DRAWING AUDITOR AND RELATED SERVICES AGREEMENT

THIS DRAWING AUDITOR AND RELATED SERVICES AGREEMENT (the "**Agreement**") is made and entered into this 28th day of September, 2006 (the "**Effective Date**"), by and between THE NORTH CAROLINA EDUCATION LOTTERY ("**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq.) (as may be amended from time to time, the "Act"), and THOMAS & GIBBS CPAs, PLLC ("**VENDOR**").

W I T N E S S E T H:

WHEREAS, NCEL was created to organize and operate a state lottery in the State of North Carolina (the "**Lottery**");

WHEREAS, VENDOR, submitted the bid, dated September 15, 2006 attached hereto as Exhibit A and incorporated herein by this reference (the "**Bid**") to NCEL in response to NCEL's Invitation to Bid on Drawing Auditor and Related Services, dated August 14, 2006, attached hereto as Exhibit B and incorporated herein by this reference (the "**ITB**"), as interpreted by NCEL's Answers to Questions concerning the ITB, which were published by NCEL, attached hereto as Exhibit C and incorporated herein by this reference (the "**Answers**"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, NCEL desires to retain VENDOR to provide drawing auditor and related services to NCEL, and VENDOR desires to provide such services for NCEL;

NOW, THEREFORE, for and in consideration of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

1. SERVICES

Subject to the terms and conditions set forth in this Agreement, NCEL retains VENDOR to provide drawing auditor and related services to NCEL as contemplated by this Agreement, the ITB and Answers (collectively, the "**Services**"), and VENDOR agrees to provide such Services to NCEL, all in accordance with the terms of this Agreement.

2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS

(a) VENDOR and its Subcontractors will work in conjunction with the Director of NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other vendors, subcontractors, employees, agents, retailers and consultants of NCEL. VENDOR and its Subcontractors will provide the Services to NCEL as detailed in the ITB, the Answers and the Bid and will perform drawing auditor services and provide such specific services as requested in accordance therewith, from time to time, orally or in writing, by the Director, his designee(s) or the Commission. Except as otherwise set forth herein, VENDOR agrees that all Services to be provided to NCEL under this Agreement shall meet or exceed the requirements

NC EDUCATION LOTTERY INITIAL SEP 28 2006 JS

as set forth in this Agreement, the ITB and the Answers.

(b) VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the Director or his designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the Director or his designee(s).

(c) VENDOR hereby agrees to use its best efforts to make available to NCEL, such of its employees and its Subcontractors as may be necessary or appropriate for the timely performance of VENDOR's obligations pursuant to this Agreement. No employee or agent of VENDOR or any of its Subcontractors shall undertake or participate in, during the term of this Agreement, any other engagement which will interfere with the completion of the work contemplated by this Agreement. VENDOR will provide to NCEL, as requested from time to time, written reports of the names and work schedules of VENDOR's and the Subcontractors' employees who will be performing services pursuant to this Agreement.

3. **SUBCONTRACTORS**

(a) VENDOR will not subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any individual or entity without the prior written consent of NCEL in each instance, which consent may be withheld in NCEL's sole discretion. VENDOR will provide NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All subcontractors which are approved by NCEL for work pursuant hereto will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as NCEL may require. VENDOR agrees that it will obtain the prior consent of the Director or his designee(s) prior to having any Subcontractor perform any activities for NCEL under this Agreement.

(b) Upon the request of NCEL, VENDOR will promptly provide NCEL with copies of all subcontracts and other agreements entered into by VENDOR with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

(c) NCEL shall have the right, at any time and from time to time, to instruct VENDOR not to use the services of any Subcontractor, individual or employee in connection with the work to be performed for NCEL under this Agreement, and VENDOR agrees to comply with all such instructions.

(d) Notwithstanding anything herein to the contrary, VENDOR will remain fully liable and responsible for all Services and work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by VENDOR or under VENDOR's control, and VENDOR will ensure the compliance of its

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006

employees, and will exercise its best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as NCEL may establish from time to time.

4. **INDEPENDENT CONTRACTOR**.

(a) Both NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of the Vendor to procure selected materials and services as authorized by NCEL and as specifically set forth in, and subject to the limitations described in, the ITB. No Subcontractor is authorized to bind NCEL to any liability or obligation or to represent that it has any such authority.

(b) VENDOR shall be solely responsible for all payments to Subcontractors and all compensation, withholding taxes and benefits for its employees and for providing all necessary unemployment and workmen's compensation insurance for its employees.

5. **COMPENSATION**

(a) As full and complete compensation for all Services provided by VENDOR pursuant to this Agreement, NCEL will pay VENDOR, and VENDOR will accept, an hourly rate (the "**Vendor's Fee**") equal to one hundred fifty dollars and 00/100 ($150.00) per hour.

(b) Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 13) or this Agreement, NCEL will pay to VENDOR all other uncontested amounts due under this Agreement within thirty (30) days of receiving an invoice, unless the parties otherwise agree, in accordance with the policies and procedures established by NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

6. **TERM**

(a) Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement, the ITB or the Answers, and subject to the provisions of Section 23 hereof, the term of this Agreement shall commences as of the Effective Date and shall continue for a period of three (3) years from the Effective Date (the "**Initial Term**"). This Agreement shall be automatically renewed for a period of one (1) year (each a "**Renewal Term**") upon the completion of the immediately preceding Initial Term or Renewal Term, as

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006
JS

the case may be, for a total of no more than three (3) Renewal Terms, unless either party sends the other party at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be.

(b) In the event VENDOR is unable to provide drawing auditor and related services at any drawing during the term of the Agreement, except due to a cancellation of the drawing by the NCEL, the NCEL shall have the right to assess VENDOR for liquidated damages in the amount of five thousand dollars ($5,000) per drawing.

(c) VENDOR and NCEL hereby acknowledge and agree that, in the event VENDOR is unable to perform the Services during the term of the Agreement:

(i) NCEL's damages would be difficult or impossible to accurately estimate or calculate;

(ii) The liquidated damage amount called for herein is a reasonable pre-estimate of NCEL's damages;

(iii) The liquidated damage amount is intended to compensate the NCEL upon the occurrence of such event and not penalize and/or deter VENDOR from breaching the Agreement; and

(iv) Liquidated damages, if assessed, would be NCEL's sole remedy with respect to such event.

(d) VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, NCEL will award a new contract for replacement of the Services and deliverables provided by VENDOR under this Agreement and that VENDOR has no right or expectation in or to any such new contract. VENDOR further agrees that NCEL may use the final one hundred eighty (180) days of the term of this Agreement for transitioning the provision of such Services. VENDOR shall cooperate fully and in good faith and shall assist NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner.

7. **WORK STANDARD**

(a) VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable policies and procedures of NCEL and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement in a professional manner and by following and applying the highest professional and technical guidelines and standards applicable to the VENDOR's industry.

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006
JS

(b) VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, nor any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer or subcontractor in connection with the performance of its obligations under this Agreement.

(c) If the NCEL becomes dissatisfied with the Services or work product of or the working relationship with any of the individuals assigned to perform services under this Agreement by VENDOR or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Personnel identified in the Bid as performing Services under this Agreement will continue to perform such Services in their designated capacities until such Services are completed unless (i) they cease to be employed by VENDOR or a Subcontractor, (ii) unless the NCEL requests their removal, or (iii) the NCEL agrees to their substitution, in which case a person or persons of suitable competency and acceptable to NCEL, in its discretion, will be substituted forthwith.

(d) Nothing in this Section 7 shall be construed to prevent VENDOR from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of such key personnel, including secretarial, clerical and common labor duties. VENDOR shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by key personnel or other workers.

(e) Nothing in this Agreement shall prohibit the NCEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. The NCEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the Services of VENDOR or any Subcontractors.

(f) VENDOR hereby designates Bruce Thomas, or such other person or persons as it may from time to time notify the NCEL, as its primary contact with the NCEL for purposes of this Agreement.

8. **CHANGES IN WORK**

By written or oral request by the Director or his designee(s) to VENDOR, the NCEL may from time to time make changes in the Services to be provided by VENDOR or any Subcontractor, or the place of performance of such Services. VENDOR and all applicable Subcontractors shall promptly comply with such requests and take all necessary or appropriate actions to effect such change. If such changes add material obligations or expenses not contemplated by this Agreement (including the Answers, ITB or Bid), the NCEL and VENDOR shall negotiate in good faith any changes required to this Agreement or the compensation to be provided pursuant hereto.

NJ EDUCATION LOTTERY
INITIAL
SEP 29 2006
TS

9. BOOKS AND RECORDS

VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by the NCEL from time to time. VENDOR and all Subcontractors shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years after the date of final payment under this Agreement, for inspection by the NCEL, or by any authorized representative of the NCEL, and copies thereof shall be furnished to the NCEL by the appropriate entity, at no cost to the NCEL, if requested by the NCEL. The NCEL shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the goods to be provided and Services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

10. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT

(a) For purposes of this Agreement:

(i) "**Confidential Information**" means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B) valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "Trade Secret" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors. For purposes of this Agreement, the financial statements provided pursuant to Section 10 of this Agreement shall be deemed to be VENDOR Confidential Information; and

(ii) a "**Trade Secret**" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: (A) derives independent actual or potential commercial value from not being generally known or readily ascertainable thorough independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) In recognition of the need of VENDOR to protect its legitimate business interests, the NCEL hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, NCEL will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006
TS

any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement or conduct the North Carolina Lottery. The NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite the NCEL's best efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Open Records Law G.S. §132-1 et. seq. (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and the NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the ITB, Answers or Bid, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes.

(c) In recognition of the need of the NCEL to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) the NCEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by the NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the NCEL; provided, however, that VENDOR shall be entitled to disclose such information to its counsel, accountants and other professional advisors who are under either a contractual or legal professional obligation of confidentiality. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any NCEL Confidential Information, NCEL Trade Secrets or other information or property of the NCEL, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 11(c), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit the NCEL to independently enforce the requirements set forth in such agreements.

(d) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(b) shall not apply to VENDOR information that is: (A) generally known to the public other than due to a disclosure by the NCEL; (B) already known to the NCEL at the time it is disclosed by VENDOR to the NCEL; (C) independently developed by the NCEL; or (D) received by the NCEL from a party that the NCEL believed in good faith had the right to make such disclosure.

(e) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(c) shall not apply to the NCEL information that is: (A) generally known to the public other than due to a disclosure by VENDOR or a Subcontractor; (B) already known to VENDOR at the time it is disclosed by the NCEL to VENDOR; (C) independently developed by VENDOR; or (D) received by VENDOR from a third party that VENDOR believed in good faith had the right to

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006
TS

make such disclosure.

11. NONDISCRIMINATION; AFFIRMATIVE ACTION

(a) None of VENDOR or any Subcontractors shall discriminate against any employee or applicant for employment because of his or her race, color, religion, sex, handicap, disability, national origin or ancestry. Breach of this covenant by VENDOR, or VENDOR's failure to use its best efforts to require all Subcontractors to comply with this covenant, may be regarded as a material breach of this Agreement. VENDOR and Subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

(b) Consistent with the Act and all other applicable North Carolina laws, VENDOR agrees to make every reasonable effort to include the participation by minority businesses in the performance of its Services pursuant hereto. Specifically, and without limitation, any human resources services performed for the NCEL will include appropriate attention to the hiring and training of qualified minority applicants in accordance with the Act, all Governing Laws and Regulations, and the policies and procedures adopted by the NCEL from time to time.

12. LIMITATION OF LIABILITY

THE PAYMENT OBLIGATIONS UNDERTAKEN BY THE NCEL UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO THE NCEL. THERE SHALL BE NO LIABILITY ON THE PART OF THE NCEL EXCEPT TO THE EXTENT OF AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS AND OTHER FUNDS AVAILABLE TO THE NCEL. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF NORTH CAROLINA, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER.

13. COMPLIANCE WITH LAWS

VENDOR agrees to comply with all applicable rules, procedures and regulations adopted from time to time by the NCEL under the Act and all other applicable federal, state and local laws, rules, regulations, ordinances or executive orders, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 1201 et. seq.) and all other labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein, are hereby incorporated by reference (all of the foregoing being sometimes referred to collectively as the "**Governing Laws and Regulations**").

NC EDUCATION LOTTERY
INITIAL
SEP 2 9 2006
JS

14. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

VENDOR hereby represents, warrants or covenants, as the case may be, to the NCEL, on its own behalf and with respect to each of its Subcontractors, that as of the Effective Date and at all times throughout the term of this Agreement, as follows:

(a) VENDOR has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and VENDOR has taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement. The execution and delivery of this Agreement and the performance of its obligations under this Agreement are not in contravention of any provisions of law or any material indenture or agreement by which VENDOR is bound and do not require the consent or approval of any governmental body, agency, authority or other person or entity which has not been obtained. This Agreement constitutes the valid and legally binding obligation of VENDOR, enforceable against VENDOR in accordance with its terms.

(b) VENDOR and its Subcontractors have disclosed or will disclose to NCEL all matters required to be disclosed under the Governing Laws and Regulations. In addition, VENDOR recognizes and acknowledges that there are certain limitations on its activities, and the activities of its Subcontractors, now and in the future, including, but not limited to, limitations on certain political contributions, limitations on the ability to submit bids in response to subsequent requests for bids issued by the NCEL, and limitations on the ability to enter into or perform contracts or other arrangements with certain third parties. In particular, VENDOR recognizes and acknowledges that employees of VENDOR who perform services under this Agreement may not purchase lottery tickets. Some of these restrictions also apply to members of such employees' households, as designated by the NCEL, and VENDOR will enforce such restrictions upon its employees and Subcontractors.

(c) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders have ever been found guilty of, or plead guilty to, any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction, nor are VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders currently under indictment for any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction.

(d) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any entity that has supplied consultation services under contract to the NCEL with respect to the ITB.

(e) No "public official" has an ownership interest of five percent (5%) or more in VENDOR or any of the Subcontractors.

(f) To the extent required by applicable law, VENDOR and all Subcontractors are, and will remain at all times during the term of this Agreement, qualified to do business in the State of North Carolina and will file North Carolina income tax returns.

NC EDUCATION LOTTERY INITIAL SEP 2 5 2006 JS

(g) All Work Product: (i) shall be prepared, worked on and completed solely by employees of VENDOR or a Subcontractor in the scope of their employment or by independent contractors of VENDOR or a Subcontractor working under the strict and direct supervision of such employees; (ii) shall be original works of authorship; (iii) shall not infringe, plagiarize, pirate or constitute misappropriations of any Intellectual Property Rights, copyrights, trademarks, service marks, trade names, patents, Confidential Information, Trade Secrets or other intellectual properties or proprietary rights of any individuals or entities; and (iv) shall not be false, misleading, actionable, defamatory, libelous or constitute an invasion of privacy of any individual or entity.

(h) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement, the NCEL or the Lottery without the prior written consent of the Director or his designee(s) in each instance.

(i) None of VENDOR or any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use the NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the Director or his designee(s) in each instance.

(j) All Services rendered and provided pursuant to this Agreement have been and shall be prepared or done in a workman-like manner consistent with the highest standards of the industry in which the Services are normally performed.

15. **OBLIGATIONS OF VENDOR**

(a) VENDOR agrees to fully disclose to the NCEL all matters materially affecting the NCEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors, partners, major shareholders and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the NCEL or the Lottery. In addition, VENDOR acknowledges that some or all of its employees, officers, directors, partners and major shareholders, and its Subcontractors and their respective employees, officers, directors, partners and major shareholders, may be required to submit to background and other investigations, and VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of Vendor or any subcontractor; provided, however, if any such proceeding would have a material adverse affect on VENDOR or a Subcontractor or their ability to perform

NC EDUCATION LOTTERY
INITIAL
SEP 2 8 2006
B

pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after VENDOR learns of such proceeding.

(b) VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement a performance bond (the "**Performance Bond**") or letter of credit with NCEL in an amount equal to Fifty Thousand Dollars ($50,000). The Performance Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to indemnify NCEL pursuant hereto, and/or VENDOR's failure to fully and completely pay any obligation contained in this Agreement.

(c) VENDOR shall maintain the following types and amounts of insurance during the term of this Agreement:

i) General liability insurance in the amount of $1,000,000;

ii) Such other types and amounts of insurance as the NCEL shall from time to time reasonably require;

iii) Workers Compensation Insurance at or above levels required by the State of North Carolina; and

(d) VENDOR shall provide the NCEL with certificates of insurance within ten (10) days after the date hereof and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are financially rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

16. **TAXES**

The NCEL will not be responsible for any taxes levied on VENDOR or any Subcontractor as a result of the execution, delivery or performance of this Agreement. VENDOR and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

17. **TERMINATION**

(a) Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement: (i) if VENDOR fails to correct or cure any breach of any of Sections 7(b), 14(c), 14(d), 14(e), or 15(a) of this Agreement (collectively, the "**Major Sections**") within three (3) business days of the earlier of: (A) VENDOR's having knowledge of such breach; or (B) VENDOR's receiving oral or written notice of such breach from the NCEL; or (ii) if VENDOR fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after thirty (30) calendar days' prior written notice from the NCEL.

NC EDUCATION LOTTERY
INITIAL
SEP 29 2006
B

(b) If the NCEL, after thirty (30) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement, then VENDOR may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section 17(c), the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

(d) If, for any reason other than a breach of this Agreement by the NCEL, VENDOR is unable to perform its obligations hereunder, the NCEL shall acquire a usufruct in all contractual items owned by VENDOR or any Subcontractor which is used in conjunction with, and is necessary to, the performance of this Agreement, which usufruct shall exist until the expiration or termination of this Agreement.

18. **INDEMNIFICATION**

(a) VENDOR agrees to indemnify, defend and hold harmless the NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement or any other act or omission of VENDOR, the Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise.

(b) In addition, VENDOR agrees to indemnify, defend and hold harmless the NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, arising out of, in connection with or resulting from the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or item, trade secret, article or appliance furnished to the NCEL, or used in the performance of this Agreement, by VENDOR or any Subcontractor, excluding claims for personal injury.

19. **CONFLICT RESOLUTION PROCEDURES**

Prior to bringing any judicial enforcement action with respect to any claims or controversies arising in connection with the performance of this Agreement, VENDOR must first pursue and exhaust any and all remedies available to it in accordance with the dispute resolution procedures adopted by the NCEL, as amended from time to time (collectively, the

NC EDUCATION LOTTERY INITIAL SEP 2 5 2006 TS

"Dispute Resolution Procedures").

20. **NOTICES**

(a) All notices and statements provided for or required by this Agreement shall be in writing, and shall be delivered personally to the other designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service, as follows:

If to NCEL: North Carolina Education Lottery
2100 Yonkers Road
Raleigh, North Carolina 27604
Attn: Thomas N. Shaheen, Executive Director

If to VENDOR: Thomas & Gibbs CPAs, PLLC
5842 Fayetteville Road, Suite 106
Durham, North Carolina 27713
Attn: Bruce Thomas, CPA, Esq.

(b) Either party hereto may change the address and/or person to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section 20.

21. **MISCELLANEOUS**

(a) This Agreement, together with the Bid, the Answers and the ITB, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. Notwithstanding anything herein to the contrary, in the event of an inconsistency among this Agreement, the Bid, the Answers and/or the ITB, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the ITB, and the terms of the ITB shall control the Bid. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. ONLY AFTER EXHAUSTION OF ALL REMEDIES AND PROCEDURES IN THE DISPUTE RESOLUTION PROCEDURES OF THE NCEL, IF APPLICABLE LAW PERMITS ANY FURTHER APPEALS, ANY SUCH APPEAL MUST BE BROUGHT SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA. VENDOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT WHICH IT MAY NOW OR HEREAFTER HAVE TO APPEAL ANY FINAL DECISIONS OF THE COMMISSION MADE PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES, AND VENDOR IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE**

NC EDUCATION LOTTERY INITIAL SEP 29 2006 TS

TO THE VENUE OF ANY APPEAL BEING SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA.

(c) Neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent the NCEL from freely assigning this Agreement, without requiring VENDOR's prior written consent, to any entity which operates or will operate the Lottery. For purposes of this Section 21(c), any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR will be deemed an assignment for which the NCEL's consent is required.

(d) This Agreement shall be binding on VENDOR, and its Subcontractors, successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) Upon the request of either party, the other party agrees to take, and VENDOR agrees to cause any Subcontractor to take, any and all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

22. **ADDITIONAL SERVICES**

In the event the NCEL desires to retain the services of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services, payment therefore shall not exceed the rates identified in this Agreement unless agreed to in writing by the NCEL. Any such services, the rates, and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall VENDOR or any Subcontractor be paid for work not authorized, or for work in excess of that authorized, in writing by the NCEL.

NC EDUCATION LOTTERY
INITIAL
SEP 2 9 2006

23. APPROVAL OF COMMISSION AND REQUIRED INVESTIGATIONS

The NCEL and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the approval of the Commission and the completion of all criminal and other background investigations required by the Act, Governing Laws and Regulations or the NCEL. This Agreement will not be binding upon the NCEL until the completion of all such investigations and the Commission has expressly approved the awarding of the Agreement to VENDOR and executed this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement, under seal, to be effective as of the Effective Date.

"NCEL"

NORTH CAROLINA EDUCATION LOTTERY

By: _____

Its: EXECUTIVE DIRECTOR

(SEAL)

"VENDOR"

THOMAS & GIBBS CPAs, PLLC

By: _____

Its: Member

Thomas & Gibbs CPAs, PLLC (CORPORATE SEAL)

NORTH CAROLINA EDUCATION LOTTERY
INITIAL
SEP 29 2006
13