

**LOTTERY DRAWING SHOW NETWORK TELEVISION
SERVICES AGREEMENT**

This Lottery Drawing Show Network Televising Services Agreement (the "**Agreement**") is made and entered into this 17th day of April, 2009 (the "**Effective Date**"), by and between the North Carolina Education Lottery (the "**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**"), located at 2100 Yonkers Road, Raleigh, North Carolina, 27604, and ABC45 WXLV, a wholly owned subsidiary of the Sinclair Television of Buffalo, Inc, located at 3500 Myer Lee Drive, Winston-Salem, North Carolina, 27101, a corporation organized under the laws of the State of Delaware ("**VENDOR**").

WITNESSETH:

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

WHEREAS, VENDOR presented its proposal on March 19, 2009, attached hereto as Exhibit A (the "**Proposal**") which complied with the requirements as specified in the NCEL's Request For Proposals for Lottery Drawing Show Network Televising Services, dated March 20, 2006, attached hereto as Exhibit B (the "**RFP**"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide lottery drawing show televising services to the NCEL, and VENDOR desires to provide such services for the 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, the NCEL retains VENDOR to provide lottery drawing show broadcasting, televising, transmission and other services to the NCEL as contemplated by this Agreement, the RFP and the Proposal (collectively, the "**Services**"), and VENDOR agrees to provide such Services to the NCEL. Capitalized terms not otherwise defined herein shall be defined as set forth in the RFP.

2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS

A. VENDOR and its Subcontractors will work in conjunction with the Executive Director of the NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other vendors, subcontractors, employees, agents, retailers and consultants of the NCEL. VENDOR and its Subcontractors will provide the Services to NCEL as detailed in the RFP and the



Proposal and will perform such specific services and provide such deliverables as requested, 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 and deliverables to be provided to the NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the RFP and the Proposal. All drawing game shows approved, adopted or created by the NCEL (the "**Drawing Shows**") shall be conducted, recorded, broadcast and televised in accordance with such reasonable rules, regulations and procedures as are adopted by the NCEL from time to time and made available to VENDOR with reasonable advance notice prior to their implementation. VENDOR hereby agrees to use its commercially reasonable efforts to make available to the NCEL, such of its employees and its Subcontractors as may be necessary or appropriate for the timely performance of VENDOR's Services and obligations pursuant to this Agreement.

B. Scope of Services

(i) Beginning April 27, 2009, VENDOR will broadcast 1:00 (one minute) of the *Powerball* drawing every Wednesday and Saturday at 10:59 p.m. (evening); and 1:00 (one minute) for the *Carolina Pick 3* and *Carolina Cash 5* drawing every Monday through Sunday at 11:22 p.m. (evening); and beginning April 27, 2009, an additional :15 (fifteen seconds) for the *Carolina Pick 4* drawing every Monday through Sunday at 11:22 p.m. (evening).

(ii) Promotional Campaign

(1) Beginning April 27, 2009, VENDOR will produce and air 3x :30 (thirty second) promotional announcements per day, totaling 1,095 announcements per Agreement year. These announcements will be considered highest priority to ensure all announcements run as scheduled. Announcements will run 7 a.m. (morning) through 12 a.m. (midnight), Monday through Friday and 12 p.m. (noon) -12 a.m. (midnight) Saturday through Sunday. No announcements will air inside children's/religious programming. Total GRP's 1,095

(2) Beginning April 27, 2009, VENDOR will produce and air :10 (ten second) *Powerball* Jackpot updates. When the *Powerball* amount reaches \$100 million dollars, VENDOR will update the commercials on Monday to air Monday through Wednesday, and update on Thursday to air Thursday through Saturday, with the latest *Powerball* jackpot amount. When the *Powerball* jackpot is less than \$100 million dollars, VENDOR will air a *Carolina Cash 5* Top Prize Update in place of the *Powerball* commercial. The updated *Carolina Cash 5* jackpot will air on Tuesday and Friday; Monday, Wednesday, Thursday, Saturday and Sunday (after 12

p.m. (noon)), a commercial promoting the *Carolina Cash 5* drawing will air. VENDOR will air 3x :10 (ten second) commercial per day.

(3) Beginning April 27, 2009, VENDOR will provide a link to the North Carolina Education Lottery web page on its ABC45.com website posting winning numbers from the past week's drawing. VENDOR will display video of the *Pick 3* daytime drawing (link to video will be provided to VENDOR) and provide a link to the *Powerball* drawings within the NCEL's website page. For updated drawing numbers, VENDOR will sign up, through the NCEL's website, to receive the NCEL's embedded syndicated FLASH™ web module.

C. Proof of Performance

VENDOR shall provide affidavits of performance attesting to the performance of the VENDOR's obligations with respect to all Promotional Campaigns as referenced above.

D. Additional Drawing

During the term of this Agreement, the NCEL anticipates adding another online game to its current product mix. VENDOR is aware that the NCEL may include another drawing to the current schedule. At such time, VENDOR and the NCEL will negotiate the inclusion of such additional drawing to the current drawing schedule.

3. SUBCONTRACTORS

A. Neither VENDOR nor any Subcontractors will subcontract or otherwise assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the NCEL in each instance, which consent may be withheld in the NCEL's sole discretion. The NCEL shall have the right to approve or disapprove of any subcontractor. VENDOR will provide the 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 the 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 the NCEL may require.

B. Upon the reasonable request of the NCEL, VENDOR will promptly provide the 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 the 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, deliverables 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 employees, and will exercise its commercially reasonable 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 the NCEL may establish from time to time.

4. INDEPENDENT CONTRACTOR

A. Both the 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 the 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 VENDOR to procure selected materials and services as authorized by the NCEL and as specifically set forth in, and subject to the limitations described in, the RFP. No Subcontractor is authorized to bind the 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

Except as otherwise provided herein, the NCEL shall not under any circumstances be liable or responsible for any costs, expenses, reimbursements



or fees incurred by the VENDOR or Subcontractors (or any other individual or entity) in connection with any Services or the VENDOR's performance under this Agreement. For the services to be provided by VENDOR as specified Section 14 below, the NCEL agrees to spend two hundred twenty thousand dollars (\$220,000) gross of its Greensboro media market TV buy, per Agreement year, beginning on the effective date of this Agreement (i.e., April 2009 through April 2010). However, such expenditures are subject to the NCEL's gross annual sales and any changes to the Lottery Act, which could reduce or increase the advertising expenditures in all media markets, including media purchases through the VENDOR. In addition, the NCEL agrees to provide the following:

- Provide VENDOR with logos/graphics and any other materials to produce promotional announcements and web banner.
- WXLV logo will be posted on all Winston-Salem/High Point/Greensboro market billboards and point of sale items.
- Provide Galaxy and Transponder feed information to VENDOR.

6. **TERM**

A. Unless sooner terminated in accordance with the provisions of Section 15 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence 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 the case may be, for a total of no more than three (3) Renewal Terms, unless the NCEL sends VENDOR 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. VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, the NCEL may 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 the 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 the NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient.

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 the 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 by following and applying the highest professional and technical guidelines and standards.

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, subcontractor or other individual or entity in connection with the performance of its obligations under this Agreement.

C. If NCEL becomes dissatisfied with the Services, deliverables 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. Important personnel identified in the Proposal 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; or (ii) the NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to the NCEL, in its discretion, will be substituted forthwith; or (iii) VENDOR wishes to have them replaced by someone of equal or better qualifications and VENDOR obtains NCEL's prior written consent to such change.

D. VENDOR hereby designates Fran McRae, 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. VENDOR must notify the NCEL, in writing and within five (5) business days, regarding designation of a new primary contact person for the VENDOR

8. **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 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 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 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.

9. **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;

(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 through 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, the 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 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 Education Lottery. The NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite the NCEL's reasonable efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the entirety of Section 1.5 of the RFP, the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Public 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 RFP or Proposal, 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. 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.

D. Neither the VENDOR nor any Subcontractor shall have any proprietary rights or interests in any intellectual properties (including, without limitation, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith) (all of the foregoing being collectively defined as the "**Intellectual Property Rights**")) programs, shows, concepts, ideas, Drawing Shows or other content or items of any kind or nature developed, produced or provided in connection with the Services provided for the NCEL under this Agreement (collectively, the "**NCEL Intellectual Properties**"). All such NCEL Intellectual Properties, including all Intellectual Property Rights therein, shall belong exclusively to the NCEL, and shall, to the greatest extent possible be deemed to be "works made for hire" for the NCEL. All NCEL Intellectual Properties, deliverables, written materials, campaigns, designs, tangible or intangible materials or other work product of any kind or nature produced, revised, created, modified or prepared by the VENDOR and any of its employees or Subcontractors in connection with this Agreement, the RFP or the procurement covered by the RFP or for the NCEL (collectively, the "**Work Product**") will be deemed, to the greatest extent possible, "work made for hire" under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by the NCEL. To the extent that any Work Product does not qualify as a "work made for hire," the VENDOR and each of the employees and Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all

right, title and interest in the Work Product, together with all Intellectual Property Rights therein, free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At the NCEL's written request, the VENDOR and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. At the NCEL's written request, the VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL's written request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product and Drawing Shows that it chooses in the conduct of its the lottery games and other activities.

E. Notwithstanding the foregoing, the nondisclosure restrictions of Section 9.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.

F. Notwithstanding the foregoing, the nondisclosure restrictions of Section 9.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 make such disclosure.

G. NCEL will not issue a press release regarding this Agreement without first having VENDOR review same and give its written approval.

10. NONDISCRIMINATION; AFFIRMATIVE ACTION

A. Neither VENDOR nor 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 commercially reasonable 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 minorities 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.

11. LIMITATION OF LIABILITY

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.

12. 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**").

13. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

VENDOR hereby represents, warrants or covenants, as the case may be, to 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, and to **VENDOR's** knowledge, 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** shall ensure that it is aware of any statutory limitations or restrictions affecting its Agreement with the NCEL, such as certain political



contributions, its ability to conduct future business with the NCEL and/or its ability to conduct business with certain third parties. Any employee of the VENDOR who works directly on the NCEL Contract/Account, and members of such employee's households, shall be prohibited from purchasing NCEL tickets and/or claiming any NCEL prizes.

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. VENDOR shall be obligated to notify the NCEL if VENDOR or any one of its officers and directors has been convicted of a felony or any gambling offense in any state or federal court of the United States within ten (10) years of entering into the contract (NCGS §18C-151(a)(5)).

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

E. 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.

F. 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, 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.

G. Neither VENDOR nor 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 or the Services without the prior written consent of the Director or his designee(s) in each instance.

H. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use 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.

14. 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 and legally required background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the NCEL or the State of North Carolina. In addition, VENDOR acknowledges that to the extent under Applicable Laws some or all of its employees, officers, directors and its Subcontractors and their respective employees, officers and directors may be required to submit to background and other investigations, 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 that it will routinely update all information disclosed to the NCEL pursuant to this Agreement or the RFP; provided, however, VENDOR shall as soon as possible notify the NCEL upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to the NCEL under this Agreement or the RFP and which materially affect the NCEL, VENDOR, the Subcontractors, any of their respective officers, on-air talent, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the NCEL 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, on-air talent, director or employee of Vendor or any Subcontractor.

B. In addition to the other types and amounts of insurance maintained by VENDOR as outlined in its Proposal, VENDOR shall at all times maintain at least the following types and amounts of insurance during the term of this Agreement:

- (i) General liability insurance in the amount of at least One Million Dollars (\$1,000,000);
- (ii) Full replacement cost property damage or loss insurance coverage for all NCEL equipment or other property in the possession of VENDOR or stored at VENDOR's locations;
- (ii) Workers Compensation Insurance at or above levels required by the State of North Carolina; and
- (iii) A liability insurance policy which shall insure against any and all claims against the NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or Intellectual Property Rights infringement arising out



of any Work Product prepared by, or services performed by, VENDOR, its employees (including any on-air talent) or its Subcontractors, in the amount of at least Five Hundred Thousand Dollars (\$500,000) per incident and One Million Dollars (\$1,000,000) in the aggregate.

C. Such insurance policies shall name the NCEL as an additional insured, and shall provide that such policies cannot be terminated, canceled, or modified without giving VENDOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification. VENDOR shall be required to provide proof of insurance coverage in accordance with this Agreement and its Proposal prior to execution of this Agreement and at least annually during the term hereof.

15. 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 the Services or this Agreement.

16. TERMINATION

A. Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement:

(i) immediately upon notice if, other than as a result of local, State or national emergency, as a result of VENDOR's or its employees or Subcontractors' actions or omissions: (A) more than two (2) consecutive Drawing Shows are interrupted or are unable to timely air; or (B) more than five (5) Drawing Shows in any one (1)-year period are interrupted or are unable to timely air; or (C) more than two (2) consecutive times or more than five (5) times in any one (1)-year period VENDOR is unable or fails to comply with any of other requirements set forth in Section 5.2.1 of the RFP (including, without limitation, VENDOR's duty to provide at least twelve (12) hours advance written notice to the NCEL of any pre-emption of a Drawing Show); or (D) any Drawing or Drawing Show is subject to any integrity or security-related concern;

(ii) if VENDOR fails to correct or cure any breach of this Section within seventy-two (72) hours 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 NCEL; or

(iii) if VENDOR fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than as described in Sections 16(a)(i) or (ii) hereof, after thirty (30) calendar days' prior written notice from NCEL.



B. VENDOR may cancel and terminate this Agreement if the NCEL, after thirty (30) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement.

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, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

17. **INDEMNIFICATION**

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, reasonable attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from: (a) 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; or (b) 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 the Services or this Agreement, by VENDOR, its employees or any Subcontractor.

18. **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 "**Dispute Resolution Procedures**") attached as Exhibit C.

19. **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, NC 27604
Attn: Thomas N. Shaheen, Executive Director

If to VENDOR: WXLV ABC 45
Sinclair Television of Buffalo, Inc
3500 Myer Lee Drive
Winston-Salem, NC 27101
Attn: Fran McRae, General Sales Manager

With a copy to:

Sinclair Television of Buffalo, Inc.
c/o Sinclair Broadcast Group, Inc.
10706 Beaver Dam Road
Cockeysville, MD 21030
Attn: General Counsel

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. MISCELLANEOUS

A. This Agreement, together with the Proposal and the RFP, 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 Proposal and/or the RFP, the terms of this Agreement, as may be amended pursuant hereto, shall control the RFP, and the terms of the RFP shall control the Proposal. 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 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, 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.

21: APPROVAL OF REQUIRED INVESTIGATIONS

The NCEL and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the successful completion of all criminal and other background investigations required by the Act, other Applicable Laws, Governing Laws and Regulations or NCEL.

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

"NCEL"

NORTH CAROLINA EDUCATION LOTTERY

By: 

Thomas N. Shaheen

Its: Executive Director

"VENDOR"

**SINCLAIR TELEVISION OF BUFFALO, INC.
D/B/A WXLV ABC 45**

By: 

David Bochenek

Its: Vice President/Chief Accounting Officer

