STATE OF NORTH CAROLINA

Western Carolina University

Request for Proposal #: 73-RFP-00775

WCU Dining Services

Date of Issue: September 16, 2026

Direct all inquiries concerning this RFP to:

Stuart Hurst

Project Lead, Campus Dining, Inc

Email: shurst@campusdining.net

Phone: 440-708-8594

STATE OF NORTH CAROLINA

Request for Proposal # 73-RFP-00775

Electronic submittals ONLY will be accepted for this solicitation.

STATE OF NORTH CAROLINA
Western Carolina University

Refer *ALL* Inquiries regarding this RFP to: *Stuart Hurst , Lead Project Manager Campus Dining, Inc* *shurst@campusdining.net*	**Request for Proposal #: 73-RFP-00775** **Proposals are due no later than 2:00 pm ET on November 9, 2026**
Using Agency: WCU	**Commodity No. and Description:** **78000000 / Dining Services**

EXECUTION

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

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

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

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

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

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

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

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

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

COMPLETE/FORMAL NAME OF VENDOR:			
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #12):			
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:	
VENDOR'S AUTHORIZED SIGNATURE*:	**DATE:**	EMAIL:	

VALIDITY PERIOD

Offer shall be valid for at least 90 days from date of bid opening, unless otherwise stated here: _____ days, or if extended by mutual agreement of the parties. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

ACCEPTANCE OF PROPOSAL

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

FOR STATE USE ONLY: Offer accepted and Contract awarded this_____ day of _____, 20____, as indicated on

The attached certification, by _____.

(Authorized Representative of Western Carolina University)

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1.0 PURPOSE AND BACKGROUND

The purpose of this request for proposal is to solicit responses from vendors who can provide Dining Services for Western Carolina University("University" or "WCU"). The current vendor is Aramark, Inc. and the contract ends June 30, 2027, so the University will be awarding a new contract with the potential of a ten (10) year agreement.

WCU's main campus sits in Cullowhee, North Carolina, near the Great Smoky and Blue Ridge mountains, fifty-two miles west of Asheville. The location in the rural mountains amidst incredible biodiversity and unique communities creates an opportunity for academic discovery service. The campus covers approximately 600 acres.

One of 17 institutions in the University of North Carolina System, WCU offers a powerful academic experience to stimulate creative inquiry and critical thinking and a community rich in diversity, inclusion, and global perspectives. Just under 19,000 students attend WCU.

The intent of this solicitation is to award an Agency Contract. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

1.1 CONTRACT TERM

The Contract shall have an initial term of five (5) years, beginning on the date of final Contract execution (the "Effective Date").

At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to two (2) additional five-year renewals. The State will give the Vendor written notice of its intent to exercise each option no later than thirty (30) days before the end of the Contract's then-current term. In addition to any optional renewal terms, and with the Vendor's concurrence, the State reserves the right to extend the Contract after the last active term.

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

2.0 GENERAL INFORMATION

2.1 REQUEST FOR PROPOSAL DOCUMENT

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

2.2 E-PROCUREMENT FEE

ATTENTION: The E-Procurement fee **does not apply to this solicitation**.

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

2.3 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

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

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component of this RFP, those must be submitted as questions in accordance with the instructions in the PROPOSAL QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The State may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question-and-answer period. Other than through this Q and A process or negotiation under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal or otherwise. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject

to further negotiation. Vendor's proposal shall constitute a firm offer that shall be held open for the period required herein ("Validity Period" above).

By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive. The State may exercise its discretion to consider Vendor proposed modifications.

2.4 RFP SCHEDULE

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

Event	Responsibility	Date and Time
Issue RFP	State	September 16, 2026
Hold Pre-Proposal Meeting	State	September 23, 2026
Site Visit	Vendor	September 30, 2026
Submit Written Questions	Vendor	October 6, 2026
Provide Response to Questions	State	October 11, 2026
Submit Proposals	Vendor	November 9, 2026
Finalist Presentations	State/ Vendor	January, 2027
Contract Award	State	March, 2026
Contract Effective Date	State	July 1, 2026

2.5 MANDATORY SITE VISIT

Mandatory Site Visit

Date: September 30, 2026
Time: 10:00 am Eastern Time
RSVP: Vendors must RSVP with Stuart Hurst at shurst@campusdining.net by **September 28, 2026**.
# of attendees limited to four (4) people

Instructions: Vendor representatives must visit the site and apprise themselves of the conditions and requirements which will affect the performance of the work called for by this Request for Proposal. A mandatory site visit is scheduled for 10:00 AM Eastern Time at the Western Carolina University Courtyard Dining Hall. Please note that visitor parking is located within walking distance at the Camp Labs parking lot. Submission of a proposal shall constitute sufficient evidence of this compliance and no allowance will be made for unreported conditions which a prudent Vendor would recognize as affecting the performance of the work called for in this proposal.

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

2.6 PROPOSAL QUESTIONS

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

Written questions shall be emailed to shurst@campusdining.net by the date and time specified above. Vendors should enter "RFP # 73-RFP-00775 Questions" as the subject for the email. Question submittals should include a reference to the applicable RFP section and page number.

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the WCU's Bonfire Portal (https://wcu.bonfirehub.com), and shall become an Addendum to this RFP. No information, instruction or advice provided

orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in the RFP and an addendum to this RFP.

2.7 PROPOSAL SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk of late submission due to unintended or unanticipated delay. It is the Vendor's sole responsibility to ensure its proposal has been received as described in this RFP by the required submission date.

All proposals shall be submitted to the Bonfire Portal (https://wcu.bonfirehub.com) for consideration in this process. Proposals must be electronically submitted. It is the responsibility of the vendor to verify that their proposal has been received by the managing consultant, Stuart Hurst and Campus Dining Inc.

Failure to submit a proposal in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor's proposal(s). Critical updated information may be included in Addenda to this RFP. It is important that all Vendors responding to this RFP periodically check the portal for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in this RFP and all Addenda thereto.

2.8 PROPOSAL CONTENTS

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

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

a) Cover Letter, must include a statement that confirms that the proposer has read the RFP in its entirety, including all links, and all Addenda released in conjunction with the RFP.

b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.

c) Completed and signed version of all EXECUTION PAGES, along with the body of the RFP.

d) Signed receipt pages of any addenda released in conjunction with this RFP, if required to be returned.

e) Vendor's Proposal addressing all Specifications of this RFP.

f) Completed requirements of EXHIBIT A: WCU RFP SUBMITTALS

g) Completed and signed version of ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

2.9 ALTERNATE PROPOSALS

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

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

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

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

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

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

4.0 REQUIREMENTS

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

4.1 PRICING

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

4.2 FINANCIAL STABILITY

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

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

4.3 BACKGROUND CHECKS

Any personnel or agent of Vendor performing Services under any Contract arising from this RFP may be required to undergo a background check at the expense of the Vendor, if so requested by the State.

4.4 PERSONNEL

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

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

4.5 VENDOR'S REPRESENTATIONS

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

4.6 AGENCY INSURANCE REQUIREMENTS MODIFICATION

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

☐ Small Purchases

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

☒ Contract value in excess of $1,000,000.00

5.0 SPECIFICATIONS AND SCOPE OF WORK

5.1 GENERAL REQUIREMENTS

Contractor must meet the requirements *listed in Exhibits A, B and C.*

6.0 CONTRACT ADMINISTRATION

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

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

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

6.2 POST AWARD PROJECT REVIEW MEETINGS

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

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consists of various ways to enhance business efficiencies as performance progresses.

6.4 ACCEPTANCE OF WORK

Performance of the work and/or delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator.

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

6.5 TRANSITION ASSISTANCE

If a Contract results from this solicitation, and the Contract is not renewed at the end of the last active term, or is canceled prior to its expiration, for any reason, Vendor shall provide transition assistance to the State, at the option of the State, for up to three (3) months to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. If the State exercises this option, the Parties agree that such transition assistance shall be governed by the terms and conditions of the Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall agree to pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the Services or other resources utilized.

6.6 DISPUTE RESOLUTION

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

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

6.7 CONTRACT CHANGES

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

7.0 ATTACHMENTS

IMPORTANT NOTICE

RETURN THE REQUIRED ATTACHMENTS WITH YOUR RESPONSE

ATTACHMENT A: 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.

d) If Contractor desires to terminate this Agreement before it expires on January 1,2029 , Contractor shall give at least one year's notice in advance of such termination shall be effective only at the close of business on June 30 of the following year following the minimum one-year notice period. By way of example, if Contractor provides notice of termination to the University on December 31. 2025, the termination would not be effective until June 30, 2027.

If the Contractor cancels without the minimum one-year written notice, the Contractor shall be considered in breach of contract. The University may, at its option, hire another food service provider and recover all increased cost from the Contractor. The University may take any reasonable action to protect its interest and similarly recover related costs form the Contractor. The University will take reasonable measures to mitigate costs; however, the Contractor shall be responsible for all costs related increase in meal plans and University administration processing and set-up for a new Contractor. These provisions shall not limit the legal or equitable remedies that the University may pursue.

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: 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 the 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.

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.

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. 143B-1379. 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. 143-59.4.

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 non-Federal 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.

ATTACHMENT B: WCU IT SERVICES & SYSTEMS ADDENDUM

Vendor acknowledges that WCU will disclose Personally Identifying Information (PII) to the Vendor during the performance of this Agreement, and/or the Agreement allows the Vendor access to PII. Vendor agrees to maintain strict confidentiality of PII, in accordance with the requirements and conditions set forth in this Addendum.

Vendor attests and warrants that any documentation submitted or supplied is accurate, complete, and is a comprehensive assessment of the requirements for which it is submitted. Vendor shall immediately notify the University of any errors, omissions, corrections, or material changes in the documentation and/or underlying information used to prepare the documentation. The University assumes no responsibility to verify the documentation.

1) **DEFINITIONS:**

a) "Data" is information, formulae, algorithms, or other content that WCU, WCU's employees, agents and end users provide, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which WCU's Data may be ascertainable. All data provided or derived is the property of WCU and is to be confidential and kept private unless otherwise noted by mutual agreement.

b) "Regulated data" means Personally Identifiable Information (PII) and any other Data that is protected or regulated by state or federal law.

c) "Services" are the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this Agreement.

d) "Support" includes provision of ongoing service updates, fixes, training, consulting, and maintenance for Vendor supplied services.

e) "Personally Identifiable Information", or "PII", is any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data. Personally Identifiable Information shall include "Education Records" and "Personnel Information" as those terms are further defined herein.

2) **ACCESS AND USE OF IT SERVICES:**

a) Vendor grants WCU a personal non-transferable and non-exclusive right to use and access, all contracted Services. WCU may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. WCU is authorized to access WCU Data and any data provided as part of the contracted Services. Services may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. WCU shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. All Services and information designated as "confidential" or "proprietary", and all Data, shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq*.

b) WCU's right to license the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, unless otherwise agreed to by the parties. Vendor has a limited, non-exclusive license to access and use WCU Data as provided to Vendor, but solely for providing the specified contracted Services.

c) The technical and professional activities required for establishing, managing, and maintaining the Services and environment are the responsibility of the Vendor.

d) Any additional agreements or terms derived by end user assent (e.g., "clickthrough") are null and void.

e) All WCU Data must remain within the legal jurisdiction of the United States unless the Data's disposition is otherwise explicitly designated by WCU.

f) The Vendor is ultimately responsible for providing the contracted Services under the specified provisions. The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, but Vendor assumes all

responsibility for third party activities in those regards. Vendor will not provide Data to any subcontractor or agent without WCU's prior written consent, and until the subcontractor or agent agrees in writing to comply with these Terms and Conditions.

3) **MODIFICATION OF SERVICES:**

If Vendor modifies or replaces the Services provided to WCU and other tenants, and if WCU has paid all applicable Subscription Fees, as that term may be defined in Vendor documentation, WCU shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then-accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to WCU for an additional subscription fee. In the event of either of such modifications, the then-accessible version of the Services shall remain fully available to WCU until the newer version is provided to WCU and accepted. If a modification materially affects the functionality of the Services as used by WCU, at its sole option, WCU may defer such modification.

4) **TRANSITION PERIOD:**

a) For a minimum of ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist WCU, upon written request, in extracting and/or transitioning all Data in the format determined by WCU ("Transition Period").

b) The Transition Period and terms may be modified as specified by both parties in writing.

c) During the Transition Period, Services access shall continue to be made available to WCU without alteration.

d) Vendor agrees to compensate WCU for damages or losses WCU incurs as a result of Vendor's failure to comply with this Transition Period section.

e) Upon termination, and unless otherwise stated in an SLA, and after providing WCU Data to WCU as indicated above in this section with acknowledged receipt by WCU in writing, the Vendor shall permanently destroy or render inaccessible all WCU Data. The vendor shall provide written documentation confirming the destruction or inaccessibility of WCU's Data.

5) **CONFIDENTIALITY**:

WCU may maintain the confidentiality of certain types of information provided by Vendor described in N.C. Gen. Stat. § 132-1, *et seq*. Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. § 132-1.2. Vendor may designate information, products, or Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked "confidential" meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** WCU agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C. Gen. Stat. § 132-9 to compel WCU to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending WCU, including any public official(s) or public employee(s). The Vendor agrees that it shall hold WCU and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against WCU in the action. WCU shall have the right, at its option and expense, to participate in the defense of the action through its counsel. WCU shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

6) **SECURITY OF WCU DATA:**

a) All materials, including software, Data, information, and documentation provided by WCU to the Vendor (WCU Data) during the performance or provision of Services hereunder are the property of WCU and must be kept secure, returned to WCU, and afterwards destroyed. The Vendor will protect WCU Data from disclosure, unauthorized modification, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to WCU by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor.

Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to WCU as part of the Services.

b) The Vendor shall protect the confidentiality and integrity of all information, Data, instruments, studies, reports, records and other materials provided to it by WCU or maintained or created in accordance with provided services. No such information, Data, instruments, studies, reports, records, other materials, or derivatives of such, in the possession of Vendor, shall be disclosed in any form without the prior written consent from WCU Purchasing.

c) The Vendor is responsible for the protection of WCU Data, including but not limited to Personal Identifying Information (PII). Vendor acknowledges its responsibility for securing any WCU Data used in connection with the provision of the Services. Vendor warrants, it shall provide reasonable care and efforts to protect private and Regulated Data, detect fraudulent activity involving such Data, and promptly notify WCU Purchasing of any unauthorized access, use, or Data loss. Specific terms and conditions for Personally Identifiable Information are included herein.

d) Vendor will provide and maintain secure backups of WCU Data on an acceptable periodic schedule.

e) Vendor shall implement and maintain appropriate access controls for its online system providing the Services, as well as all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of this Agreement to secure the Data and the Services from loss, corruption, unauthorized disclosure.

f) Vendor will apply the principle of “least privilege” for employee and contractor access in providing the contracted services.

g) Vendor must maintain logs of all changes in user privilege and any access to data.

h) Upon request Vendor must provide WCU with the most recent report, audit, or certification, performed by a third party, that relates to the security, availability, processing integrity, confidentiality, and privacy of the operations and systems of the Vendor.

i) WCU may, at any time, make a local copy of all WCU data.

j) Vendor shall certify to WCU:

i) They have and adhere to a periodically tested and annually reviewed disaster recovery plan.

ii) That the Services will comply with the following where applicable:

(1) Privacy provisions of the Federal Privacy Act of 1974;

(2) The Family Educational Rights and Privacy Act (FERPA) if records include student information.

(3) The Health Insurance Portability and Accountability Act if records include any health-based information.

(4) The Americans with Disabilities Act and Section 504 of the Rehabilitation Act requirements for access to and use of their provided services.

(5) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);

(6) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and

(7) Applicable industry standards and guidelines, including but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Computing Guidelines.

k) Security Breach. “Security Breach” under the NC Identity Theft Protection Act (N.C.G.S. § 75-60) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or

other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any WCU Data or WCU confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon WCU Data or WCU confidential information described in Section 1 above, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying. Notwithstanding the above, Vendor shall, within one business day of discovery, report to WCU any use or disclosure of PII not authorized by these Terms and Conditions or in writing by WCU. Vendor's report shall identify:

(i) the nature of the unauthorized use or disclosure;

(ii) the PII used or disclosed;

(iii) who made the unauthorized use or received the unauthorized disclosure;

(iv) what vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and

(v) what corrective action vendor has taken or shall take to prevent future similar unauthorized use or disclosure.

WCU, in its sole discretion, shall have the right to require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible, subject to Vendor's obligations upon termination of described in this paragraph 6. Vendor shall provide any such other information relevant to WCU's breach investigation and mitigation, including a written report, as reasonably requested by WCU.

l) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense,

(i) immediately notify WCU Purchasing of such Security Breach and perform a root cause analysis thereon,

(ii) investigate such Security Breach,

(iii) provide a remediation plan, acceptable to WCU, to address the Security Breach and prevent any further incidents,

(iv) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and

(v) cooperate with WCU, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach.

WCU shall make the final decision on notifying WCU's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of WCU's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by WCU) shall be considered legally required. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Vendor improperly disclosed PII obtained from WCU's Education Records, WCU may not allow the Vendor access to Education Records for at least five (5) years.

m) Notification Related Costs. Vendor shall reimburse WCU for all Notification Related Costs incurred by WCU arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include WCU's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) Preparation and mailing or other transmission of legally required notifications; (2) Preparation and mailing or other transmission of such other communications to customers, agents or others as WCU deems reasonably appropriate; (3) Establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) Public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with WCU'S investigation of and response to such event; and (6) Costs for credit reporting services that are associated with legally required notifications or are advisable, in WCU's opinion, under the circumstances. In the event that Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with terms of the Agreement, Vendor shall immediately notify WCU Purchasing of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

n) In the event of disaster or catastrophic failure that results in significant WCU Data loss or extended loss of access to Data or Services, Vendor shall notify WCU Purchasing by the fastest means available and also in writing, with additional notification provided to the WCU Chief Information Officer or designee. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform WCU of:

i) The scale and quantity of WCU Data loss;

ii) What Vendor has done or will do to recover the WCU Data from backups and mitigate any deleterious effect of WCU Data and Services loss; and

iii) What corrective action Vendor has taken or will take to prevent future WCU Data and Services loss.

iv) If Vendor fails to respond immediately and remedy the failure, WCU may exercise its options for assessing damages or other remedies.

Vendor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with WCU. WCU and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with WCU, its agents and law enforcement.
o) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold WCU Data or any other WCU confidential information or refuse for any reason, to promptly return to WCU Data and any other WCU confidential information (including copies thereof) if requested to do so on such media as reasonably requested by WCU, even if WCU is then or is alleged to be in breach of the Agreement as long as WCU has paid any undisputed sums. As a part of Vendor's obligation to provide WCU Data pursuant to this Paragraph 10)o), Vendor will also provide WCU any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for WCU to use, translate, interpret, extract and convert WCU Data.

7) **CONFIDENTIALITY OF EDUCATION RECORDS AND PERSONNEL INFORMATION**

a) **Education Records**

i) **Definition:** ***Education Records*** shall have the meaning prescribed to it in 34 CFR § 99.3, and includes paper and electronic student education record information supplied by WCU, as well as any data provided by WCU's students to the Vendor, excluding any information that is designated as "directory information" in WCU Policy 04.150 Student Records and Family Educational Rights and Privacy Act (FERPA).

ii) **Protection of Education Records:** Vendor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational Rights and Privacy Act (34 CFR § 99.33(a)(2)) and with the terms set forth below. 34 CFR § 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the institution may use the information, but only for the purposes for which the disclosure was made.

iii) **School Official Designation:** For purposes of this Agreement and receipt of Education Records, Vendor is a school official with a legitimate educational interest as defined in 34 CFR § 99.31(a)(1)(i)(B).

b) **Personnel Information**

i) **Definition:** ***Personnel Information*** shall mean staff and faculty identification numbers beginning with "850," and, to the extent applicable, confidential information contained in an employee's personnel file as provided in N.C.G.S. §§ 126-22 *et seq.*

ii) **Vendor Designation:** To the extent N.C.G.S. § 132-6 applies, Vendor acknowledges that it is not a custodian of public records under that statute.

c) **Ownership and Use of Education and Personnel Records**

i) **Property of WCU:** Education Records and Personnel Information shall remain the sole property of WCU. Vendor expressly acknowledges and agrees that Vendor has no property right or interest whatsoever in any such data.
ii) **Prohibition on Unauthorized Use or Disclosure of Education Records**: Vendor agrees to hold Education Records and Personnel Information in strict confidence. Vendor shall not use or disclose Education Records and Personnel Information received from or on behalf of WCU except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by WCU. Vendor agrees not to use Education Records and Personnel Information for any purpose other than the purpose for which the disclosure was made. In the event that Vendor receives a request for Education Records and Personnel Information by subpoena or other legal process or from a court, governmental authority, accrediting agency, or other third party, Vendor shall give prompt written notice to WCU.

8) **PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS (PCI DSS) COMPLIANCE:**
In the event Vendor may have access to credit or debit card information and/or may affect the security of a credit or debit card transaction, Vendor is required to maintain PCI compliance. Vendor will provide documentation of PCI compliance per the PCI Security Standards Council (www.pcisecuritystandards.org) for itself and any of its third-party vendors, contractors, and service providers used for services provided to the university. Vendor will provide annually a PCI Security Standards Council Attestation of Compliance (AOC), preferably signed by a registered QSA firm, to the university.

ATTACHMENT C: UNIVERSITY ALCOHOL POLICY

Initially approved: January 15, 2002
Revised and Approved by Executive Council:
September 14, 2004
May 2. 2005
June 30, 2008
May 17, 2010
February 4, 2013
October 21, 2013
July 01, 2019
January 31, 2023
February 21, 2023
July 18, 2023

Policy Topic: Governance and Administration
Administering Office: Vice Chancellor for Administration and Finance

I. POLICY STATEMENT

It is the policy of Western Carolina University (the "University") to regulate the service, possession, consumption, and sale of alcohol in University facilities and on University grounds in compliance with applicable North Carolina General Statutes and Jackson County ordinances.

II. SCOPE AND APPLICATION OF POLICY

This Policy applies to: (1) all University students and employees; (2) all University contractors and visitors; and (3) all facilities and properties owned, leased or otherwise controlled by the University.

III. DEFINITIONS

"**Alcoholic Beverage**" or "**Alcohol**" means any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

"**Athletic Facility**" or "**Athletic Facilities**" means a stadium, athletic facility, or arena, that has received approval from the Board of Trustees for the sale of alcoholic beverages, on the campus or property of Western Carolina University.

"Fortified wine" means any wine of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume made by: (1) fermentation from grapes, fruits, berries, rice, or honey; or (2) the addition of pure cane, beet, or dextrose sugar; or (3) the addition of pure brandy from the same type of grape, fruit, berry, rice or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

"Growler" means any portable container designed to hold, transport, and dispense between 32 U.S. fl oz two (2) liters or more of beer.

"Keg" means a portable container designed to hold and dispense three (3) gallons or more of malt beverage.

"Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage, except unfortified or fortified wine as defined by this Policy, containing at least one-half of one percent (0.5%) but not more than fifteen percent (15%) alcohol by volume.

"Mixed beverage" means either of the following: (1) a drink composed in whole or in part of spirituous liquor and served in a quantity less than the quantity contained in a closed package; or (2) a premixed cocktail served from a closed package containing only one serving.

"Open container" means a container whose seal has been broken or a container other than the manufacturer's unopened original container.

"Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

"Spirituous liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

"Unfortified wine" means any wine of sixteen percent (16%) or less alcohol by volume made by: (1) fermentation from grapes, fruits, berries, rice, or honey; or (2) the addition of pure cane, beet, or dextrose sugar; or (3) the addition of pure brandy from the same type of grape, fruit, berry, rice or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

IV. SELECTED NORTH CAROLINA LAWS

A. Possession and Consumption of Alcohol by an Underage Person

It is unlawful for any person under twenty-one (21) years of age to possess and consume malt beverages, unfortified wine, fortified wine, spirituous liquor or mixed beverages.

B. Sale or Purchase of Alcohol by an Underage Person

1. It is unlawful for any person to sell or give any alcoholic beverage to a person under twenty-one (21) years of age.

2. It is unlawful for a person under twenty-one (21) years of age to purchase or possess any alcoholic beverage.

3. It is unlawful for any person to aid or abet another person in violation of the provisions in Sections IV.B.1 and IV.B.2 above.

4. It is unlawful for any person to obtain or attempt to obtain an alcoholic beverage by using or attempting to use: (1) a fraudulent or altered driver's license; or (2) a fraudulent or altered identification document other than a driver's license; or (3) a driver's license issued to another person; or (4) an identification document other than a driver's license issued to another person.

5. It is unlawful for any person to allow the use of his/her driver's license or any other identification document by any person who violates or attempts to violate Section IV.B.2 above.

C. Unlawful Possession and Use of Fortified Wine and Spirituous Liquor

It is unlawful to consume fortified wine, spirituous liquor or mixed beverages on any public road, street, highway or sidewalk.

It is unlawful for any person to possess or consume any fortified wine, spirituous liquor or mixed beverages upon any premises when the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises.

D. Open Containers in Motor Vehicles

It is unlawful to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container.

It is unlawful for a person driving a motor vehicle on a highway or public vehicular area to possess an open container or consume alcohol in the passenger area of that vehicle.

It is unlawful for any person to possess an open container or consume alcohol in the passenger area of a motor vehicle while the vehicle is on a highway or public vehicular area.

V. UNIVERSITY POLICIES ON SALES, POSSESSION AND CONSUMPTION OF ALCOHOL

A. Possession and Consumption of Alcohol on University Grounds

Except as otherwise permitted by this Policy or other applicable University policies (e.g., **University Policy 103 Tailgating**), the possession of an open container of any alcoholic beverage or the consumption of alcoholic beverages on University grounds, including vehicular areas, sidewalks and public right-of-ways, is prohibited.

B. Possession and Consumption of Alcohol in University Residential Buildings

Consistent with State law, the possession and consumption of alcoholic beverages by persons of legal age in residential buildings, including the personal residence of a student living in a residence hall and the Chancellor's Residence, are permitted. Possession and consumption of alcohol in the public or common areas of student residence halls are prohibited.

C. Possession, Service, and Consumption of Alcohol in University Non-residential Buildings

The possession, service, and consumption of alcoholic beverages by persons of legal age in specified University non-residential buildings is permitted only as provided in this Section V.C and/or other applicable University policies (e.g., the University Policy on Tailgating.

1. **General Considerations**

    a. Malt beverages and unfortified wine may be served and consumed at approved University events as provided in this Section V.C with due consideration given to the educational mission of the University; the purpose of the event; the event audience; and the psychosocial dynamics of alcohol use, misuse, and abuse.

    b. The possession and consumption of alcohol at University-sponsored events must conform to the requirements of State law, applicable Jackson County ordinances, and University policies.

    c. Event sponsors/organizers must emphasize the quality and purpose of the event without advertising the service of alcohol.

    d. At each event where alcohol is served, a responsible person must be designated by the sponsor/organizer to ensure compliance with this Policy.

    e. Only the University's food services contractor, or the University's food service contractor's licensed designee, may serve alcohol at approved University events on the main campus. Only individuals or businesses licensed to serve alcohol may serve alcohol at approved University events at the Biltmore Park Instructional site. The event sponsor/organizer is responsible for making arrangements with the food services contractor for on-campus events or the contractor/caterer as applicable for Biltmore Park events.

    f. Non-alcoholic beverages and food (i.e., meals or receptions with hors d'oeuvres) must be available at events where alcohol is served. For events that include meals, alcohol service may begin 30 minutes before meal service, and end when meal service concludes. For events that include receptions, alcohol may be served for the duration of the reception, but may not exceed a total of 1½ hours of service or 2 ½ hours with full meal service.

    g. Alcohol may not be served to anyone who is visibly intoxicated.

h. Service of alcohol at a University sponsored fundraising event at which a fee is charged to attend the event shall not be deemed as the sale of alcohol; provided, however, that a separate fee is not charged for the alcohol and the requisite service permits have been obtained by the food services provider.

i. Service of alcohol on real property designated millennial campus, pursuant to State law and V.C.2 below, is permissible.

j. No alcohol shall be served before 5:00 pm on any weekday, with the exception of Athletic Events held at permitted Athletic Facilities.

2. **Approval Process for Alcohol Service at Specified University Non-Residential Buildings**

Event sponsors/organizers must obtain the prior written approval of their Executive Council member, or the Chancellor if the event sponsor is the Executive Council member, before serving alcohol at a University event. Event sponsors must use the standard form of approval available in Section VIII of this Policy. Fourteen (14) calendar days prior to any event, the standard form of approval, with all necessary approvals, must be transmitted to the food service vendor before alcohol may be served at the event.

Malt beverages and unfortified wine may be served, in accordance with the general considerations listed in Section V.C.1 above, in the following University facilities:

- A.K. Hinds University Center: Illusions; Grand Room; and Multipurpose Room;
- Bardo Fine and Performing Arts Center: Star Lobby; Theater Lobby; and Black Box Niggli Studio Theater;
- Biltmore Park instructional site: 1st Floor Lobby; and Conference Room;
- Bird Alumni House (when used for events rather than residential purposes);
- Blue Ridge Residence Hall Conference Space;
- Brown Hall: Sunset Room; Sunset Terrace; Fireplace Lounge; and Plaza;
- Center for Applied Technology: Lobby;
- Cordelia Camp Building: Conference Room, Room 141, and Dining Room;
- J. Whitmire Stadium;
- Harrill Residence Hall: Multipurpose Room; and Multipurpose Room Entrance Lobby (summer conferences);
- Hennon Baseball Stadium;
- Jordan-Phillips Field House: Tom Young Room; 2nd Floor Space; and Patio;
- Noble Hall: Designated retail space on the first floor;
- Madison Hall: Conference Space; and
- Ramsey Regional Activity Center: Auxiliary Gym, Hospitality Room, Concourse, Northeast Patio, Northwest Patios, and Ice Rink.

Malt beverages and unfortified wine may be served in other University facilities only upon the approval of a specific exception request to the Chancellor or at the direction of the Chancellor.

D. Sales of Alcoholic Beverages at the Bardo Fine and Performing Arts Center

Except as provided in this Section V.D, no person or organization, including recognized student organizations, is permitted to sell alcoholic beverages on the University's campus.

Malt beverages and unfortified wine may be sold at events held at the John W. Bardo Fine and Performing Arts Center provided that such sales comply in all respects with State law pertaining to the sale of beer and wine at performing arts centers located on property owned or leased by constituent institutions of the University of North Carolina as well as applicable Jackson County ordinances. Prior to the sale of beer and wine at an event, requisite ABC permits must be obtained by the University's food services provider and the food services provider shall be responsible for all alcohol sales and compliance with all applicable laws related to sales.

E. Athletic Facilities and Events

1. **General Considerations**

    a. Unless otherwise permitted by this policy, the possession and consumption of alcohol are prohibited in athletic facilities and during athletic events.

    b. No person or organization, including recognized student organizations, is permitted to sell alcoholic beverages on the University's campus, including athletic facilities.

    c. Sales of alcoholic beverages at Athletic Facilities may only occur during official athletic events.

    d. Alcoholic beverages may not be sold to anyone who is visibly intoxicated.

2. **Sales of Alcoholic Beverages at Athletic Facilities and During Athletic Events**

    a. With the exception of the University's food service contractor, no person or organization, including recognized student organizations, is permitted to sell alcoholic beverages on the University's campus, including in or around athletic facilities during athletic events.

    b. Sales of alcoholic beverages in regulated seating areas not accessible by the general public is permissible until the midpoint of the second half of a football or basketball game; the conclusion of the seventh inning of a baseball game; the conclusion of the fifth inning of a softball game; or any other equivalent time, provided food is available until said time.

    c. Alcoholic beverages may be sold, in accordance with the general considerations listed in Section V.C.1 above; Section V.E.2.a; and pursuant to State law, in the following Athletic Facilities:

        - E.J. Whitmire Stadium; and
        - Hennon Baseball Stadium;
        - Jordan-Phillips Field House: Patio; and
        - Ramsey Regional Activity Center: Auxiliary Gym, Hospitality Room, Concourse, Northeast Patio, Northwest Patio, and Ice Rink.

    d. Alcoholic Beverages may be sold prior to 5:00 pm at Athletic Events at permitted Athletic Facilities, pursuant to State law, any applicable local ordinance(s), and university policy.

e. Alcoholic Beverages may be sold in other Athletic Facilities only upon the approval of the Chancellor pursuant to State law and action of the any required action of the Board of Trustees.

F. Academic Uses of Alcohol

Alcohol or alcoholic beverages may be used for educational purposes in beverage operations, preparation, or evaluation courses in accordance with this Section. The Dean of the academic college and the Program Director, School Director, or Department Head shall ensure that the use of alcohol and alcoholic beverages for educational purposes is in strict conformance with this Policy as well as applicable state and local laws and ordinances. Additionally, the Dean shall, in coordination with the Director or Department Head and the faculty member teaching the class, develop processes to ensure that alcohol is stored safely and securely, used only for educational purposes, and is disposed of properly at the conclusion of classes. A letter addressed to the Provost outlining the course's compliance with this Policy is required before the class using alcohol or alcoholic beverages for educational purposes is first offered or if there are changes to the process for the storage, use, or handling of alcohol.

G. Drinking Games and Contests

Games and contests that reward the capacity to consume large amounts of alcohol or consume alcohol quickly are strictly prohibited on campus. Alcoholic beverages, including cases and kegs of beer, shall not be provided as prizes or awards to students or recognized student organizations.

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ATTACHMENT D: INSTRUCTIONS TO VENDORS

The Instructions to Vendors, which are incorporated herein by this reference, may be found here: *https://ncadmin.nc.gov/documents/vendor-forms*

ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

Complete, sign, and return the Certification of Financial Condition, which can be found at the following link: *https://ncadmin.nc.gov/documents/vendor-forms*

EXHIBIT A: WCU RFP SUBMITTALS

SEE ATTACHED

EXHIBIT B: WCU STATEMENT OF WORK

SEE ATTACHED

EXHIBIT C: WCU FINANCIAL MODEL & PERFORMANCE METRICS

SEE ATTACHED

EXHIBIT D: WCU HISTORICAL DATA REPORT

SEE ATTACHED

***** Failure to Return the Required Attachments May Eliminate Your Response from Further Consideration *****