

NORTH CAROLINA EDUCATION LOTTERY
INVITATION TO BID
LIGHTING RETROFIT AND RELATED SERVICES

ITB # LC-000023

November 2, 2009

PART I- GENERAL INFORMATION

1.1 INTRODUCTION

The North Carolina Education Lottery (“**NCEL**”) is soliciting bids through this Invitation To Bid ITB # LC-000023 (“**ITB**”) to invite responsible bids (“**Bids**”) from qualified and reputable companies (“**Lottery Suppliers**”) to provide lighting retrofit and related services for the NCEL’s Headquarters in Raleigh, North Carolina, as outlined in this ITB (collectively, the “**Work**”).

The NCEL requires the Lottery Supplier that is selected to provide the Work contemplated by this ITB (the “**Successful Lottery Supplier**”) to provide all Services and Deliverables and do all things necessary to enable the NCEL to achieve all of its objectives as set forth in this ITB.

The NCEL currently intends to execute only one contract (the “**Contract**”) as a result of this ITB; provided, however, nothing obligates the NCEL to sign any Contract, or only one Contract, and the NCEL may do whatever it determines in its sole discretion to be in the best interests of the NCEL and the State of North Carolina.

All Bids and the Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the “**Act**”) and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the “**Regulations, Policies and Procedures**”), as they may be changed from time to time. Copies of these documents may be obtained either from the NCEL or through a link on the NCEL’s website, <http://www.nc-educationlottery.org/> (the “**Website**”).

1.2 BID SUBJECT TO PUBLIC RECORDS LAWS

All Bids, data, materials and documentation originated, prepared and submitted to the NCEL pursuant to this ITB shall belong exclusively to the NCEL and may become available to the public in accordance with the North Carolina Public Records Act as provided in N.C.G.S. §132-1 et. seq. (the “**Public Records Laws**”). The NCEL will make reasonable attempts to maintain, in accordance with the Public Records Laws and the Act and all applicable laws of its domicile, the State of North Carolina and the United States of America (all of the forgoing being collectively defined as, the “**Applicable Laws**”), the confidentiality of any trade secrets or confidential information that meets the requirements of N.C.G.S. §132-1.2 of the Public Records Laws (collectively, “**Confidential Information**”) if such Lottery Suppliers properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Public Records Laws.

1.3 REJECTION OF BIDS AND CANCELLATION OF ITB; REISSUE OF ITB

Issuance of this ITB does not constitute a commitment on the part of the NCEL to award or execute a Contract. The NCEL retains the right, in its sole discretion, at any time to reject any or all Bids, in whole or in part, and to cancel or cancel and reissue this ITB, before or after receipt and opening of Bids in response thereto, or take any other actions, if it considers it to be in the best interests of the NCEL.

1.4 BID VALIDITY; INCURRED EXPENSES

All Bids shall remain valid for one hundred eighty (180) calendar days (the “**Bid Offer Period**”) after 4:00 p.m. Eastern Standard Time (“**EST**”) November 23, 2009 (the “**Bid Deadline**”). A Bid constitutes an offer by the Lottery Supplier to contract with the NCEL in accordance with the terms of the Bid and this ITB, which offer is irrevocable for the duration of the Bid Offer Period and may not be withdrawn or amended during the Bid Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Lottery Supplier in preparing and submitting a Bid or in performing any other action in connection with this procurement process.

PART II - BID PROCESS

2.1 SUMMARY OF KEY DATES

The NCEL reserves the right to change any dates and schedule contained in this ITB, including those shown below. If changes are made, the changes will be communicated on the NCEL’s Websites.

November 2, 2009	ITB Issuance Date
November 12, 2009	Mandatory Site Visit 9:00 a.m. (EST) NCEL Headquarters 2100 Yonkers Road Raleigh, NC 27604
November 17, 2009	Deadline for submission of Questions 4:00 p.m. EST
November 18, 2009	Answers Posted
November 23, 2009	Deadline for submission of Bids 4:00 p.m. EST

DELIVERY ADDRESS:

North Carolina Education Lottery Headquarters
Lighting Retrofit and Related Services ITB
(ITB # LC-000023)
2100 Yonkers Road
Raleigh, NC 27604

2.2 CONTACT PERSON

The sole point of contact (the “**Contact Person**”) for inquiries and additional information concerning this ITB (ITB # LC-000023) will be Quan Kirk, Director of Legal Services, who can be reached as follows:

Email: **bid.submission@lotterync.net**
Fax: **919-301-3620**

North Carolina Education Lottery
Lighting Retrofit and Related Services ITB
2100 Yonkers Road
Raleigh, NC 27604

No direct or indirect contact or other solicitation initiated by Lottery Suppliers or their representatives, in connection with this ITB, should occur with any NCEL employee other than the Contact Person.

2.3 INQUIRIES

All inquiries regarding this ITB must be submitted in the form of questions or requests for clarification (collectively, the “**Questions**”). Such Questions must be in writing and received by the Contact Person identified in Section 2.2 of this ITB on or before 4:00 p.m. EST on November 17, 2009 (the “**Question Deadline**”). The NCEL’s responses (the “**Answers**”) to Questions properly received prior to the Question Deadline will be posted on the NCEL’s Website <http://www.nc-educationlottery.org/vendor.aspx> and the Interactive Purchasing System (IPS) website <https://www.ips.state.nc.us/IPS/DeptBids.aspx>.

2.4 BID SUBMISSION AND FORMAT

Bids must be received by the Contact Person no later than the Bid Deadline in sealed envelopes or containers. The Cost portion of the Bid must be in a separately sealed envelope. A Lottery Supplier should submit a signed original and three (3) reproduced complete copies of its Bid. Bids must be received by the NCEL by 4:00 p.m. (EST) November 23, 2009. Late Bids will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Lottery Suppliers must provide responses for all items contained herein that request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this ITB that are due with the Bid. Bids shall be complete and must convey all of the information requested by the NCEL. Also, the Bid must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Lottery Supplier.

2.5 MULTIPLE LOTTERY SUPPLIERS AND JOINT BIDS

If the response submitted is a joint Bid that includes multiple Lottery Suppliers, it must define completely the roles, responsibilities, duties and obligations that each entity that is a part of a joint venture, strategic partnership or prime contractor team proposes to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The Bid must be signed by an authorized officer or agent of each entity. Also, the Bid must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the joint venture, strategic partnership or prime contractor team. Any Contract resulting from a joint Bid must be signed by an authorized officer or agent of each entity. Any entity which is part of a joint venture, strategic partnership or prime contractor team included in the submission of a joint Bid will be jointly and severally liable during the term of the Contract.

The Successful Lottery Supplier that submits a Bid whereby any subcontractor will provide some portion of the specifications of this ITB shall retain ultimate responsibility for all Services and Deliverables provided by any subcontractor, and any claims or liabilities arising from or related to the subcontractor’s performance. Furthermore, each subcontractor of a Successful Lottery Supplier must comply with all of the requirements contained in this ITB.

2.6 CHANGES, MODIFICATIONS AND CANCELLATION

The NCEL reserves the right, in its sole discretion, at any time prior to the Bid Deadline to make changes to this ITB by issuance of written addendum(s) or amendment(s) or to cancel all or part of this ITB. Any addendum(s), amendment(s) or cancellation(s) will be posted on the NCEL’s Website and notification by the NCEL to all Responding Lottery Suppliers will be sent via email and/or fax.

2.7 BID CONSTITUTES OFFER

By submitting a Bid, a Lottery Supplier agrees to be governed by the terms and conditions set forth in this ITB, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this ITB and any amendments hereto and the Questions and Answers, the Lottery Supplier’s

Bid and any terms and conditions subsequently negotiated with such Lottery Supplier. A Lottery Supplier submitting a Bid must complete and submit, as part of its Bid, the Lottery Supplier Certification Form included as **Attachment A**, and made a part hereof.

2.8 BID EVALUATION

A variety of factors shall be considered by the NCEL in determining the Successful Lottery Supplier it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL. Thus, while Lottery Suppliers are strongly encouraged to offer the lowest price and total cost and highest value possible, the Lottery Supplier offering the lowest price and total cost may not be selected as the Successful Lottery Supplier. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Bids deemed responsive using an evaluation committee (the "**Evaluation Committee**") selected by the NCEL Executive Director. The Evaluation Committee may request clarifications or answers to any questions it may have of a Lottery Supplier as a result of any information or representations contained in its Bid or otherwise identified, and may ask a Lottery Supplier to address technical questions or seek additional information regarding any Bid before completing the initial evaluation. It is not the intent of the NCEL to disqualify any Bid based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Bid and Lottery Supplier. It is the intent of the evaluation procedure established by the NCEL to determine whether each Bid meets the needs of the NCEL, as outlined in this ITB, and then to determine which ITB best suits those needs.

2.9 DISPUTE PROCEDURE

All claims and disputes, including but not limited to protests related to this ITB, the procurement process and the award of the Contract to the Successful Lottery Supplier shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Dispute Resolution Procedures (the "**Dispute Procedures**"), as adopted and/or amended from time to time by the NCEL Commission (**Attachment D**). Any Lottery Supplier that submits a Bid hereby expressly acknowledges and agrees that: (a) the Dispute Procedures represent the exclusive procedure and the exclusive forum for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind relating in any way to any ITB, the procurement process, Contract, offer, quote, Bid or agreement entered into by the NCEL; (b) it is estopped from objecting to any court, agency or other entity as to the Dispute Procedures being such sole and exclusive forum for binding resolution; and (c) it agrees to be completely, solely and irrevocably bound by such Dispute Procedures. In addition, each Lottery Supplier submitting a Bid irrevocably waives any claim it might have had to protest or object to this ITB or its contents.

2.10 NEGOTIATION AND EXECUTION OF CONTRACT

A Successful Lottery Supplier under this ITB shall negotiate and execute a Contract containing such terms and conditions as shall be satisfactory to the NCEL. The occurrence of negotiations with any Lottery Supplier(s) conveys no right or status on such Lottery Supplier(s). By submitting a Bid, each Lottery Supplier acknowledges and agrees that the NCEL may negotiate with one or more Lottery Suppliers, under such circumstances, at such times and in such a manner as it determines to be in the best interests of the NCEL.

2.11 NONEXCLUSIVE RIGHTS

Nothing in this ITB or any Contract shall preclude the NCEL from purchasing other products and/or services, for its use from other Lottery Suppliers or Potential Contractors, individuals or entities as the NCEL, in its sole discretion, shall determine

2.12 E-PROCUREMENT SERVICE REQUIREMENTS

Please note this ITB is subject to E-Procurement requirements. It is the responding Lottery Supplier's responsibility to read the following terms and conditions carefully and consider them in

preparing the Bid. By submitting a Bid, Lottery Supplier acknowledges acceptance of all terms and conditions, including those related to e-procurement.

General information on the e-procurement service can be found at: http://www.ncgov.com/eprocurement/asp/section/ep_index.asp. Instructions are also provided in Attachment F of this ITB.

Payment by the NCEL shall be conducted through the Statewide E-Procurement Service. The Lottery Supplier shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of the Contract.

THE SUCCESSFUL LOTTERY SUPPLIER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER.

The transaction fee is handled by a third party Supplier Manager. This fee applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. The Successful Lottery Supplier will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Successful Lottery Supplier. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Successful Lottery Supplier's failure to perform or comply with specifications or requirements of the Contract.

The Successful Lottery Supplier, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Successful Lottery Supplier identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and the Successful Lottery Supplier shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Successful Lottery Supplier is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, the Successful Lottery Supplier may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the NCEL has not been received by the Successful Lottery Supplier. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of Contract. The Supplier Manager shall provide, whenever reasonably requested by the Successful Lottery Supplier in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Successful Lottery Supplier agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Successful Lottery Supplier is a corporation, partnership or other legal entity, then the Successful Lottery Supplier may authorize its employees to use its password. The Successful Lottery Supplier shall be responsible for all activity and all charges by such employees. The Successful Lottery Supplier agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Successful Lottery Supplier's account, the Successful Lottery Supplier shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. The Successful Lottery Supplier shall cooperate with the NCEL and the Supplier Manager to mitigate and correct any security breach.

PART III – BID TERMS AND CONDITIONS

3.1 GOVERNING LAW

This procurement process and any Contract resulting from this ITB shall be governed by and construed in accordance with the laws of the State of North Carolina, including the Act. Any and all claims or disputes arising under or in connection with this ITB or the Contract shall be exclusively governed by the Dispute Procedures, as they may be adopted or amended from time to time by the Commission.

3.2 CONTRACT ELEMENTS

The terms of this ITB, as may be amended by the NCEL prior to the Bid submission deadline, and the Bid of the Successful Lottery Supplier will be incorporated into and form a part of the Contract, as will the Questions and Answers. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the Contract, this ITB and any amendments thereto as well as Answers to the Questions, and finally the Bid of the Successful Lottery Supplier, all of which must comply with the Act. The NCEL reserves the right to negotiate the form of contract and offer such Contract to the Successful Lottery Supplier as the NCEL determines is in the best interests of the NCEL.

The currently proposed draft Contract is attached to this RFP as **Attachment E** (the "Proposed Contract"). The NCEL may modify the language of the Proposed Contract prior to the execution of the Contract with the Successful Lottery Supplier, which may include any requested changes by the Successful Lottery Supplier.

PART IV – BID REQUIREMENTS

4.1 MANDATORY COMPONENTS; LOTTERY SUPPLIER COMMITMENT

The integrity of the NCEL is essential. The NCEL must maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to the State of North Carolina, the greatest integrity for the NCEL and the best service for the public, all in a manner consistent with the dignity of the State of North Carolina. A Lottery Supplier must sign and submit the Lottery Supplier Certification Form included as **Attachment A** and made a part hereof. The form must be signed by a person duly authorized to legally bind such Lottery Supplier.

4.2 LOTTERY SUPPLIER CONTACT PERSON

A Lottery Supplier shall provide the name, address, telephone number, e-mail address and facsimile number of the person to provide notification or contact concerning questions regarding its Bid.

4.3 LOTTERY SUPPLIER BACKGROUND, EXPERIENCE AND CAPABILITIES

The Lottery Supplier must submit a description of its background, experience, business, System and Services and a provide list of all current customers for which it provides systems or services similar to the System or Services. The Lottery Supplier should include for each account a description of the type of System implemented, Services performed, the name of the key contact person for each account and such contact person's telephone number. The NCEL reserves the right to contact any of the contact persons provided pursuant to this Section.

The Lottery Supplier shall submit with its Proposal as much technical and other information as may be necessary for the NCEL to properly evaluate the System and Services proposed by the Lottery Supplier, including at least three (3) examples of successful implementations of similar Systems and the performance of similar Services within the last two (2) years. Specific information should be provided in the Proposal about the Lottery Supplier's experience at performing repair and maintenance Services for its Systems. Any warranty or other claims made by any customer in the last three (3) years with respect to the System or any Services should also be described in the Bid.

With its bid response, a Lottery Supplier must provide a letter from manufacturers of equipment listed in it referencing this ITB number (ITB#LC-000023), if applicable, and confirming that the Lottery Supplier is authorized to sell the products. Letters provided to Lottery Suppliers for prior bids shall not meet the requirements of this ITB.

A Lottery Supplier's failure to provide the letter, if applicable, with its Bid will render the Bid non-responsive and will not be evaluated further.

4.4 GOODS AND SCOPE OF SERVICES

OBJECTIVE

The NCEL desires the Successful Lottery Supplier to remove the existing magnetic ballasts and tubes throughout the NCEL Raleigh Headquarters facility and replace it with high performance, energy efficient electronic ballasts and tubes.

REQUIREMENTS

- 1.) Provide all labor, materials, equipment, and supervision to remove the existing magnetic ballasts and tubes throughout the facility and install high performance, energy efficient electronic ballasts and tubes.
- 2.) Mandatory site visit is required to view work area and count the number of fixtures to accurately complete proposals and documentation for rebates.
- 3.) Ensure electrical work is performed by a NC State Licensed Electrician. Copy of license must be provided.
- 4.) All work shall be performed in compliance with OSHA regulations utilizing all necessary safety precautions to ensure a safe working environment.
- 5.) All work shall be done in accordance with Local, State and Federal Building Codes (Newest Edition).
- 6.) Responsible for any and all permits required by city, county and/or state.
- 7.) All equipment and components used must be applicable to the Progress Energy rebate approval.
- 8.) Preference for T8 ballasts and lamps for four (4) foot fixtures.
- 9.) Labor to install and connect.
- 10.) Inclusion of all electrical and controls
- 11.) Include one (1) year warranty for lamps and labor and five (5) year warranty for ballasts.
- 12.) All Work will take place during normal business hours during the workweek unless unforeseen circumstances make that impossible. The NCEL Facilities Manager shall be present while the Work is being performed. A 48-hour notice must be given to the NCEL Facility Manager for after hours and/or weekend work.
- 13.) All noise, dust and debris must be kept to a minimum as much as possible, as NCEL business will be conducted during normal business hours.
- 14.) All work shall be performed in an organized professional manner.
- 15.) Protect interior work area, etc., during project.
- 16.) Repair any damage caused by negligence in a manner that eliminates evidence of patching or refinishing. Any damage caused by the Successful Lottery Supplier not repaired will be deducted from the Successful Lottery Supplier's final invoice.
- 17.) Recycling and/or disposal of all lamps, ballasts and other debris. Preference is for Lottery Suppliers to provide an ecologically approved recycling method. No materials are to be disposed of in the NCEL dumpsters.
- 18.) In order to qualify for the rebate, an accurate count of tubes and ballasts must be documented for items actually used.

The above-referenced requirements are not all inclusive. Responding Lottery Suppliers are expected to propose, and clearly specify in their Bids, any and all materials, equipment and/or services that are required to complete the Work as requested by the NCEL, and their associated costs.

WORK SITE

NCEL Headquarters
2100 Yonkers Road
Raleigh, NC 27604

NOTE: Access to the building WILL BE LIMITED to the specified work areas and restrooms only.

ADDITIONAL REQUIREMENTS

Responding Lottery Supplier shall furnish with its Bid the following information:

- 1.) Include a copy of a W-9 Form (rev. 10/07)
- 2.) Raleigh Business License
- 3.) NC General Contracting License (if applicable)

4.5 COMMITMENT TO NONDISCRIMINATION AND MINORITY PARTICIPATION

The Act has specific references to minority participation in the formation and operation of the NCEL and requires compliance with Article 8 Chapter 143 as applicable. The NCEL strongly encourages participation by, and involvement of, minority-owned businesses. In order to achieve or exceed the goals established by the Act and Applicable Laws, and to provide equal business opportunities in the procurement process, the NCEL encourages Lottery Suppliers to contract with minority-owned businesses whenever and wherever possible. Given the NCEL policy regarding participation of minority businesses and the express provisions of the Act, a Lottery Supplier shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its Bid and provisions of its Work.

4.5.1 MINORITY BUSINESSES PARTICIPATION

Each Lottery Supplier should describe in its Bid what actions it currently takes in the areas of: (a) utilizing minority-owned businesses; (b) encouraging full participation of qualified, capable, competent and competitive minority-owned businesses; (c) assisting minority businesses or minority persons; and (d) any plans to continue to provide interested minority businesses with adequate information about any subcontracting opportunities. Bids should describe what minority businesses the Lottery Supplier uses or intends to use. To facilitate that process, either Affidavit A or B and Affidavit C (collectively referred to as **Attachment B**) should be completed and included with each Bid. Any additional and supplemental information in this area is also highly encouraged.

4.5.2 NON-DISCRIMINATION

Each Lottery Supplier should describe in its Bid what actions it currently takes, in the areas of: (a) ensuring a workplace free of all discrimination on the basis of race, color, religion, national origin, age, sex, disability or otherwise; (b) ensuring a diverse workforce and providing equal opportunities; and (c) ensuring and maintaining a work environment free of harassment, intimidation and coercion.

PART V - COST

5.1 PRICING

The NCEL currently expects that the Successful Lottery Supplier shall be compensated for the Work based on a fixed fee agreed upon by the NCEL; however, Lottery Suppliers are encouraged to offer, in addition to a fixed fee, alternative pricing terms if they wish. Lottery Suppliers are reminded that the cost quotation should cover all of the Systems and Services and other items covered and required by this ITB, as well as other Services and Deliverables deemed necessary by the Lottery Supplier, to be provided by the Successful Lottery Supplier during the entire term of the Contract. All Services required by this ITB must be included in such fee, including, without limitation:

- Cost associated with the supply, installation, activation and testing for all required equipment;
- Cost associated with manufacturer's warranty that the proposed installed equipment is free from any and all defects in material and workmanship. Such warranty to cover replacement costs, labor, freight, and travel expenses at no additional cost to the NCEL; and
- Cost associated with one (1) year warranty for lamps and labor and five (5) year warranty for ballasts after the expiration of the initial warranty period.

Lottery Suppliers shall provide the pricing in the format presented in **Attachment C**, including total unit cost per line item and extended unit cost. No reimbursement will be available to the Successful Lottery Supplier beyond the amount agreed to be paid as the cost of the goods and services provided. Costs agreed to in the resulting contract shall be firm and remain constant throughout the life of the contract.

5.2 PAYMENT

Upon determination of the amount due to the Successful Lottery Supplier on the thirtieth (30th) day of each month, payment will be processed in an expedited manner. Lottery Suppliers may propose any alternative methods or schedules of payments which will be considered during contract negotiations with the Apparent Successful Lottery Supplier.

ATTACHMENT A

LOTTERY SUPPLIER CERTIFICATION

LIGHTING RETROFIT AND RELATED SERVICES

I do hereby certify as follows:

1. The initial prices and other terms and provisions included in the Bid submitted by _____ (the "Proposing Lottery Supplier") are accurate and binding for 180 days from the Bid due date (the "Bid Offer Period");
2. All charges are, to the best of my knowledge, accurate and complete;
3. The Proposing Lottery Supplier acknowledges and agrees that this Bid will be considered valid and irrevocable for the Bid Offer Period and, if an award is not made within the Bid Offer period or if a Contract with the Successful Lottery Supplier is for any reason not executed within the Bid Offer Period, it shall be incumbent upon the Proposing Lottery Supplier to notify the designated contact person identified in Section 2.2 of the ITB in writing if it does not want its Bid to be further considered beyond the Bid Offer Period (i.e., in the event of a breach or termination, the NCEL may decide to return to the remaining Lottery Suppliers' Bids). Failure on the part of the Proposing Lottery Supplier to notify the designated contact person identified in Section 2.2 of this ITB will mean that its Bid remains valid even after the Bid Offer Period;
4. The cost and other terms and provisions contained in the Bid accurately reflect the Proposing Lottery Supplier's total proposed cost, including any applicable discounts, and the Proposing Lottery Supplier would deliver the services and related items for that amount and according to those terms and provisions if the NCEL wanted to accept the prices and other terms and provisions described in its Bid without negotiation;
5. All inquiries to the NCEL and other pre-Bid review and evaluation efforts have been completed and that no extra costs or payments to any entity, including this Proposing Lottery Supplier, will be allowed for any miscalculation, deficiency, oversight and failure to make suggestions regarding possible additional needs for desired features, or any other difference in cost if later discovered;
6. By submission of this Bid, the Proposing Lottery Supplier agrees to fully comply with all requirements of the ITB, and its separate parts, and any deviation noted in the Proposing Lottery Supplier's submission may be the basis for rejection of its Bid by the NCEL without recourse;
7. The Proposing Lottery Supplier has read and understands the Act and all of the requirements contained in the ITB and any amendments thereto, the responses to written questions submitted by Lottery Suppliers and its Bid, and agrees to be bound by all the terms and conditions contained in each of these documents, without exception;
8. The Proposing Lottery Supplier has taken appropriate steps to completely and fully familiarize itself with the requirements of the ITB in order to render full performance under any resulting relationship between the NCEL and Proposing Lottery Supplier; and
9. This Bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Bid for the services and is in all respects fair and without collusion or fraud.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT B

Equal Business Opportunity Forms

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the Lottery Supplier to the commitment herein set forth.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 2009.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit B-- Intent to Perform Contract with Own Workforce

State of _____

County of _____

Affidavit of _____ (Name of Lottery Supplier)

I hereby certify that it is our intent to perform 100% of the work required for the NCEL contract for Lighting Retrofit and Related Services ITB.

In making this certification, the Lottery Supplier states that the Lottery Supplier does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Lottery Supplier agrees to provide any additional information or documentation requested by the NCEL in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Lottery Supplier to the commitments herein contained.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 2009.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit C- Listing of Good Faith Efforts

State of _____

County of _____

Affidavit of _____ (Name of Lottery Supplier)

I have made a good faith effort to comply under the following areas checked:

Lottery Suppliers must earn at least 50 points from the good faith efforts listed for their Bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Lottery Supplier, or available on State or local government maintained lists, at least 10 days before the Bid date and notified them of the nature and scope of the work to be performed.

2 --(10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the Bids are due.

3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.

4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the Bid documents that provide assistance in recruitment of minority businesses.

5 – (10 pts) Attended pre-bid meetings scheduled by the NCEL.

6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.

7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.

8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Lottery Supplier's suppliers in order to help minority businesses in establishing credit.

9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if declared to be the Successful Lottery Supplier, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of Contract to be executed with the NCEL. Substitution of contractors must be in accordance with GS143-128.2(d). Failure to abide by this statutory provision will constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the Lottery Supplier to the commitment herein set forth.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 2009.

Notary Public _____

My commission expires _____

[SEAL]

ATTACHMENT C

**Lighting Retrofit and Related Services ITB
ITB # LC-000023**

COST PROPOSAL

(Lottery Supplier's Name)

1. Using the following table, please itemize the unit cost per line item and the extended unit cost:

Total Equipment Cost \$ _____

2. Cost for Additional Essential Items:

- Cost associated with the shipping, labor/installation, activation and testing for all required equipment

\$ _____

- Cost associated with one (1) year warranty for lamps and labor that the proposed installed equipment is free from any and all defects in material and workmanship. Such warranty to cover replacement costs, labor, freight, and travel expenses at no additional cost to the NCEL

\$ _____

- Cost associated with and five (5) year warranty for ballasts

\$ _____

3. Other Costs (*please specify*):

\$ _____

TOTAL COST PROPOSAL \$ _____

ATTACHMENT D

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

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SCOPE

These Dispute Resolution Procedures apply to and shall constitute the exclusive procedure for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind filed by an Aggrieved Person relating in any way to any agreement entered into by the NCEL, whether in an administrative proceeding or litigation, at law or equity, including, but not limited to, those arising out of or relating to any aspect of a solicitation or bid or a failure to conduct a solicitation or bid, the performance of any party, the interpretation of any contractual provision, the applicability or interpretation of any law, rule or regulation, or any decision to award, deny, suspend or cancel, terminate or not renew any contract or agreement.

DEFINITIONS (see appendix A)

Capitalized terms used herein shall have the meanings set forth in Appendix (A) attached hereto, unless otherwise defined in context.

FILING OF A DISPUTE RESOLUTION REQUEST

- A. Any Aggrieved Person may file a Dispute Resolution Request seeking a determination with respect to any matter which is included within the scope of these Dispute Resolution Procedures as set forth in the Scope of these policies. An Aggrieved Person who files a Dispute Resolution Request is hereinafter referred to as a "Petitioner." Other than expressly set forth in these Dispute Resolution Procedures, nothing contained herein shall confer any rights or remedies upon any Aggrieved Person and/or Petitioner, or impose any duties or obligations upon the NCEL, which are not otherwise so conferred or imposed by the Act.

- B. The Dispute Resolution Request shall be in writing, shall be filed by delivery by hand or courier to the Director with a copy to the Legal Counsel of the NCEL at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

IF DELIVERED SOLELY BY US POSTAL SERVICE

Director
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

IF DELIVERED SOLELY BY US POSTAL SERVICE

Legal Counsel
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

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**IF DELIVERED BY OTHER MEANS
(INCLUDING HAND DELIVERY)**

Director
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

**IF DELIVERED BY OTHER MEANS
(INCLUDING HAND DELIVERY)**

Legal Counsel
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

- C. The Dispute Resolution Request shall include the following information:
1. The name, address and telephone number of the Petitioner;
 2. The signature of the Petitioner;
 3. Identification of the solicitation or contract number or other matter that is the subject of the dispute;
 4. a statement of the legal and factual grounds supporting the position of the Petitioner, including copies of relevant documents;
 5. Any other documentation the Petitioner wishes to submit in support of Petitioner's position; and
 6. A statement of the relief requested whether legal, equitable or otherwise. If a monetary award is requested, the amount shall be stated.

For a Dispute Resolution Request to be timely filed, the original Dispute Resolution Request manually signed by the Petitioner must be physically received by the NCEL within the time period prescribed in Time for Filing a Dispute Resolution Request Section below. Facsimile or any other electronically transmitted copies of the Dispute Resolution Request will not be accepted.

- D. The Petitioner shall be required to provide a suitable Dispute Bond (as defined in the filing of a dispute resolution request section) to the NCEL in certified funds at the time the Dispute Resolution Request is filed. The purpose of this bond is to:

1. Discourage frivolous Dispute Resolution Requests and litigation;

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2. Assure payment by the Petitioner of the costs incurred as a result of the Dispute Resolution Request, including reasonable attorney's fees of the Commission, in the event Petitioner appeals and such costs are adjudged against the Petitioner; and
3. Assure payment of all other amounts for which the Petitioner may be found liable, including, but not limited to, any loss of income to the NCEL resulting from the institution of a frivolous or unsuccessful appeal.

Failure to provide such Dispute Bond with any Dispute Resolution Request will result in the dismissal of such Dispute Resolution Request. An Aggrieved Person/Petitioner shall not have met the requirement in Time for Filing a Dispute Resolution Request Section timely file a Dispute Resolution Request unless the applicable Dispute Bond accompanies the Dispute Resolution Request when it is timely filed. This requirement does not apply to any Petitioner who has already provided a Dispute Bond in the proper Dispute Bond amount as part of a bidding process.

- E. The amount of the Dispute Bond shall be the amount established in the applicable solicitation; provided, however, in the event that no amount is specified in the applicable solicitation, the Dispute Bond shall be the lesser of One Million Dollars (\$1,000,000.00) or ten percent (10%) of the contract amount in controversy.

TIME FOR FILING A DISPUTE RESOLUTION REQUEST

- A. Dispute Resolution Requests concerning a solicitation.
 1. A Dispute Resolution Request in regard to a Major Procurement Contract solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial proposals shall be filed within five (5) business days after the deadline for Vendor questions established in the solicitation. A Dispute Resolution Request in regard to any other solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial proposals. Dispute Resolution Requests based upon a solicitation that are apparent before the bid opening shall be filed before bid opening.
 2. Dispute Resolution Requests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the NCEL with respect to any solicitation or response thereto, that are apparent before the

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closing date for receipt of proposals or any supplemental information requested by the NCEL shall be filed within five (5) business days after the deadline for Vendor questions or the date of the amendment, whichever date is later.

3. Subject to the provisions of Section 1.04C, if a Dispute Resolution Request is timely filed in accordance with these Dispute Resolution Procedures before the award of a contract, the award of such contract may be made before a decision is rendered on the Dispute Resolution Request.

B. If the Commission or Director announces its intent not to require competitive bidding of a Major Procurement Contract, the Dispute Resolution Request must be filed within five (5) business days of the date such announcement is made, posted, published or otherwise made available to the public.

C. Dispute Resolution concerning an award of contract.

1. Any Aggrieved Person may protest the NCEL's decision to award a contract. Any such written Dispute Resolution Request shall be filed in the case of either a contract that has not been competitively bid by the NCEL or a contract that has been competitively bid by the NCEL, within five (5) business days after the earlier to occur of: (a) the NCEL's issuance of a notice of intent to award such contract; or (b) the NCEL's award of such contract is posted, published or otherwise made publicly available; or (c) the execution of any such contract.
2. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is filed with the Legal Counsel of the NCEL in accordance with the Time for Filing a Dispute Resolution Request Section and before a contract is executed, the NCEL may nonetheless award and enter into such contract if either: (a) such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures, or (b) the Commission shall have made a written determination that the award of such contract without delay is necessary to protect substantial interests of the NCEL.
3. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is timely filed in accordance with these Dispute Resolution Procedures after a contract is executed, the NCEL and other party or parties to such contract may nonetheless continue to perform in accordance

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therewith until such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures such that the contract must be set aside and/or terminated and no further work can be performed thereunder. By submitting a bid or proposal governed by these Dispute Resolution Procedures, each Vendor acknowledges and agrees that at any time that the Commission determines that the award and performance of a contract without delay is necessary to protect substantial interests of the NCEL, such award and contract shall not be enjoined, and by submitting such bid or proposal all Vendors waive any right they might have had to seek injunctive relief to enjoin such award or contract there being deemed to be an important state need, and adequate remedy at law, a waiver of injunctive relief by the Aggrieved Person Vendor and an otherwise available mechanism to remedy any contract issues by either terminating it or awarding a new contract or re-bidding the contract.

- D. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in Time for Filing a Dispute Resolution Request Section of these regulations, a Dispute Resolution Request must be filed within five (5) business days after the earlier to occur of: (1) the announcement of the Commission's decision to award is posted, published or otherwise made publicly available; or (2) the NCEL's issuance of a notice of intent to award such contract; or (3) the execution of any such contract.
- E. In all cases other than those covered in Time for Filing a Dispute Resolution Request Section, the Dispute Resolution Request must be filed within five (5) business days after the Aggrieved Person knows or should have known of the facts giving rise to the action complained of.
- F. Failure to file a written Dispute Resolution Request in accord with the Filing of a Dispute Resolution Request Section within the applicable time limit provided in Time for Filing a Dispute Resolution Request Section shall bar any further administrative, legal, or equitable action of any kind or nature and in any body, court or agency. Time is of the essence in the various procurements of the NCEL.
- G. Failure to provide the applicable Dispute Bond in the amount required and as otherwise provided in the Filing of a Dispute Resolution Request Section within the applicable time frame shall result in an untimely filing and bar any further

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administrative, legal, or equitable action of any kind or nature and in any body, court or agency.

NOTICE OF FILING OF A DISPUTE RESOLUTION REQUEST

In the event a Dispute Resolution Request is filed, the Director shall immediately give notice of the Dispute Resolution Request to the Commission and to the successful person or entity, if an award has been made or a contract entered into, or, if no award has been made or contract entered into, to all persons or entities who have timely submitted responsive bids or proposals on that procurement.

CONFIDENTIAL INFORMATION

- A. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
- B. If the Petitioner believes the Dispute Resolution Request contains confidential information or trade secrets, it must comply with all relevant provisions of the North Carolina Public Records Act to attempt to secure confidential treatment thereof; provided, however, all Petitioners acknowledge that the NCEL is subject to the Public Records Act and Open Meetings Laws of the State of North Carolina, and thus the NCEL is not liable for any disclosure of any material submitted by any Petitioner regardless of the circumstances.

DECISION BY THE DIRECTOR OR DESIGNATED HEARING OFFICER

- A. The Director (or his Designated Hearing Officer), shall have the exclusive authority to decide all Dispute Resolution Requests.
- B. The Director (or his Designated Hearing Officer) shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:
 - 1. A brief description of the claim;
 - 2. A reference to the pertinent contract provision;
 - 3. A brief statement of the factual and legal issues raised or implicated;

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4. A statement of the Director's decision, findings of facts and conclusions of law, with supporting rationale and he remedial action and/or award, if any.
- C. The Director (or his Designated Hearing Officer) shall furnish a copy of the decision to the Petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier.
- D. The time limit for decisions set forth in the Decision by the Director or Designated Hearing Officer may be extended by the Director (or his Designated Hearing Officer), in his discretion, for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Director (or his Designated Hearing Officer) shall notify the Petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- E. If the Director (or his Designated Hearing Officer) fails to issue a decision within the time limits set forth in the Decision by the Director or Designated Hearing Officer Section, the Petitioner may proceed as if the Director (or his Designated Hearing Officer) had issued an adverse decision to the Petitioner.
- F. In lieu of a written decision, the Director may, in his sole discretion, within thirty (30) calendar days after a Dispute Resolution Request is filed, give written notice to the Petitioner that the Dispute Resolution Request shall be resolved by a hearing conducted by the Director (or his Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section. Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a Dispute Resolution Request be resolved by a hearing conducted by the Director (or his Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section.

HEARING PROCEDURES

- A. All hearings conducted under this Section shall be conducted by the Director (or his Designated Hearing Officer). The decision as to whether the Director or a Designated Hearing Officer will conduct the hearing shall be in the sole discretion of the Director. In either case, any Hearing Officer's actions, decisions and orders shall be deemed to be on behalf of the Director and effective as though taken by the Director, subject to the appeals procedures as hereinafter provided.

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- B. If the Director determines under the Decision by the Director or Designated Hearing Officer Section that the Dispute Resolution Request will be resolved after a hearing, the hearing shall be held within thirty (30) calendar days following the Director's determination under the Decision by the Director or Designated Hearing Officer Section to resolve a Dispute Resolution Request by this procedure for a hearing. A notice which will set forth the time, date and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the Hearing Officer may:
1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
 2. Hold pre-hearing conferences to:
 - a. settle, simplify or identify the issues involved in the hearing;
 - b. consider other matters that may aid in the expeditious disposition of the hearing;
 - c. rule on any parties' request for injunctive or other equitable relief;
 3. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
 4. Require each party to produce for examination those relevant witnesses and documents under its control;
 5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope and extend of discovery available to the parties;
 6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
 7. Establish time limits for submission of motions or memoranda;
 8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;

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9. Administer oaths or affirmations;
 10. Issue subpoenas; and
 11. Join any necessary parties to the hearing.
- D. The hearing shall be conducted before a court reporter. The Petitioner shall procure at Petitioner's own cost and on Petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. If the Petitioner fails to do so, the Hearing Officer may suspend such hearing until the Petitioner has provided the court reporter, or the Hearing Officer may supply a court reporter and assess the costs thereof against Petitioner. The original transcript of any such proceedings shall be submitted to the Hearing Officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The Petitioner shall also submit a copy of the transcript (at Petitioner's expense) to all other parties to the Dispute Resolution Request as soon as the transcript is available.
- E. Any party may appear and be represented with or without counsel at the hearing.
- F. If a Hearing Officer, other than the Director, conducts the hearing, such Hearing Officer shall make a written recommendation containing the Hearing Officer's ruling, in the form of a Proposed Decision, to the Director, within thirty (30) calendar days after receiving an original transcript of the hearing pursuant to the Hearing Procedures Section above and deliver a copy of the Proposed Decision to the Petitioner. If a Proposed Decision is received by the Director, he must render his final and binding decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the Proposed Decision from the Hearing Officer.
1. If the Director received a recommendation in a Proposed Decision from a Hearing Officer other than himself, he may:
 - a. accept, modify or reject the Hearing Officer's recommendation in whole or in part;
 - b. return the matter to that Hearing Officer with instructions;

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- c. make any other appropriate disposition; or
 - d. issue a no action response.
2. If the Director issues a no action response, then the determination in the Proposed Decision of the Hearing Officer will be deemed to be accepted by the Director.
- G. If the Director conducts the hearing, he must render a decision in writing and deliver the decision to the Petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The Director’s final and binding decision (and any previous recommended Proposed Decision made by a Designated Hearing Officer) shall be sent to the Petitioner by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier.

PROCEDURE FOR FILING AN APPEAL TO THE COMMISSION

- A. A Petitioner may appeal a decision of the Director solely to the Commission. Any appeal from a decision of the Director must be filed with the Commission within five (5) business days after receipt of such decision.
- B. Any appeal shall be filed by delivery by hand or courier, to the Director with a copy to the Legal Counsel of the NCEL at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

**IF DELIVERED SOLELY BY
US POSTAL SERVICE**

Director
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

**IF DELIVERED SOLELY BY
US POSTAL SERVICE**

Legal Counsel
North Carolina Education Lottery Protest
2100 Yonkers Road
Raleigh, NC 27604

**IF DELIVERED BY OTHER MEANS
(INCLUDING HAND DELIVERY)**

**IF DELIVERED BY OTHER MEANS
(INCLUDING HAND DELIVERY)**

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Director North Carolina Education Lottery Protest 2100 Yonkers Road Raleigh, NC 27604	Legal Counsel North Carolina Education Lottery Protest 2100 Yonkers Road Raleigh, NC 27604
------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------

An appeal so delivered will be timely filed only if received by the NCEL at the above-stated address during its normal business hours on or before the fifth (5th) business day prescribed by the Procedure for Filing an Appeal to the Commission Section above.

- C. Every appeal must be in writing and shall contain the following:
1. Copy of the decision of the Director;
 2. A copy of the transcript of any hearing; and
 3. The basis for the precise factual or legal error in the decision of the Director from which the appeal is taken.
- D. The Commission may notify any other individuals or entities which it, in its sole discretion, determines it wishes to notify of the appeal (by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier) within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

COMMISSION'S DECISION

- A. The Commission, or a committee of the Commission, may review the record without a hearing or oral argument and issue a written decision on behalf of the Commission. The Commission, or a committee of the Commission, may, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances in its sole discretion: (1) conduct its own review or investigation; (2) a de novo review in whole or in part; or (3) allow oral argument.
- B. A copy of the Commission's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight

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express courier. The original written decision shall be retained by the Commission. The written decision of the Commission, or a committee of the Commission, will be final, and no further appeal to the Commission will be allowed.

JUDICIAL REVIEW

Only after exhaustion of all remedies and procedures in these 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. By submitting a bid covered by these Dispute Resolution Procedures, Vendor irrevocably waives, to the fullest extent permitted by law, any right which it has to appeal any final decisions of the Commission made pursuant to these Dispute Resolution Procedures, and Vendor irrevocably waives any objection which it has to the venue of any appeal being solely in the Superior Court of Wake County, North Carolina.

EXCLUSIVE REMEDY

These Dispute Resolution Procedures provide the exclusive procedure for asserting a claim against the NCEL arising out of or relating to any matter which is within the scope of these Dispute Resolution Procedures as set forth in the Scope of these policies. Neither an Aggrieved Person, Petitioner nor any other interested party has a right to any remedy against the NCEL with respect to a matter within the scope of the Scope of these policies, except in accordance with the procedures set forth in these Dispute Resolution Procedures.

AMENDMENT

These Dispute Resolution Procedures may be amended from time to time by the Commission. Any Aggrieved Person or other individual or entity may, and should, obtain the latest version of these Dispute Resolution Procedures before proceeding in connection with any Dispute Resolution Request or dispute governed hereby.

ATTACHMENT E

LIGHTING RETROFIT AND RELATED SERVICES AGREEMENT

This Lighting Retrofit and Related Services Agreement (the "**Agreement**") is made and entered into this ___ day of _____, 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 _____, located at _____, a corporation organized under the laws of the State of North Carolina ("**LOTTERY SUPPLIER**").

WITNESSETH:

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

WHEREAS, LOTTERY SUPPLIER submitted the Bid, dated _____, 2009 (the "**Bid**," Exhibit A) to the NCEL in response to the NCEL's Invitation to Bid dated November 2, 2009 (ITB#LC-000023) (the "**ITB**," Exhibit B). Exhibits A and B are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain LOTTERY SUPPLIER to provide lighting retrofit and related services to the NCEL, and LOTTERY SUPPLIER desires to provide such services and deliverables 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. GOODS AND SERVICES

Subject to the terms and conditions set forth in this Agreement, the NCEL retains LOTTERY SUPPLIER to provide lighting retrofit and related services to the NCEL as contemplated by this Agreement, the ITB and the Bid (collectively, the "**Work**"), and LOTTERY SUPPLIER agrees to provide such Services and Deliverables to the NCEL. Capitalized terms not otherwise defined herein shall be defined as set forth in the ITB.

2. DUTIES AND RESPONSIBILITIES OF LOTTERY SUPPLIER AND SUBCONTRACTORS

A. LOTTERY SUPPLIER and its Subcontractors, if applicable and approved by the NCEL, 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. LOTTERY SUPPLIER and its Subcontractors will provide the Work to the NCEL as detailed in the ITB, the Answers and the Bid. Except as otherwise set forth herein, LOTTERY SUPPLIER agrees that the Work to be provided to the NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the ITB, the Answers and the Bid.

B. Upon execution of this Agreement, LOTTERY SUPPLIER, and its Subcontractors shall meet the NCEL's Facility Manager to establish work plans, implementation schedules and timetables for completion of the work.

C. LOTTERY SUPPLIER hereby agrees to use its best 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 LOTTERY SUPPLIER's obligations pursuant to this Agreement. No employee or agent of LOTTERY SUPPLIER 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.

D. Scope of Work: LOTTERY SUPPLIER agrees to remove the existing magnetic ballasts and tubes throughout the NCEL Raleigh Headquarters facility and replace it with high performance, energy efficient electronic ballasts and tubes. The lighting retrofit project, to be provided by the LOTTERY SUPPLIER, shall meet the following minimum requirements:

- 1.) Provide all labor, materials, equipment, and supervision to remove the existing magnetic ballasts and tubes throughout the facility and install high performance, energy efficient electronic ballasts and tubes.
- 2.) Mandatory site visit is required to view work area and count the number of fixtures to accurately complete proposals and documentation for rebates.
- 3.) Ensure electrical work is performed by a NC State Licensed Electrician. Copy of license must be provided.
- 4.) All work shall be performed in compliance with OSHA regulations utilizing all necessary safety precautions to ensure a safe working environment.
- 5.) All work shall be done in accordance with Local, State and Federal Building Codes (Newest Edition).
- 6.) Responsible for any and all permits required by city, county and/or state.
- 7.) All equipment and components used must be applicable to the Progress Energy rebate approval.
- 8.) Preference for T8 ballasts and lamps for four (4) foot fixtures.
- 9.) Labor to install and connect.
- 10.) Inclusion of all electrical and controls
- 11.) Include one (1) year warranty for lamps and labor and five (5) year warranty for ballasts.
- 12.) All Work will take place during normal business hours during the workweek unless unforeseen circumstances make that impossible. The NCEL Facilities Manager shall be present while the Work is being performed. A 48-hour notice must be given to the NCEL Facility Manager for after hours and/or weekend work.
- 13.) All noise, dust and debris must be kept to a minimum as much as possible, as NCEL business will be conducted during normal business hours.
- 14.) All work shall be performed in an organized professional manner.
- 15.) Protect interior work area, etc., during project.
- 16.) Repair any damage caused by negligence in a manner that eliminates evidence of patching or refinishing. Any damage caused by the Lottery Supplier not repaired will be deducted from the Lottery Supplier's final invoice.
- 17.) Recycling and/or disposal of all lamps, ballasts and other debris. Preference is for Lottery Supplier to provide an ecologically approved recycling method. No materials are to be disposed of in the NCEL dumpsters.
- 18.) In order to qualify for the rebate, an accurate count of tubes and ballasts must be documented for items actually used.
- 19.) Access to the building WILL BE LIMITED to the specified work areas and restrooms only.

3. SUBCONTRACTORS

A. Neither LOTTERY SUPPLIER 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. LOTTERY SUPPLIER will provide the NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement. All approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties

working with or for LOTTERY SUPPLIER in performing services under this Agreement or for the NCEL 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. LOTTERY SUPPLIER agrees that it will obtain the prior consent of the Director or his designee(s) prior to having any Subcontractor perform any activities for the NCEL under this Agreement.

B. Upon the request of the NCEL, LOTTERY SUPPLIER will promptly provide the NCEL with copies of all subcontracts and other agreements entered into by LOTTERY SUPPLIER 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. The NCEL shall have the right, at any time and from time to time, to instruct LOTTERY SUPPLIER not to use the services and/or deliverables of any Subcontractor, individual or employee in connection with the work to be performed for the NCEL under this Agreement, and LOTTERY SUPPLIER agrees to comply with all such instructions.

D. Notwithstanding anything herein to the contrary, LOTTERY SUPPLIER 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 LOTTERY SUPPLIER or under LOTTERY SUPPLIER's control, and LOTTERY SUPPLIER will ensure the compliance of its 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 the Work 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 LOTTERY SUPPLIER, 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 LOTTERY SUPPLIER 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 LOTTERY SUPPLIER 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 ITB and/or this Agreement. No Subcontractor is authorized to bind the NCEL to any liability or obligation or to represent that it has any such authority.

B. LOTTERY SUPPLIER 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 workers' compensation insurance for its employees.

5. COMPENSATION

A. As full and complete compensation for the Work provided by LOTTERY SUPPLIER pursuant to this Agreement, the NCEL will pay LOTTERY SUPPLIER, and LOTTERY SUPPLIER will accept, a not to exceed amount of: **[SUCCESSFUL LOTTERY SUPPLIER'S RATE AFTER NEGOTIATION PURSUANT TO ITB]**.

B. 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 LOTTERY SUPPLIER or Subcontractors (or any other individual or entity) in connection with any Services and/or Deliverables or the LOTTERY SUPPLIER's performance under this Agreement.

C. 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, the NCEL will pay to LOTTERY SUPPLIER all nondisputed amounts due under this Agreement within thirty (30) days upon receipt and verification of LOTTERY SUPPLIER's invoice.

6. TERM

Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the ITB, the term of this Agreement shall commence as of the Effective Date and shall continue until the end of any warranty and/or maintenance period, or any extension(s) thereof.

7. WORK STANDARD

A. LOTTERY SUPPLIER 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. LOTTERY SUPPLIER 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 applicable to the LOTTERY SUPPLIER's industry.

B. LOTTERY SUPPLIER 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. LOTTERY SUPPLIER 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 the NCEL becomes dissatisfied with the Work of or the working relationship with any of the individuals assigned to perform the Work under this Agreement by LOTTERY SUPPLIER or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Important personnel identified in LOTTERY SUPPLIER's Bid as performing the Work under this Agreement will continue to perform the Work in their designated capacities until the Work is completed unless: (i) they cease to be employed by LOTTERY SUPPLIER or a Subcontractor; (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) LOTTERY SUPPLIER wishes to have them replaced by someone of equal or better qualifications and LOTTERY SUPPLIER obtains NCEL's prior written consent to such change.

D. Nothing in this Agreement shall prohibit the NCEL from retaining the services and/or deliverables of any individual or entity to perform any services and/or provide any deliverables on its behalf, whether or not such or similar services and/or deliverables were initially contemplated to be provided by LOTTERY SUPPLIER or a Subcontractor. The NCEL is not prohibited by this Agreement from retaining the services and/or deliverables of any individual or entity to provide any services and/or deliverables it requires, and it is under no obligation to exclusively use the Services and/or Deliverables of LOTTERY SUPPLIER or any Subcontractors.

E. LOTTERY SUPPLIER hereby designates _____, 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. LOTTERY SUPPLIER must notify the NCEL, in writing and within five (5) business days, regarding designation of a new primary contact person for the LOTTERY SUPPLIER

8. CHANGES IN WORK

By written or oral request by the Director or his designee(s) to LOTTERY SUPPLIER, the NCEL may from time to time make changes in the Work to be provided by LOTTERY SUPPLIER or any Subcontractor. LOTTERY SUPPLIER 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 LOTTERY SUPPLIER shall negotiate in good faith any changes required to this Agreement or the compensation to be provided pursuant hereto.

9. BOOKS AND RECORDS

LOTTERY SUPPLIER shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Work 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. LOTTERY SUPPLIER 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, upon reasonable advance notice. Upon ten (10) days prior written notice, the NCEL shall have the right to audit the records and operations of LOTTERY SUPPLIER with respect to the Work to be performed pursuant to this Agreement. LOTTERY SUPPLIER shall also comply with all other requirements of the Act and Governing Laws and Regulations.

10. CONFIDENTIALITY

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; 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 either party to protect its legitimate business interests, each party hereby covenants and agrees that with regard to any party's 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 any party's Trade Secrets, at all times such information remains a Trade Secret under applicable law, each party will regard and treat all such

items as strictly confidential and wholly owned by such party 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 Confidential Information or 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 the other party or except to the extent necessary to fulfill the purposes of this Agreement or conduct the North Carolina Education Lottery. 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 NCEL, LOTTERY SUPPLIER covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. Notwithstanding anything hereto the contrary, the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq., the Public Records Law G.S. §132-1 et. seq. and North Carolina Education Act G.S. §18-132(k) (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. Notwithstanding the foregoing, the nondisclosure restrictions of Section 10 shall not apply to information that is: (A) generally known to the public other than due to a disclosure by such party; (B) already known to the such party at the time it is disclosed by the other party; (C) independently developed by such party; or (D) received by such party from anyone else that such party believed in good faith had the right to make such disclosure.

11. NONDISCRIMINATION; AFFIRMATIVE ACTION

Neither LOTTERY SUPPLIER 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 LOTTERY SUPPLIER, or LOTTERY SUPPLIER’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. LOTTERY SUPPLIER 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.

Consistent with the Act and all other applicable North Carolina laws, LOTTERY SUPPLIER agrees to make every reasonable effort to include the participation by minorities in the performance of its Work 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

LOTTERY SUPPLIER 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**").

14. ANTITRUST ACTIONS

LOTTERY SUPPLIER hereby conveys, sells, assigns and transfers to the NCEL all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of North Carolina relating to any Services and/or Deliverables provided by LOTTERY SUPPLIER to the NCEL under this Agreement.

15. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

LOTTERY SUPPLIER 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. LOTTERY SUPPLIER has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and LOTTERY SUPPLIER 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 LOTTERY SUPPLIER 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 LOTTERY SUPPLIER, enforceable against LOTTERY SUPPLIER in accordance with its terms.

B. LOTTERY SUPPLIER and its Subcontractors have disclosed or will disclose to the NCEL all matters required to be disclosed under the Governing Laws and Regulations. LOTTERY SUPPLIER 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 LOTTERY SUPPLIER who works directly on the NCEL Agreement, and members of such employee's households, shall be prohibited from purchasing NCEL tickets and/or claiming any NCEL prizes.

C. Neither LOTTERY SUPPLIER, 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 LOTTERY SUPPLIER, 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. LOTTERY SUPPLIER shall be obligated to notify the NCEL if LOTTERY SUPPLIER 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 this Agreement (NCGS §18C-151(a)(5)).

