, ordinances, rules, and regulations bearing on the conduct of the Work as drawn and specified.
- E. If Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify the University, and make all necessary changes as provided in the contract for changes in the work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the architect, he shall bear all costs arising therefrom.

6.02 PATENTED DEVICES, MATERIALS, AND PROCESSES [see Exhibit A, Section 26].

6.03 LAND, AIR, AND WATER POLLUTION

- A. Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time. Temporary pollution control measures will be used to correct unforeseen conditions that develop during construction, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. Contractor is advised that temporary pollution control may include measures outside the project site, where such work is necessary as a direct result of project construction. Contractor shall keep the University advised of all such off-site control measures undertaken; however, this shall not relieve Contractor of the basic responsibilities for such work.
- C. If Contractor fails to control erosion pollution, and/or siltation, the University reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the University in the performance of such duties for the Contractor shall be the responsibility of the Contractor.
- D. Contractor must submit evidence to the University that the governing Federal, State, and Local Air Pollution criteria are met. This evidence and related documents will be retained by the University.
- E. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the University under the terms of the contract. If it is determined that the order is due in any part to acts or omissions of the Contractor required by the Procurement Officer in the administration of the Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer under the Suspension of Work clause of the contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance or the contract (excluding profit) as provided that clause, subject to all the provisions thereof.
- F. The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the work on the environment.

#### 6.04 CONTRACTOR'S LIABILITY INSURANCE

Salisbury University's insurance requirements are defined in Section 51 of Exhibit A (Required Contract Provisions).

#### 6.05 FIRE AND EXTENDED COVERAGE INSURANCE – TO BE PROVIDED BY CONTRACTOR FOR NEW CONSTRUCTION SOLICITATIONS ONLY, UNLESS OTHERWISE STATED

- A. Contractor shall carry, at its own expense, builder's risk insurance for the full contract amount, insuring against the perils of fire, lightning, extended coverage vandalism, and malicious mischief subject only to the minimum standard deductible currently filed by the Insurance Service Office with the State of Maryland Insurance Department. The University will provide no coverage during the construction period.
- B. The builder's risk policy shall contain endorsements reading as follows:
  - 1. It is the intent of this insurance to cover specifically all the Work being done under the Contract between the insureds, and as to such Work this policy shall be primary insurance and shall not contribute or claim contribution from any other insurance being carried which, by its terms, would also cover the property covered hereunder in the absence of this insurance.
  - 2. Coverage afforded under this policy will not be canceled until at least fifteen (15) days prior written notice has been given to the Procurement Officer.
- C. Certificates of Insurance shall be submitted to the Procurement Officer for review and approval prior to commencement of work, and shall be held for the duration of the contract. The University shall have the absolute right to terminate the contract if the policy of insurance is canceled at any time for any reason and a new policy is not obtained by Contractor and approved by the Procurement Officer.
- D. The above insurance shall remain in full force and effect until such time as the University shall fully accept the work covered by this contract.

#### 6.06 ASSIGNMENTS [see Exhibit A, Section 28]

#### 6.07 SEPARATE CONTRACTS

- A. The University reserves the right to let other contracts in connection with this Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate his Work with theirs.
- B. If any part of the Contractor's Work depends on proper execution or results upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the architect any defects in such Work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's Work as fit proper for the reception of his Work, except as to the defects which may develop in the other Contractor's Work after the execution of his Work.
- C. To insure the proper execution of his subsequent Work, the Contractor shall measure Work already in place and shall at once report to the architect any discrepancy between the executed Work and the drawings.

#### 6.08 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES (JUNE 2002)

- A. In carrying out any of the provisions of the contract, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the University, it being understood that in all such matters they act solely as agents and representatives of the University.
- B. The University may terminate the rights of the Contractor to proceed under this contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the University with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract; the facts upon which the Procurement Officer makes such findings may be reviewed in any competent court.
- C. In the event this Contract is terminated as provided in paragraph B above, the University shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of Contractor's breach of the Contract, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- E. Conflict of Interest. No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and term of this Contract and while serving as an officer or employee of the State, become or be an employee of the Contractor or any subcontractor on this contract.

#### 6.09 NO WAIVER OF LEGAL RIGHTS

- A. The University and the State of Maryland shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, or from showing that the Work or materials do not in fact conform to the requirements of the contract. The University and the State of Maryland shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance by the University or any representative of the University, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the University shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages.
- B. The waiver by the University of the any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

#### 6.10 CONTINGENT FEE PROHIBITION [see Exhibit A, Section 14]

## 6.11 ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor sells, transfers, and assigns to the University and the State of Maryland all rights, title, and interest of and in and to any causes of action arising at any time before the date of this assignment or during the performance of this contract under the Antitrust Laws of the United States, including Section 1 of the Sherman Act, and the Antitrust Law of Maryland relating to the purchase by him or the University or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

## 6.12 DISPUTES [see Exhibit A, Section 16]

## 6.13 CLAIMS

- A. Under no circumstances will overhead or profit be permitted as items of a claim, when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error, omission for which the Contractor is responsible.
- B. No profit or overhead that includes rental of equipment and the salaries of supervisory personnel will be allowed Contractor for stoppage of work when written notice of such stoppage, or impending stoppage, is not given sufficiently far in advance to prevent such stoppage.
- C. No claim will be granted that includes cost of delays or work stoppage due to strikes lockouts, fire, unusually severe weather, avoidable casualties, or damage or delay in transportation for which the University or its agents are responsible; only time extension, in accordance with Section 7.03 will be granted.
- D. Contractor and the University agree that no pre-judgement or post-judgement interest on any claims asserted by either party will be allowed.
- E. No claim for damage caused by a delay will be allowed unless, within five (5) days of the act or omission causing the delay, Contractor notifies the University of the existence of the delay.

## SECTION 7 – PROSECUTION AND PROGRESS OF THE WORK

### 7.01 NOTICE TO PROCEED

After the contract has been executed, the University will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin work. The specified contract time shall begin on the day work (other than the erection of the inspector's office, construction stakeout, and mobilization) actually starts or on the day stipulated in the "Notice to Proceed", whichever is earlier. Any preliminary work started or materials ordered before receipt of the "Notice to Proceed", shall be at the risk of the Contractor.

### 7.02 PROJECT SIGNS

No sign or advertisement shall be displayed on the building site or the campus job site.

### 7.03 PROSECUTION-OF-THE-WORK

- A. All time limits in the Contract Documents are of the essence of the contract.

- B. The date of commencement of the work is the date established in a Notice to Proceed signed by the Procurement Officer.
- C. If Contractor is delayed at any time in the progress of the work by any act or neglect of the University or any of its officers, agents, or employees, or by any separate contractor employed by the University, or by any changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties, or by any cause which the Procurement Officer determines may justify any delay, then the contract time shall be extended for such time as the Procurement Officer may authorize.
- D. It is expressly understood and agreed by and between Contractor and the University that the time for the completion of the work is a reasonable time, taking into consideration the average climatic range and the usual business conditions prevailing in the locality of the project.

#### 7.04 PUBLIC CONVENIENCE AND SAFETY

Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction, and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities scheduled to be removed, but which might be of service to the public during construction, will not be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets, and portions of the project the work under construction shall not be obstructed more than is absolutely necessary.

#### 7.05 BARRICADES AND WARNING SIGNS

- A. Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. Contractor shall erect warning signs in advance of any place on the project where its operations may interfere with vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices, or as directed.

#### 7.06 PRESERVATION PROTECTION AND RESTORATION OF PROPERTY

- A. Contractor shall continuously maintain adequate protection of its work from damage, and shall protect University property from injury or loss arising in connection with the Contract. Contractor shall repair, and shall indemnify the University against any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents, or caused by agents or employees of the University. Contractor shall adequately protect adjacent property as provided by law, and by the Contract Documents.

- B. Contractor shall box all trees which are liable to injury by the moving, storing, and working up of materials. He shall use no tree for any attachment or anchorage.
- C. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.
- D. In any emergency affecting the safety of life or of the Work or of the adjoining property, Contractor, without special instruction or authorization, is permitted to act, at his discretion, to prevent such threatened loss or injury. If specifically instructed by the University to do work in an emergency, Contractor shall do the work and be paid compensated as outlined in Section 3.06.

#### 7.07 PROGRESS SCHEDULE AND TIME

Preparation of Work Schedule. Contractor shall prepare a schedule setting forth dates for completing various portions of the work. Included among the task set forth on the schedule shall be the dates for submittals, and dates for the return of the approved submittals. The schedule shall be reviewed for approval of the time within which the University must evaluate Contractor submittals. Approval of Contractor's schedule does not constitute approval of the entire schedule, but merely an approval of that portion of the schedule that relates to the review of submittals. If Contractor fails to prepare and submit to the University a schedule before the occurrence of a delay, then no claim for extra costs due to delay in the work shall be recognized or asserted.

#### 7.08 PROGRESS PHOTOGRAPHS

If stated in the Specification, Contractor shall submit to the University photographs, taken on or about the first of each month, showing the status of the Work.

#### 7.09 SUSPENSION OF WORK [see Exhibit A, Section 38]

#### 7.10 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the Work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the contractor, or of anyone employed by him, then Contractor may, upon seven (7) days' written notice to the Procurement Officer, stop work or terminate this contract.

#### 7.11 UNIVERSITY'S RIGHT TO TERMINATE FOR ITS CONVENIENCE [see Exhibit A, Section 19]

#### 7.12 TERMINATION FOR DEFAULT-DAMAGES FOR DELAY AND TIME EXTENSIONS [Exhibit A, Sections 18 and 20]

#### 7.13 PARTIAL ACCEPTANCE

- A. If during the construction of work the University desires to occupy any portion of the project, the University shall have the right to occupy and use those portions of the project which, in the opinion of the Procurement Officer, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of Contractor and the University for maintenance, heat, light, utilities, and insurance are mutually agreed.
- B. Partial occupancy shall in no way relieve Contractor of its responsibilities under the contract.

#### 7.14 FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES

- A. Time is an essential element of the Contract and the work shall be vigorously prosecuted until completion.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, Contractor may be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

#### 7.15 SUBSTANTIAL COMPLETION AND FINAL INSPECTION

- A. When the work is substantially completed, the Contractor shall notify the Project manager and Procurement Officer, if requested, that the work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the Project Manager and Procurement Officer, if requested, to schedule the final inspection.
- B. On the basis of the inspection, if the Project Manager determines that the work is substantially complete and the project can be occupied or used for its intended purpose, the Project Manager shall establish the date of substantial completion and shall state the responsibilities of the University and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time for which the guarantee will begin.
- C. Final payment shall not be made until all contract work is complete to the satisfaction of the University.

#### 7.16 CLEANING UP

Contractor shall at all times keep the construction area, including storage areas, free from accumulations of waste materials or rubbish and, prior to completion of the work, remove all rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the University. Contractor shall give special attention to any materials used on rooftops or exposed areas that may become windborne and be hazards, public nuisances, or litter on nearby grounds. Upon completion, Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the Procurement Officer.

#### 7.17 NOTICE TO UNIVERSITY OF LABOR DISPUTES

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor agrees to insert the substance of this clause, including this Paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

## **SECTION 8 - PAYMENTS**

### **8.01 CORRECTION OF WORK BEFORE COMPLETION**

- A. Contractor shall promptly remove from the premises all materials condemned as failing to conform to the contract, whether incorporated in the work or not. Contractor shall promptly replace and re-execute his own work in accordance with the contract and without expense to the University, and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. If Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the University may remove and store the materials at Contractor expense. If Contractor does not pay the expense of such removal within ten (10) days thereafter, the University may, upon ten (10) days notice, sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

### **8.02 PAYMENT OF INTEREST [see Exhibit A, Section 39]**

### **8.03 AUDITS BY THE STATE**

- A. Contractor agrees that the State or any of its duly authorized representatives shall, until the expiration of three years after final payment under this contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.
- B. Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the University or any of its duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.

### **8.04 ALLOWANCES**

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his contract sum the entire amount of such specified allowances. The expenditure of these allowances is at the University's direction. However, the allowance expenditure is limited to items properly inferable from the title of the allowance and as included within the scope and purpose identified in the specifications. Unexpended balances are to revert to the University. Prior to receiving authorization from the University to expend funds covered by an allowance, the contractor shall submit a detailed cost proposal outlining all costs, including labor, material, overhead and profit.

## **SECTION 9 – EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS**

### **9.01 EMPLOYEES AND WORKMANSHIP**

- A. Qualification of Employees. Contractor shall employ only personnel thoroughly trained and skilled in the task assigned on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work.
- B. Licensed Employees. When municipal, county, state, or federal laws require that certain personal (electricians, plumbers, etc.) be licensed, all such personal employed on the work shall be so licensed.



- C. Quantity of Labor. Contractor shall employ on the work, at all times, sufficient personnel to complete the Work within the time stated in the contract.
- D. Work Areas. Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or directions of the University. Generally, the work area will be the same as the "Limit of Contract" line indicated in the construction documents.
- E. Methods and Quality
1. All workmanship shall be of good quality. Where the method of work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned, and conditioned as so called for thereby;
  2. All materials shall be accurately, assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or old work, shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
- F. Scheduling.
1. Contractor shall so schedule the Work as to ensure efficient and uninterrupted progress, and to minimize cutting and patching of new Work. All cutting, patching, and digging necessary to the execution of the Work is included.
  2. Contractor shall so schedule the construction performed by each group or trade that each installation or portion of the construction shall member with and join with every other new or old Work as required for a complete installation, all according to accepted good construction practice.
- G. Superintendent. Contractor shall keep on the Work, at all times during its progress, a competent English-speaking superintendent and any necessary assistants, all approved by the University prior to commencement of the Work. Contractor shall submit in writing to the University the name of the person it intends to employ as superintendent for the execution of this contract, with a statement of the proposed superintendent's qualifications, to be reviewed by the University and approved or rejected in writing. Persons who have previously proved unsatisfactory on work executed for the University or the State of Maryland, or who lack sufficient qualifications, will not be approved, and this procedure will be repeated. A single Contractor Superintendent may superintend two or more jobs located at the same institution or nearby only when approved by the University in writing. The Superintendent shall represent the contractor, and all directions given to the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request. A Superintendent who proves unsatisfactory to the University shall be removed from the work, and Contractor shall submit a new Superintendent for approval as described above.
- H. Discipline. Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, and the University. Employees must not be allowed to loiter on the premises before or after working hours.

## 9.02 NON-DISCRIMINATION EMPLOYMENT POLICIES [Exhibit A, Section 17]

## 9.03 SUBCONTRACTS

- A. Contractor shall, as soon as practicable and before the execution of the contract, notify the University, in writing, of the names of subcontractors proposed for the principal parts of the work, and shall not employ any to which the University may object as incompetent or unfit.
- B. Contractor shall be as fully responsible to the University for the acts and omissions of subcontractors and of persons either directly employed by them, as for the acts and omissions of persons directly employed by Contractor.
- C. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the University and nothing in the contract documents is intended to make the subcontractor a beneficiary of the contract between the University and the contractor.

## 9.04 RELATION OF CONTRACTOR AND SUBCONTRACTOR

- A. Contractor agrees to bind every subcontractor, and will see that every subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, the Drawings, and Specifications as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved in writing by the University.
- B. Contractor agrees to include the following provision in all subcontracts and supply contracts applicable to the work:
  - 1. Subcontractor agrees to be bound to Contractor by the terms of the Agreement, General Conditions, Drawings, and Specifications, and to assume toward him all obligations and responsibilities that Contractor, by those documents, assumes toward the University.
  - 2. Subcontractor agrees, upon completion of its work, to promptly pay all labor, material suppliers, vendors, subcontractors, and others, to permit simultaneous final payment by Contractor.
- C. Contractor agrees to be bound to subcontractor by all the obligations that the University assumes to the Contractor under the Agreement, General Conditions, Drawings, and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the University.
  - 1. To pay the subcontractor to such extent as may be provided by the contract documents or the subcontract;
  - 2. To pay the subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage;
  - 3. To pay the subcontractor a just share of any fire insurance money received by Contractor; and
  - 4. To give the subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.
- D. Prompt Payment of Subcontractors: This contract is subject to the provisions of COMAR 21.10.08. Contractor shall promptly pay subcontractor any undisputed amount to which the subcontractor is entitled. In the event Contractor fails to pay promptly, subcontractors may request remedy in

accordance with COMAR 21.10.08. Contractor shall include in each subcontract a clause that contains substantially the same provisions as this clause.

- E. Contractor and the subcontractor agree that nothing in this section shall create any obligation on the part of the University to pay to or to see to the payment of any sums to any subcontractor.

#### 9.05 PREVAILING WAGE RATES

All contracts in the amount of \$500,000 or more may be subject to the provisions of State Finance & Procurement Article, Sections 17-201, et seq, Annotated Code of Maryland. Where an original contract is in an amount less than \$500,000 the terms of State Finance & Procurement Article, Sections 17-201, shall not apply, even where subsequent change orders shall increase the total contract in excess of \$500,000. Wage rates if applicable to projects of \$500,000 or more will be identified in the specifications. Federal wage rates shall be in effect where applicable.

#### 9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS

It is a condition of the Contract and shall be made a condition of each subcontract that neither Contractor nor any subcontractor shall require any laborer or mechanic employed in performance of the contract to work in surroundings or under work conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the state, and the federal government.

### **SECTION 10 – ENVIRONMENTAL HEALTH AND SAFETY**

#### 10.01 EPA COMPLIANCE

- A. Materials, supplies, equipment and services shall comply in all respects with the federal Noise Control Act of 1972, where applicable. Power equipment, to the greatest extent possible, shall be the quietest available. Equipment certified by the US EPA as a “Low Noise Emission Product” pursuant to the Federal Noise Control Act of 1972 shall be considered to meet the intent of the regulation.
- B. The Contractor must supply and have immediately available to their employees spill containment equipment/supplies necessary to contain any hazards they may introduce to the job site. The Contractor is responsible for any and all cost incurred by the University in remediating spills or releases of materials he/she introduced onto the job site.
- C. **Contractor must contact the Salisbury University Department of Environmental Health and Safety (EHS) (410-677-6485) immediately following any spill/release of a liquid hazardous material in excess of one (1) quart or a solid or gaseous hazardous material in excess of one (1) pound. For purposes of this document, a hazardous material is defined as any substance for which a Material Safety Data Sheet (MSDS) has been prepared.**

#### 10.02 SAFETY SYSTEM PLAN REVIEW

- A. Whenever or wherever any device, equipment, system condition, arrangement, level of protection or any other life safety feature is altered, renovated or installed, the proposed design plans shall be submitted to EHS for review as well as the Maryland State Fire Marshal's Office, where required, before project initiation. All proposed plans shall meet the applicable National Fire Protection Association (NFPA) Codes and recommended guidelines. This includes, but is not limited to fire alarm systems, sprinkler systems, standpipe systems, means of egress requirements, emergency lighting, occupancy changes, classification of hazard contents, special fire protection situations such as computer rooms and/or protection of kitchen hoods, etc.

- B. EHS and ultimately the Maryland State Fire Marshal's Office shall have the final determination as to whether the proposed design is acceptable.

#### 10.03 FIRE ALARM ACCEPTANCE

Any alteration or installation of fire suppression, fire detection, alarm and communication systems including, but not limited to, fire alarm, sprinkler or standpipe systems on campus must be acceptance tested by the Maryland State Fire Marshal's Office before being used for occupant protection and/or notification. Testing shall be coordinated through EHS prior to operation.

#### 10.04 ILLICIT DISCHARGE

If any illicit discharge is observed on the campus, Provider shall immediately contact the Salisbury University Police at (410) 543-6222 or email [SUPOLICE@salisbury.edu](mailto:SUPOLICE@salisbury.edu). Photograph the illicit discharge, if possible, and be prepared to provide the following information:

- Date and time the spill or pollution was observed
- Campus location of the spill or pollution (be as specific as possible)
- Brief description of the spill or pollution
- Source or cause of the pollution
- Responsible party (if known)

### **SECTION 11 - PHYSICAL PLANT / FACILITIES MANAGEMENT SUPPLEMENTAL CONDITIONS**

#### 11.01 STORAGE OF MATERIALS

The University does not have storage space for any Contractor's materials or equipment.

#### 11.02 PARKING [see Specifications for instructions and permit information]

#### 11.03 INSPECTIONS

Inspections will be performed by the appropriate agencies as specified in the Contract documents. Salisbury University and independent inspection agencies, as required, will perform most required inspections. Other agencies that may be required for inspection are:

- Maryland Department of the Environment (MDE)
- State Fire Marshall

#### 11.04 AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

All work performed shall be in compliance with current ADA regulations. Contractor shall notify the Owner of any deficiencies in design bearing on ADA compliance, prior to commencement of work.

#### 11.05 VEHICULAR ACCESS

Contractors will use only the vehicle access routes approved by Physical Plant Director / Project Manager prior to commencement of the project. Under no circumstances shall Contractor park or drive motor vehicles on grass or landscaped areas. Contractor shall bear all costs of repair or replacement of areas damaged by its vehicles.

## 11.06 CONTRACTOR MOTOR VEHICLES

Under no circumstances shall a contractor vehicle exceed 15 mph while on University property. Pedestrians have the right of way at all times, with no exceptions. Any Contractor vehicle over 1 ton shall have operational back-up signals. Flat beds, box trailers and all 18-wheel vehicles shall be accompanied by an assistant during the back-up process to ensure the safety of pedestrians and property in the path of the vehicle.

## 11.07 CONTRACTOR'S EMPLOYEE BEHAVIOR

Contractor is responsible for its employees' behavior at all times. Unprofessional behavior will not be tolerated and will be cause for immediate removal of the employee(s) from campus property. Contractor employees should refrain from unsolicited conversation with the general campus public.

## 11.08 NOISE RESTRICTIONS

Due to the close proximity of residential communities to University property, noise limitations are imposed during certain hours. Normal work hours (7am – 5pm) are not limited except as may be specified in regard to the adjacent classroom building schedules or residence halls. When Contractor anticipates work before or after normal hours, it shall confirm with the University's Project Manager that the work to be accomplished is within acceptable noise limits.

## 11.09 ELECTRICAL/MECHANICAL TIE-IN

Contractor shall coordinate all electrical and mechanical tie-ins through the University Project Manager at least 72 hours in advance. Contractor shall not enter any electrical panel for inspection, installation, or otherwise without the consent of the Project Manager. Where Contractor anticipates mechanical tie-in, he shall verify with the University Project Manager that existing valves and other control systems are functional. The University plumbing shop shall drain down all mechanical equipment, unless otherwise stated in the Specifications.

## 11.10 WORK HOURS. Normal work hours shall be as follows, unless otherwise stated in the Specifications:

- Weekdays: 7:00am – 4:00pm
- Weekends: 7:00am – 4:00pm, with written authorization
- Holidays: Only with advanced authorization

## 11.11 RADIOS

Playing of radios, CD players, etc. is not permitted on any construction site.

## 11.12 MAINTENANCE OF PROPERTY

Contractor is solely responsible for maintaining, at its expense, all property within the Limit of Disturbance (L.O.D.) or the established construction fence, which ever has the greater perimeter, including:

- A. Cutting grass to a maximum 4" height and, where construction or safety fence exist; trimming both sides.
- B. Establishing and maintaining safety fence at the drip line of all trees and shrubs marked to remain.
- C. Maintaining clean walkways and entrances to trailers used as site offices.

### 11.13 CONTRACT AND ADMINISTRATIVE PROTOCOL

Contractor and all contractor representatives shall clearly understand and strictly adhere to the following University protocols prior to work commencement:

- A. All Coordination between Contractor and Owner shall be through the University's designated Project Manager. At no time shall Contractor request or demand support or assistance from the University's maintenance department, trades shops, or grounds department. Failure to observe this protocol shall result in dismissal of Contractor's superintendent from the site.
- B. Coordination for submission of administrative and contractual documents shall be as outlined in pre-construction or work initiation meeting.

**END OF SECTION**

## **SAMPLE EXHIBITS**

## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor Agreement

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 \_\_\_\_\_.

**2. Term**

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

**3. 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 \_\_\_\_\_.

**4. 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.

**5. 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.

**6. 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.

**7. 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



## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor Agreement

the Contractor will be attached and incorporated herein and marked as Attachment A.

**8. 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.

**9. University Project Manager**

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

**10. 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.

**11. 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.

**12. 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.

**13. Insurance**

If insurance is required by the University, the Contractor shall maintain, during the term hereof, comprehensive general liability insurance policies covering its employees while performing under this Agreement in the following minimum amounts: Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate; Workmen's Compensation in amounts as required by applicable State law and Personal Injury and Property Insurance. If the Agreement requires use of an automobile, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident. 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

## **EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT**

### **SALISBURY UNIVERSITY** Independent Contractor Agreement

copies of policies or other satisfactory proof of insurance. All policies for liability protection, bodily injury or property damage must specifically name on its face, the State of Maryland, the University System of Maryland and Salisbury University as an additionally named insured, along with the Solicitation #, Project ID Name/Number and or Contract #. Also, the Policy Holder should read: "Salisbury University, 1101 Camden Avenue, Salisbury, MD 21801".

**14. 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.

**15. 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.

**16. 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.

**17. 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

**18. 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.

**19. 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.

**20. 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

## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor Agreement

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.

**21. 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.

**22. 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, from time 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.

**23. 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.

**24. EPA Compliance**

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

**25. 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.

**26. 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>

**27. 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

## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor Agreement

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 from 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.

#### **28. 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.

## **EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT**

### **SALISBURY UNIVERSITY** Independent Contractor Agreement

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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

**34. 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.

## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor Agreement

**35. 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.

**36. 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.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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.

## EXHIBIT D SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

### SALISBURY UNIVERSITY Independent Contractor 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**

By: \_\_\_\_\_  
(Signature)

Jeff Canada  
\_\_\_\_\_  
(Printed name)

Director of Procurement  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(date)

AGREED TO BY: **(Contractor)**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(date)

<b>SALISBURY UNIVERSITY MODIFICATION OF CONTRACT</b>			
1. MODIFICATION NUMBER <b>M00--</b>		2. DATE ISSUED	
3. NUMBER OF PAGES			
4. ISSUED BY SALISBURY UNIVERSITY PROCUREMENT DEPARTMENT 1101 CAMDEN AVENUE SALISBURY, MARYLAND 210801 POINT OF CONTACT: TELEPHONE NUMBER: FACSIMILE NUMBER:		5. ADMINISTERED BY (If other than Item 4) Name/Address: N/A Point of Contact: N/A Telephone: N/A Fax: N/A	
6. NAME, ADDRESS AND FEI NUMBER OF CONTRACTOR   FEI NO. ----		7A. MODIFICATION OF CONTRACT NUMBER	
		7B. DATED	
<b>8. The Referenced Contract is Modified In the Following Particulars Only.</b>			
A. THIS CONTRACT MODIFICATION IS ISSUED UNILATERALLY TO MAKE THE CHANGES SET FORTH IN ITEM 9 (below) PURSUANT TO THE CHANGES CLAUSE CONTAINED IN PART II, SECTION I OF THE CONTRACT REFERENCED IN 7A ABOVE.			
B. THE CONTRACT REFERENCED IN 7A ABOVE IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as billing address, accounting data, etc.) SET FORTH IN ITEM 9 (below).			
<input checked="" type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO TO MODIFY THE CONTRACT REFERENCED IN 7A ABOVE AS SET FORTH IN ITEM 9 (below).			
D. OTHER (Specify Type of Modification)			
9. DESCRIPTION OF MODIFICATION (Use Additional Pages if Required)  <i>i.e.</i> -----insert description of modifications. Add any change in time to extend Contract, if applicable.   <div style="display: flex; justify-content: space-between;"> <div>Amount of this Modification:</div> <div>\$ _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Previous Contract Amount:</div> <div>\$ _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Revised Contract Amount:</div> <div>\$ _____</div> </div> <p><i>Contractor shall coordinate all work with and shall contact SU Project manager, twenty-four (24) hours prior to starting any work.</i></p>			
10A. NAME AND TITLE OF SIGNER (Contractor - Type or Print)		11A. NAME OF PROCUREMENT OFFICER (Type or Print)	
10B. CONTRACTOR  (Signature of Person Authorized to Sign)	10C. DATE SIGNED	11B. SALISBURY UNIVERSITY  (Signature of Procurement Officer)	11C. DATE SIGNED