



SERVICES AGREEMENT

This agreement (the “**Agreement**”) is entered on 08/05/2024 (“**Effective Date**”) between Central Carolina Community College (“**Client**”) and Compass Group USA, Inc. by and through its Canteen Division (“**Canteen**,” and collectively with Client, the “**Parties**”), who agree as follows:

I. Definitions

- A. Equipment:** all equipment provided by Canteen (if any).
- B. Products:** all food, beverage, and sundry products supplied by Canteen.
- C. Services:** all services provided by Canteen as included on the attached Exhibit(s).

II. Responsibilities of the Parties

- A.** Canteen shall install, maintain, and service the Equipment in accordance with industry standards, applicable laws, and the attached Exhibit(s).
- B.** Client grants to Canteen the exclusive right to provide the Services and install Service-related Equipment at the Premises.
- C.** Client shall provide Canteen the necessary trash removal, extermination services, and utilities to permit the sanitary operation of the Services in accordance with applicable laws and industry standards.
- D.** In the event that there is a disruption in utilities, Client will notify Canteen when Client becomes aware of the disruption.

III. Equipment

- A.** Client has no title to or interest in Equipment.
- B.** Client will not remove, or tamper with the Equipment unless necessary in connection with the Services.
- C.** Client is responsible for any damage to, or theft of, the Equipment caused by the willful misconduct or negligent acts or omissions of Client, its agents, or employees.
- D.** In the event that a piece of Equipment is not generating an appropriate sales volume the Parties shall mutually agree to one of the following: (i) remove such Equipment; (ii) implement a subsidy arrangement or (iii) implement another solution. If such Equipment is Unattended Vending Equipment, then in addition to (i) and (ii) above, Canteen may convert the Unattended Vending Equipment to Vending Equipment.

IV. Prices

- A.** Canteen will determine the initial prices for the Services based upon distribution and market costs. Canteen may increase prices in the event of any changes in market conditions. Canteen will notify Client prior to implementing price increases.

V. Indemnification and Insurance.

- A.** Canteen will indemnify, defend and hold harmless Client from any and all losses, damages or expenses, including reasonable attorneys’ fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage, any breach or default hereunder, or other injury or damage if caused by any negligent act or omission of Canteen, its employees, or agents. Canteen must receive notice of any claim no later than 10 days after receipt of notice of the claim or lawsuit.
- B.** Canteen shall maintain insurance as follows: commercial general liability (including contractual and products-completed operations liability) in an amount not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate; business automobile coverage in an amount not less than \$1,000,000 each accident; and workers’ compensation (including employers’ liability coverage in an amount not less than \$1,000,000 each accident/each employee/policy limit) in an amount not less than that required by applicable statute.

- C. Client shall maintain commercial general liability insurance with policy limits of not less than \$1,000,000 per occurrence, with excess coverage in an amount not less than \$5,000,000 to cover claims in the aggregate, as well as property insurance against risks covered by standard forms of fire, theft and extended coverage in such amounts as appropriate.

VI. Term, Default and Termination

- A. The term is two years beginning on the Effective Date (the “**Initial Term**”) and thereafter may be renewed for additional one-year terms upon mutual agreement (each a “**Renewal Term**”).
- B. If either Party breaches this Agreement, the Party claiming such breach will give written notice citing specifics. If, within 60 days of such notice, the breach is not corrected, the non-breaching Party may terminate this Agreement on 30 days written notice.
- C. Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term upon 60 days prior written notice to the other.

VII. Assignment/Subcontracting

- A. Neither Party may assign or subcontract this Agreement to an unaffiliated business entity without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

VIII. Equal Employment Opportunity Certification.

- A. **The Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that the Parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

IX. Notices

- A. The Parties shall make all notices required under this Agreement by registered or certified mail (return receipt requested) or overnight air courier to the addresses below. All such notice will be deemed to have been given upon receipt.

To:	Canteen	Client
Entity Name:	Compass Group USA, Inc. by and through its Canteen Division	Central Carolina Community College
Attn:	Christopher Taylor, Division President	Dr. Marcie Dishman, Associate Vice President of Marketing
Address:	3112 Horseshoe Lane, Suite 100 Charlotte, NC 28208	1105 Kelly Drive, Sanford, NC 27330
w/ copy to:	Managing Legal Counsel - Canteen	Jonathan White, General Counsel
Address:	2400 Yorkmont Rd. Charlotte, NC 28217	1105 Kelly Drive, Sanford, NC 27330

X. Technology

- A. **Information Technology Systems Security.** In connection with the services being provided hereunder, Canteen may need to operate certain information technology systems not owned by Client (“**Canteen Systems**”), which the parties expressly agree will not connect to or interface with Client’s internet access, networks, software, or information technology systems (“**Client Systems**”). Canteen will be solely responsible for all Canteen Systems, and Client will be solely responsible for Client Systems,

including taking the necessary security and privacy protections that are reasonable under the circumstances. If Canteen serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Canteen will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data (“Data Protection Rules”). If the parties subsequently agree to connect or interface Canteen Systems with Client Systems, then the parties expressly agree hereby that (1) they will mutually agree on an amendment to this section appropriately allocating responsibility for compliance with data protection laws, regulations, and standards; (2) such connection or interface will not be implemented until the parties mutually agree on such amendment; and (3) in any event, Canteen will not owe a duty of indemnity arising under this section unless the parties have properly agreed on appropriate amendments to this section and Client has performed its obligations related thereto.

XI. Dispute Resolution

- A. This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of North Carolina, without regard to its provisions concerning choice of laws, choice of forum or any principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- B. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT, OR THE BREACH THEREOF, SHALL BE SETTLED BY LITIGATION IN THE COURTS OF CHARLOTTE, NORTH CAROLINA.
- C. NEITHER Canteen NOR CLIENT SHALL BE LIABLE AT LAW OR EQUITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY DAMAGES RELATED TO LOST PROFIT, ECONOMIC LOSS, LOSS OF GOODWILL, DAMAGE TO REPUTATION, LOST SALES, LOST MARGIN, ECONOMIC HARDSHIP, OR DAMAGE TO TRADE RELATIONS OR RELATIONSHIPS. THE PARTIES AGREE THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS.

XII. Incorporation of Terms

- A. The terms and conditions of the Client’s RFP for Vending Services, the North Carolina General Terms and Conditions and Canteen’s proposal for services dated July 3, 2024 are hereby incorporated by reference. In the event of conflicting terms the order of precedence shall be (i) this Agreement, (ii) the North Carolina General Terms and Conditions, and (iii) the terms of the RFP.

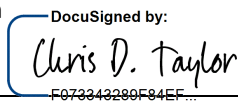
XIII. Non-Disclosure

- A. Client shall not, either during the term of this Agreement or any time thereafter, disclose to any person, the terms or content of this Agreement or Canteen’s operational procedures without the prior written consent of Canteen, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer:

ACCEPTED AND AGREED TO:

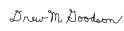
**Compass Group USA, Inc. by and through its
Canteen Division**

By:  DocuSigned by:
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Print Name: Christopher Taylor

Title: Division President

Central Carolina Community College

By: 

Print Name: Drew M. Goodson

Title: Chief Financial Officer

**EXHIBIT A
VENDING SERVICES**

1. Premises. Canteen will provide the Vending Services at the following Premises

Address	City	Zip Code
1105 Kelly Drive	Sanford	27330
764 West Street	Pittsboro	27312
75 Ballentrae Court	Pittsboro	27312
400 Progress Blvd	Siler City	27344
1075 E Cornelius Boulevard	Lillington	27546
660 E Johnson Street	Dunn	27334
126 Alexander Drive	Lillington	27546
51 Red Mulberry Way	Lillington	27546
145 Olive Farm Drive	Sanford	27332
220 Olive Farm Drive	Sanford	27332
5910 Enterprise Park Drive	Sanford	27330
1801 Nash Street	Sanford	27330
3000 Airport Road	Sanford	27332
5825 Clyde Rhyne Drive	Sanford	27330
2101 Nash Street	Sanford	27330

2. Services.

- A. Canteen will provide Products via vending machines (“Vending Services”).
- B. Except as otherwise set forth herein, Canteen shall provide its Vending Services on a profit and loss basis, whereby Canteen shall retain all income derived and bear all costs of operation (unless such costs of operation are otherwise a Client obligation pursuant to this Agreement) resulting from the provision of the Vending Services.
- C. The vending prices reflect a Ten Cent (\$0.10) discount for paying cash.

3. Vending Services Fees

A. Commissions.

- i. Canteen will pay Client commissions in the percentages listed in the chart below, computed monthly (based on Canteen’s fiscal calendar) based upon Net Sales (as defined below) from Vending Equipment on Client Premises. Net Sales means the reported units sold multiplied by the initial unit selling prices less applicable taxes, redemption values (if applicable), container deposits (if applicable) cold food and fresh pastries. Further, costs of providing cashless payment options (e.g. credit and debit card readers) including, but not limited to wireless communications charges, bank or credit card fees, etc. shall be deducted from Client commissions earned. Within 90 days of month end, Canteen will send Client a commission report and payments. If applicable, the agreed upon commission percentage, and the resulting payments made by Canteen to Client, will be inclusive of all applicable Florida taxes.
- ii. Canteen will not pay commissions on any Vending Equipment generating Net Sales of less than \$ 75 per week.
- iii. Canteen may adjust commissions in the event of any changes in market conditions.
- iv. Commission Percentage Rates as of the Effective Date:

Product Categories	Commission Percentage Rate
Snacks	18.0%



REQUEST FOR PROPOSALS FOR FOOD VENDING OPERATIONS

This request solicits proposals for the operation of food vending services for Central Carolina Community College (the “College”) and any contract resulting from this proposal must include the terms and conditions listed herein. The object is to secure a contract that will provide to the students, employees, and guests of the College food vending services where the quality, quantity, diversity of offerings, and the economy of price to the consumer are the primary considerations. Performance of services must be satisfactory and responsive to the evolving needs of the College.

TERM AND CONTRACT

The services as described herein are to commence no later than August 5, 2024. The term of any contract awarded shall end no later than July 9, 2026. The College requires that the contractor have the vending machines installed and stocked by no later than August 14, 2024. Upon mutual agreement between the College and the contractor, the commencement date may begin earlier than August 5, 2024, contingent upon complete removal of the current contractor’s vending machines.

Any changes in the final negotiated contract must be in writing and mutually agreed upon by the Contractor and the College. Both parties, the Contractor and the College, will have the right to terminate the contract for convenience by giving the other party sixty (60) days written notice.

USING AGENCY

The services solicited herein will be performed for:

Central Carolina Community College
 1105 Kelly Drive
 Sanford, North Carolina 27330

ISSUING OFFICE AND INQUIRIES

Proposals should be emailed to the following point of contact:

Brandi Hernandez
 Director of Purchasing
 Central Carolina Community College

 bhernandez@cccc.edu
 Telephone: (919) 718-7419

BID CALENDAR & CLOSING DATE

Questions regarding this solicitation must be received at the email address above by 5:00 p.m. local time on June 17, 2024. Original proposals subject to the terms and conditions as specified herein must be received at the email address above by 5:00 p.m. local time on June 24, 2024. The College intends for a decision to be made by July 19, 2024 or sooner; if the decision needs to be delayed for any reason, vendors will be notified of the delay and the expected decision date by July 19, 2024.

Date	Process Step	Responsible Party
June 11, 2024	Solicitation Request Sent to Vendors	College
June 17, 2024, 5:00 PM ET	Questions Due	Vendors
June 19, 2024, 5:00 PM ET	Answers Due	College
June 24, 2024, 5:00 PM ET	Solicitation Responses Due	Vendors
July 19, 2024	Contract Awarded or Delay Notices Sent	College

SITE VISIT

Site visits will not be conducted. A listing of the current food vending machine types and their locations across College campuses is included at the end of this request. This list may expand or contract as the needs of the college change, including the acquisition or disposition of buildings in the future. Any questions or clarifications must be submitted in writing by email.

PROPOSAL ACCEPTANCE

The College reserves the right to accept or reject any and all proposals, to waive any informality in proposals, and unless otherwise specified by the offeror, to accept or reject any item in any proposal. The College further reserves the right to enter into negotiations with the contractor of the preferred proposal as the College deems necessary and proper.

COST FOR PROPOSAL PREPARATION

The College will not reimburse offerors for costs incurred in the preparation and submission of proposal.

OFFEROR'S REPRESENTATIVE FOR BUSINESS PURPOSES

The name, mailing address, and telephone number of the offeror's authorized agent with authority to bind the firm and answer official questions concerning the offeror's proposal must be clearly stated., NC Sales and Use Tax Registration number should be included along with Federal I.D. number or Social Security number.

BACKGROUND

Central Carolina Community College is a public, state-supported, comprehensive community college serving three counties: Lee, Chatham and Harnett.

The College offers a comprehensive range of programs including College Transfer, Technical, Vocational, Continuing Education, Occupational, Literacy, Adult High School, Early College, and Community Service Programs. The Fall 2023 enrollment was 5,774 students total, with roughly 67% of our students being part-time and 44% being classified as either on-campus or hybrid students.

As of May 2024, there are 422 full-time and 475 part-time employees.

SCOPE

Vending operations are expected to be available at all times that the college facilities are in use. Students attend classes approximately 78 days in the Fall, 78 days in Spring, and 32 days in Summer. Vending machines must feature both cash and wireless credit card payment options, with all credit card readers meeting current PCI DSS minimum security standards; the College prefers for credit card readers to also feature contactless functionality. All vending machines are to be kept regularly stocked with unexpired merchandise that ensures a product mix that provides a variety of selections that meet consumer demand. The College prefers for the student center areas on Lee Main Campus, Harnett Main Campus, and Chatham Main campus, as well as the Keller Health Sciences Building, to have at least one vending machine featuring fresh food options, such as prepackaged sandwiches and salads. Contractor must be able to provide an average uptime of at least 95% across all machines.

The Contractor has the responsibility of providing equipment in the same areas as now exist as well as additional vending equipment as deemed necessary by the College. Also, the Contractor must provide vending machines to any new buildings constructed on campus. The College may, at its discretion, increase or decrease the number of vending machines present on campus at any time. In the event that a vending machine is underperforming, defined as producing volume of 50% or less of the median volume across all machines over a rolling six-month period, the Contractor may remove the vending machine from operation.

Locations may include:

- Chatham County
 - Main Campus & Small Business Center, 764 West Street, Pittsboro
 - Chatham Health Sciences Center, 75 Ballentrae Court, Pittsboro
 - Siler City Center, 400 Progress Boulevard, Siler City
- Harnett County
 - Main Campus, 1075 E Cornelius Boulevard, Lillington
 - Dunn Center, 660 E Johnson Street, Dunn
 - Harnett Adult Education Center, 126 Alexander Drive, Lillington
 - Harnett Health Sciences Center, 51 Red Mulberry Way, Lillington
 - West Harnett Center, 145 and 220 Olive Farm Drive, Sanford
- Lee County
 - Main Campus & Lee Early College, 1105 Kelly Drive, Sanford
 - Center for Workforce Innovation & Small Business Center, 5910 Enterprise Park Drive, Sanford
 - Dennis A. Wicker Civic & Conference Center, 1801 Nash Street, Sanford
 - Emergency Services Training Center, 3000 Airport Road, Sanford
 - Howard-James Industry Training Center, 5825 Clyde Rhyne Drive, Sanford
 - E. Eugene Moore Manufacturing and Biotech Solutions Center, 2101 Nash Street, Sanford

The awardee will be granted exclusive rights to provide vending services for food on campus locations. These exclusivity rights will not bar noncommercial activities, including but not limited to noncommercial events featuring complimentary food, fundraising activities, and acts of appreciation or support for students, employees, or donors provided by students, faculty, staff, board members, the College, the Civic Center, the College's Foundation, or State, County, or local government and government entities. Exclusivity rights will not bar the sale of food by commercial or noncommercial entities contracted by the school to provide food services, including but not limited to on-site restaurants or food truck vendors.

PERSONNEL

All vending personnel will be employees of the Contractor. Compliance with all applicable government regulations relating to employees and payment of the employees will be the responsibility of the Contractor. Employees of the Contractor must be suitable by reason of training, appearance, and habit for working on College premises. Any employee will be subject to being removed and banned from campus for conduct considered by the College to be undesirable.

Contractor personnel must wear appropriate clothing (clean and neat). Employees of the Contractor must meet health requirements required by law or appropriate governing agency. Contractor shall be required to conduct background checks for any employees who will be present on College premises and shall represent and warrant that no employee's presence on College premises shall violate North Carolina law, including but not limited to Chapter 14, Article 27A of the North Carolina General Statutes.

INSURANCE

Certificates of insurance certifying that the contractor carries worker's compensation, comprehensive public liability, and property damage insurance in such amounts as necessary to protect the College must be provided before opening day of business. The Contractor must further agree to indemnify and save harmless the College from claims, suits, actions, damages, and costs of every name and description arising out of or resulting from performance of the contract.

USE OF INTELLECTUAL PROPERTY

Neither party will transfer any ownership interest in, right to, or license to use the names, logos, trademarks, or any other intellectual property as a result of the final agreement not included herein. Subject to Contractor's prior approval, which shall not be unreasonably withheld or delayed, School shall have the right to use Contractor's and products' names, logos, and trademarks during the Term of the Agreement solely for promoting or marketing Contractor's product on campus.

Contractor shall not use the College's name, logo, or trademark in any way. Contractor may request to use the College as a reference for future contracts with other parties.

INDEMNIFICATION

Contractor will indemnify and hold the College harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses, and penalties (including reasonable attorneys' fees) arising out of (1) its breach of any term or condition of this agreement and/or (2) claims for personal injury resulting from the use or consumption of its products or equipment.

Only in the manner and to the extent permitted under North Carolina law, including the North Carolina Tort Claims Act, GS 143-291, et seq., and without waiver of its sovereign immunity, the College will indemnify and hold the Contractor harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses, and penalties arising out of (1) its breach of any representation, warranty, term or condition of this agreement and/or (2) any claims for property damage, personal injury, or death by any person injured through the negligence or misconduct of the School.

RELATIONSHIP OF THE PARTIES

The College and the Contractor are independent contractors with respect to each other and nothing contained in the final agreement will be deemed or construed as creating a joint venture or partnership between the parties.

ASSIGNABILITY

The final agreement shall not be assignable by either party without written consent from the other party. Consent shall not be unreasonably withheld so long as the duties, obligations, rights, and responsibilities are assigned in their entirety.

LAW, VENUE, & JURISDICTION

The final agreement shall be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles. Any dispute shall be attempted to be resolved first with good-faith negotiations. In the event good-faith negotiations fail, any dispute may be heard only by a court in the State North Carolina.

FORCE MAJEURE

Any delay in the performance of any of the duties or obligations of either the College or the Contractor (except the payment of money) caused by an event outside the affected party's reasonable control which it could not have avoided by the exercise of reasonable diligence shall not be considered a breach of the final agreement. In the event of such a delay, the time required for performance shall be extended for a period equal to the period of said delay. Examples of such events include acts of God, acts of a public enemy, insurrections, riots, injunctions, embargoes, fires, explosions, floods, domestic acts of terrorism and pandemics. When such an event creates a delay, the affected party shall give prompt notice to the other party and shall take whatever reasonable steps are appropriate to relieve the delay as quickly as possible. Force Majeure events will not relieve Contractor from providing any additional incentives in their entirety and will not serve as a basis for reducing said incentives on a pro rata basis.

FACILITIES AND EQUIPMENT

All vending equipment will be provided by and remain the property of the Contractor or Contractor's agent. The Contractor must keep the machines and the immediate area clean and the machines in proper operating condition. Repair service must be provided within a reasonable time when problems are reported. Machines are expected to meet current energy efficiency standards.

COST ASSUMPTIONS

The Contractor will assume the following costs of operations:

- 1) Cost of all items for sale in the vending machines
- 2) Repair and maintenance costs of vending machines
- 3) All costs of labor -- direct and fringes

- 4) Insurance as described above
- 5) Replacement/repair of fixed and movable equipment owned by the College that is damaged through the negligence of the Contractor or his employees
- 6) Federal, State, County, City license, permits and fees as required
- 7) Placement of trash, garbage, and refuse in container provided by the College

The College will assume the following cost of operation:

- 1) Refuse pick up
- 2) Water and electricity
- 3) Extermination and pest control services

PRICING

Prices should not exceed the most prevalent prices in the local area and will be mutually agreed upon by the College and the Contractor. When increases are requested, the Contractor should submit a complete listing of both old and new prices along with appropriate justification including a survey of prevalent prices in the area. Reasonable requests will be approved for implementation at the beginning of the next term or sooner if justifiable.

PROPOSED RENT/ COMMISSION

Please include the commission rate the college will collect from your products. Currently the college utilizes the following machines:

- Included in this proposal
 - 28 variety snack or food machines (see included spreadsheet)
- Machines that may be included at Vendor's option
 - 1 money changer
- Other machines not included in this proposal
 - 42 beverage machines

ADDITIONAL INCENTIVES

Please include any other additional incentives in your proposals. Additional incentives may include, but are not limited to, support funds, athletic sponsorships, donated product, and scholarship funds.

PRODUCT OFFERINGS

Please include the products that will be offered through the vending services. Unless stated otherwise herein, product offerings do not need to be specified on a machine-by-machine and location-by-location basis, but an overview of the products to be offered should be included in the proposal. This should include:

- The brand of products to be offered
- A rough description or approximation of the brand segments offered
- Information may be a general statement of what is expected to be offered, or may include a breakdown by percentages expected to be offered

BASIS OF AWARD

Final award will be made after evaluation of all proposals received as specified, provided all terms, conditions and specifications herein have been met. The right is reserved to reject any or all proposals. Our primary objective is the overall excellence of food service and the belief that it should contribute significantly to the students' total educational experience. Our specifications are intended to preserve the integrity of our food service operation but not to restrict creativity. Indeed, we encourage you to be creative and propose practical, innovative programs for our students. Proposals will be evaluated on the basis of quality and service and will lead to a written agreement between the selected contractor and Central County Community College. The College reserves the right to negotiate the terms and conditions of the winning bid and to abandon the winning bid if acceptable terms cannot be agreed upon.

The College will entertain up to three (3) price-commission-incentives proposals from each respondent. The College will use the below mentioned criteria to determine which proposal to accept. Respondents are not obligated to submit more than one (1) proposal. Multiple proposals should be combined in a single response, with each proposal clearly differentiated from any other proposal in the response. The College reserves the right to request clarification from any respondent whose response is ambiguous or unclear so long as the proposals in question are not materially or substantially altered in any way as a result of the clarification.

EVALUATION CRITERIA

The following factors will be equally weighted and used to select a contractor:

- 1) Prior experience
 - Contractor must provide at least three references, with preference given to Contractors whose references are community colleges, four-year colleges, universities, or substantially similar entities.
- 2) Qualification and experience of contractor
 - Contractors with more years in business will be given preference.
- 3) Quality and variety of product offerings
 - Contractor must provide a substantial variety of quality food offerings, with better variety and quality being given preference.
- 4) Cost to students
 - Contractors offering lower prices on similar quality products will be given preference.
- 5) Return to College
 - Contractors offering higher returns or bigger incentives to the College will be given preference.


In the event that two or more bids are substantially similar, the College shall make a decision based on the best interests of the College and its students, with such determination being at the sole discretion of the College.

MISCELLANEOUS PROVISIONS

The terms of the final contract shall be governed by North Carolina law, with the courts of North Carolina possessing sole and exclusive jurisdiction over any disputes arising under or in connection with the contract and its performance. The College's liability shall be limited to the extent and the manner permitted under North Carolina law, including but not limited to the North Carolina Tort Claims Act, NCGS § 143-291 et seq. Final award will be contingent upon mutual agreement of contractual terms through good-faith negotiations. Failure to arrive at mutually acceptable terms shall be grounds for rescinding the award, and the College shall be free to select another vendor to provide services as defined in this RFP. Failure to satisfactorily perform services as defined in the final agreement shall be grounds for termination. The North Carolina General Terms and Conditions as attached shall be incorporated into the final agreement and shall be given precedence over any additional conflicting terms.

VENDING MACHINE SPREADSHEET


Account	Location	Address	Zip Code
CCCC - Chatham Co.	Siler City Center	400 Progress Blvd, Siler City, NC	27344
CCCC - Chatham Co.	Chatham Health Sciences Center	75 Ballentrae Ct, Pittsboro, NC	27312
CCCC - Chatham Co.	Lucier Hall	764 West St, Pittsboro, NC	27312
CCCC - Chatham Co.	Bldg. 41	764 West Street, Pittsboro, NC	27312
CCCC - Chatham Co.	Main	764 West Street, Pittsboro, NC	27312
CCCC - Chatham Co.	Main Upstairs	764 West Street, Pittsboro, NC	27312
CCCC - Harnett Co.	Bldg. 32	1075 E Cornelius Harnett Blvd, Lillington, NC	27546
CCCC - Harnett Co.	Bldg. 39 - Cosmetology	1075 E Cornelius Harnett Blvd, Lillington, NC	27546
CCCC - Harnett Co.	West Harnett Center	145 Olive Farm Road, Sanford, NC	27332
CCCC - Harnett Co.	West Harnett Restoration	220 Olive Farm Rd, Sanford, NC	27332
CCCC - Harnett Co.	Harnett Health Sciences Center	51 Red Mulberry Way, Lillington, NC	27546
CCCC - Harnett Co.	Dunn Center	660 E Johnson Street, Dunn, NC	28335
CCCC - Lee Co.	Budd Hall	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Hockaday Hall - Student Center	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Joyner Hall - Auto	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Joyner Hall - Welding	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Keller Science	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Lett Hall	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Marchant Hall	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Powell Hall	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Vet Med	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	Wilkinson Hall	1105 Kelly Drive, Sanford, NC	27330
CCCC - Lee Co.	DAWCC	1801 Nash Street, Sanford, NC	27330
CCCC - Lee Co.	E. Eugene Moore Mfg. & Biotech Solution Center	2101 Nash Street, Sanford, NC	27330
CCCC - Lee Co.	ESTC	3000 Airport Road, Sanford, NC	27332
CCCC - Lee Co.	ESTC #2	3000 Airport Road, Sanford, NC	27332
CCCC - Lee Co.	ESTC #3	3000 Airport Road, Sanford, NC	27332
CCCC - Lee Co.	CWI	5910 Enterprise Park Drive, Sanford, NC	27330
CCCC - Lee Co.	CWI #2	5910 Enterprise Park Drive, Sanford, NC	27330
CCCC - Harnett Co. (Money Changer)	Bldg. 32	1075 E Cornelius Harnett Blvd, Lillington, NC	27546

 CENTRAL CAROLINA COMMUNITY COLLEGE	REQUEST FOR PROPOSALS FOR FOOD VENDING OPERATIONS
	Addendum 1
	Date: June 12, 2024

Change to BID CALENDAR & CLOSING DATE

The Bid Calendar is being updated to extend the solicitation response deadline to allow vendors ample time to create their proposal after their questions are answered. The solicitation responses must be received by 5:00 p.m. local time on June 24, 2024.

Date	Process Step	Responsible Party
June 11, 2024	Solicitation Request Sent to Vendors	College
June 17, 2024, 5:00 PM ET	Questions Due	Vendors
June 19, 2024, 5:00 PM ET	Answers Due	College
July 3, 2024, 5:00 PM ET	Solicitation Responses Due	Vendors
July 19, 2024	Contract Awarded or Delay Notices Sent	College

	REQUEST FOR PROPOSALS FOR FOOD VENDING OPERATIONS
	Addendum 2
	Date: June 19, 2024

Vendor Questions & Answers

Question	Answer
On average, how many vending machines is your organization in request of specifically relating to this solicitation?	The College needs 29 variety snack or food machines as indicated in the Vending Machine Spreadsheet on page 7 of the RFP.
Is your establishment in need of beverage machines also?	The College is not in need of beverage machines at this time.
The RFP mentioned the desire of having a sandwich machine provided near the science areas, is this a mandatory request relating to the proposal that we as the contractor will submit to be considered?	A sandwich machine is not mandatory but a preferred method to offer students hearty snacks for long days on campus.
Is your corporation considering accepting multiple bids?	At this time, the College is seeking a single servicer for all locations. While you may submit a bid for servicing fewer locations, preference will be given to services who can service all locations.
What is the projected student population % increase year to year moving forward in 2024 and beyond?	The College projects a 1-2% increase in student population per year.
In a perfect world what would your vending program look like?	The College's ideal is for the vending machines to stay stocked with in-date products at a competitive and low-cost rate that appeals to community college students.
Currently what feedback do you get from your students, faculty and staff regarding your vending program?	Feedback usually consists of options they prefer to see in the machines. Also, they report when there are issues with refunds, machine problems, etc. Historically, negative feedback is typically the result of broken machines, unstocked machines, broken credit card readers, or machines not vending correctly.
Who is your current beverage vending provider? When does that contract expire?	Our current beverage vending provider is Durham Coca Cola Bottling Co and their contract expires July 9, 2026.
In the absence of a site visit are you able to provide picture examples of current equipment covering both the snack machines and food machines?	Yes, we can offer pictures of examples of the vending equipment.
As part of providing the fresh food machines listed will there be any plan in place for the college to pay for food spoilage?	The College is seeking a solution that would not involve the College paying for food spoilage. The College is willing to work with the servicer to minimize food spoilage, including but not limited to plans that implement a seasonal schedule for the fresh food options (e.g., having two vending machines in a commons area, one with fresh food and the other with shelf stable food, and the fresh food machine only being stocked during the Fall and Spring semesters). The College is also willing to entertain proposals where a certain level of food spoilage triggers good faith discussions on replacing fresh food options with shelf stable food options.

Question	Answer
<p>In reference to page six of the evaluation criteria – Of the 5 sections listed how is each section weighted from % standpoint as it pertains to the decision?</p>	<p>Each of the 5 evaluation criteria are equally weighted.</p>
<p>Who comprises the team that makes this decision? a. What are each of those team member key goals in this process?</p>	<p>College staff will compile a summary of the servicer responses to be presented to the Board of Trustees for review. Board members will be provided the entire proposals of any servicers if the members so request. At that point, it will ultimately be up to the Board to decide which servicer to go with. The College staff may provide advice and guidance to the Board members based on staff evaluations (i.e., the least expensive option is Servicer X, while the greatest variety of food options is Servicer Y, and the largest return to the College is projected to be Servicer Z). While College staff cannot speak for the Board members, the primary concerns in past evaluations have included affordability to the students, variety of food options, and return to the College.</p>
<p>What is the current pricing structure for snack items provided in the machine (i.e. chips, crackers, candy, pastry)? Sizes of the packaging of these same item categories?</p>	<p>The current contract states that prices are at or below current market prices at convenience stores within a 10-mile radius of campus.</p>
<p>What were the commission dollars provided in FY23 and FY24 from the snack vending portion?</p>	<p>The College received \$6,925 in commission during FY23.</p>
<p>What was the commission % in 2023 and 2024 from the snack vending portion?</p>	<p>The College received 10% commission on all sales associated with food vending operations in FY23 and FY24.</p>
<p>In the previous year’s FY23 and FY24 what were the commission dollars used for from the snack vending sales?</p>	<p>Commission dollars were used for Student Cultural Enrichment, Flowers, Equipment Insurance, Graduation Reception, and Student Activities.</p>
<p>Can you please provide the total snack vending revenue for FY23 and FY24? Can you please provide a revenue by machine breakdown for the snacks and fresh food portion as well?</p>	<p>The total snack vending revenue for FY23 was \$69,250. The College does not currently have information for FY24. If the information becomes available with a week or more time left before final proposals are due, the College will make reasonable efforts to post an additional addendum with that information.</p>
<p>How has your current snack and beverage vending provider supported the partnership opportunities with Central Carolina CC? What specific partnerships did they support and what monetary value is attributed to that support?</p>	<p>The primary support provided by the current servicer has been in the form of commissions paid on sales. No other support has been provided. Our drink vending arrangements does provide other support, including but not limited to, free product for certain College events and an annual sponsorship donation.</p>
<p>Post the initial two-year term of the agreement is it the intent of the college to include optional renewal years? If so, how many?</p>	<p>No. The intent is to synchronize this contract with the drink vending contract. This will enhance administrative efficiency in the handling of future solicitations and opens the door for a combined vending solicitation in the future (though the College may still decide to split vending services if it is in the best interest of the College to do so).</p>



NORTH CAROLINA GENERAL TERMS & CONDITIONS

1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See*, G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and

specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license

to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERMS:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.

- 4. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.
6. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

7. **SITUS AND GOVERNING LAWS:**

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. **NON-DISCRIMINATION COMPLIANCE:**

Wholly State Funded Contracts.

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended

by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

Contracts Partially or Wholly Federally Funded.

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- c) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- e) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.
- f) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- h) The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- i) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- j) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may

direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

- k) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- l) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- m) The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. **CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

- 1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and

2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) Should any deliverables supplied 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 deliverables, or replace or modify the same to become non-infringing. 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 cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.
- c) 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 deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 1. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 2. 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.
- d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

12. ADVERTISING: Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

13. ACCESS TO PERSONS AND RECORDS:

- (a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.
- (b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:
 1. The State Auditor.
 2. The internal auditors of the affected department, agency or institution.
 3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.

(c) The Joint Legislative Commission on Governmental Operations has the authority to:

1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
4. Receive reports as required by law or as requested by the Commission.
5. Access and review
 - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

(d) The Joint Legislative Commission on Governmental Operations has the power to:

1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.

(e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.

(f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.

(g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.

(h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

15. INSURANCE: This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

- 1. Potential for damage to State property or property of a third party,
- 2. Potential for bodily injury to State employees or third parties,
- 3. Whether Vendor will transport State property, clients, or employees,
- 4. Use of a vehicle to accomplish the work or to travel to or from State locations,
- 5. Anticipated physical contacts of the Vendor with the State,
- 6. Anticipated number and activity of Vendor personnel within the State, and
- 7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

- a) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
 - 1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 - 2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the

Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.

- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**

- i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

16. GENERAL INDEMNITY:

- a) The Vendor shall indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense shall defend any action brought against the State, under this section. 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.
- c) The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. *See, G.S. 22B-3, -10.*

17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)

GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

- a) 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.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. 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, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services 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 email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES

- d) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT SERVICE). G.S. 66-58.12; See, *NC E-Procurement Terms of Use*.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. 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.
- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee 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 invoice for the transaction fee, or it shall be considered a material breach of Contract.

Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. 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.

- 18. SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.

19. **CONFIDENTIALITY:** Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 *et seq.* Notice is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

21. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 14359.4.

22. **ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
23. **ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
24. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
25. **NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

26. 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, other catastrophic epidemic or pandemic, natural event or Act of God.

27. SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

28. FEDERAL FUNDS PROVISIONS:

Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract. Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

Any links to websites not maintained by the State are provided as a courtesy. The State does not warrant or guarantee the accuracy of the hyperlink or the information contained therein.

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

- 1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).

3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. *SubContracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

e) **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

Clean Air Act

1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

f) **Debarment and Suspension.**

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

g) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** (as Amended).

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonFederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

h) **Procurement of Recovered Materials.**

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
 - Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - Meeting Contract performance requirements; or
 - At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "**ACCESS TO PERSONS AND RECORDS**" included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

- j) **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "**AMENDMENTS**," except as approval and signature by any federal official may also be required.
- k) **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
- l) **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "**ADVERTISING**," the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.
- q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

Central Carolina Community College_AGR__v4_8.7.24 final

Final Audit Report

2024-08-09

Created:	2024-08-09
By:	Jonathan White (jwhit6071@cccc.edu)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeazEwLzeqBLESnOJZhQU3_ItDJkHuc8q

"Central Carolina Community College_AGR__v4_8.7.24 final" History

-  Document created by Jonathan White (jwhit6071@cccc.edu)
2024-08-09 - 1:43:37 PM GMT
-  Document emailed to Drew Goodson (dgood156@cccc.edu) for signature
2024-08-09 - 1:43:44 PM GMT
-  Email viewed by Drew Goodson (dgood156@cccc.edu)
2024-08-09 - 2:16:26 PM GMT
-  Document e-signed by Drew Goodson (dgood156@cccc.edu)
Signature Date: 2024-08-09 - 2:23:34 PM GMT - Time Source: server
-  Agreement completed.
2024-08-09 - 2:23:34 PM GMT