



# **STATE OF NORTH CAROLINA**

**East Carolina University**

**Request for Proposal #: 56-2402BTRFP**

**Health Sciences Student Center Coffee Shop Operations**

**Date of Issue: April 30, 2024**

**Proposal Opening Date: June 6, 2024**

**At 2:00 PM (Eastern Time)**

**Direct all inquiries concerning this RFP to:**

**Bryan Tuten**

**Purchasing Specialist**

**Email: [tutenb@ecu.edu](mailto:tutenb@ecu.edu)**

**Phone: (252) 328-6289**

<h2 style="margin: 0;">STATE OF NORTH CAROLINA</h2> <h3 style="margin: 0;">East Carolina University</h3>	
Refer <u>ALL</u> Inquiries regarding this RFP to: <b>Bryan Tuten, Purchasing Specialist</b> ECU Department of Materials Management Email: <a href="mailto:tutenb@ecu.edu">tutenb@ecu.edu</a>	Request for Proposal #: <b>56-2402BTRFP</b> Proposals will be publicly opened: <b>June 6, 2024 at 2:00 PM</b>
Using Agency: <b>East Carolina University</b>	Commodity No. and Description: <b>Food &amp; Beverage Products</b>
Requisition No.: <b>N/A (University Contract)</b>	Title: <b>Health Sciences Student Center Coffee Shop Operations</b>

**EXECUTION**

In compliance with this Request for Proposals (RFP), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein.

By executing this proposal, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this proposal is submitted competitively and without collusion (G.S. 143-54),
- none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this proposal, the undersigned certifies to the best of Vendor’s knowledge and belief, that:

- it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned vendor certifies will comply with all Federal and State requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public contracts; or awarding or administering public contracts; or inspecting or supervising delivery of the public contract of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this response to the RFP, the undersigned certifies, for Vendor’s entire organization and its employees or agents, that Vendor is not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

By executing this proposal, Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated herein**. These documents can be accessed from the ATTACHMENTS page within this document.

**Failure to execute/sign proposal prior to submittal may render proposal invalid and it MAY BE REJECTED. Late proposals shall not be accepted.**

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:	FAX NUMBER:	
VENDOR’S AUTHORIZED SIGNATURE*:	DATE:	EMAIL:

Proposal Number: 56-2402BTRFP

Vendor: \_\_\_\_\_

**VALIDITY PERIOD**

Offer shall be valid for at least sixty 60 days from date of bid opening, unless otherwise stated here: \_\_\_\_\_ days, or if extended by mutual agreement of the parties in writing. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

**ACCEPTANCE OF PROPOSAL**

If your proposal is accepted, all provisions of this RFP, along with the written results of any negotiations, shall constitute the written agreement between the parties ("Contract"). The NORTH CAROLINA GENERAL TERMS AND CONDITIONS are incorporated herein and shall apply. Depending upon the Goods or Services being offered, other terms and conditions may apply, as mutually agreed.

**FOR STATE USE ONLY:** Offer accepted and Contract awarded this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as indicated on

The attached certification, by \_\_\_\_\_.

**(Authorized Representative of East Carolina University)**

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## 1.0 PURPOSE AND BACKGROUND

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Request for Proposals (RFP) are issued to prospective vendors for a coffee shop operator at the East Carolina University (hereinafter referred to as ECU or University) Health Sciences Student Center (hereinafter referred to as HSSC), to provide faculty, staff, students, etc. access to food and beverages at this location. ECU is seeking a fully service coffee shop that will offer coffee, tea, hot chocolate, blended ice coffee beverages, espresso beverages, whole bean coffee and related retail items. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto. The intent of this solicitation is to award an Agency Contract for East Carolina University.

### 1.1 CONTRACT TERM

The Contract shall have an initial term of one (1) year, beginning on the date of final Contract execution (the “Effective Date”) or August 1, 2024, whichever is later. Monthly rent will not change during the first one (1) year period. At the end of the Contract’s initial term, ECU shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to two (2) additional one-year terms. All terms and conditions associated with this contract shall remain during the duration of the contract. Anticipated contract start date and restaurant business opening date is August 1, 2024. East Carolina University reserves the right to cancel this contract at any time if the contracted vendor is not meeting ECU’s requirements, specifications, standards, and/or overall satisfaction. A thirty (30) day written cancellation notice should be provided. In addition, East Carolina University reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments. East Carolina University reserves the right to receive and consider any other offers and proposals from any other vendors and/or businesses after each one year period.

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

## 2.0 GENERAL INFORMATION

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### 2.1 REQUEST FOR PROPOSAL DOCUMENT

This RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award, which are incorporated herein by reference.

### 2.2 E-PROCUREMENT FEE

**ATTENTION: The E-Procurement fee DOES NOT apply to this solicitation. See the paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.**

General information on the E-Procurement Services can be found at: <http://eprocurement.nc.gov/>.

### 2.3 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor’s responsibility to read the Instructions to Vendors, the North Carolina General Terms and Conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions or issues regarding any component of this RFP, those must be submitted as questions in accordance with the instructions in the PROPOSAL QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The State may also elect to leave open the possibility for later negotiation of specific provisions of the Contract that have been addressed during the question-and-answer period, prior to contract award.

Other than through the process of negotiation under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor’s proposal or otherwise. This applies to any language appearing in or attached to the document as part of the Vendor’s proposal that purports to vary any terms and conditions

or Vendors’ instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor’s proposal shall constitute a firm offer that shall be held open for the period required herein (“Validity Period” above).

The State may exercise its discretion to consider Vendor proposed modifications. By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded unless expressly agreed upon through negotiation and incorporated by way of a Best and Final Offer (BAFO). Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor’s proposal as nonresponsive.

**2.4 RFP SCHEDULE**

The table below shows the *intended* schedule for this RFP. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	ECU	5/1/24 (Wed)
Hold Pre-Proposal Meeting/Site Visit	ECU	RECOMMENDED—CONTACT ECU FOR SITE VISIT NO LATER THAN 5/15/24
Submit Written Questions	Vendor	5/22/24 (Wed) by 5:00 PM (ET)
Provide Response to Questions	ECU	5/31/24 (Friday) by 5:00 PM (ET)
Submit Proposals	Vendor	6/6/24 (Thurs) by 2 pm (ET)
Contract Award	State/ECU	7/1/24 (estimated)
Contract Effective Date	State/ECU	8/1/2024 (anticipated business opening date)

**2.5 SITE VISIT (ECU RECOMMENDS)**

Location: ECU Health Sciences Student Center (northwestern corner of first floor across from information desk)  
 400 West Campus Loop (ECU Health Sciences Campus)  
 Greenville, NC 27834

**Instructions:** Vendor representatives are URGED and CAUTIONED to visit the site and apprise themselves of the conditions and requirements which will affect the performance of the work called for by this RFP. To schedule a visit to look at the site, please email Bryan Tuten at [tutenb@ecu.edu](mailto:tutenb@ecu.edu) no later than Wednesday, May 15, 2024. Submission of a proposal shall constitute sufficient evidence of this compliance and no allowance will be made for unreported conditions which a prudent Vendor would recognize as affecting the performance of the work called for in this RFP.

Vendor is cautioned that any information released to attendees during the site visit, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this RFP, must be confirmed by written addendum before it can be considered to be a part of this RFP and any resulting contract.

In the event of a pre-bid meeting/site visit, a parking permit should be acquired by contacting ECU Department of Parking and Transportation, located at 305 E. Tenth Street, Greenville, NC, at 252-328-6294 between the hours of 8:00 AM – 12:00 PM or 1:00 PM – 4:30 PM, Monday through Friday. Parking on campus is by permit only. Attendees who come by the Parking and Transportation Office and ask for a pre-bid/site visit permit will be sold a Departmental Guest Permit for \$1.00 (B Zones) and \$3.00 (A1 Zones). Parking will be assigned in proximity to the pre-bid/site visit location. Individuals with disabilities, who require accommodations under the American with Disabilities Act (ADA), should contact the Department of Disabilities Support Services at 252-737-1016 prior to the meeting date.

ECU Parking Maps can be located at [Health-Sciences-Campus-map-and-legend.pdf \(ecu.edu\)](#) (Health Sciences Campus) and [PDF Maps | Information | ECU](#) (all ECU maps).

### 2.6 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the “Submit Written Questions” date and time provided in the RFP SCHEDULE Section above, unless modified by Addendum.

Written questions shall be emailed to Bryan Tuten at [tutenb@ecu.edu](mailto:tutenb@ecu.edu) by the date and time specified above. Vendors should enter “RFP # 56-2402BTRFP Questions” as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

Reference	Vendor Question
RFP Section, Page Number	Vendor question ...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in the RFP and an addendum to this RFP.

### 2.7 PROPOSAL SUBMITTAL

**IMPORTANT NOTE: This is an absolute requirement.** Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor’s sole responsibility to ensure its proposal has been received as described in this RFP by the specified time and date of opening. The time and date of receipt will be marked on each proposal when received. Any proposal or portion thereof received after the proposal deadline will be rejected.

**Please email proposals to Bryan Tuten at [tutenb@ecu.edu](mailto:tutenb@ecu.edu) by deadline date and time.**

If confidential and proprietary information is included in the proposal, also submit one (1) signed, REDACTED copy of the proposal. Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132- 1.2. Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the statutes and rules set forth above. By so redacting any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions determined to be confidential and proprietary and redacted as such, meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential.

If the Vendor does not provide a redacted version of the proposal with its proposal submission, the Department may release an unredacted version if a record request is received.

Failure to submit a proposal in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor’s proposal(s). Vendors are strongly encouraged to allow sufficient time to upload proposals.

Critical updated information may be included in Addenda to this RFP. It is important that all Vendors responding to this RFP periodically check the State’s IPS (or its bid solicitation) website for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in this RFP and all Addenda thereto.

### 2.8 PROPOSAL CONTENTS

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Failure to provide all required items, or Vendor’s submission of incomplete items, may result in the State rejecting Vendor’s proposal, in the State’s sole discretion.

Vendor RFP responses shall include the following items and attachments, which shall be arranged in the following order:



- a) Cover Letter, which must contain the following: (i) a statement that confirms that the proposer has read the RFP in its entirety, including all links, and all Addenda released in conjunction with the RFP, (ii) a statement that the Vendor agrees to perform in accordance with the scope of work, requirements, and specifications contained herein; and (iii) Vendor’s agreement to comply with all instructions, terms and conditions, and attachments.
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Completed and signed version of all EXECUTION PAGES, along with the body of the RFP.
- d) Signed receipt pages of any addenda released in conjunction with this RFP, if required to be returned.
- e) Vendor’s Proposal addressing all Specifications and/or Scope of Work of this RFP.
- f) Completed version of ATTACHMENT A: PRICING PROPOSAL
- g) Completed version of ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION
- h) Completed version of ATTACHMENT E: CUSTOMER REFERENCE FORM
- i) Completed version of ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR
- j) Completed and signed version of ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION
- k) Completed and signed version of ATTACHMENT I: NETWORKING CONNECTION AGREEMENT

## 2.9 ALTERNATE PROPOSALS

Unless provided otherwise in this RFP, Vendor may submit alternate proposals for comparable Goods, various methods or levels of Service(s), or that propose different options. Alternate proposals must specifically identify the RFP requirements and advantage(s) addressed by the alternate proposal. Any alternate proposal, in addition to the marking described above, must be clearly marked with the legend: “Alternate Proposal #56-2402BTRFP”. Each proposal must be for a specific set of Goods and Services and must include specific pricing. If a Vendor chooses to respond with various offerings, each must be offered with a separate price and be contained in a separate proposal document. Each proposal must be complete and independent of other proposals offered.

## 2.10 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

Relevant definitions for this RFP are provided in 01 NCAC 05A .0112 and in the Instructions to Vendors found below which are incorporated herein by this reference.

# 3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

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## 3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State’s best interest. All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the specific RFP Specifications and achieving the highest and best final evaluation, based on the criteria described below.

While the intent of this RFP is to award a Contract(s) to a single Vendor, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this RFP in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in proposals received.

### **3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION**

While this RFP is under evaluation, the responding Vendor, including any subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. See the Paragraph 29 of the Instructions to Vendors entitled COMMUNICATIONS BY VENDORS.

Each Vendor submitting a proposal to this RFP, including its employees, agents, subcontractors, suppliers, subsidiaries and affiliates, is prohibited from having any communications with any person inside or outside the using agency; issuing agency; other government agency office or body (including the purchaser named above, any department secretary, agency head, members of the General Assembly and Governor’s office); or private entity, if the communication refers to the content of Vendor’s proposal or qualifications, the content of another Vendor’s proposal, another Vendor’s qualifications or ability to perform a resulting contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals, the award of a contract, or both.

Any Vendor not in compliance with this provision shall be disqualified from evaluation and award. A Vendor’s proposal may be disqualified if its subcontractor and/or supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of contract award or cancellation of the procurement). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or inquiries directed to the purchaser named in this RFP regarding requirements of the RFP (prior to proposal submission) or the status of the award (after submission) are excepted from this provision.

### **3.3 PROPOSAL EVALUATION PROCESS**

Only responsive submissions will be evaluated.

#### **The State will conduct a One-Step evaluation of Proposals:**

Proposals will be received according to the method stated in the Proposal Submittal Section above.

All proposals must be received by the issuing agency not later than the date and time specified in the RFP SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At the date and time provided in the RFP SCHEDULE Section above, unless modified by Addendum, the proposal from each responding Vendor will be opened publicly and all offers (except those that have been previously withdrawn, or voided bids) will be tabulated. The tabulation shall be made public at the time it is created. When negotiations after receipt of bids is authorized pursuant to G.S. 143-49 and 01 NCAC 05B.0503, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. If negotiation is anticipated, cost and price shall become available for public inspection at the time of the award. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor’s pricing position.

At their option, the evaluators may request oral presentations or discussions with any or all Vendors for clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Upon completion of the evaluation process, the State will make award(s) based on the evaluation. Award of a Contract to one Vendor does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous and represented the best value to the State.

The State reserves the right to negotiate with one or more vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State.

### 3.4 EVALUATION CRITERIA

**BEST VALUE:** "Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. A contract shall be awarded to the Vendor whose proposal is determined to be most advantageous to the University. The University further reserves the right to reject any and all proposals, and the University will be the sole judge as to whether the contractor's proposal has or has not satisfactorily met the requirements of this RFP.

Evaluation criteria will be based on the following factors:

1. Quality & Variety
  - Demonstrated ability to respond to seasonal menu preferences, changing customer expectations, and to be innovative with specialized menus and coffee items.
  - Pre-testing of menu items.
  - Portion size and prices.
2. Ability, Capacity, and Skill of Vendor to Perform
  - Must have demonstrated success in opening and operating a coffee shop operation or equivalent type operation.
  - Is able to meet the coffee shop opening deadline and other requirements given in this RFP.
3. Financial benefit to ECU
4. Financial stability of Vendor
5. Other factors given in Specifications and Scope of Work (Section 5.0)

The results of oral presentations or demonstrations, if requested by ECU, will be used to clarify and substantiate information in the written proposals and may be considered when scoring the responses in the RFP. The reference check results may be considered when scoring the responses in the RFP.

### 3.5 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this RFP, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills
- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

### **3.6 INTERPRETATION OF TERMS AND PHRASES**

This RFP serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State’s needs as described in the RFP. Except as specifically stated in the RFP, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a proposal in its entirety.

## **4.0 REQUIREMENTS**

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This Section lists the requirements related to this RFP. By submitting a proposal, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements, and terms and conditions stated in this RFP. If a Vendor is unclear about a requirement or specification, or believes a change to a requirement would allow for the State to receive a better proposal, the Vendor is urged to submit these items in the form of a question during the question and answer period in accordance with the Proposal Questions Section above.

### **4.1 PRICING**

Proposal price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling, transportation, administrative and other similar fees. Complete ATTACHMENT A: PRICING PROPOSAL and include in Vendor’s proposal. The pricing provided in ATTACHMENT A: PRICING PROPOSAL, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

### **4.2 INVOICES**

If applicable, the Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each order. Invoices shall include detailed information to allow Purchasing Agency to verify pricing at point of receipt matches the correct price from the original date of order. The following fields shall be included on all invoices, as relevant:

Vendor’s Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyer’s Order Number, Manufacturer Part Numbers, Vendor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

***INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS OR SERVICES ACCEPTED.***

### **4.3 FINANCIAL STABILITY**

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

Each Vendor shall certify it is financially stable by completing ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification. The Contract Manager may require annual recertification of the Vendor’s financial stability.

### **4.4 HUB PARTICIPATION**

Pursuant to North Carolina General Statute G.S. 143-48, it is State policy to encourage and promote the use of small, minority, physically handicapped, and women contractors in purchasing Goods and Services. As such, this RFP will serve to identify those Vendors that are minority owned or have a strategic plan to support the State’s Historically Underutilized Business program by meeting or exceeding the goal of 10% utilization of diverse firms as 1st or 2nd tier subcontractors. Vendor shall complete ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION.

**4.5 VENDOR EXPERIENCE**

In its Proposal, Vendor should demonstrate experience of requested services with public and/or private sector clients, with similar or greater size and complexity to the State.

**4.6 REFERENCES**

Vendor shall provide at least three (3) references, using ATTACHMENT E: CUSTOMER REFERENCE FORM, for which it has provided services of similar size and scope to those proposed herein. The State may contact these users to determine whether the Services provided are substantially similar in scope to those proposed herein and whether Vendor’s performance has been satisfactory. The information obtained could be considered in the evaluation of the Proposal.

**4.7 BACKGROUND CHECKS**

Vendor and its personnel are required to provide or undergo background checks at Vendor’s expense prior to beginning work with the State. As part of Vendor background, the following details must be provided to the State:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, by Vendor, its officers or directors, or any of its employees or other personnel to provide Services on this project, of which Vendor has knowledge, or provide a statement that Vendor is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Vendor of which it has knowledge, or provide a statement Vendor is aware of none;
- c) Any **regulatory sanctions** levied against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term “regulatory sanctions” includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies of which Vendor has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Vendor during the three (3) years preceding submission of its proposal herein or a statement that there are none.

Vendor’s response to these requests shall be considered a continuing representation, and Vendor’s failure to notify the State within thirty (30) days of any criminal litigation, investigation or proceeding involving Vendor or its then current officers, directors or persons providing Services under this Contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Vendor to perform Services under this Contract.

**VENDOR BACKGROUND CHECK AGREEMENT**

Vendor agrees to conduct a criminal background check per the specifications above in this section on all employees proposed to work under this Contract, at its expense, and provide the required documentation to the State in order to perform Services under this Contract:

YES  NO

**FAILURE TO COMPLETE VENDOR BACKGROUND CHECK AGREEMENT SECTION SHALL RESULT IN VENDOR’S PROPOSAL BEING DEEMED NON-RESPONSIVE AND NOT CONSIDERED FOR AWARD.**

**4.8 PERSONNEL**

Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

Should the Vendor's proposal result in an award, the Vendor shall be required to agree that it will not substitute key personnel assigned to the performance of the Contract without prior written approval by the Contract Lead. Vendor shall further agree that it will notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the Services of any person providing Services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract Services provided by such personnel.

**4.9 VENDOR'S REPRESENTATIONS**

If Vendor's Proposal results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the Service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

**4.10 AGENCY INSURANCE REQUIREMENTS MODIFICATION**

Insurance requirements set forth in the North Carolina General Terms and Conditions, *Insurance* paragraph, are minimal requirements. Other insurance requirements and coverages, at a minimum, are given below and in Section 5.0 Specifications and Scope of Work.

A. Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

- Small Purchases
- Contract value in excess of the Small Purchase threshold, but up to \$1,000,000.00
- Contract value in excess of \$1,000,000.00

B. The Purchasing Agency has conducted a risk assessment and determined that certain default coverage provisions in the North Carolina General Terms and Conditions, paragraph entitled *Insurance*, should be increased from the minimums stated. Increased or additional insurance coverage amounts for this Solicitation are as follows. Coverages not changed here remain as stated in the General Terms and Conditions.

- a) **Commercial General Liability**                      \$1,000,000 Combined Single Limit (Defense costs shall be in excess of the limit of liability)

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## 5.0 SPECIFICATIONS AND SCOPE OF WORK

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### **Description of Services/Scope of Work**

1. **Title:** ECU Health Sciences Student Center Coffee Shop Operations
2. **Purpose and Intent:** The purpose of this request for proposals is for a full service coffee shop operation to occupy a space in the Health Science Student Center (HSSC) to provide faculty, staff, and students access to food and beverages. ECU intends to establish a turnkey contract with the prospective vendor for the vendor to operate under all the guidelines, policies, procedures, regulations, etc. of ECU, Pitt County (NC), and the State of North Carolina. The coffee shop operator shall offer coffee, tea, hot chocolate, blended ice coffee beverages, whole bean coffee, fresh muffins, pastries, and cookies, and related retail items. The coffee shop operator should offer multiple and secure payment methods from customers including cash, payment card (credit and/or debit), etc. Vendor is requested to give a complete and detailed proposal of this coffee shop operation.
3. **Independent Contractor:** The relationship of the Contractor and ECU shall be that of an Independent Contractor. Any and all employees or agents of the Contractor or any other person, while engaged in the performance of any work or services required by the Contractor under these specifications, shall not be considered employees of ECU.
4. **Prior Vendor Agreements:** ECU has exclusive agreements with other companies which allows them to be the exclusive provider of soft drinks and bottled water (Minges Bottling Group/Pepsi products), food and dining services (Aramark), and snack vending (Canteen). This coffee shop location has been removed from the Aramark contract but Pepsi related products cannot be offered or sold at this coffee shop location.
5. **Program Administrator:** ECU Student Affairs/Student Centers serves as Program Administrator (can also be referred to as Contract Administrator) for this contract and will oversee the day to day operations and provide guidance as needed. The Department of Materials Management will assist the program administrator with this contract as needed.
6. **Compliance to Applicable Laws, Policies, and Procedures**  
Contractor shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable licenses and permits. Licensee shall abide by all applicable ECU, Pitt County (NC), and State of North Carolina policies and procedures, including but not limited to food safety and alcohol policies.
7. **Coffee Shop Main Requirements:**
  - **Hours of Operation** - ECU Health Science Student Center normally operates Monday through Friday from 5:00 a.m. to 9:00 p.m. and on weekends from 12:00 p.m. to 8:00 p.m., as of fall 2023. The vendor must propose their hours of operation for the coffee shop. While there is no minimum or maximum expectation of hours of operation, hours of operation will be considered in this proposal that will ultimately be accepted. Vendor will flex hours based on holidays, special events, etc. in coordination with the ECU Student Center staff. Hours of operation shall be publicly posted including approved signage, website, social media, etc. Vendor's modification of operational hours can occur upon prior written approval from the Program Administrator or his/her approved designee.
  - **Historical Data Accessibility** – In fiscal year 22-23, the facility traffic count was 164,374. Daily traffic counts for fall 2023 will be provided upon request.

- **Location** – The location within the building was previously occupied by Starbucks. It is located on the northwestern corner of the first floor of the building across from the information desk and is approximately 1214 sq. ft.
- **Marketing** — Vendor can collaborate with ECU for marketing of this coffee shop to the campus community. If Vendor desires to use ECU’s name or logo in its branding, ECU related logos must be approved in advance by ECU. Please provide in vendor proposal your marketing strategy.
- **Furniture and fixtures** – The cabinetry from Starbucks can be kept or torn out. If the cabinetry is kept, vendor must paint it a different color (non-Starbucks colors). The vendor is responsible for providing furniture for the location. All changes to fixtures and furniture must have prior approval by the student center director. Please provide in vendor proposal your furniture and fixtures plan.
- **Storage** – The vendor has access to HS Student Center Room 109 with a mop sink and three-compartment sink. Please provide in vendor proposal your storage needs and plans.
- **Food and Beverage** – A full menu, including menu prices and any other fees, shall be provided by the vendor with the proposal. Any price increases must be approved by ECU with thirty (30) days notice to ECU Program Administrator.
- **Rent** - The vendor’s monthly rent of \$500 includes utilities. All rent payments must be received by ECU no later than the first day of each month of operation.
- **Technology and Systems Information**
  - Full compliance with the University’s policies for information security, privacy, and acceptable use.
  - Full compliance of the University’s data security standards including PCI (Payment Card Industry) data security standards.
  - The coffee shop operator should offer multiple and secure payment methods from customers including cash, payment card (credit and/or debit), etc.
  - Please provide in vendor proposal your technology and systems information including equipment, software, accessories, etc.
- **Health and Safety** – Programs, standards, and human resources policies (training, wellness at work) that promote and enforce safe food handling, proper sanitation, HACCP standards, and health department requirements. Vendor must meet and/or maintain all health and safety regulations, requirements, inspections, etc. of ECU Environmental Health & Safety (EH&S) and Pitt County (NC) Environmental Health Division, which is a division of Pitt County (NC) Health Department. Please provide in vendor proposal your health and safety programs, plans, strategies, standards, policies, etc. that fully covers this entire section.
- **Other Requirements:**
  1. The vendor should have an existing off campus restaurant that is comparable to or greater than this type of coffee shop given in this RFP. In addition, the Vendor must have been established for a period of at least one year. In order to provide the best customer service and response time, the vendor’s existing off campus restaurant must be located within 30 miles of the ECU Health Science Student Center. Please provide in vendor proposal information that covers this section.
  2. The Vendor shall be solely responsible for any damage or destruction they may cause to any University equipment, buildings, or premises and any equipment or facilities leased, lent, or in the care, custody, or control of the University by contractor’s personnel while performing this service. All



repairs/replacements associated with these damages will be completed per East Carolina University requirements and specifications.

- 3. All services shall be provided in strict conformance with this RFP. Proposed deviations from the RFP strategy must be approved by the University prior to initiating the contract. Any additional fees resulting from the contractor’s negligence or oversight will be absorbed at the contractor’s expense. The University reserves the right to contract with a third party to correct any contractor negligence or oversight at the contractor’s expense.

**5.1 TECHNICAL APPROACH**

Vendor’s proposal shall include, in narrative, outline, and/or graph form the Vendor's approach to accomplishing the tasks outlined in this RFP and the Scope of Work section. A description of each task and deliverable and the schedule for accomplishing each shall be included.

**6.0 CONTRACT ADMINISTRATION**

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor’s planning purposes.

**6.1 CONTRACT MANAGER AND CUSTOMER SERVICE**

The Vendor shall be required to designate and make available to ECU a contract manager. The contract manager shall be ECU’s point of contact for Contract related issues and issues concerning performance, progress review, scheduling, and service.

<b>Contract Manager Point of Contact (Vendor)</b>	
Name:	
Title:	
Full Address:	
Office Phone #:	
Mobile Phone #:	
Email:	

**6.2 POST AWARD PROJECT REVIEW/CONTRACT PERFORMANCE MEETINGS**

The Vendor, at the request of the State, shall be required to meet periodically (such as monthly or quarterly) with the State for Project Review and/or Contract Performance meetings. The purpose of these meetings will be to review project/contract progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

**6.3 CONTINUOUS IMPROVEMENT**

The State encourages the Vendor to identify opportunities to keep improving this contract and its products and services. A continuous improvement effort consists of various ways to enhance business efficiencies as performance progresses.

**6.4 ACCEPTANCE OF WORK**

Performance of the work and/or delivery of Goods and/or Services shall be conducted and completed at least in accordance with

the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator.

The State shall have the obligation to notify Vendor, in writing within ten (10) calendar days following completion of such work or delivery of a deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any specifications, acceptance criteria or otherwise fail to conform to the Contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

### **6.5 FAITHFUL PERFORMANCE**

Any Contract may include terms ensuring a Vendor's performance such as: (1) a bond, or similar assurance; (2) liquidated damages; (3) a percentage of the Contract value held as a retainage; (4) withholding final payment contingent on acceptance of the final deliverable; and (5) any other provision that assures performance of the Vendor. The parties agree that the Vendor shall be subject to the following faithful performance requirements:

### **6.6 TRANSITION ASSISTANCE**

If a Contract results from this solicitation, and the Contract is not renewed at the end of the last active term, or is canceled prior to its expiration, for any reason, Vendor shall provide transition assistance to the State, at the option of the State, for up to six months to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. If the State exercises this option, the Parties agree that such transition assistance shall be governed by the terms and conditions of the Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall agree to pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the Services or other resources utilized.

### **6.7 DISPUTE RESOLUTION**

During the performance of the Contract, the parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

### **6.8 CONTRACT CHANGES**

Contract changes, if any, over the life of the Contract shall be implemented by contract amendments agreed to in writing by the State and Vendor. Amendments to the contract can only be through the contract administrator.

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## 7.0 ATTACHMENTS

### **\*\*IMPORTANT NOTICE\*\***

#### **RETURN THE REQUIRED ATTACHMENTS WITH YOUR RESPONSE**

FOLLOW THE LINKS TO ACCESS EACH ATTACHMENT

(OR REFER TO NC DEPT. OF ADMINISTRATION VENDOR FORMS AT [Vendor Forms | NC DOA](#)  
TO EACH ATTACHMENT REFERENCED IN THIS RFP)

#### **ATTACHMENT A: PRICING PROPOSAL**

Vendor **must** complete and return this Attachment A: Pricing Proposal, which is pricing associated with this RFP and can be found in the table below:

ITEM	Payment Type (to ECU)	Dollar Amount	
1	Rent (monthly) ECU recommends this payment type (to ECU) at a minimum.	\$500/month	Vendor Agrees to this? (Please check below) Yes _____ No _____ (if No please give details below or include with your proposal).
2	Commissions or any other form of payment(s) to ECU	_____ % of Gross Revenue	Please provide details below or include with your proposal.
3	Other	\$ _____	Please provide details below or include with your proposal.

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**ATTACHMENT B: INSTRUCTIONS TO VENDORS**

The Instructions to Vendors, which are incorporated herein by this reference, may be found here:

[open \(nc.gov\)](#)

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**ATTACHMENT C: NORTH CAROLINA GENERAL TERMS & CONDITIONS**

The North Carolina General Terms and Conditions, which are incorporated herein by this reference, may be found here:

[Microsoft Word - Form\\_North-Carolina-General-Terms-and-Conditions\\_11.2021 \(nc.gov\)](#)

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**ATTACHMENT D: HUB SUPPLEMENTAL VENDOR INFORMATION**

Complete and return the Historically Underutilized Businesses (HUB) Vendor Information form, which can be found at the following link:

[download \(nc.gov\)](#)

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**ATTACHMENT E: CUSTOMER REFERENCE FORM**

Complete and return the Customer Reference Form, which can be found at the following link:

[open \(nc.gov\)](#)

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**ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR**

Complete and return the Location of Workers Utilized by Vendor, which can be found at the following link:

[download \(nc.gov\)](#)

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**ATTACHMENT G: CERTIFICATION OF FINANCIAL CONDITION**

Complete, sign, and return the Certification of Financial Condition, which can be found at the following link:

[download \(nc.gov\)](#)

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**ATTACHMENT H: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

See following pages. Please include with vendor proposal.

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**ATTACHMENT I: NETWORK CONNECTION AGREEMENT**

See following pages. Complete, sign, and return this Attachment I with vendor proposal.

**\*\*\* Failure to Return the Required Attachments (Downloaded and Completed)  
Could Eliminate Your Response from Further Consideration \*\*\***

**ATTACHMENT H: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS & CONDITIONS****1) DEFINITIONS: Supplementing the Definitions appearing in the body of this solicitation, above:**

- a) "Agency" means the Agency purchasing the goods or Services.
- b) "Computer" means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.
- c) "Computer Data Base" means a collection of data in a form capable of being processed and operated on a Computer.
- d) "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.
- e) "Computer Software" or "Software" means Computer Programs and Data Bases. Also, see, "Software" below.
- f) "Computer Software Documentation" means technical data and information comprising Computer listings and printouts, in human readable form that:
  - i) Documents the design or details the Computer Software
  - ii) Explains the capabilities of the Software, or
  - iii) Provides operating instructions for using the Software to obtain desired results from a Computer.
- g) "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.
- h) "Data" means recorded information, regardless of form or method of recording.
- i) "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraph 2, and as included in Paragraph 7 c), of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- j) "Hardware" includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State's intended purposes as expressed in the solicitation documents.
- k) "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.
- l) "Services" means the obligations and duties undertaken by the Vendor to comply with the specifications and requirements in this solicitation.
- m) "Software" is "Packaged Copyrighted Software Products" (unless otherwise identified) as used in 09 NCAC 06A.0102(13) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered "shrink-wrap" or "clickwrap", that is or may be generally licensed by "shrink-wrap" or "clickwrap" licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.
- n) "State" shall mean the State of North Carolina, NCDIT as an Agency, or an Agency in its capacity as the Award Authority.
- o) "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other agreed support Services provided by or through Vendor.
- p) "Use", in the context of Computer Software execution and operation in Section 2 and 3 hereinbelow, means storing, loading, installing, executing or displaying Software on a Computer, processor or controller, or making a copy of Software for archival or backup purposes only.

**2) SOFTWARE LICENSE**

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Agency under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the Vendor's standard agreement.
- b) Software provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as

part of the installation process for the Software. The sole purpose of any clickwrap agreement shall be to operate as the mechanism for the installation of the Software. All terms and conditions of any clickwrap agreement provided with any Software solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software.

- c) The State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.
- d) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, and consistent with the security, records retainage or other policy of the Agency for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.
- e) Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.
- f) The State's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.
- g) Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.
- h) The State's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The State's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the State's solicitation documents.
- i) The State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

### **3) USE OF SOFTWARE AND INFORMATION**

- a) The State agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the State under this Agreement shall be and remain the property of the Vendor, or other party, respectively.
- b) All Software and information furnished to the State under this Agreement
  - i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;
  - ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and
  - iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and
- c) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. §132-1, *et seq.*
- d) Transfer of Software or program license:
  - i) Software may be transferred within the United States to any location for the State's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the State will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than ten (10) business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.
  - ii) The rights granted herein are restricted for use solely by the State. The State may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the State under this Agreement

- e) Custom or Modified Software, if solicited by the State, is being developed or modified exclusively for the State, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the State and shall be transferred to the State upon creation.

#### 4) **WARRANTY**

- a) Minimum warranties for Products shall include:
- i) On the delivery date the Products and the associated Computer operating system Software will be in good working order (operating in conformance with Vendor's standard specifications and functions). Unless otherwise specified in the solicitation, the warranty for other suppliers' Software is included in the suppliers' Software package and is provided directly from the supplier.
  - ii) The warranty shall be as provided or specified in the state's solicitation documents and shall begin on the day of successful installation. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Products, commencing the day of successful installation.
  - iii) The state shall notify Vendor if any Product is not in good working order during the warranty period. Vendor shall, at its option, either repair or replace any Product reported as not in good working order during the warranty period without charge to the State. The repair or replacement Products must be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become property of Vendor at the time the Product is either placed in shipment to Vendor, or picked up by Vendor.
  - iv) The service provided during the warranty period is dependent upon the acceptable warranty option selected by the State and indicated in the State's solicitation document. If no warranty option is indicated, Vendor will provide their standard warranty service for the Product, unless otherwise agreed by the parties.
  - v) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.
- b) Software warranties shall include the following:
- i) Vendor warrants the media (comprising diskettes, tapes or other media) to be free of defects in materials or workmanship under normal use for ninety (90) days from the date of acceptance unless otherwise agreed. Vendor shall replace any media reported as not in good working order during the warranty period without charge to the State. If Vendor is unable to replace the Software, Vendor shall refund the full amount of the Software purchase paid by the State.
  - ii) In addition to the warranty exclusions stated in Paragraph 5, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.
  - iii) For any Customized or Modified Software provided pursuant to this Agreement, Vendor warrants that for a period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State specifically identifies the Hardware environment in which the Customized or Modified Software will be installed or operated, or if it is used in connection with Hardware acquired under this Agreement.
- c) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after successful installation, Vendor or its suppliers shall provide telephone assistance to the State during the State's normal business hours.
- d) Vendor warrants to the best of its knowledge that:
- i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
  - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
  - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
  - iv) The Software does not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the State's ability to use the Software for the term of this Agreement.

#### 5) **WARRANTY EXCLUSIONS**

- a) Except as stated in Paragraph 4 (Warranty), Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.

- b) The warranty provided in Paragraph **Error! Reference source not found.** (Warranty) does not cover repair for damages, malfunctions or service failures caused by:
  - i) Actions of non-Vendor personnel;
  - ii) Failure to follow Vendor's installation, operation or maintenance instructions and/or Services provided to the State;
  - iii) Attachment to the Products of non-Vendor products or failure of Products not maintained by Vendor unless such installation or use is approved in writing by the Vendor; or
  - iv) Force Majeure conditions set forth hereinbelow.

#### **6) INTELLECTUAL PROPERTY INDEMNITY**

- a) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Software or Products supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- b) If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
- c) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

#### **7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY**

- a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.
- d) For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
  - i) To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and
  - ii) To cancel the order without incurring cancellation charges.
  - iii) Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

#### **8) SUPPORT AND MAINTENANCE**

- a) Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the Vendor's standard agreement for Support in effect on the date of the order, subject to the order of precedence



and the limitations in the Vendor's Standard Agreement(s) paragraph (above) as set forth in the Solicitation. Unless otherwise indicated herein, Support and Maintenance acquired herein will begin at the end of any applicable warranty period.

- b) To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

#### **9) SOFTWARE RETIREMENT**

- a) Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Software and stop providing Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Software m that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the State for an additional fee.
- b) Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c) Relocation of Software is the State's responsibility and may result in additional support charges and modified service response times. Software moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider.
- d) Vendor is not required to provide support for non-qualified Software, nor Software not supplied under this Agreement. "Non-Qualified Software" is Software not supplied or approved by Vendor, and Software for which the State does not allow Vendor to incorporate modifications. The State is responsible for removing non-qualified Software to allow Vendor to perform Support Services.
- e) Support does not cover any damage or failure cause by:
- i) Media and supplies or use of items not designed or designated for use with Software; or
  - ii) Site conditions that do not conform to Vendor's previously established site specifications; or
  - iii) Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

- 1) **TRANSPORTATION:** Transportation charges for software shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 2) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 3) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 09 NCAC 06B.1207, or other provision of law.
- 4) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency

of any further obligation thereof. The State shall remit payment for Products and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

- 5) **PAYMENT TERMS:** The total License Fee and the Support Service or Maintenance Fee (if applicable and provided the State subscribes or purchases such Services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Increases in pricing for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software, whichever is later. Payment terms for Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card.
- 6) **ACCEPTANCE CRITERIA:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of software or Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of Software or Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.
- 7) **CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate information, Products, software or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. G.S. §132-9 or other applicable law.
- 8) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- 9) **ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 10) **NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 11) **TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 12) **AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 13) **TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State

may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

**23) GOVERNING LAWS, JURISDICTION, AND VENUE**

- a) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- b) Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Agreement. To the extent the Agreement entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

**24) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

**25) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, pandemic or other catastrophic natural event or act of God.

**26) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**27) TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- c) The parties may mutually terminate this Contract by written agreement at any time.
- d) The State may terminate this Contract, in whole or in part, pursuant to Paragraph **Error! Reference source not found.**, (Default) or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following
  - i) **Termination for Cause:** In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph **Error! Reference source not found.** (Limitation of Liability). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) **Termination For Convenience Without Cause:** The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will

pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

**28) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**29) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**30) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**31) ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

- a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

**ATTACHMENT I: NETWORK CONNECTION AGREEMENT**

**Network Connection Agreement  
between  
East Carolina University (University)  
and**

\_\_\_\_\_ **(Insert Company Name)**

**Purpose:** This agreement outlines acceptable use and security understanding for guest and affiliate usage of East Carolina University’s computer network.

**Audience:** This agreement applies to guests, affiliates and other individuals or companies not directly employed by the University or attending as a student, and processing payment card (credit and debit card) transactions.

**Agreement of Understanding**

It is understood and agreed upon by the undersigned that the University is only providing a link to the internet, and that computing network and resources are provided as a guest service to Company. The University is not providing IDS, logging, firewall, or other security services to the Company, and as such will not be considered a Payment Card Industry Data Security Standard (“PCI DSS”) service provider.

The internet provided by the University’s network connection should be considered a hostile environment. Appropriate protections for user data should be instituted by the Company when utilizing the University’s network connection. The University is not liable for any attacks upon the Company’s systems that may originate from within the University’s network.

Only University approved payment card (credit and debit card) processing devices are allowed on the University network. These devices must utilize a certified P2PE solution. Computers are not allowed to process payment cards on the network.

The Company shall be responsible for the security of all cardholder data in its possession and will comply with the most recent version of the Payment Card Industry Data Security Standard (“PCI DSS”).

**Prohibited use:**

- Using computers or networks in a fashion that causes harassment, abuse, or intimidation of another person, gaining or attempting to gain access to accounts or other computer systems without proper authorization.
- Using non-University approved payment card (credit and debit card) processing devices on the network.
- Any act deemed illegal in the state of North Carolina, or by federal statute
- Illegal downloading and distribution of copyrighted material.

The University makes every attempt to preserve the integrity of the network, if a conflict arises between keeping the system operational and maintaining the integrity of the Company’s connection, keeping the East Carolina University network operational takes precedence. The University is not responsible for any loss of data or business.

The Company agrees to indemnify and hold harmless East Carolina University, its employees, and agents from any claim, demand, liability, cause of action, suit judgment or expense (including attorney fees), arising out of or relating to my breach of this agreement.

This Agreement is governed by the laws of the State of North Carolina. Venue for any legal action relating to or arising from this Agreement shall be in federal or state courts located in Pitt County, North Carolina.

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

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

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

*This agreement is valid upon signature. There is no expiration implied. East Carolina University reserves the right to amend this agreement at any time.*