

**NORTH CAROLINA EDUCATION LOTTERY**

**REQUEST FOR PROPOSALS #LC-61004**

**PROFESSIONAL ADVERTISING, MEDIA AND RELATED SERVICES**

**October 1, 2009**

## 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 qualified and reputable advertising firms licensed in North Carolina (“**Vendors**”) to provide quality professional advertising and related services. Any Vendor selected through this RFP process (a “**Successful Vendor**”) will work in cooperation with the NCEL marketing and advertising staff in the planning, designing and execution of the NCEL marketing and advertising activities. Pursuant to the North Carolina General Statutes §18C-162(a)(3), the NCEL’s advertising budget may not exceed one percent (1%) of its total annual revenues, which also includes payments to the NCEL’s advertising agency for all services performed, fees, expenses, etc. In the previous Fiscal Year 2009, the NCEL’s total annual revenue was approximately \$1.3 billion. There can be no assurance as to what advertising budget the NCEL may adopt from year to year.

When responding to this RFP, Vendors should be aware of the following NCEL goals and objectives:

- To conduct advertising and related programs in such a manner as to promote the positive image and integrity of the NCEL and the programs funded with Lottery proceeds.
- Effectively and efficiently market the NCEL brand and products in accordance with the Lottery Act and within any rules, regulations, procedures and policies officially adopted by the NCEL.
- To annually increase revenue to the North Carolina State Lottery Fund.
- To market high quality products that provide entertainment and customer satisfaction.
- To ensure that the Successful Vendor is capable of providing the services called for in this RFP, and that the Successful Vendor will be capable of continuing to provide these services during the term of the Contract.
- To obtain the highest quality, creative advertising and related services at competitive prices.
- To provide for innovation and the ability to respond to changes in the industry and the demands of the marketplace.
- To ensure meaningful minority representation and a commitment to nondiscrimination (see Section 4.6 of this RFP).

The NCEL is a continuously active account with multiple marketing, communications, creative and media projects requiring attention and service simultaneously. As a frequent user of broadcast media, the ability to demonstrate proficiency in purchasing and utilizing television and radio to create entertaining messages for game awareness, winner awareness, and at the same time to create beneficiary advertising or other corporate messages with a more serious tone, is critical. In addition to the advertising needs of the NCEL’s on-line and instant scratch-off games, beneficiary and winner awareness initiatives, substantial retail promotional and educational materials have to be developed and produced for timely distribution to over 6,000 retailers to meet game launch deadlines.

As an independent state government agency, the North Carolina Education Lottery has detailed procedures for budget management and expenditure requirements to achieve timely submission of bills and invoices for payment. The Successful Vendor will perform all functions normally required of a full-service advertising agency. Vendors that do not offer all of these services are invited to work with subcontractors that offer such services.

The NCEL has a current contract (the “**WW Contract**”) with WWL Advertising, LLC d/b/a Wray Ward Laseter (“**WW**”) whose original term extends until February 21, 2010, which includes the first of three (3) one-year renewal terms. The WW Contract automatically renews (the “**Auto-Renewal**”) for an additional two (2) one (1)-year periods unless the NCEL, in its sole discretion, chooses not to renew it for any of such one (1)-year Auto-Renewals. As of this date, the NCEL has not decided if it will allow the WW Contract to automatically renew for the next one-year option or not. The purpose of this RFP is to help ascertain if it is in the best interests of the NCEL to allow the Auto-Renewal or to instead enter into a new contract (the “**Contract**”) with a new (or the same) Vendor. The NCEL intends to obtain what it

believes to be the best creative solution, at the optimal price-value that will be responsive to the NCEL's needs. If the NCEL does not allow the Auto-Renewal of the WW Contract, it currently intends to execute only one Contract as a result of this procurement under this RFP (the "**Procurement**") with a term of three (3) years from the date of execution and three (3) one year renewal terms; provided, however, nothing obligates the NCEL to sign any Contract, or only one Contract, or to allow the Auto-Renewal, 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. It is the NCEL's desire to have a single Vendor that is able to provide (through itself or its subcontractors) full advertising services, including media purchases, subject to Section 2.11 herein. All Vendors 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.

All Proposals and any Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the "**Act**"), **in particular NCGS §§18C-114(a)(2) and 18C-130(c) establishing NCEL standards for advertising**, 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 PROPOSAL SUBJECT TO PUBLIC RECORDS LAWS**

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 Vendors properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Public Records Laws.

## **1.3 REJECTION OF 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, to allow the Auto-Renewal of the WW Contract or 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.

## **1.4 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**") November 16, 2009 (the "**Proposal Deadline**"). A Proposal constitutes an offer by the Vendor 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 Vendor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

## 1.5 RIGHT TO USE INFORMATION IN THE PROPOSAL

Upon submission, all materials submitted to the NCEL by Vendors 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.

<b>October 1, 2009</b>	RFP Issuance Date
<b>October 9, 2009</b>	Deadline for submission of Questions 4:00 p.m. EST
<b>October 14, 2009</b>	Answers Posted
<b>November 16, 2009</b>	Deadline for submission of Proposals 4:00 p.m. EST

DELIVERY ADDRESS:

North Carolina Education Lottery Headquarters  
Professional Advertising, Media and Related Services RFP #LC-61004  
2100 Yonkers Road  
Raleigh, NC 27604

<b>December 3-4, 2009</b>	Finalist Vendor Presentations (upon request by the NCEL)
<b>January 1, 2010</b>	Target date for Decision of Successful Vendor followed by Contract Execution, subject to Commission approval.

### 2.2 CONTACT PERSON

The sole point of contact (the "**Contact Person**") for inquiries and additional information concerning this RFP will be Quan Kirk, Director of Legal Services, who can be reached as follows:

Email: **Proposal.submission@lotteryinc.net**  
Fax: **919-715-8831**

North Carolina Education Lottery  
Professional Advertising, Media and Related Services RFP #LC-61004  
2100 Yonkers Road  
Raleigh, NC 27604

**No direct or indirect contact or other solicitation initiated by Vendors or their representatives, in connection with this Procurement, should occur with any NCEL employee other than the Contact Person.** Employees of WW who are required to work with the NCEL under the existing WW 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 October 9, 2009 (the “**Question Deadline**”). The NCEL’s responses (the “**Answers**”) to Questions properly received prior to the Question Deadline will be posted on the NCEL’s Website <http://www.nc-educationlottery.org/vendor.aspx> and the Interactive Purchasing System (IPS) website <https://www.ips.state.nc.us/IPS/DeptBids.aspx>.

## **2.4 PROPOSAL SUBMISSION AND FORMAT**

Proposals must be received by the Contact Person no later than the Proposal Deadline in sealed envelopes or containers. The Cost Proposal must be in a separately sealed envelope. A Vendor 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) November 16, 2009. Late Proposals will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Vendors 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 Vendor.

## **2.5 MULTIPLE VENDORS AND JOINT PROPOSALS**

If the response submitted is a joint Proposal that includes multiple Vendors, it must define completely the roles, responsibilities, duties and obligations that each entity that is a part of a joint venture, strategic partnership or prime contractor team proposes to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The Proposal must be signed by an authorized officer or agent of each entity. 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 joint venture, strategic partnership or prime contractor team. Any Contract resulting from a joint Proposal must be signed by an authorized officer or agent of each entity. Any entity which is part of a joint venture, strategic partnership or prime contractor team included in the submission of a joint Proposal will be jointly and severally liable during the term of the Contract.

The Successful Vendor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP shall retain ultimate responsibility for all Services provided by any subcontractor, and any claims or liabilities arising from or related to the subcontractor’s performance. Furthermore, each subcontractor of a Successful Vendor must comply with all of the requirements contained in this RFP. A vendor that submits a Proposal whereby any subcontractor will provide twenty-five percent (25%) or more of the specifications of this RFP must also provide the information described in Part IV, Proposal Requirements, for each such subcontractor.

## **2.6 CHANGES, MODIFICATIONS AND CANCELLATION**

The NCEL reserves the right, in its sole discretion, at any time prior to the Proposal Deadline to instead rely on the Auto-Renewal of the WW Contract or 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 Responding Vendors will be sent via email and/or fax.

## **2.7 PROPOSAL CONSTITUTES OFFER**

By submitting a Proposal, a Vendor 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 Vendor's Proposal and any terms and conditions subsequently negotiated with such Vendor. A Vendor submitting a Proposal must complete and submit, as part of its Proposal, the Vendor Certification Form included as **Attachment A**, and made a part hereof, as referenced in Section 4.1.

## **2.8 PROPOSAL EVALUATION**

A variety of factors shall be considered by the NCEL in determining the Successful Vendor it believes provides the best overall solution at a fair and reasonable price 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 Vendor. While price and total cost are both important factors, as is a price/value analysis, the Vendor's proposed marketing plan which should be designed to maximize net revenues for the NCEL in the most professional and responsible manner with integrity is also critical. Creativity, track record, experience and proven excellence are also critical needs and requirements. Thus, while Vendors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Vendor offering the lowest price and total cost may not be selected as the Successful Vendor.

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 Vendor. 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. The evaluation involves, at a minimum, a two-part process: Initial Evaluation and Final Competition.

### **2.8.1 NCEL ADVERTISING STANDARDS**

When responding to this RFP, Vendors must understand that the NCEL advertising must be tastefully designed and presented in a manner to avoid appeal of NCEL games to minors. The use of cartoon characters or of false, misleading or deceptive information in NCEL advertising is prohibited. All advertising promoting the sale of NCEL tickets or shares for a particular game must include the actual or estimated overall odds of winning the game and any other items required by the Act. Specifically, in addition, the following criteria must be followed:

- All advertising shall include resources for responsible gaming information.
- No advertising may intentionally target specific groups or economic classes.
- No advertising may be misleading, deceptive or present any NCEL game as a means of relieving any person's financial or personal difficulties.
- No advertising may have the primary purpose of inducing persons to participate in the NCEL.
- To the extent reasonably possible, every effort should be made to comply with the advertising guidelines as established by the North American Association of State and Provincial Lotteries (NASPL) Advertising Guidelines (see attached Exhibit A).

These standards shall continue to apply to all NCEL advertisings created and executed by the Successful Vendor.

### **2.8.2 SCOPE OF SERVICES**

The NCEL offers various games of chance which are divided into two (2) distinct categories: instant ticket games and online ticket games.

- A. Instant Tickets – The NCEL may create and distribute up to fifty (50) or more instant ticket games per year. Instant ticket games offer players the opportunity to scratch off a latex cover and immediately reveal whether the player has won a prize. The strategy is to keep the games fresh and to offer a wide variety of tickets based on theme, price point and play style.
- B. Online Games – The current online game product mix consists of *Carolina Pick 3*, *Carolina Pick 4*, *Carolina Cash 5* and *Powerball*. Tickets are generated from a Lottery terminal for specific draws, as requested by the player. Winning tickets must match the numbers drawn for that particular game and drawing date and time.

Subject to the instructions and decisions of the NCEL, the Successful Vendor will be responsible for the following:

- A. Provide the NCEL full professional advertising services and advice during the term of the Contract, including but not limited to assisting in the overall marketing analysis, strategy development and positioning of the NCEL and its products. Among other things, the Successful Vendor shall provide comprehensive management through: (1) direct involvement from the Creative Director, from concept presentation to final approval of produced work because of the number of TV and radio spots produced; (2) supervising the NCEL account team at the executive level for authority over media and account services because of the large media responsibility of this account; and (3) ownership of all aspects of the advertising to ensure proper planning is achieved in order to meet deadlines.
- B. Provide input for planning, coordinating and executing specific portions of the NCEL's annual advertising plan, making professional recommendations during the term of the Contract for revisions and/or modifications to the advertising plan based upon sales market conditions and any other contributing factors.
- C. Manage the NCEL account without over dependence on email or other electronic correspondence. Although there are many acceptable uses for electronic correspondence, such as email, one-on-one meetings are required for presentations, creative and media, including additional follow up as a result of those meetings.
- D. Conduct meetings and follow up on assignments, providing attention to detail and clear focus on critical issues.
- E. Provide media solutions and creative concepts that are executable.
- F. Interact and work with the NCEL Staff and other marketing vendors to provide the integration of advertising plans and achieve the NCEL's overall objectives and goals, including but not limited to:
- (1) A minimum of weekly meetings with the NCEL Staff to discuss purchasing, concepts, development and other issues related to marketing/sales issues; and
  - (2) Advertising reviews to the NCEL Commission, as requested.
- G. Possess the ability and initiative to anticipate questions and provide a thorough response.
- H. Create and produce professional advertising and related services for the NCEL's existing products, new products and special projects as requested.
- I. Adhere to schedules to ensure that radio and/or television commercials, print advertising, point-of-sale materials and other related materials are completed in advance of the campaign. Materials that are being distributed must be approved by the NCEL Executive Director and/or his Designee(s), prior to production of the advertisement, related

materials or other services. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by the Successful Vendor, and to direct the Successful Vendor to cease work in connection with any such plan.

- J. Provide a preliminary production schedule within one (1) week of receipt of a creative marketing plan from the NCEL. The production schedule shall allow sufficient time for developing, presenting and refining the creative concepts, editing and revising the selected option per the NCEL's request, obtaining final approval from the NCEL, producing the final product, and distributing the finished product according to the NCEL's specifications.
- K. Complete Successful Vendor work or subcontracted work within forty-five (45) days of estimate approval except as otherwise agreed to by the NCEL.
- L. Provide creative services to the NCEL as follows:
  - (1) Creative services for television and radio production including, but not limited to, scripts, pre-production, editing and finalization of spots;
  - (2) Creative services for print production including, but not limited to, production and finalization of advertisements;
  - (3) Concepts, design and/or artwork for in-store communications;
  - (4) Artwork for outdoor production; and
  - (5) Art direction services for broadcast, print and outdoor production.

A minimum of three (3) creative executions per campaign is required, unless otherwise approved by the NCEL.

- M. Create and produce point-of-sale advertising pieces as designated by the NCEL.
- N. Create advertising that is complementary and consistent with any and all point-of-sale advertising materials.
- O. Develop general market media plans and, with the approval of the NCEL, purchase general market television, radio, print, outdoor and any new media vehicle that will assist in marketing NCEL products.
- P. As authorized, develop specific plans to maximize the awareness of the NCEL and its games and recommend budgetary savings where appropriate.
- Q. Provide the NCEL with post-buy analysis quarterly, within two (2) weeks of publication of the Arbitron and Nielsen research, indicating that the reach and frequency goals of each media buy were achieved within budget, or if a gross rating point shortfall were to occur, provide the NCEL with analysis as to how the Vendor plans to rectify underachieved results with specific media during the next media purchase of that type. The acceptable range for post-buy percentage is 95-105%.
- R. Ensure that all media that is run or published is in accordance with any contracts or placement instructions. The Successful Vendor must provide affidavits, tear sheets or other documentation to the NCEL in connection therewith, and all media invoices must be notarized. The Successful Vendor must notify the NCEL before approving any "make goods" for any ads that did not run as scheduled. All such materials shall be maintained

by the Successful Vendor and must be available for inspection by the NCEL or its authorized representatives. Affidavits and/or tear sheets must accompany any final billings submitted to the NCEL.

- S. Request and audit the airing and/or publishing of NCEL winning numbers from all radio stations, TV stations and newspapers included in a NCEL buy.
- T. Negotiate and track delivery of bonus spots and/or added value at no additional charge from all radio and TV stations included in a NCEL buy. Any bonus spots provided by participating stations must be assigned a value and reported monthly to the NCEL.
- U. Purchase on behalf of the NCEL certain materials and services used in the production of the NCEL advertising and sales promotion materials. The NCEL shall pay the Successful Vendor for all approved obligations incurred by the Successful Vendor on the NCEL's behalf within the scope of the Successful Vendor's authority.
- V. The Successful Vendor shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the NCEL Executive Director or his Designee. In connection with such authorization, the Successful Vendor is subject to the following guidelines:
  - (1) The Successful Vendor must prepare and evaluate competitive bids for productions and media, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis.
  - (2) The Successful Vendor must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, the Vendor shall provide written documentation of such to accompany the cost estimate.
  - (3) If the Successful Vendor recommends any vendor other than the lowest bidder, the Successful Vendor shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow the Successful Vendor's recommendation.
  - (4) Bids shall be secured from North Carolina-based vendors whenever possible. However, all TV and radio commercials must be shot/filmed/recorded in the State of North Carolina. If local vendors are not available for project as approved, the Vendor shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.
  - (5) Cost estimates shall be presented by the Successful Vendor to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.
  - (6) The estimate number used to track each project will be issued by the Successful Vendor and invoices shall be numbered consistent with estimate number.
  - (7) All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his Designee and the Successful Vendor may not begin

work until the Successful Vendor has received a signed estimate/authorization from the NCEL.

- (8) A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previous approved amounts and/or history of amounts.
  - (9) Media invoices will be paid only upon completion of the media flights and must include a notarized affidavit that lists all spots being billed, bonus spots received, station, date, number of spots aired and cost. Invoices, including credits, should be submitted to the NCEL within ninety (90) to one hundred twenty (120) days of the media spot run.
  - (10) Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. The Successful Vendor is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.
  - (11) The NCEL's fiscal year ends June 30<sup>th</sup>. All invoices for that fiscal year must be submitted by September 30<sup>th</sup> of the new fiscal year. The NCEL reserves the right not to pay any invoices received after September 30<sup>th</sup>.
  - (12) Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested Successful Vendor invoices, unless as otherwise agreed upon by both parties.
  - (13) The Successful Vendor shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to the Successful Vendor. In the event that the NCEL becomes aware of Successful Vendor's default of these terms, the NCEL will notify the Successful Vendor immediately.
  - (14) The Successful Vendor agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.
- W. Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or nonspeaking;
- X. The NCEL acknowledges that the Successful Vendor may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist ("AFTRA"), Screen Actors Guild ("SAG") and/or American Federation of Musicians ("AFM"), and that the production of advertising material from which the employment of talent is required may necessitate the negotiation, review, approval and/or execution by the Successful Vendor and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent.
- Y. In conjunction with the NCEL, develop and conduct advertising and market research studies, as requested, that involve advertising research such as recall tests, copy and

motivation tests, media weight tests and attitude studies. The Successful Vendor may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design. The cost of the research studies will be paid from the NCEL's existing advertising budget or such other budget as designated by the NCEL.

- Z. Provide the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number; (ii) brief description of job; (iii) original estimate amount; (iv) an estimate of the costs incurred to date that have not yet been billed; and (v) billings rendered to date on each job.
- AA. Provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current fiscal year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid and the amounts committed that have not been billed.
- BB. Provide the NCEL with a monthly analysis of media spending by county and a comparison of sales levels achieved in those areas as requested by the NCEL. The NCEL will provide detailed sales information to the Successful Vendor on an ongoing basis, as available. Each such analysis shall include a recommendation from the Vendor regarding any changes in media expenditures, as applicable.
- CC. Provide for the management and traffic of production development, media placement and timelines and any required reports, including, but not limit to, monthly county-by-county advertising/sales evaluation and monthly projects in progress.
- DD. Provide the NCEL with weekly status reports, contact reports, minority compliance reports and other reports, as requested.
- EE. Assist the NCEL with public relations activities as needed, including:
  - (1) Scheduling on-air interviews with advertising partners.
  - (2) Solicit/evaluate promotional opportunities from media partners.
  - (3) Assist with planning public relations media events.
- FF. Evaluate, as requested, sports sponsorship programs and promotional events that include media components.

### **2.8.3 PROPOSAL CONTENT**

Vendor's Proposal must provide a clear description of the Vendor's capabilities to meet the requirements of this RFP. Vendors must submit their Proposals in the following format:

- A. Experience and Personnel
  - (1) A statement (no longer than one page) indicating the length of time the Vendor and, if applicable, the media buying house have been in business.
  - (2) Vendor must have annual billings of at least five million dollars (\$5,000,000) and must include in its Proposal a list of all current accounts and the date of acquisition of each account. The Vendor must also include a list of accounts terminated in the past two (2) years and reason for such termination. The

Vendor should list the accounts by approximate annual billing size (beginning with the largest account) and must include for each account a description of the type of projects billed, the name of the key contact person for each account and such contact person's telephone number. The NCEL reserves the right to contact any of the contact persons provided pursuant to this Section. Each Vendor must disclose information regarding any potential, actual or apparent conflicts of interest between any current client of the Vendor and the NCEL.

- (3) List specific North Carolina clients requiring spot broadcast media and experience in entertainment, Lottery and/or consumer goods accounts.
- (4) Written description (not to exceed four (4) pages) outlining the Vendor's full service advertising capability, including:
  - (a) Account services;
  - (b) Creative staff;
  - (c) Media planners/buyers;
  - (d) Broadcast and print production planning and execution;
  - (e) Accounting/budget coordination;
  - (f) On line marketing;
  - (g) Account planning/research; and
  - (h) Expert advice on key trends and issues in general market advertising.
- (5) Written demonstration of the Vendor's ability to handle highly active retail advertising accounts.
- (6) Provide one (1) example of how the Vendor saved money and/or maximized value for a client in each of the following areas:
  - (a) Broadcast production cost efficiencies
  - (b) Print production cost efficiencies
  - (c) Media cost efficiencies
  - (d) Additional example relevant and appropriate to the NCEL account
- (7) Proof of financial viability and ability to perform the Contract as required and proposed.
- (8) Typical timeline for the following:
  - (a) Campaign development (either creative or media);
  - (b) Media buys and revisions; and
  - (c) Media evaluations and recommendations.
- (9) Brief description of the Vendor's strategic process.
- (10) The Vendor must be licensed and establish an office in North Carolina. The Vendor is expected to meet with the NCEL regularly at the NCEL's Headquarters in Raleigh, two (2) or more times weekly.
- (11) An organization diagram and a staffing plan. Key staff must be identified, the nature and scope of each person's responsibilities and duties must be outlined and detailed resumes must be provided. The organization diagram should indicate reporting relationships, location of the staff and the percentage of time to be dedicated to the NCEL account. Indicate staff positions that will be new hires. In addition to all other persons needed by the Successful Vendor to perform all services required under this RFP, a Vendor must provide and identify three (3) full-time professionals who will work exclusively on the NCEL account.

- (12) Resumes of the Vendor's key staff which must include the following information for each individual:
- (a) Name and title of each staff member that will be assigned to the NCEL account (please note that the Vendor cannot aggregate staff positions in order to comply with the dedicated time requirements set forth herein;
  - (b) The total number of years of experience in advertising;
  - (c) Education (school/major/degree/year);
  - (d) Accounts handled by such staff person while employed by the Vendor, length of time of each account, size and complexity of account, and level of responsibility (indicate which are current responsibilities);
  - (e) Accounts with previous employers and level of responsibility; and
  - (f) For staff yet to be determined, please specify which positions and levels will be committed to the NCEL account, the location of the staff, and the minimum qualifications expected for that position, i.e., education and work experience.

B. Technical Proposal

(1) Case Studies:

- (a) Campaign Development and Execution Case Study - The Vendor shall provide a written case study of not more than five (5) pages, excluding exhibits, describing an advertising campaign representative of its work from start to finish. *The NCEL will not accept submissions longer than five (5) pages.* Of particular relevance to the NCEL is work in entertainment environments and and/or competitive retail-driven product categories such as soft drinks, candy, etc. The Vendor must address the following items in the case study submitted in connection with this Subsection:
  - i. Name of client, contact person, telephone number and date campaign was executed;
  - ii. Key facts from background market research and analysis, i.e., budget, competitive, organizational, etc.;
  - iii. Identification of problems/opportunities
  - iv. Budget;
  - v. Advertising objectives;
  - vi. Creative strategy positioning;
  - vii. Campaign execution – DVDs and CDs, print (finished), as applicable;
  - viii. Media objectives/strategy;
  - ix. Media plan/summary, including verifiable cost per thousand (CPM) and cost per point (CPP); and
  - x. Evaluation of campaign results, i.e., sales, market research, media post-buy.
- (b) Product Image Case Study - The Vendor shall provide with its Proposal a case study of not more than four (4) pages, excluding exhibits, describing one campaign run/aired in North Carolina that demonstrates the Vendor's ability to maintain or promote a product's image and communicate intangible benefits. (This case study must be from a different campaign than the case study submitted pursuant to Subsection 2.8.3(B)(1)(a), above). The Vendor must address the following items in the case study submitted in connection with this Section:
  - i. The creative strategy and execution;
  - ii. Advertising objective;

- iii. Budget;
- iv. The media planning and execution implications;
- v. Media strategies explored;
- vi. Ability to provide statewide reach; and
- vii. Tools used by the Vendor to evaluate the campaign's effectiveness against the audience(s).

- (c) Samples of Work - The Vendor shall submit with its Proposal creative samples produced within the past two (2) years by the Vendor's office and the creative director that will be servicing the NCEL account. Samples must be from at least two (2) different campaigns and must be different from the case studies submitted pursuant to Section 2.8.3(B), above. For each of the samples submitted pursuant to this Section, the Vendor must provide a write-up of not more than two (2) pages indicating the account name, product name, marketing objective, creative strategy, and creative team(s), and must identify the staff who will be assigned to the NCEL account. The Vendor must include the following items in the samples submitted in connection with this Section:
- i. Three (3) TV ads on DVDs and/or CDs;
  - ii. Three (3) radio ads on DVDs and/or CDs;
  - iii. Three (3) outdoor ads (5" x 7" or 8" x 10" photos are acceptable); and
  - iv. Three (3) additional items (any medium) that illustrate the Vendor's unique creative strengths.

- (d) Written Assignments – The Vendor shall submit to the NCEL a written concept with appropriate exhibits for a creative assignment and media assignment. The Vendor is not required to furnish completed creative materials; however, the written assignments should be sufficiently detailed to enable the NCEL to evaluate accurately the capabilities of the Vendor in terms of marketing strategy, creative ability and media planning, as well as, the Vendor's ability to buy media efficiently with cost savings.

- i. Creative Assignment Requirements: With the information provided below, the Vendor must submit a detailed advertising campaign for a six-digit game, which is a new multi-state lotto-style game. For this exercise, assume a launch date of March 1, 2010. The goals of the advertising campaign are:
  - a. Create awareness for this new game in order to create trial from new, frequent and infrequent NCEL players, especially those who are familiar with lotto-style games such as the big jackpot game of *Powerball* and the smaller top prize nightly game of *Carolina Cash 5*.
  - b. Establish the game as the southern regional game with good odds of winning sizeable jackpots.
  - c. Ensure that the game jackpot announcement needs are addressed, either as part of the campaign executions or in separate executions.
  - d. Reinforce a positive attitude among North Carolinians toward the game as a beneficial support for education. In developing this advertising campaign, the Vendor should also be prepared to demonstrate how the campaign execution can be extended after the initial campaign launch.  
Tentative Game Details:

*Game X* is a new multi-state lotto game where players select 6 numbers from 1 to 54 or play by selecting Quick Pick. If 3, 4, 5, or 6 of those numbers are drawn in any order – the player wins. Plus, the game includes a bonus feature where a state ball is drawn. Players pay an additional one dollar (\$1.00) to choose a state ball. If the player's state selection is drawn, all prizes, except the jackpot, doubles. The states included in the game are North Carolina, Tennessee, Georgia, Virginia and Kentucky. The ticket cost is one dollar (\$1.00). Drawings will be held every Monday and Thursday night. Anticipated jackpot amounts will begin at \$2 million and could grow up to \$40 million. The Game's prize amounts vary with the number of tickets sold and the number of winning tickets in each prize category.

ii. Media Assignment Requirements: The Vendor is required to recommend at least a 13-week media plan for the launch/introduction of the Game. The media budget must support all advertising efforts, including high jackpot announcements in all North Carolina markets. The media plan should take into consideration traditional media (network television, cable TV, radio, outdoor and print) and on-line media. The media plan should include a comprehensive description of the following elements.

- Media buying demographics.
- Allocations of dollars by media with detailed media selection rationale.
- Allocation of dollars by market.
- Gross rating point objectives with reach/frequency goals.
- Length of broadcast units and sizes/showings of other media.
- On-going scheduling by markets.

In addition to the advertising media plan, the Vendor should clearly demonstrate how each media element will be integrated for greatest impact and cost effectiveness. This demonstration should also include how media will be bought, monitored and analyzed to ensure maximum cost savings to the NCEL.

#### **2.8.4 INITIAL EVALUATION**

Proposals meeting the mandatory requirements of this RFP shall be evaluated and rated based on, but not limited to, the following factors:

A. Qualification and Experience:

- The overall qualifications and experience of the Vendor, its participating staff members, and subcontractors, if any, to render timely and professional advertising and related services, including the relative thoroughness and overall professional quality of the Vendor's Proposal.
- The sufficiency, appropriateness and quality of the assigned staff levels and persons to complete the services required by this RFP.
- Background and financial viability of the Vendor.

B. Technical Proposal:

- Quality and thoroughness of Vendor's responses to requested items as specified in Section 2.8.3.

- Creativity of case study responses.
- Written assignments:
  - With respect to the written creative assignment, evaluation will be on the advertising plan which should include, but not limited to, the following criteria:
    - (1) Overall marketing objective.
    - (2) Key facts from market research and/or other analysis considered during the development of the strategies and campaigns.
    - (3) Problems and opportunities considered during the development of the strategies and campaigns, including long-term versus short-term implications.
    - (4) The advertising objective and strategies and how these were defined.
    - (5) Creative positioning/strategy development process and rationale.
    - (6) Creative presentation (only storyboard, slides, scripts or rough cuts for radio accepted).
    - (7) Key creative, account, planning/research and media personnel responsible for the development of the strategies and campaigns who will work on the NCEL account.
  - With respect to the written media assignment, evaluation will be on the media summary plan which should include, but not limited to, the following criteria:
    - (1) Media objectives, considerations and strategies.
    - (2) Media selection, weight levels and timing.
    - (3) Proposed media merchandising strategies.
    - (4) The rationale for the above recommendations.
- Ability to use humor on TV and radio to achieve marketing objective.
- An understanding of the NCEL's goals and objectives with respect to its mission and business.

C. Compensation: Every Vendor (not just the Finalist Vendors) shall prepare and submit a cost proposal as described in Part V of this RFP. One form of compensation will be via a fixed percentage fee as agreed upon by the NCEL. In addition, Vendors are encouraged to be creative in proposing an alternative compensation package.

The above-referenced evaluation criteria are not necessarily listed in the order of importance or weight. In addition, the NCEL shall also consider the Vendor's responses to Section 4.6 pertaining to Minority Business Participation, as part of the evaluation. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Proposals deemed responsive using an evaluation committee (the "**Evaluation Committee**") selected by the Executive Director. The Evaluation Committee may request clarifications or answers to any questions it may have of a Vendor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Vendor to address technical questions or seek additional information regarding any Proposal before completing the initial evaluation.

## 2.8.5 FINAL COMPETITION

The final step will consist of evaluation of the top three (3) Finalist Vendors selected through the Initial Evaluation which will be based upon, but not limited to, the following:

- A. Written Proposal Carryover: The overall evaluation of each Finalist Vendor from Section 2.8.4 above will be carried over to the Final Competition.
- B. Finalist Oral Presentation and On-Site Visits: The Evaluation Committee may make an on-site visit to each of Finalist Vendor's advertising agency on either December 3<sup>rd</sup> or 4<sup>th</sup>, 2009 for the purpose of the oral presentations. However, the NCEL has the discretion to

require Finalist Vendors to conduct the oral presentation at the NCEL's Headquarters in Raleigh, North Carolina. During the presentation, the Finalist Vendor will be required to make an oral presentation of its written creative and media assignments to the NCEL Evaluation Committee. The presentation may be a maximum of two (2) hours in length. The purpose of the oral presentation is to provide the NCEL Evaluation Committee a better understanding of the advertising capabilities and compatibility of the Finalist Vendor and to allow the Evaluation Committee to ask any questions related to the written assignments.

- Finalist Vendor may not modify its original Proposal (including written assignments).
- Finalist Vendor may submit samples of creative materials, such as commercials, print, graphics, etc. which demonstrate the concepts presented in the written assignments.
- The Evaluation Committee desires to meet the senior advertising agency management team and those staff individuals who will be assigned to manage the NCEL advertising account on a daily basis.

## **2.9 DISPUTE PROCEDURE**

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 Vendor 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 Vendor 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 Vendor submitting a Proposal irrevocably waives any claim it might have had to protest or object to this RFP or its contents.

## **2.10 NEGOTIATION AND EXECUTION OF CONTRACT**

A Successful Vendor 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 Vendor(s) conveys no right or status on such Vendor(s). By submitting a Proposal, each Vendor acknowledges and agrees that the NCEL may negotiate with one or more Vendors, under such circumstances, at such times and in such a manner as it determines to be in the best interest of the NCEL.

## **2.11 NONEXCLUSIVE RIGHTS**

Nothing in this RFP or any Contract resulting from this RFP shall preclude the NCEL from purchasing other advertising, public relations, creative services or related services for its use from other vendors, individuals or entities as the NCEL, in its sole discretion, shall determine.

# **PART III – PROPOSAL TERMS AND CONDITIONS**

## **3.1 GOVERNING LAW**

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. Any and all claims or disputes arising under or in connection with this RFP or the Contract shall be exclusively governed by the Dispute Procedures, as they may be adopted or amended from time to time by the Commission.

### 3.2 CONTRACT ELEMENTS

The terms of this RFP, as may be amended by the NCEL from time to time, and the Proposal of the Successful Vendor 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 Vendor, 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 Vendor 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 Vendor, which may include any requested changes by the Successful Vendor.

## PART IV – PROPOSAL REQUIREMENTS

### 4.1 MANDATORY COMPONENTS; VENDOR 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 Vendor must sign and submit the Vendor Certification Form included as **Attachment A** and made a part hereof. The form must be signed by a person duly authorized to legally bind such Vendor.

### 4.2 VENDOR CONTACT PERSON

A Vendor 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 BACKGROUND INFORMATION

The NCEL will investigate, at a minimum, the financial responsibility and security of any Vendor that submits a Proposal. A Vendor must complete and submit as part of its Proposal the Background Disclosure Form, included as **Attachment B** and made a part hereof. Vendors 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 Vendor must complete and submit, as part of its Proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Vendor Investigation Form, included as **Attachment C** and made a part hereof, and Authorization for Individual Investigation, included as **Attachment D** and made a part hereof, in both cases to allow the NCEL access to the criminal, civil, and financial history of the Vendor and its employees assigned to this project. Such forms shall authorize access to the backgrounds of the following persons, as well as the Vendor, as applicable: (i) if the Vendor is a corporation, the officers, directors and each person who owns five percent (5%) or more of the equity interests in any member of a Vendor Team; (ii) if the Vendor is a partnership or joint venture, all of the general partners, limited partners or joint ventures; and (iii) for any Vendor, any person who can exercise control or authority, or both, on behalf of the Vendor.

Contemporaneously with the delivery of a Proposal, the Vendor must post a bond or letter of credit from a bank or credit provider acceptable to the NCEL in the amount of not less than five percent (5%) of the Proposal and submit a check or other similar financial instrument of immediately available funds (the "**Record Check Fee**") to the NCEL to cover the cost of criminal record check conducted under N.C.G.S.

§114-19-6 pursuant to §18C-151(a)(3) of the Act. The calculation of the amount of the bond or letter of credit (5%) must be substantiated and explained in the Vendor's Proposal.

The Record Check Fee that must be submitted by EACH Vendor with their Proposal shall be in the amount equal to the sum of:

- i) Seven hundred fifty Dollars (\$750) (the "**Corporate Search Fee**") for the Vendor and any parent company of the Vendor; plus
- ii) Two hundred dollars (\$200) (the "**Individual Search Fee**") for each officer and director of the Vendor and for each shareholder of the Vendor who owns an interest of five percent (5%) or more in the Vendor.

In addition, contemporaneously with the execution of the Contract, only the Successful Vendor shall provide a performance bond or letter of credit from a bank or credit provider acceptable to the NCEL and in a form reasonably acceptable to the NCEL (the "**Performance Bond**") in the amount not less than five hundred thousand dollars (\$500,000) and a payment bond (the "**Payment Bond**") or letter of credit in an amount not less than five hundred thousand dollars (\$500,000).

The NCEL intends to conduct full background checks only on the apparent Successful Vendor. After the Contract is awarded, the NCEL will return all bonds and fees to the nonselected vendor(s). Any Vendor that has previously submitted to such full background check inquiries in prior NCEL procurement processes and that is currently a Vendor 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 E, and parts thereof (if applicable).

#### **4.4 DISCLOSURE OF LITIGATION AND LEGAL MATTERS**

A Vendor should include in its Proposal a disclosure of any pending or overtly threatened civil or criminal litigation or indictment involving such Vendor. A Vendor must also disclose any civil or criminal litigation or indictment involving any of its subcontractors participating in its Proposal. Specifically, the Vendor 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 Vendor has submitted a Proposal under this RFP must be disclosed to the NCEL in writing within five (5) days after it is filed.

#### **4.5 FINANCIAL SOUNDNESS**

Under the Act, a Vendor 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 Vendor 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 Vendor.

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

#### 4.6.2 NON-DISCRIMINATION

Each Vendor 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.

## PART V - COST

### 5.1 PRICING OPTIONS

Based upon the current economic condition, the NCEL desires to acquire advertising services fulfilling the scope of services as provided in this RFP, at the best competitive price. Vendors must submit cost proposal that is based on a fixed percentage fee. Under the fixed percentage fee formula, a percentage of the total annual advertising budget, as determined by the NCEL, will be utilized. A Vendor must state the percentage of advertising budget required as its compensation to accomplish the tasks specified in the Proposal and this RFP. The single cost quotation should be presented on a separate, signed page and be expressed as a numeric percentage of the NCEL's annual advertising budget carried to no more than four (4) decimal places. For example, 1.0000%. **Please note that the NCEL's total annual advertising budget, which shall not exceed one percent (1%) of the NCEL's revenues, includes the Vendor's total compensation. Therefore, the total annual advertising budget is not spent completely on true advertising, but also includes payments to the NCEL's advertising agency for all services performed, fees, expenses, etc.**

In addition to the fixed percentage fee formula, Vendors are encouraged to be creative in offering an alternative pricing formula that will provide best value solutions to the NCEL in order to maximize the NCEL's transfer of funds to North Carolina educational programs. In this regard, the NCEL will consider

the total value under any alternative pricing formula versus the fixed percentage fee formula proposed by the Vendor, as part of the overall evaluation.

Vendors are reminded that the cost quotation (under either formula) should cover all of the services and other items covered and required by this RFP, as well as other services deemed necessary by the Vendor, to be provided by the Successful Vendor during the entire term of the Contract. Specifically, the Successful Vendor shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from the Successful Vendor to the NCEL. In addition, the Successful Vendor shall be responsible for the cost of all travel-related expenses incurred by the Successful Vendor's staff including airline tickets, rental car, mileage, meals, hotel accommodations and conference fees for up to one out-of-state NASPL conference yearly; and any expenses associated with attending any NCEL related activities including, but not limited to conferences, sales meetings and retailer visits. The Successful Vendor shall also coordinate, submit and be responsible at functions, including associated entry fees of up to ten thousand dollars (\$10,000) per year, for award recognition designated by the NCEL (the NCEL shall retain any awards, trophies, plaques, etc., that may be awarded for creative work that was created and produced by the Successful Vendor for the NCEL). Under the fixed percentage fee formula, the Successful Vendor shall be compensated solely via the fixed percentage fee agreed upon by the NCEL.

Costs agreed to in the resulting contract shall be firm and remain constant throughout the life of the contract and any extensions thereof.

## **5.2 PAYMENT**

Upon determination of the amount due to the Successful Vendor (i) in the case of media invoices, the fifteen (15<sup>th</sup>) day of every month, and (ii) in the case of production invoices, the thirtieth (30<sup>th</sup>) day of every month, payment (less applicable damages and penalties which may be deducted) will be processed in an expedited manner. Vendors may propose any alternative methods or schedules of payments which will be considered during contract negotiations with the Apparent Successful Vendor.

**COST PROPOSAL**  
**(MUST BE IN A SEPARATELY SEALED ENVELOPE**  
**FROM THE TECHNICAL PROPOSAL)**

---

(Proposer's Name)

Vendors are required to submit a fixed percentage cost proposal and are encouraged to submit an alternative cost proposal that will provide best value solutions to the NCEL in order to maximize the NCEL's transfer of funds to North Carolina educational programs. Vendors should propose various pricing terms that will benefit the NCEL and the State of North Carolina during the Contract term period.

Signed by: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT A

### VENDOR CERTIFICATION

#### PROFESSIONAL ADVERTISING, MEDIA AND RELATED SERVICES

I do hereby certify as follows:

1. The initial prices and other terms and provisions included in the Proposal submitted by \_\_\_\_\_ (the "Proposing Vendor") 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 Vendor 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 Vendor is for any reason not executed within the Proposal Offer Period, it shall be incumbent upon the Proposing Vendor 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 Vendors' Proposals). Failure on the part of the Proposing Vendor 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 cost and other terms and provisions contained in the Proposal accurately reflect the Proposing Vendor's total proposed cost, including any applicable discounts, and the Proposing Vendor would deliver the services and related items for that amount and according to those terms and provisions if the NCEL wanted to accept the prices and other terms and provisions described in its 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 Vendor, 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 Vendor agrees to fully comply with all requirements of the RFP, and its separate parts, and any deviation noted in the Proposing Vendor's submission may be the basis for rejection of its Proposal by the NCEL without recourse;
7. The Proposing Vendor 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 Vendors 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 Vendor 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 Vendor; 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.

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(Signature of Authorized Representative)

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(Print Name)

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(Title)

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(Date)

## ATTACHMENT B

### BACKGROUND DISCLOSURE FORM

*For any subcontractor that comprises at least twenty-five (25%) of the cost of the Vendor's Proposal (a "25% Subcontractor"), disclose all the same information for each 25% Subcontractor as if each 25% Subcontractor were itself the Vendor. 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 Vendor. (Vendor and all members of a joint venture, a strategic partnership or a prime contractor team are sometimes herein referred to as "Vendor 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 Vendor's officers, directors and each stockholder if the Vendor 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 Vendor corporation if the parent corporation's shares are publicly traded; if the Vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Vendor is an association, the member, officers and directors; if the Vendor is a partnership or joint venture, all general partners, limited partners or joint venturers:
  - a. Name:  
Relationship to Vendor:  
Address:  
Telephone number, including area code:  
Social Security number:
  - b. Name:  
Relationship to Vendor:  
Address:  
Telephone number, including area code:  
Social Security number:

- c. Name:
  - Relationship to Vendor:
  - 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 Vendor 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 Vendor Team has contracts to supply gaming 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor Team, and list the Fiscal Years for each team member. Complete an Authorization For Vendor Investigation for each (see Attachment C.)
12. List all the individuals constituting the Vendor Team who will work on the NCEL Contract. Complete an Authorization For Individual Investigation for each (see Attachment D).
13. Does the Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor and Vendor Team. In that capacity, I hereby certify that the Vendor and all members of the Vendor 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 Vendor and each member of the Vendor 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 Vendor and the members of the Vendor Team as well as the members of all such employees' households, and the Vendor and each member of the Vendor Team will enforce such restrictions upon its employees and subcontractors.

---

(Signature of Authorized Representative)

---

(Print Name)

---

(Title)

---

(Date)

**ATTACHMENT C**

**AUTHORIZATION FOR VENDOR INVESTIGATION**

I, \_\_\_\_\_, hereby authorize the North Carolina Education Lottery or its designee to conduct a Vendor 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**

**AUTHORIZATION FOR INDIVIDUAL INVESTIGATION**

I \_\_\_\_\_, hereby authorize the North Carolina Education Lottery to request and receive any civil, criminal, and financial credit history record information pertaining to me. 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.

\_\_\_\_\_  
Full Name Printed  
(First, Middle, Last – *no initials*)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Sex Race

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of Birth SSN

\_\_\_\_\_  
Signature

**NOTARY:**

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**[SEAL]**

**ATTACHMENT E**

**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 \_\_\_\_\_ 2009.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**[SEAL]**

## Affidavit B- Listing of Good Faith Efforts

State of \_\_\_\_\_

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_ (Name of Vendor)

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 Vendor, 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 Vendor, 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 abide by this statutory provision will constitute a breach of the Contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the 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 \_\_\_\_\_ 2009.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**[SEAL]**

**Affidavit C-- Intent to Perform Contract with Own Workforce**

State of \_\_\_\_\_

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_ (Name of Vendor)

I hereby certify that it is our intent to perform 100% of the work required for the NCEL contract for Professional Advertising, Media and Related Services.

In making this certification, the Vendor states that the Vendor 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 Vendor 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 Vendor to the commitments herein contained.

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**NOTARY:**

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2009.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**[SEAL]**

## **EXHIBIT A**

NASPL Advertising Guidelines

### **NASPL ADVERTISING GUIDELINES**

Approved March 19, 1999

#### **Introduction**

The producers and marketers of lottery products encourage responsible decision-making regarding lottery play by adults, and discourage abusive use of their products. The lottery industry urges that adults who choose to play the lottery, do so responsibly. Signatory NASPL members will conduct their advertising and marketing practices in accordance with the provisions of these Standards.

#### **Content**

1. Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
  - Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
  - Advertising should not portray product abuse, excessive play nor a preoccupation with gambling.
  - Advertising should not imply nor portray any illegal activity
2. Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Advertising should not encourage people to play excessively nor beyond their means.
  - Advertising and marketing materials should include a responsible play message when appropriate.
  - Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
  - Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
  - Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
  - Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
  - Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

#### **Tone**

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.

2. Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
3. Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
6. Advertising should not imply that lottery games are games of skill.

## **Minors**

1. Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
2. Age restrictions should, at a minimum, be posted at the point of sale.
3. Advertising should not appear in media directed primarily to those under the legal age.
4. Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
5. Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
  - The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
  - Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age.

## **Game Information**

1. Odds of winning must be readily available to the public and be clearly stated.
2. Advertising should state alternative cash and annuity values where reasonable and appropriate.

## **Beneficiaries**

1. Lotteries should provide information regarding the use of lottery proceeds.
2. Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

**EXHIBIT B**  
**PROFESSIONAL ADVERTISING AND RELATED SERVICES AGREEMENT**

This Professional Advertising and Related Services Agreement (the "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010 (the "**Effective Date**"), by and between the North Carolina Education Lottery (the "**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq.) (as may be amended from time to time, the "**Act**"), located at 2100 Yonkers Road, Raleigh, North Carolina, 27604, and \_\_\_\_\_, located at \_\_\_\_\_, a corporation organized under the laws of the State of North Carolina ("**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 the proposal, dated \_\_\_\_\_, 2009 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated September 28, 2009 (RFP#LC-61004) (the "**RFP**," Exhibit B. Exhibits A and B are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide professional advertising and related 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 professional advertising and related 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 the NCEL as detailed in the RFP, the Answers 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) and/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, the Answers and the Proposal.

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

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

D. Scope of Services: Subject to the instructions and decisions of the NCEL, VENDOR will be responsible for the following:

(1) Provide the NCEL full professional advertising services and advice during the term of the Agreement, including but not limited to assisting in the overall marketing analysis, strategy development and positioning of the NCEL and its products. Among other things, VENDOR shall provide comprehensive management through:

(a) Direct involvement from the Creative Director, from concept presentation to final approval of produced work because of the number of TV and radio spots produced;

(b) Supervising the NCEL account team at the executive level for authority over media and account services because of the large media responsibility of this account; and

(c) Ownership of all aspects of the advertising to ensure proper planning is achieved in order to meet deadlines.

(2) Provide input for planning, coordinating and executing specific portions of the NCEL's annual advertising plan, making professional recommendations during the term of the Agreement for revisions and/or modifications to the advertising plan based upon sales market conditions and any other contributing factors.

(3) Manage the NCEL account without over dependence on email or other electronic correspondence. Although there are many acceptable uses for electronic correspondence, such as email, one-on-one meetings

are required for presentations, creative and media, including additional follow up as a result of those meetings.

(4) Conduct meetings and follow up on assignments, providing attention to detail and clear focus on critical issues.

(5) Provide media solutions and creative concepts that are executable.

(6) Interact and work with the NCEL Staff and other marketing vendors to provide the integration of advertising plans and achieve the NCEL's overall objectives and goals, including but not limited to:

(a) A minimum of weekly meetings with the NCEL Staff to discuss purchasing, concepts, development and other issues related to marketing/sales issues; and

(b) Advertising reviews to the NCEL Commission, as requested.

(7) Possess the ability and initiative to anticipate questions and provide a thorough response.

(8) Create and produce professional advertising and related services for the NCEL's existing products, new products and special projects as requested.

(9) Adhere to schedules to ensure that radio and/or television commercials, print advertising, point-of-sale materials and other related materials are completed in advance of the campaign. Materials that are being distributed must be approved by the NCEL Executive Director and/or his Designee(s), prior to production of the advertisement, related materials or other services. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by VENDOR, and to direct VENDOR to cease work in connection with any such plan.

(10) Provide a preliminary production schedule within one (1) week of receipt of a creative marketing plan from the NCEL. The production schedule shall allow sufficient time for developing, presenting and refining the creative concepts, editing and revising the selected option per the NCEL's request, obtaining final approval from the NCEL, producing the final product, and distributing the finished product according to the NCEL's specifications.

(11) Complete VENDOR work or subcontracted work within forty-five (45) days of estimate approval except as otherwise agreed to by the NCEL.

(12) Provide creative services to the NCEL as follows:

- (a) Creative services for television and radio production including, but not limited to, scripts, pre-production, editing and finalization of spots;
- (b) Creative services for print production including, but not limited to, production and finalization of advertisements;
- (c) Concepts, design and/or artwork for in-store communications;
- (d) Artwork for outdoor production; and
- (e) Art direction services for broadcast, print and outdoor production.

A minimum of three (3) creative executions per campaign is required, unless otherwise approved by the NCEL.

(13) Create and produce point-of-sale advertising pieces as designated by the NCEL.

(14) Create advertising that is complementary and consistent with any and all point-of-sale advertising materials.

(15) Develop general market media plans and, with the approval of the NCEL, purchase general market television, radio, print, outdoor and any new media vehicle that will assist in marketing NCEL products.

(16) As authorized, develop specific plans to maximize the awareness of the NCEL and its games and recommend budgetary savings where appropriate.

(17) Provide the NCEL with post-buy analysis quarterly, within two (2) weeks of publication of the Arbitron and Nielsen research, indicating that the reach and frequency goals of each media buy were achieved within budget, or if a gross rating point shortfall were to occur, provide the NCEL with analysis as to how the Vendor plans to rectify underachieved results with specific media during the next media purchase of that type. The acceptable range for post-buy percentage is 95-105%.

(18) Ensure that all media that is run or published is in accordance with any contracts or placement instructions. VENDOR must provide affidavits, tear sheets or other documentation to the NCEL in connection therewith, and all media invoices must be notarized. VENDOR must notify the NCEL before approving any "make goods" for any ads that did not run as scheduled. All such materials shall be maintained by VENDOR and must be available for inspection by the NCEL or its authorized representatives. Affidavits and/or tear sheets must accompany any final billings submitted to the NCEL.

(19) Request and audit the airing and/or publishing of NCEL winning numbers from all radio stations, TV stations and newspapers included in a NCEL buy.

(20) Negotiate and track delivery of bonus spots and/or added value at no additional charge from all radio and TV stations included in a NCEL buy. Any bonus spots provided by participating stations must be assigned a value and reported monthly to the NCEL.

(21) Purchase on behalf of the NCEL certain materials and services used in the production of the NCEL advertising and sales promotion materials. The NCEL shall pay VENDOR for all approved obligations incurred by VENDOR on the NCEL's behalf within the scope of VENDOR's authority.

(22) VENDOR shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the NCEL Executive Director or his Designee. In connection with such authorization, VENDOR is subject to the following guidelines:

(a) VENDOR must prepare and evaluate competitive bids for productions and media, prepare and submit estimates and invoices to the NCEL for all work performed under the Agreement, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis.

(b) VENDOR must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, VENDOR shall provide written documentation of such to accompany the cost estimate.

(c) If VENDOR recommends any vendor other than the lowest bidder, VENDOR shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow VENDOR's recommendation.

(d) Bids shall be secured from North Carolina-based vendors whenever possible. If local vendors are not available for project as approved, VENDOR shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.

(e) Cost estimates shall be presented by VENDOR to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.

(f) The estimate number used to track each project will be issued by VENDOR and invoices shall be numbered consistent with estimate number.

(g) All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his Designee and

VENDOR may not begin work until VENDOR has received a signed estimate/authorization from the NCEL.

(h) A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previous approved amounts and/or history of amounts.

(i) Media invoices will be paid only upon completion of the media flights and must include a notarized affidavit that lists all spots being billed, bonus spots received, station, date, number of spots aired and cost. Invoices, including credits, should be submitted to the NCEL within ninety (90) to one hundred twenty (120) days of the media spot run.

(j) Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. VENDOR is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.

(k) The NCEL's fiscal year ends June 30<sup>th</sup>. All invoices for that fiscal year must be submitted by September 30<sup>th</sup> of the new fiscal year. The NCEL reserves the right not to pay any invoices received after September 30<sup>th</sup>.

(l) Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested VENDOR invoices, unless as otherwise agreed upon by both parties.

(m) VENDOR shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to VENDOR. In the event that the NCEL becomes aware of VENDOR's default of these terms, the NCEL will notify VENDOR immediately.

(n) VENDOR agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.

(23) Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or nonspeaking;

(24) The NCEL acknowledges that VENDOR may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist ("AFTRA"), Screen Actors Guild ("SAG") and/or American Federation of

Musicians (“AFM”), and that the production of advertising material from which the employment of talent is required may necessitate the negotiation, review, approval and/or execution by VENDOR and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent.

(25) In conjunction with the NCEL, develop and conduct advertising and market research studies, as requested, that involve advertising research such as recall tests, copy and motivation tests, media weight tests and attitude studies. VENDOR may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design. The cost of the research studies will be paid from the NCEL’s existing advertising budget or such other budget as designated by the NCEL.

(26) Provide the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number; (ii) brief description of job; (iii) original estimate amount; (iv) an estimate of the costs incurred to date that have not yet been billed; and (v) billings rendered to date on each job.

(27) Provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current fiscal year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid and the amounts committed that have not been billed.

(28) Provide the NCEL with a monthly analysis of media spending by county and a comparison of sales levels achieved in those areas as requested by the NCEL. The NCEL will provide detailed sales information to VENDOR on an ongoing basis, as available. Each such analysis shall include a recommendation from VENDOR regarding any changes in media expenditures, as applicable.

(29) Provide for the management and traffic of production development, media placement and timelines and any required reports, including, but not limit to, monthly county-by-county advertising/sales evaluation and monthly projects in progress.

(30) Provide the NCEL with weekly status reports, contact reports, minority compliance reports and other reports, as requested.

- (31) Assist the NCEL with public relations activities as needed, including:
  - (a) Scheduling on-air interviews with advertising partners.
  - (b) Solicit/evaluate promotional opportunities from media partners.
  - (c) Assist with planning public relations media events.
  
- (32) Evaluate, as requested, sports sponsorship programs and promotional events that include media components.

### 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 approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties working with or for VENDOR in performing services under this Agreement or for the NCEL will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the NCEL may require. VENDOR agrees that it will obtain the prior consent of the Director or his designee(s) prior to having any Subcontractor perform any activities for the NCEL under this Agreement.

B. Upon the 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. The 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 best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this

Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as 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 and/or this Agreement. No Subcontractor is authorized to bind the NCEL to any liability or obligation or to represent that it has any such authority.

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

#### 5. **COMPENSATION**

(a) As full and complete compensation for all Services and deliverables provided by VENDOR pursuant to this Agreement, the NCEL will pay VENDOR, and VENDOR will accept, an amount (the "**Vendor's Fee**") equal to: **[SUCCESSFUL VENDOR'S RATE AFTER NEGOTIATION PURSUANT TO RFP]**; provided, however, that notwithstanding anything herein to the contrary, advertising expenditures of the NCEL, including VENDOR's total compensation, shall not exceed one percent (1%) of the NCEL's total annual fiscal year revenues.

(b) VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from VENDOR to the NCEL. In addition, VENDOR shall be responsible for the cost of all travel-related expenses incurred by VENDOR's staff including airline tickets, rental car, mileage, meals, hotel accommodations and conference fees for up to one out-of-state NASPL conference yearly; and any expenses associated with attending any NCEL related activities including, but not limited to conferences, sales meetings and retailer visits. VENDOR shall also coordinate, submit and be responsible at functions, including associated entry fees of up to ten thousand dollars (\$10,000)

per year, for award recognition designated by the NCEL (the NCEL shall retain any awards, trophies, plaques, etc., that may be awarded for creative work that was created and produced by VENDOR for the NCEL).

(c) 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 VENDOR or Subcontractors (or any other individual or entity) in connection with any Services or the VENDOR's performance under this Agreement.

(d) VENDOR shall, at its own expense, conduct trademark and service mark searches with respect to trademarks, service marks, logos or trade names used by VENDOR in connection with the NCEL. Copies of all such search reports will be delivered to the NCEL and its Legal Counsel. New trademarks and service marks developed for the NCEL will be registered by legal counsel chosen by the NCEL solely in the name of the NCEL for its sole use.

(e) Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 13) or this Agreement, the NCEL will pay to VENDOR all nondisputed amounts due under this Agreement on (i) in the case of media invoices, the fifteenth (15<sup>th</sup>) day of every month; and (ii) in the case of production invoices, the thirtieth (30<sup>th</sup>) day of every month, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by the NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

## 6. **TERM**

A. Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence as of the Effective Date and shall continue for a period of three (3) years from the Effective Date (the "**Initial Term**"). This Agreement shall be automatically renewed for a period of one (1) year (each a "**Renewal Term**") upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than three (3) Renewal Terms, unless the NCEL sends VENDOR at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be. If the NCEL and VENDOR fail to mutually agree in writing on a Vendor Fee for any Renewal Term prior to the beginning of any such Renewal Term, then the Vendor Fee shall be the same as specified for the preceding year and this Agreement shall be terminated by the NCEL at any time during such Renewal 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 or less, of the term of this Agreement for transitioning the provision of such Services and deliverables; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such period. 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 manner without any interruption to the NCEL's current marketing efforts, at no additional cost to the NCEL or such new contractor.

**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 applicable to the VENDOR's industry.

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

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

F. VENDOR hereby designates \_\_\_\_\_, 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. CHANGES IN WORK**

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

**9. BOOKS AND RECORDS**

VENDOR and each Subcontractor shall provide, as soon as it is available, to the NCEL on an annual basis a copy of its audited financial statements for such year; provided, however, if a Subcontractor does not obtain audited financial statements, then its financial statements must be certified by its chief financial officer. VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by the NCEL from time to time. VENDOR and all Subcontractors shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by the NCEL, or by any authorized representative of the NCEL, and copies thereof shall be furnished to the NCEL by the appropriate entity, at no cost to the NCEL, if requested by the NCEL. The NCEL shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the goods to be provided and Services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

## 10. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT, MATERIALS AND RIGHTS OF USE

A. For purposes of this Agreement:

(i) "**Confidential Information**" means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B) valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "Trade Secret" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors. For purposes of this Agreement, the financial statements provided pursuant to Section 9 of this Agreement shall be deemed to be VENDOR's Confidential Information; and

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

B. In recognition of the need of VENDOR to protect its legitimate business interests, the NCEL hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, 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) 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. To ensure the compliance by it and all Subcontractors with the provisions of this Section 10(C), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit NCEL to independently enforce the requirements set forth in such agreements.

D. Notwithstanding the foregoing, the nondisclosure restrictions of Section 10(B) shall not apply to either party's information that is: (i) generally known to the public other than due to a disclosure by the Disclosing Party; (ii) already known to the Receiving Party at the time it is disclosed by the Disclosing Party to the Receiving Party; (iii) independently developed by the Receiving Party; or (iv) received by the Receiving Party from a party that the Receiving Party believed in good faith had the right to make such disclosure.

E. Neither the VENDOR nor any of its approved 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**") products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts, ideas 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 deliverables, written materials, campaigns, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or

nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, 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,” VENDOR and each of the Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks and service marks (and the goodwill associated therewith) and rights (all of the foregoing being collectively defined as the “**Intellectual Property Rights**”), 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 request, 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. 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 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 that it chooses in the conduct of its lottery games and other activities.

F. The NCEL grants to VENDOR during the period from the Effective Date until the expiration of this Agreement, or is otherwise earlier terminated, a non-exclusive license to use, sublicense, modify and create derivative works of the NCEL Intellectual Properties which are owned by the NCEL and created solely by VENDOR or its Subcontractors, provided such use by VENDOR or its Subcontractors is only for the benefit of the NCEL and solely for the purpose of performing the Agreement.

## **11. 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 best efforts to require all Subcontractors to comply with this covenant, may be regarded as a material breach of this Agreement. VENDOR and Subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

B. Consistent with the Act and all other applicable North Carolina laws, VENDOR agrees to make every reasonable effort to include the participation by 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.

12. **LIMITATION OF LIABILITY**

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

13. **COMPLIANCE WITH LAWS**

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

14. **ANTITRUST ACTIONS**

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

15. **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, as follows:

A. VENDOR has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and VENDOR has taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this

Agreement. The execution and delivery of this Agreement and the performance of its obligations under this Agreement are not in contravention of any provisions of law or any material indenture or agreement by which VENDOR is bound and do not require the consent or approval of any governmental body, agency, authority or other person or entity which has not been obtained. This Agreement constitutes the valid and legally binding obligation of VENDOR, enforceable against VENDOR in accordance with its terms.

B. VENDOR and its Subcontractors have disclosed or will disclose to the NCEL all matters required to be disclosed under the Governing Laws and Regulations. VENDOR shall ensure that it is aware of any statutory limitations or restrictions affecting its Agreement with the NCEL, such as certain political contributions, its ability to conduct future business with the NCEL and/or its ability to conduct business with certain third parties. Any employee of the VENDOR who works directly on the NCEL Contract/Account, and members of such employee's households, shall be prohibited from purchasing NCEL tickets and/or claiming any NCEL prizes.

C. Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders have ever been found guilty of, or plead guilty to, any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction, nor are VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders currently under indictment for any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction. VENDOR shall be obligated to notify the NCEL if VENDOR or any one of its officers and directors has been convicted of a felony or any gambling offense in any state or federal court of the United States within ten (10) years of entering into the contract (NCGS §18C-151(a)(5)).

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

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

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

G. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement or the Services without the prior written consent of the Director or his designee(s) in each instance.

H. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the Director or his designee(s) in each instance.

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

## **16. OBLIGATIONS OF VENDOR**

A. VENDOR shall provide the NCEL on an annual basis an updated certificate of existence showing that it and each Subcontractor are qualified to transact business in the State of North Carolina.

B. To avoid not only actual impropriety but also the appearance of impropriety, VENDOR is expected to establish and enforce a code of conduct for all employees, independent vendors and subcontractors that will help achieve the NCEL's objective of maintaining integrity in its operation, as well as, follow the rules and procedures established, and from time to time, amended, by the NCEL.

C. VENDOR and its Subcontractors shall disclose all written and oral agreements with all lobbyists and consultants doing work on its behalf in the State of North Carolina and before the federal government. VENDOR and its approved Subcontractors shall also comply with all state and federal lobbying laws. This Agreement may be terminated, at the sole option and discretion of the NCEL, if VENDOR has not complied with these disclosure requirements.

D. 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; including, without limitation, any breaches of all representations, warranties and additional covenants set forth in 14 hereof, no less often than every six (6) months; 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, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; provided, however, if any such proceeding would have a material adverse affect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after VENDOR learns of such proceeding.

E. VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement (i) a performance bond (the "**Performance Bond**") or letter of credit with the NCEL in an amount equal to five hundred thousand dollars (\$500,000), and (ii) a payment bond (the "**Payment Bond**") or letter of credit with the NCEL in an amount equal to five hundred thousand dollars (\$500,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by the NCEL in its sole discretion. The security provided by VENDOR pursuant to the Performance Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to indemnify the NCEL pursuant hereto. The security provided by VENDOR pursuant to the Payment Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely pay any obligation contained in this Agreement. The Bonds may be renewable annually, provided that: (i) each Bond provides that, in the event such Bond will not be renewed for an additional year, the NCEL will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if such Bond is not renewed for an additional year, VENDOR must obtain a replacement equivalent Bond or letter of credit to be in place so that at no time is VENDOR in violation of its obligation pursuant to this Section to maintain a performance bond and a payment bond at least throughout the term of this Agreement.

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

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

(iii) An advertising agency 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, other product or service prepared by, or services performed by, VENDOR, its employees or its Subcontractors, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of at least five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) in the aggregate.

G. 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. Renewed bonds and/or insurance policies must be submitted to the NCEL within five (5) days prior to the expiration of the then existing bonds and/or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are finally rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

## **17. 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. VENDOR and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

## **18. TERMINATION**

A. Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement if VENDOR fails to correct or cure any breach of this Agreement within three (3) business days of the earlier of: (a) VENDOR's

having knowledge of such breach; or (b) VENDOR's receiving oral or written notice of such breach from the NCEL; or

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

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

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

## **19. 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, 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.

## **20. 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**”).

**21. NOTICES**

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

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

If to VENDOR: [VENDOR INFORMATION]

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.

**22. MISCELLANEOUS**

A. This Agreement, together with the Proposal, the Answers 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 Answers, the terms of the Answers 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.

**23. ADDITIONAL SERVICES**

In the event the NCEL desires to retain the services of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services, payment therefore shall not exceed the rates identified in this Agreement unless agreed to in writing by the NCEL. Any such services, the rates and the terms of payment shall be approved, in writing, prior to the commencement of any such

additional work. In no event shall VENDOR or any Subcontractor be paid for work not authorized, or for work in excess of that authorized, in writing by the NCEL.

**24. APPROVAL OF COMMISSION AND REQUIRED INVESTIGATIONS**

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

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

"NCEL"

**NORTH CAROLINA EDUCATION LOTTERY**

By: \_\_\_\_\_  
Thomas N. Shaheen  
Its: Executive Director

"VENDOR"

By: \_\_\_\_\_  
[NAME]  
Its: [TITLE]

EXHIBIT A

[Proposal]

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EXHIBIT B

[RFP]

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EXHIBIT C

[QUESTIONS AND ANSWERS]