

REQUEST FOR PROPOSAL
LOTTERY DRAWING SHOW PRODUCTION
AND
TELEVISION SERVICES
NORTH CAROLINA EDUCATION LOTTERY

RFP # LC-000034

September 6, 2011

PART I- GENERAL INFORMATION

1.1 INTRODUCTION

The North Carolina Education Lottery (“**NCEL**”), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 *et seq.*), is issuing this Request for Proposal (“**RFP**”) to invite responses (“**Proposals**”) from North Carolina television or cable stations in the Raleigh metropolitan area, licensed in North Carolina (“**Contractors**”) to: (i) produce the drawing game shows (“**Drawing Shows**”) approved, adopted or created by the NCEL; (ii) televise the Drawing Shows in the Raleigh metropolitan area; and (iii) perform the production, transmission and all other activities and services set forth in this RFP and its Exhibits and attachments (“**Services**”).

The NCEL currently, and for the past six (6) years, utilizes the services of a TV station in the Raleigh metro area. The station has been responsible for all activities and services as it relates to drawing production, satellite uplink and broadcast of the lottery drawings. The Contract term between the current Contractor and the NCEL will expire in May of 2012. However, the NCEL anticipates that, for purposes of set-up and preparation at the Successful Contractor’s studio for production of the Draw Shows, the Contract arising from this RFP will begin either March or April of 2012. For purposes of this RFP, Drawing Shows will include *Powerball*, *Mega Millions*, *Carolina Cash 5*, *Carolina Pick 3* and *Carolina Pick 4*, any other multi-state games which may not originate in North Carolina or be under the sole jurisdiction of the NCEL, and any other online lottery game drawings adopted or approved by the NCEL.

The NCEL currently intends to execute only one contract (the “**Contract**”) as a result of this Procurement under this RFP (the “**Procurement**”) with a term of six (6) years from the date of execution; 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 Contractors must fully acquaint themselves with the NCEL’s needs and requirements and obtain all necessary information and understandings to be able to submit responsive and effective Proposals. Contractors are encouraged to be creative in their Proposals and provide best in class and creative solutions so that the NCEL can maximize the revenues it raises as responsibly as possible.

All Proposals and any 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**”). 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 BENEFITS TO THE SUCCESSFUL CONTRACTOR/NCEL RELATIONSHIP

Consumer Market Research by the NCEL in January 2011 indicated that 61% of adult North Carolinians have played a lottery game in North Carolina. NCEL drawings are of programming value and provide a competitive benefit to the broadcast entities that air them. NCEL drawings attract North Carolina Education Lottery players to watch their television station during the time period in which the drawings are aired. In addition, there is value for television entities to be perceived by viewers as the exclusive source for live North Carolina Education Lottery drawings.

While the Contractor will provide the Services and other items required by this RFP and its Proposal primarily at its own cost, the NCEL believes that providing the Services to the NCEL will provide the Successful Contractor with many tangible and intangible benefits. In that regard, the NCEL intends to offer the following specific benefits to the Successful Contractor:

(a) Except in cases of emergency and certain promotional events, the Successful Contractor will exclusively originate the Drawing Shows and will be the only television station in its primary viewing area to carry the live online and any other NCEL lottery drawings (collectively, the “**Drawings**”) which may result in potentially increased ratings.

- (b) The NCEL will include the Successful Contractor's station logo on NCEL procured outdoor boards promoting online games in the Successful Contractor's primary viewing area.
- (c) The NCEL will include the Successful Contractor's station tag on selected NCEL procured online radio spots in the Successful Contractor's primary viewing area.
- (d) The NCEL will include the Successful Contractor's station logo on certain point-of-sale materials that promote the online Drawings in the retailer locations throughout the State of North Carolina.
- (e) The NCEL will offer to the Successful Contractor more advantageous television media buys for the NCEL's regular advertising and promotion.
- (f) The NCEL will reimburse the Successful Contractor up to one hundred thousand dollars (\$100,000) annually toward any production and/or broadcasting costs.

1.3 PROPOSAL SUBJECT TO PUBLIC RECORDS ACT AND OPEN MEETINGS ACT

All Proposals, data, materials and documentation originated, prepared and submitted to the NCEL pursuant to this RFP 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 Contractors properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Public Records Laws.

1.4 REJECTION OF PROPOSALS AND CANCELLATION OF RFP; REISSUE OF RFP

Issuance of this RFP 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 Proposals, in whole or in part, and to cancel or cancel and reissue this RFP, before or after receipt and opening of Proposals in response thereto, or take any other actions, if it considers it to be in the best interests of the NCEL.

1.5 PROPOSAL VALIDITY; INCURRED EXPENSES

All Proposals shall remain valid for one hundred eighty (180) calendar days (the "**Proposal Offer Period**") after 4:00 p.m. Eastern Standard Time ("**EST**") October 7, 2011 (the "**Proposal Deadline**"). A Proposal constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal 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 Contractor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

1.6 RIGHT TO USE INFORMATION IN THE PROPOSAL

Upon submission, all materials submitted to the NCEL by Contractors shall become the NCEL's property and may be used as the NCEL deems appropriate.

PART II - PROPOSAL PROCESS

2.1 SUMMARY OF KEY DATES

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

| | |
|---------------------------|--|
| September 6, 2011 | RFP Issuance Date |
| September 16, 2011 | Deadline for submission of Questions 4:00 p.m. EST |
| September 19, 2011 | Answers Posted |
| October 7, 2011 | Deadline for submission of Proposals 4:00 p.m. EST |
| | <u>DELIVERY ADDRESS:</u> North Carolina Education Lottery Headquarters Lottery Drawing Show Production and Televising Services RFP #LC-000034 2100 Yonkers Road Raleigh, NC 27604 |
| December 14, 2011 | Target date for Commission Decision of Apparent Successful Contractor |
| March/April 2012 | Contract execution, subject to approval by NCEL Commission |

2.2 CONTACT PERSON

The sole point of contact (the “**Contact Person**”) for inquiries and additional information concerning this RFP will be Michele Goff, Purchasing Administrator, who can be reached as follows:

Email: bid.submission@lotterync.net
 Fax: 919-715-2711

North Carolina Education Lottery
 Lottery Drawing Show Production and Televising Services RFP #LC-000034
 2100 Yonkers Road
 Raleigh, NC 27604

No direct or indirect contact or other solicitation initiated by Contractors or their representatives, in connection with this Procurement, should occur with any NCEL employee other than the Contact Person. Employees of the current Contractor who are required to work with the NCEL under the existing Lottery Drawing Show Production and Televising Services Contract will be permitted to continue their regular contacts under that agreement; however, they may not have any discussions or exchange any information in connection with or regarding this Procurement or RFP.

2.3 INQUIRIES

All inquiries regarding this RFP 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 RFP on or before 4:00 p.m. EST on September 16, 2011 (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>.

2.4 PROPOSAL SUBMISSION AND FORMAT

Proposals must be received by the Contact Person no later than the Proposal Deadline in sealed envelopes or containers. A Contractor should submit a signed original and three (3) reproduced complete copies of its Proposal. Proposals must be received by the NCEL by 4:00 p.m. (EST) October 7, 2011. Late Proposals will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Contractors 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 RFP that are due with the Proposal. Proposals shall be complete and must convey all of the information requested by the NCEL. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Contractor.

2.5 CHANGES, MODIFICATIONS AND CANCELLATION

The NCEL reserves the right, in its sole discretion, at any time prior to the Proposal Deadline to make changes to this RFP by issuance of written addendum(s) or amendment(s) or to cancel all or part of this RFP and Procurement. Any addendum(s), amendment(s) or cancellation(s) will be posted on the NCEL's Website and notification by the NCEL to all Potential Contractors will be sent via email and/or fax.

2.6 PROPOSAL CONSTITUTES OFFER

By submitting a Proposal, a Contractor agrees to be governed by the terms and conditions set forth in this RFP, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this RFP and any amendments hereto and the Questions and Answers, the Contractor's Proposal and any terms and conditions subsequently negotiated with such Contractor. A Contractor submitting a Proposal must complete and submit, as part of its Proposal, the Contractor Certification Form included as **Attachment A**, and made a part hereof, as referenced in Section 4.1.

2.7 PROPOSAL EVALUATION

A variety of factors shall be considered by the NCEL in determining the Successful Contractor it believes provides the best overall solution and consistent with the goals and objectives of the NCEL. No one factor can or will be so paramount that the most favorable bidder in that category automatically is the Successful Contractor.

It is not the intent of the NCEL to disqualify any Proposal based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Contractor. It is the intent of the evaluation procedure established by the NCEL to determine whether each Proposal meets the needs of the NCEL, as outlined in this RFP, and then to determine which Proposal best suits those needs.

All Proposals submitted will be evaluated for form and content in accordance with the provisions of this RFP.

2.8 SCOPE OF SERVICES

I. Background

The NCEL offers a variety of games of chance which are divided into two (2) distinct categories: instant ticket games and online ticket games (or draw numbers games). For the purposes of this RFP, production services are required for online drawing shows for *Carolina Pick 3*, *Carolina Pick 4* and *Carolina Cash 5*. These televised drawing programs are currently distributed live via satellite by the TV production studio (Successful Contractor) to four (4) stations across North Carolina, in the NCEL drawing station network. The NCEL may add a fifth broadcasting station during the term of the Contract arising from this RFP. Drawing shows and distribution of the live drawings for the multi-jurisdictional games *Mega Millions* and *Powerball* are provided through the Multi-State Lottery Association ("MUSL"). The NCEL is not involved in the production of these non-local, multi-jurisdictional drawings.

The nightly drawings air live and require the following amount of airtime:

| | |
|---|--|
| <i>Carolina Pick 3, Carolina Pick 4 and Carolina Cash 5</i> | 1 minute and 15 seconds, 7 days a week |
|---|--|

The jackpot games air live and require the following amount of airtime:

| | |
|----------------------|------------------------------------|
| <i>Mega Millions</i> | 1 minute, Tuesdays and Fridays |
| <i>Powerball</i> | 1 minute, Wednesdays and Saturdays |

The mid-day drawings for *Carolina Pick 3* and *Carolina Pick 4* will not air but are made available online at nc-educationlottery.org or at any of the NCEL’s drawing station network’s websites.

All drawings will be conducted at a specific time at the Contractor’s television or cable production facility in the Raleigh, North Carolina metropolitan area not to exceed twenty (20) miles from the NCEL’s Headquarters at 2100 Yonkers Road, Raleigh, NC, 27604. Drawings for the NCEL’s online drawing games will include weekends and holidays. The in-state nightly drawing programs must air 365 days per year, or in the case of leap year, 366 days per year. Multi-jurisdictional game drawings must be aired live or at an alternate time suitable to the NCEL.

Winning numbers must be repeated from each lottery drawing program during the morning and afternoon newscast on the day after each drawing.

Drawing Schedule

The following outlines the current drawing games and airtimes.

| | | |
|------------------------|--|-----------------------|
| <i>Carolina Cash 5</i> | draws daily Monday-Sunday | 11:22 PM |
| <i>Carolina Pick 3</i> | draws twice a day Monday-Sunday | 3:00 PM* and 11:22 PM |
| <i>Carolina Pick 4</i> | draws twice a day Monday-Sunday | 3:00 PM* and 11:22 PM |
| <i>Mega Millions</i> | drawings are held in Atlanta, GA, Tuesdays and Fridays | 11:00 PM |
| <i>Powerball</i> | drawings are held in Orlando, FL, Wednesdays and Saturdays | 10:59 PM |

*Mid-day drawings will not be aired but are made available online at nc-educationlottery.org or at any of the NCEL’s drawing station network’s websites.

II. Required Services

A. The NCEL will require the Successful Contractor to provide, primarily at such Successful Contractor’s expense, the Services outlined in this RFP, including this Section 2.8. The NCEL shall not be liable for any of the costs or expenses (including, without limitation, all costs of labor, benefits, payroll, equipment, satellite time, taxes, production, promotional offerings, etc.) for any of the times set forth in this RFP, including this Section 2.8. A detailed discussion of how a Contractor intends to satisfy each of the requirements of this RFP should be included in each Proposal.

B. Responding Contractor must provide a synopsis of its business continuity plan, including plan to cover inclement weather situation with respect to the NCEL drawings. Contractor must also describe its plan to accept NCEL-provided video for broadcast, either via the web or television, which includes the Contractor’s ability to FTP and broadcast RNG-created video file in disaster situation.

C. Responding Contractor must provide a detailed description, a drawing layout, and photos/architectural drawing of the proposed secure area.

D. The Successful Contractor will design, construct, maintain and refurbish the appropriate sets (the “Sets”) for the in-state drawing games in accordance with the specifications established by, and subject to the reasonable approval of, the NCEL. The same Set will be used for each type of drawing. During the term of the Contract, new Sets may be required from time to time, no more frequently than once during any twelve (12) month period. Sets must be in position and ready for telecast at least one (1) hour before

each Drawing is aired. Responding Contractor must provide a detailed description, with a drawing layout, of the proposed production Set, including an operations area.

The following are mandatory requirements with respect to the studio facility, the Set location and the designated NCEL secured storage area, and the Successful Contractor's capabilities:

- Minimum of 25' x 20' Draw Studio space.
- Minimum of 20' x 25' (or equivalent) secured storage area, adjacent to the Draw Studio ("Secured Area").
- Permit the NCEL to install two (2) surveillance cameras in the Draw Studio with audio feed (equipment provided by the NCEL).
- Minimum of four (4) dedicated circuits, up to 20A each (with the ability to add more dedicated circuits if the NCEL adds additional games).
- Minimum of three (3) seats for the NCEL Draw Staff.
- Telephone lines and Internet access via the NCEL MIS.
- Physical access control to the building containing the Draw Studio.
- Generator for all of Draw Production equipment, including but not limited to, draw machines, lights, cameras, broadcast, etc., and the Secured Area (to cover long-term outages).
- UPS for all of Draw Production equipment, including but not limited to, draw machines, lights, cameras, broadcast, etc.
- NEMA-style outlets for draw machines (currently 20 amp for *Pick 4* machine, and 15 amp for all other machines) plus the ability to change style outlets upon request by the NCEL.
- Implicit permission for visitors, approved by the NCEL, to enter the Draw Studio building/visitor area.
- Separate visitor area from the Draw Studio, with a clear-view of the Draw Studio and enough space to contain 8-10 seats for approved visitors/VIPs (the "Visitor Area"). NCEL will provide the seats. The NCEL prefers that a restroom is nearby the Visitor Area for use by the NCEL visitors.
- ADA compliance access to Draw Studio, including a clear-view of the Draw Studio from the Visitor Area for wheel-chair bound visitors.
- The NCEL prefers one or more television monitors in the Visitor Area to show live draw production. Successful Contractor may feed its own programming on the monitors prior to the live draw.
- The NCEL security system must control the Secured Area's access.
- Sufficient cooling of Secured Area to prevent damage to NCEL computers.
- NCEL must have the ability to access Secured Area, preferably on a 24x7 basis.
- Window in Secured Area with line-of-sight to the Draw Studio.
- Loading dock or equivalent access to Draw Studio/Secured Area to facilitate rotation of draw machines.
- NCEL must have the ability to perform draws regardless of weather conditions, seven (7) days per week.
- NCEL must have the ability to participate in the Contractor's existing hazardous weather lodging and transport services. NCEL will cover lodging costs for its Auditors and/or Draw Staff.
- Adequate staff to produce Draw Shows seven (7) days per week at two (2) times per day. Contractor should also plan to cover a possible third draw period and during inclement weather situations. If possible, the NCEL prefers that the camera crew perform checks 30-45 minutes prior to the afternoon and evening drawings.
- Draw Studio room schedule must accommodate mid-day and evening drawings.
- Camera zoom-in capability for selected numbers, which may require movement of the camera.
- Provide Draw Host and back-up Draw Host, if necessary for all mid-day and evening drawings.

Attached to this RFP as **Attachment E** is a complete list of equipment provided by the NCEL that will be located in either the Draw Studio or the Secured Area.

III. Airing and Pre-emption

The Successful Contractor will televise all Drawing Shows (including live in the designated time slots and replay all Drawing Shows at times to be established by the NCEL). Pre-emption of the live telecasts of the

Drawing Shows should be avoided except in the case of bona fide emergencies. To the extent the Contractor knows of any pre-emption or interruptions that may occur from time to time, the Contractor should disclose such information in its Proposal.

If the live telecast of a Drawing Show must be pre-empted for some unforeseen reason, the Successful Contractor must provide the NCEL at least twelve (12) hours advance written notice of such pre-emption (except in the case of unforeseeable emergencies) and the corresponding Drawing will proceed and be taped at its regularly scheduled time. If the Contractor must pre-empt the Drawing Show, it must immediately crawl and continuously display for a mutually agreed upon period of time the winning numbers from any on-line game Drawings the live telecast of which has been pre-empted. The taped pre-empted Drawing Show must then be telecast in its entirety at the first available time after the pre-emption.

The televising of the NCEL's drawing schedule should be as close to the following designated time slots as possible.

(1) Contractor will broadcast 1:00 (one minute) of the *Powerball* drawing every Wednesday and Saturday at 10:59 p.m. (evening).

(2) Contractor will broadcast 1:15 (one minute, fifteen seconds) for the *Carolina Pick 3*, *Carolina Pick 4* and *Carolina Cash 5* drawing every Monday through Sunday at 11:22 p.m. (evening).

(3) Contractor will broadcast 1:00 (one minute) of the *Mega Millions* drawing every Tuesday and Friday at 11:00 p.m. EST (evening).

(4) Winning numbers must be repeated from each lottery drawing program during the morning and afternoon newscast on the day after each drawing.

(5) Contractor will live stream the *Pick 3* and *Pick 4* mid-day drawings and video replay on its official website (Monday through Sunday).

(6) Additional Drawing

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

(7) Another State Lottery Drawings

Contractor must disclose in its Proposal whether Contractor is currently or will be airing/broadcasting or displaying/streaming another State Lottery's drawing or winning numbers.

IV. Completion

In the event the designated time for a Drawing expires prior to the completion thereof, the live telecast of such Drawing Show shall continue uninterrupted until completed.

V. Network Stations

The NCEL is currently under contract with a network of television and/or cable station Contractors (collectively, the "**Network Stations**") to televise the Drawing Shows in other television markets within the State of North Carolina. The Contractor shall purchase and arrange for all necessary satellite uplink and transmission time and facilities as may be necessary to make the Drawing Shows available to all Network Stations. No more frequently than once or twice a year, the Successful Contractor may also be required to originate remote telecasts of Drawings outside the Raleigh metropolitan area at no cost to the NCEL. The Contractor shall also be responsible for coordinating with all Network Stations to help insure that the

feed for the Drawing Shows is properly received by each of them, including the transmission of the Drawing Shows in the proper format for the NCEL and Network Stations' websites.

VI. Drawing Shows

In order to minimize its expenses and thus maximize its net revenues which are transferred to the Education Lottery Fund, the NCEL has a substantial interest in making the Drawing Shows a commercial success while insuring the public can regularly view the Drawings live. As a result, the NCEL expects to exclusively own all copyrights and other Intellectual Property Rights, and all television, cable, allied and other rights, in each of the Drawing Shows and all portions, materials and components thereof including, without limitation, the rights to televise, record, adapt, reproduce, transmit, televise, advertise, promote, license, synchronize, syndicate or otherwise derive benefits from the Drawing Shows, related Intellectual Property Rights and all portions or parts thereof. If deemed necessary by the NCEL, any Successful Contractor and all appropriate employees will be required to execute all documentation, assignments, registrations and similar instruments deemed necessary by the NCEL to transfer all rights to the NCEL.

The Successful Contractor will be granted such rights as may be deemed necessary by the NCEL so that it may televise and promote the Drawing Shows as required by this RFP and any subsequent Contract with the NCEL. All facets of the Drawings and the Drawing Shows, including the procedures and scripts, shall be subject to the approval and supervision of the NCEL. The NCEL shall have the final right to determine all aspects of the format, content and all other attributes of the Drawing Shows. The NCEL shall have the exclusive right to determine which individuals shall appear or be featured in each Drawing Show; however, the Contractor should make suggestions in its Proposal as to Talent that it would provide for all Drawings. All fees or compensation of any kind for the Talent and other individuals working on any Drawing Show, are the sole responsibility of the Contractor and not the NCEL; provided, however, the Contractor shall be required to obtain all necessary releases and consents from any such Talent or other personnel as required by the NCEL.

VII. Promotional Offerings

The NCEL believes that this RFP provides the Successful Contractor with an excellent opportunity to be associated with the NCEL's success and visibility. Additionally, the NCEL believes that because the Drawings are entertaining and highly visible, the Successful Contractor's participation therein will serve to promote that Contractor's name and reputation. The NCEL would expect that Contractors submitting proposals take these factors into consideration when determining the various forms of promotion for the Drawing Shows (collectively, the "**Promotional Offerings**") that the Contractor will acquire and offer to the NCEL free of any charge to the NCEL.

Each Contractor should present in its Proposal all of the Promotional Offerings which it shall make available to the NCEL for each year of the Contract to be awarded pursuant hereto. Promotional Offerings may include items in any or all of the categories outlined in the following Subsections and such other items that the Contractor agrees to provide. Contractors are encouraged to be creative in the specific Promotional Offerings they will provide to the NCEL. In addition, the Contractor should provide its best estimate of the actual fair market value of each Promotional Offering in its proposal. All costs of any kind associated with any Promotional Offerings provided to the NCEL, its retailers or lottery players must be borne exclusively by the Contractor, and not the NCEL, its retailers or lottery players. The NCEL shall have final approval rights of all Promotional Items, including the appearance, copy, music, pictures, graphics or other items contained in or on all Promotional Offerings. Finally, the NCEL reserves the right to reject any specific media outlet or type of Promotional Offering offered by the Successful Contractor, or to require that a different media outlet or type of Promotional Offering be utilized as long as the costs are not materially different in the aggregate.

All Promotional Offerings which will be provided to the NCEL in the various categories set forth in the Sections of Section 2.8(H) of this RFP should be listed in as much detail as possible. Contractors are not necessarily required to propose Promotional Offerings corresponding to every one of the Subsections of Section 2.8(H) of this RFP, nor are Contractors limited to the categories described in Section 2.8(H); however, for each Promotional Offering that is proposed, an estimated fair market value should be

included so that the NCEL may estimate the aggregate value of all such Promotional Offerings from the Contractor for purposes of comparison. Any such Promotional Offerings which a Contractor has already procured or made arrangements to procure should be disclosed, along with copies of any agreements or other evidence thereof.

(1) Television, Cable and Radio

Identify the specific number, frequency, duration, telecast times and minimum gross ratings points delivered per week of all Contractor's television and cable spots and radio spots (on a station by station basis) which promote the Drawing Shows or the NCEL.

(2) Outdoor Advertising and Billboards

Identify the specific number, frequency, duration and minimum guaranteed gross impressions per month, listed on a location-by-location basis, for all outdoor advertising and billboard buys which the Contractor will make to promote the Drawing Shows or the NCEL.

(3) Print Media and Point of Sale Materials

Identify the specific number, frequency, duration, publication times and minimum circulations, listed on a periodical-by-periodical basis, for each print campaign which the Contractor will acquire to promote the Drawing Shows or the NCEL. Specific print media Promotional Offerings can include the local TV Guide or television/cable programming listings in the local newspaper. Demographics, coverage area and, if available, relative ranking information, should be provided for each periodical which the Contractor plans to include in its Promotional Offerings.

Identify in as much detail as reasonably possible the number and type of any point of sale materials which the Contractor will acquire for distribution by the NCEL within its retailer network to promote the Drawing Shows or the NCEL.

(4) Web/Internet Based Promotion

Identify in as much detail as reasonably possible the types of promotion of the Drawing Shows and the NCEL the Contractor will provide through its web site or any specific web/Internet based initiatives, including, without limitation, promoting the Drawing Shows, linking to the NCEL web site, possibly webcasting the Drawing Shows or other creative alternatives using the Internet to promote the Drawing Shows and the NCEL and its products.

(5) Promotional Items and Other Promotional Activities

Identify the quantity, type and descriptions of any promotional products or merchandise which the Contractor may acquire for distribution by the Contractor and/or the NCEL to its lottery players or retailers to promote the Drawing Shows or the NCEL. Such items may include, without limitation, hats, clothing, coffee mugs, pins, bumper stickers, key chains, or any other types of promotional materials.

Contractor should outline any other types of activities which it shall include in the Promotional Offerings made available to the NCEL to promote the Drawing Shows or the NCEL. The Contractor is encouraged to include creative suggestions in these areas in its Proposals.

(6) Potential Sponsorship of Certain Drawing Shows

The NCEL will consider, subject to acceptance, negotiation or rejection by the NCEL in its sole discretion, possible sponsorship opportunities for certain of its Drawing Shows which the Contractor should fully describe in its Proposal. Conceptually, and subject to the NCEL's consent, rules and policies for such things, the Successful Contractor may be permitted to sell a sponsorship for certain Drawing Shows. Any Contractor proposing such Drawing Show sponsorship should include in its

Proposal the details of such sponsorship, including what percentage of the proceeds from the sale of such Drawing Show sponsorships it proposes to pay to the NCEL and what percentage of the proceeds it proposes to keep for itself to offset its costs for providing the Services under this RFP.

The NCEL is not required to permit or accept any such Drawing Show sponsorship proposed, and if any Drawing Show sponsorship is agreed to by the NCEL, in its sole discretion, such sponsorship shall only be permitted if it is in accordance with the NCEL's Drawing Show sponsorship guidelines that the NCEL shall develop, and amend from time to time. For example, and without limitation, in order to ensure compliance with the Act and maintain the integrity and positive image of the NCEL and its products and Drawing Shows, the NCEL reserves the absolute right, in its sole discretion, to, among other things, approve any such Drawing Show sponsor, what rights the sponsor receives in connection with the Drawing Show, what any such sponsor can say or advertise about or during any such sponsorship and the other terms of the sponsorship. It is not the desire of the NCEL to unreasonably interject itself in any such arrangements, but the NCEL must have the final say in ensuring that the Drawing Shows and the products of the NCEL maintain the appropriate integrity, professionalism, positive image and other attributes important to the NCEL and that unnecessary conflicts or problems are avoided. Thus, any Contractor that proposes such sponsorships should be as specific as possible in identifying all aspects thereof for the NCEL to consider in its evaluation of the Contractor's Proposal. There may be certain Drawing Shows for multi-state online games or other Drawing Shows for which such sponsorship opportunities may not be available.

VIII. Proof of Performance

The Successful Contractor shall be required to provide affidavits of performance attesting to the performance of the Successful Contractor's obligations with respect to all Promotional Campaigns as referenced above.

2.9 NEGOTIATION AND EXECUTION OF CONTRACT

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

2.10 NONEXCLUSIVE RIGHTS

Nothing in this RFP or any Contract resulting from this RFP shall preclude the NCEL from acquiring the same or other related services for its use from other Contractors, individuals or entities as the NCEL, in its sole discretion, shall determine.

PART III – PROPOSAL TERMS AND CONDITIONS

3.1 GOVERNING LAW AND DISPUTE PROCEDURES

This Procurement and any Contract resulting from this RFP shall be governed by and construed in accordance with the laws of the State of North Carolina, including the Act.

All claims and disputes, including but not limited to protests related to this RFP, the Procurement and the award of the Contract to the Successful Contractor 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. Any Potential Contractor that submits a Proposal 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 RFP, Procurement, Contract, offer, quote, Proposal 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 Potential Contractor submitting a Proposal irrevocably waives any claim it might have had to protest or object to this RFP or its contents.

3.2 CONTRACT ELEMENTS

The terms of this RFP, as may be amended by the NCEL from time to time, and the Proposal of the Successful Contractor 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 RFP and any amendments thereto as well as Answers to the Questions, and finally the Proposal of the Successful Contractor, 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 Contractor as the NCEL determines is in the best interests of the NCEL.

The currently proposed draft Contract is attached to this RFP as **Exhibit B** (the “**Proposed Contract**”). The NCEL may modify the language of the Proposed Contract prior to the execution of the Contract with the Successful Contractor, which may include any requested changes by the Successful Contractor.

PART IV – PROPOSAL REQUIREMENTS

4.1 MANDATORY COMPONENTS; CONTRACTOR 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 Contractor must sign and submit the Contractor Certification Forms included as **Attachments A** and **B** and made a part hereof. The form must be signed by a person duly authorized to legally bind such Contractor.

4.2 CONTRACTOR CONTACT PERSON

A Contractor 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 Proposal.

4.3 DISCLOSURE OF LITIGATION AND LEGAL MATTERS

A Contractor should include in its Proposal a disclosure of any pending or overtly threatened civil or criminal litigation or indictment involving such Contractor. A Contractor must also disclose any civil or criminal litigation or indictment involving any of its subcontractors participating in its Proposal. Specifically, the Contractor must disclose, on behalf of itself and each of the persons or entities described in N.C.G.S. §18C-152(b), all of the items and information described in N.C.G.S. §18C-152(c). This disclosure requirement is a continuing obligation, and any litigation commenced after a Contractor has submitted a Proposal under this RFP must be disclosed to the NCEL in writing within five (5) days after it is filed.

4.4 BACKGROUND INFORMATION

The NCEL will investigate, at a minimum, the financial responsibility and security of any Potential Contractor that submits a Proposal. A Potential Contractor must complete and submit as part of its Proposal the Background Disclosure Form, included as **Attachment B** and made a part hereof. Potential Contractors must also fully comply and cooperate with all investigations conducted under N.C.G.S. §18C-151(c) or §18C-152 and other applicable Sections of the Act or Applicable Laws.

A Potential Contractor must complete and submit, as part of its Proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Potential Contractor Investigation Form, included as **Attachment C** and made a part hereof to allow the NCEL access to the criminal, civil, and financial history of the Potential Contractor and its employees assigned to this project.

The NCEL intends to conduct full background checks only on the apparent Successful Potential Contractor. Any Potential Contractor that has previously submitted to such full background check inquiries in prior NCEL procurement processes and that is currently a Potential Contractor to the NCEL subject to updating requirements, must submit updated information and an affidavit re-confirming all the prior information and reporting all necessary new information, in lieu of Attachments B and C, and parts thereof (if applicable).

4.5 FINANCIAL SOUNDNESS

Under the Act, a Contractor must provide adequate information to permit an evaluation of its financial responsibility, stability and its capabilities to undertake and complete satisfactorily any Contract awarded and, executed pursuant to this RFP. In that regard, a Potential Contractor must submit a copy of its last three (3) years' financial statements that have been audited by an independent public accounting firm, or if audited financial statements are not regularly produced, the NCEL will accept financial statements that are reviewed (rather than audited) provided that the financial statements are certified as being accurate by an executive officer of Potential Contractor.

4.6 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 Contractors 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 Contractor shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its Proposal and provisions of its Services.

4.6.1 MINORITY BUSINESSES PARTICIPATION

Each Contractor should describe in its Proposal 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. Proposals should describe the following:

- What minority businesses the Contractor uses or intends to use.
- Plan to continue to provide interested minority businesses with adequate information about any subcontracting opportunities available in connection the NCEL.
- Plan to continue to provide equal opportunity to minorities when replacing or adding subcontractors and suppliers.
- Efforts that have been undertaken to recruit qualified minority employees named in its Proposal and efforts that will be undertaken to recruit minority employees for positions that are not yet filled, including outreach to educational institutions.
- The total number of full-time positions for this project that are or will be held by minorities, and the number and percentage of the above that are or will be residents of the State of North Carolina.
- The percentage and number of supervisory positions that will be filled by minority employees.

To facilitate that process, each Contractor should complete and include in its Proposal either Affidavits A and B, or Affidavit C, or **Attachment D** (Equal Business Opportunity Forms). Any additional and supplemental information in this area is also highly encouraged. **If the Contractor is a minority business Contractor (certified or otherwise), the Contractor is still required to submit the requested information, excluding its own business.**

4.6.2 NON-DISCRIMINATION

Each Contractor should describe in its Proposal 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.

ATTACHMENT A

CONTRACTOR CERTIFICATION

LOTTERY DRAWING SHOW PRODUCTION AND TELEVISION SERVICES

I do hereby certify as follows:

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

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT B

BACKGROUND DISCLOSURE FORM

For any subcontractor that comprises at least twenty-five (25%) of the cost of the Contractor's Proposal (a "25% Subcontractor"), disclose all the same information for each 25% Subcontractor as if each 25% Subcontractor were itself the Contractor. In addition, disclose all of the same information for each member of a joint venture, a strategic partnership or a prime contractor team as if each such joint venturer, strategic partner or member of a prime contractor team were itself the Contractor. (Contractor and all members of a joint venture, a strategic partnership or a prime contractor team are sometimes herein referred to as "Contractor Team.")

[These pages may be copied and used as needed]

PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. Name of Business:
2. Type of legal entity and the state under whose laws the business entity is organized:
3. EIN:
4. List the name, address, area code and telephone number, and social security number of the Contractor's officers, directors and each stockholder if the Contractor is a corporation (in the case of a publicly-traded corporation, only those stockholders known to the corporation to own beneficially five percent (5%) or more of such corporation's securities), as well as the same information for a parent corporation of such Contractor corporation if the parent corporation's shares are publicly traded; if the Contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Contractor is an association, the member, officers and directors; if the Contractor is a partnership or joint venture, all general partners, limited partners or joint venturers:
 - a. Name:
Relationship to Contractor:
Address:
Telephone number, including area code:
Social Security number:
 - b. Name:
Relationship to Contractor:
Address:
Telephone number, including area code:
Social Security number:

c. Name:

Relationship to Contractor:

Address:

Telephone number, including area code:

Social Security number:

5. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Contractor Team does business and the nature of the business for each such state or jurisdiction:

6. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Contractor Team has contracts to supply goods or services, including, but not limited to, lottery goods and services, and the nature of the good or services involved for each such state or jurisdiction:

7. List all states and jurisdictions (domestic and foreign) in which any member of the Contractor Team has applied for, sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or lottery contract of any kind or has had fines or penalties assessed to his or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:

a. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

b. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties:
Circumstances:

8. For each member of the Contractor Team, if applicable, list the details of any finding or pleas, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, for any felony or any other criminal offense other than a traffic violation, including, but not limited to, felonies related to the security or integrity of a lottery by:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

9. For each member of the Contractor Team, if applicable, list the details of any finding or plea, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, of any involving gambling, theft, computer offenses, forgery, perjury, dishonesty or for unlawfully selling or providing a product or substance to a minor by:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

10. For each member of the Contractor Team, if applicable, list the details of any bankruptcy, insolvency, reorganization or corporate or individual purchase or takeover of another business, including bonded indebtedness, or any pending litigation:

- a. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

b. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

11. List the business entities that are a part of the Contractor Team, and list the Fiscal Years for each team member. Complete an Authorization For Contractor Investigation for each (see Attachment C.)
12. List all the individuals constituting the Contractor Team who will work on the NCEL Contract. Complete an Authorization For Individual Investigation for each (see Attachment D).
13. Does the Contractor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this RFP? If yes, please provide details.
14. Does any "public officer" or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Contractor Team? If yes, please provide details.
15. List any conflict of interest with the products, promotions and goals contemplated by the NCEL that could result from other projects in which the Contractor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Proposal.
16. List all lobbyists and consultants working on behalf of the Contractor Team in connection with this Proposal or any subsequent Contract.

Attachment B Certification

I, _____, hereby certify that I am duly authorized to act on behalf of the Contractor and Contractor Team. In that capacity, I hereby certify that the Contractor and all members of the Contractor Team have filed appropriate tax returns as provided by the laws of the State of North Carolina. I further warrant that the information contained in this Background Disclosure Form is true and complete, and acknowledge that a finding that it is not true or complete may result in a cancellation of the Contract.

I further certify that the Contractor and each member of the Contractor Team recognizes and acknowledges that there are certain limitations on their activities, now and in the future, including, but not limited to, limitation on certain political contributions, limitation of the ability to submit Proposals, in response to subsequent request for Proposals issued by the NCEL, limitation on the ability to purchase lottery tickets. The restrictions on the ability to purchase lottery tickets and entering into contracts or other arrangements apply to the employees of the Contractor and the members of the Contractor Team as well as the members of all such employees' households, and the Contractor and each member of the Contractor Team will enforce such restrictions upon its employees and subcontractors.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT C

AUTHORIZATION FOR CONTRACTOR INVESTIGATION

I, _____, hereby authorize the North Carolina Education Lottery or its designee to conduct a Contractor background investigation (N.C.G.S. §18C-152), including the civil, criminal and financial credit history of _____. I hereby release all organizations, individuals, agencies, and other employees and agents from any liability that may result from their furnishing such information and authorize all organizations, individuals, agencies and their employees and agents contacted by the North Carolina Education Lottery or its designee to provide such information. A photocopy of this release will be valid as an original thereof, even though said photocopy does not contain an original writing of my signature.

(Signature)

(Print Name)

(Title)

(Date)

ATTACHMENT D

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 Vendor 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 _____ 201__.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit B- Listing of Good Faith Efforts

State of _____

County of _____

Affidavit of _____ (Name of Contractor)

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

Vendors must earn at least 50 points from the good faith efforts listed for their Proposal to be considered responsive.

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Contractor, or available on State or local government maintained lists, at least 10 days before the Proposal 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 Proposals are due.
- 3 – (15 pts)** Divided 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 Proposal documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended pre-Proposal 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 Vendor'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 Contractor, 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 N.C.G.S. §143-128.2(d). Failure to a Proposal 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 Contractor 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 _____ 201__.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit C-- Intent to Perform Contract with Own Workforce

State of _____

County of _____

Affidavit of _____ (Name of Contractor)

I hereby certify that it is our intent to perform 100% of the work required for the NCEL contract for Lottery Drawing Show Production and Televising Services.

In making this certification, the Contractor states that the Contractor 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 Contractor 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 Contractor 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 _____ 201__.

Notary Public _____

My commission expires _____

[SEAL]

NORTH CAROLINA EDUCATION LOTTERY
LC-000034
DRAW STUDIO INVENTORY LIST

| | Current Items | Possible Future Items |
|---------------------|---|--|
| Secure Room: | 3 Pick3 Machines (4' x 3' each) 3 Pick4 Machines (5' x 3' each) 3 Cash5 Machines (3' x 3' each) 2 Control Consoles (2' x 2' each) 1 Safe for Ball Sets (4' x 2' effective) 1 Desktop Computer w/ Chair (4' x 3') 1 Desk for Paperwork (8' x 2' min.) 1 Rack for Security Equipment (4' x 2') 1 Cart (to carry around ball sets) (4' x 2') | 3 Draw Machines for Future Game (5' x 3' each?) Potential Additional Control Consoles (2) for Future Game 1 Additional Safe for Ballsets (once new game is added) 1 Printer (2' x 2') 1 Scanner (2' x 2') 2 Smartplay RNG cabinets (potential) (3' x 2' effective each) 1 Additional or Larger Cart after Future Game Launch |
| Draw Studio: | 1 Pick3 Machine 1 Pick4 Machine 1 Cash5 Machine 1 Control Console 3 control cords (out of traffic) Storage for power & control cords 1 Small File Cabinet 1 Fax Machine (on top of file cabinet) 1 Cart (to carry around ball sets) 1 Cordless Phone Set 2 PTZ Security Cameras (on ceiling) (owned by station) At least 1 monitor for cue/promting (owned by station) Speakers / microphone for sound (owned by station) 3 Sets of TV Cameras (1 for each game) (owned by station) 2 Script Posters plus Stand (owned by station) 1 Draw Host | 1 Draw Machine for Future Game Additional control cord (out of traffic) Storage for additional power/control cords |

EXHIBIT A

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – VENDOR DISPUTE RESOLUTION

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

**IF DELIVERED SOLELY BY
US POSTAL SERVICE**

Legal Counsel
North Carolina Education Lottery Protest

EXHIBIT A

**NORTH CAROLINA EDUCATION LOTTERY
POLICIES AND PROCEDURES MANUAL**

CHAPTER 6 – LEGAL POLICIES

6.02 – VENDOR DISPUTE RESOLUTION

2100 Yonkers Road
Raleigh, NC 27604

2100 Yonkers Road
Raleigh, NC 27604

**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:

EXHIBIT A

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – VENDOR DISPUTE RESOLUTION

1. Discourage frivolous Dispute Resolution Requests and litigation;
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

EXHIBIT A**NORTH CAROLINA EDUCATION LOTTERY
POLICIES AND PROCEDURES MANUAL****CHAPTER 6 – LEGAL POLICIES****6.02 – VENDOR DISPUTE RESOLUTION**

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 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 it's 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

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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 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)

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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 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.

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- 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;
 - 4. A statement of the Director's decision, findings of facts and conclusions of law, with supporting rationale and the 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.

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- 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.
- 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;

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- 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;
 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

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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;
 - 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

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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)**

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

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.

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- 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 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

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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.

EXHIBIT B

LOTTERY DRAWING SHOW PRODUCTION AND TELEVISIONING SERVICES AGREEMENT

This Lottery Drawing Show Production and Televising Services Agreement (the "**Agreement**") is made and entered into this ___ day of _____, 2012 (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 _____ ("**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 submitted its proposal on _____, 2011 (the "**Proposal**", Exhibit A) to the NCEL in response to the NCEL's Request For Proposal for Lottery Drawing Show Production and Televising Services dated September 6, 2011 (RFP #LC-000034) (the "**RFP**", Exhibit B); as integrated by the NCEL's Questions and Answers concerning the RFP, which were distributed by the NCEL on September 19, 2011 (the "**Questions and Answers**," Exhibit C). Exhibit A, B and C are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide lottery drawing show production and 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 production, 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

[TO BE INCLUDED BASED UPON VENDOR'S PROPOSAL]

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 _____percentage (%) of its Raleigh media market TV buy, per NCEL Fiscal Year (July 1 – June 30), beginning on the effective date of this Agreement. 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:

- Reimburse the VENDOR up to one hundred thousand dollars (\$100,000) annually toward any production and/or broadcasting costs.
- VENDOR station tag on selected NCEL procured online radio spots in the VENDOR's primary viewing area.
- Provide VENDOR with logos/graphics and any other materials to produce promotional announcements and web banner.
- VENDOR logo will be posted on all State-wide market billboards and applicable point of sale items promoting NCEL online games.
- 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 six (6) years from the Effective Date (the "**Term**").

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; (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 _____, 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, any authorized representative of the NCEL, and/or the North Carolina State Auditor's Office ("State Auditor") and copies thereof shall be furnished to the NCEL or State Auditor by the appropriate entity, at no cost to the NCEL or State Auditor, if requested by the NCEL or State Auditor. The NCEL and/or State Auditor 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; 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 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 in-state

online lottery tickets and/or claiming any NCEL prizes associated with the NCEL in-state online lottery games.

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 involved in the Drawing Show.

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 2.8 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. Voluntary termination: Either the NCEL or VENDOR may cancel and terminate this Agreement with thirty (30) calendar day's prior written notice to the other party.

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 Executive Director, 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 A.

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: Alice Garland, Executive Director

If to VENDOR: [ADDRESS]
Attn: _____

With a copy to:

[_____]

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: _____
Alice Garland
Its: Executive Director

"VENDOR"

By: _____
Its:

EXHIBIT A

[Proposal]

EXHIBIT B

[RFP]