

NORTH CAROLINA EDUCATION LOTTERY
REQUEST FOR PROPOSALS
DRAW AUDITING AND RELATED SERVICES

RFP #LC-000055

September 5, 2018

PART I - GENERAL INFORMATION

1.1 INTRODUCTION

The North Carolina State 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 Proposals (“**RFP**”) to invite responses (“**Proposals**”) from qualified and reputable Certified Public Accounting firms (“**Contractors**”) to provide drawing audit services relating to the NCEL’s drawings as outlined in this RFP (collectively, the “**Services**”). For purposes of this RFP, the relevant drawings will include two (2) daily draw games (*Carolina Pick 3* and *Carolina Pick 4*) drawn at approximately 3:00 p.m. and three (3) daily draw games (*Carolina Pick 3*, *Carolina Pick 4* and *Carolina Cash 5*) drawn at approximately 11:22 p.m. and any Second-Chance and/or Player Loyalty Rewards drawings. Any Contractor selected through this RFP process (a “**Successful Contractor**”) will work with the NCEL Security Department in the execution of Services as contemplated under this RFP.

The NCEL 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, and **the NCEL may do whatever it determines in its sole discretion to be in the best interests of the NCEL and the State of North Carolina**. All Contractors must fully acquaint themselves with the NCEL’s needs and requirements and obtain all necessary information and understandings to be able to submit responsive and effective Proposals.

All Proposals and any Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the “**Act**”), and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the “**Regulations, Policies and Procedures**”). Copies of these documents may be obtained either from the NCEL or through a link on the NCEL’s website, <http://www.nclottery.com/> (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 Contractors 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, 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**”) from 4:00 p.m. Eastern Time (“**EST**”) November 1, 2018 (the “**Proposal Deadline**”). A Proposal

constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Contractor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

1.5 RIGHT TO USE INFORMATION IN THE PROPOSAL

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

PART II - PROCUREMENT PROCESS

2.1 SUMMARY OF KEY DATES

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

September 5, 2018	RFP Issuance Date
October 4, 2018	Deadline for submission of any and all Questions 4:00 p.m. ET (The NCEL will publish answers to questions submitted periodically throughout the Questions and Answers period).
October 11, 2018	Answers Posted
November 1, 2018	Deadline for submission of Proposals 4:00 p.m. ET
	<u>DELIVERY ADDRESS:</u> Anthony Downey, Purchasing Administrator North Carolina Education Lottery LC#000055 - Draw Auditing and Related Services 2728 Capital Blvd., Suite 144 Raleigh, NC 27604
December 4, 2018	Target date for Decision of Apparent Successful Contractor as approved by the NCEL Commission

2.2 CONTACT PERSON

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

Email: bid.submission@lotterync.net
Phone: **919-301-3433**

North Carolina Education Lottery
LC#000055 - Draw Auditing and Related Services
2728 Capital Blvd., Suite 144
Raleigh, NC 27604

No direct or indirect contact or other solicitation initiated by Contractors or their representatives, in connection with this Procurement, should occur with any NCEL employee or commission member other than the Contact Person. This contact limitation extends from the RFP issuance date until an Apparent Successful Contractor has been approved by the NCEL Commission. Employees of current Contractors who are required to work with the NCEL under existing Contracts 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. ET on October 4, 2018 (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 <https://www.nclottery.com/Business>.

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 portion of the Proposal must be in a separately sealed envelope.** A Contractor should submit a signed original, three (3) reproduced complete copies, one (1) electronic copy (on disk or thumb drive) of its Proposal and one (1) redacted hardcopy/electronic copy of their Proposal with redacted information that the Responding Contractors deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law. Proposals must be received by the NCEL by 4:00 p.m. (ET) November 1, 2018. Late Proposals will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Contractors must provide responses for all items contained herein that request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this RFP that are due with the Proposal. Proposals shall be complete and must convey all of the information requested by the NCEL. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Contractor.

2.5 MULTIPLE CONTRACTORS AND JOINT PROPOSALS

If the response submitted is a joint Proposal that includes multiple Contractors, 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 Contractor 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 Contractor must comply with all of the requirements contained in this RFP. A Contractor 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 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.

2.7 PROPOSAL CONSTITUTES OFFER

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

2.8 PROPOSAL EVALUATION

A variety of factors (including, but not limited to, experience, integrity, proposed solution, cost/price and value to the NCEL, background, financial viability, ability to perform the Contract) shall be considered by the NCEL in determining the Successful Contractor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL. These factors are not necessarily listed in the order of importance or weight. Furthermore, the NCEL shall also consider the Potential Contractor's responses to Section 4.6 pertaining to Minority Business Participation, as part of the evaluation. Thus, while Potential Contractors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Potential Contractor offering the lowest price and total cost may not be selected as the Successful Contractor. 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 Potential Contractor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Potential Contractor to address questions or seek additional information regarding any Proposal before completing the initial evaluation.

It is not the intent of the NCEL to disqualify any Proposal based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Contractor. The NCEL also reserves the right to disqualify the Contractor's Proposal if the Contractor has violated Section 2.2 of this RFP. It is the intent of the evaluation procedure established by the NCEL to determine whether each Proposal meets the needs of the NCEL, as outlined in this RFP, and then to determine which Proposal best suits those needs.

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

2.9 SCOPE OF SERVICES

2.9.1 INTRODUCTION

The Successful Contractor shall be required to provide at least four (4) people, only one of which will be required at any drawing unless otherwise specified by the NCEL, to observe mechanical drawings, taking place on the designated days and times at the drawing show television studio (currently WRAL in Raleigh, NC), NCEL headquarters, or any other site as designated by the NCEL,

and to conduct certain agreed upon procedures for the specified NCEL's draw games, or any other games/promotions required by the NCEL.

The Successful Contractor shall be required to provide at least three (3) people, only one of which will be required at any drawing unless otherwise specified by the NCEL, to observe second-chance drawings, taking place on the designated days and times at NCEL headquarters or any other site as designated by the NCEL, and to conduct certain agreed upon procedures for the specified NCEL's second-chance drawings, or any other promotions required by the NCEL. Each member of the Second-Chance Draw Team must be trained on performing the agreed upon procedures for second-chance drawings and must perform at least one (1) drawing each year.

The Successful Contractor will provide to the NCEL a list of dedicated Emergency Auditors or an on-call rotation of Emergency Auditors. In the event that the scheduled auditor does not arrive by 1:50 p.m. for the afternoon draw or 9:00 p.m. for the evening draw, the NCEL draw team shall call the Emergency Auditor. This Emergency Auditor must be able to arrive at the studio or other draw location provided by the NCEL in no more than twenty (20) minutes. Emergency Auditor will not be compensated unless such individual is requested to perform a draw.

The Successful Contractor shall also supply a list of at least three (3) auditors who will be on the Disaster Recovery Team. Members of this Disaster Recovery Team will be called on in the event of a natural disaster or other emergency to assist the NCEL in a special Disaster Recovery draw process, which is currently located in Greensboro, North Carolina. Members of the Disaster Recovery Team may also be required to attend annual training or walkthrough events at NCEL Headquarters, the NCEL backup site, or any other location in the State of North Carolina as specified by the North Carolina Education Lottery.

Any staff that will be attending and/or performing audit services of any NCEL drawings must be pre-approved by the NCEL Security Department after all background investigations have been completed. The NCEL has the option to conduct periodic background investigations on any Contractor's staff as needed throughout the term of the Agreement.

2.9.2 CONTRACTOR'S RESPONSIBILITIES

The NCEL conducts two (2) draws for its draw games every day, including all holidays. These drawings use an air-machine and numbered balls to select winning numbers for the *Carolina Pick 3*, *Carolina Pick 4* and *Carolina Cash 5* games. Currently, the afternoon draw consists of the *Carolina Pick 3* and *Carolina Pick 4* games and takes place at approximately 3:00 p.m. (total time of draw process from start to finish is approximately two (2) hours). Currently, the evening draw consists of the *Carolina Pick 3*, *Carolina Pick 4* and *Carolina Cash 5* and takes place at approximately 11:22 p.m. (total time of draw process from start to finish is approximately three (3) hours). The total draw process time may be extended if the drawing is delayed for any reason.

The NCEL may, at any time, add a game or promotion to the existing draw process. The Successful Contractor will also be responsible for verifying that the agreed-upon procedures are followed for these new games and/or promotions.

The NCEL also periodically conducts technology-based drawings for second-chance and/or promotions. These draws currently use a SmartPlay Origin Random Number Generator system. The NCEL holds approximately forty (40) of these drawings a year. The NCEL may conduct these second-chance and/or promotional drawings during "down-time" in between the draw game drawings as detailed above.

The Successful Contractor will describe how they plan to work with the NCEL to establish agreed upon procedures for both mechanical and technology-based draws, and how they plan to monitor the implementation and execution of these agreed upon procedures.

For draw game drawings, the Successful Contractor will verify that:

- a) all preventative security measures have been taken after the previous drawing (safe is locked, alarm is armed, etc.);
- b) the equipment for the drawing is randomly selected;
- c) the machines and equipment for the draw are set up properly;
- d) the pre-tests are executed and that no patterns or sequences appear that would suggest a lack of randomness;
- e) the drawing equipment is under the control of two (2) staff members at all times throughout the drawing process;
- f) sales of all games are stopped before the live draw occurs;
- g) the live draw occurs without incident;
- h) the correct numbers are certified and entered into the gaming system;
- i) all machinery and equipment are properly returned to the secured area;
- j) all preventative security measures are armed before the draw team leaves the secured area; and
- k) each item of the agreed-upon procedures has been completed.

For technology-based drawings, the Successful Contractor will verify that:

1. the entry list has not been changed or tampered with, and that the digital signature matches the signature provided by the entry collection system;
2. all entries fall within the eligibility requirements;
3. the Random Number Generator software has not been tampered with, and the digital signature matches the signature provided by the certification company;
4. the Random Number Generator is functioning correctly, and that all pre-tests are properly executed;
5. all qualified entries are represented and have a chance to be drawn;
6. the correct number of prizes and alternates are drawn;
7. the winners are properly identified; and
8. all equipment is properly locked and secured before the draw team leaves the draw area.

For both mechanical and technology-based drawings, the Successful Contractor shall certify by a signed, written report of their findings for every drawing that the procedures agreed upon were performed and whether the closing of the prize pools and the selection of the winning numbers were conducted in accordance with the drawing procedures prescribed by the NCEL. Reports will be stored by the NCEL for the required time period. Written reports should also include, but is not limited to the following:

- A. Any irregularities during an audit;
- B. Questionable procedures;
- C. Suspicious activities; and
- D. Equipment problems.

Any report of irregularities, mechanical problems or any other exception report must be filed with the NCEL no more than twenty-four (24) hours after the event. These reports will be sent to the NCEL Director of Security and the NCEL Deputy Executive Director of Finance, Administration and Security.

2.10 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 Contractor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Contractor Dispute Resolution Procedures (the "**Dispute Procedures**"), as adopted and/or amended from time to time by the NCEL Commission (**Attachment F**). Any Potential Contractor that submits a Proposal hereby expressly acknowledges and agrees that: (a) the Dispute Procedures represent the exclusive procedure and the exclusive forum for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind relating in any way to any RFP, Procurement, Contract, offer, quote, Proposal or agreement entered into by the NCEL; (b) it is estopped from objecting to any court, agency or other entity as to the Dispute Procedures being such sole and exclusive forum for binding resolution; and (c) it agrees to be completely, solely and irrevocably bound by such Dispute Procedures. In addition, each Potential Contractor submitting a Proposal irrevocably waives any claim it might have had to protest or object to this RFP or its contents.

2.11 NEGOTIATION AND EXECUTION OF CONTRACT

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

2.12 NONEXCLUSIVE RIGHTS

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

PART III – PROCUREMENT 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 Contractor will be incorporated into and form a part of the Contract, as will the Questions and Answers. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the Contract, this RFP and any amendments thereto as well as Answers to the Questions, and finally the Proposal of the Successful Contractor, all of which must comply with the Act. The NCEL reserves the right to negotiate the form of Contract and offer such Contract to the Successful Contractor as the NCEL determines is in the best interests of the NCEL.

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

PART IV – PROCUREMENT REQUIREMENTS

4.1 MANDATORY COMPONENTS; CONTRACTOR COMMITMENT

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

4.2 CONTRACTOR CONTACT PERSON

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

4.3 BACKGROUND INFORMATION

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

A Contractor must complete and submit, as part of its Proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Contractor Investigation Form, included as **Attachment C** and made a part hereof, and Acknowledgment and Authorization For Background Check, 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 Contractor and its employees assigned to this project. Such forms shall authorize access to the backgrounds of the following persons, as well as the Contractor, as applicable: (i) if the Contractor 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 Contractor Team; (ii) if the Contractor is a partnership or joint venture, all of the general partners, limited partners or joint ventures; and (iii) for any Contractor, any person who can exercise control or authority, or both, on behalf of the Contractor.

Contemporaneously with the delivery of a Proposal, responding Contractors are required to submit a bond or letter of credit in an amount equal to but not less than five percent (5%) of the Cost 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 Record Check Fee that must be submitted by EACH Contractor with their Proposal shall be in the amount equal to the sum of:

- i) One thousand dollars (\$1,000) (the "**Corporate Search Fee**") for the Contractor and any parent company of the Contractor; plus
- ii) Two hundred fifty dollars (\$250) (the "**Individual Search Fee**") for each officer and director of the Contractor and for each shareholder of the Contractor who owns an interest of five percent (5%) or more in the Contractor.

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

4.4 DISCLOSURE OF LITIGATION AND LEGAL MATTERS

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

4.5 FINANCIAL SOUNDNESS

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

4.6 COMMITMENT TO NONDISCRIMINATION AND MINORITY PARTICIPATION

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

4.6.1 MINORITY BUSINESSES PARTICIPATION

Each Contractor should describe in its Proposal what actions it currently takes in the areas of: (a) utilizing minority-owned businesses; (b) encouraging full participation of qualified, capable, competent and competitive minority-owned businesses; (c) assisting minority businesses or minority persons; and (d) any plans to continue to provide interested minority businesses with adequate information about any subcontracting opportunities. Proposals should describe the following:

- a. What minority businesses the Contractor uses or intends to use.
- b. Plan to continue to provide interested minority businesses with adequate information about any subcontracting opportunities available in connection the NCEL.
- c. Plan to continue to provide equal opportunity to minorities when replacing or adding subcontractors and suppliers.
- d. 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.

- e. 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.
- f. The percentage and number of supervisory positions that will be filled by minority employees.

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

4.6.2 NON-DISCRIMINATION

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

PART V - COST

5.1 PRICING FORMULA

The NCEL currently expects that Successful Contractor shall be compensated for all Services based on a fixed fee agreed upon by the NCEL. Contractors are reminded that the cost quotation should cover all of the Services and items required by this RFP and Procurement, as well as other Services deemed necessary by the Contractor, to be provided by the Successful Contractor during the entire term of the Contract. The Successful Contractor shall also 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 Contractor to the NCEL.

Should the NCEL require drawing services outside of the Raleigh Metropolitan area, additional transportation expenses or overnight expenses will be reimbursed in accordance with the NCEL Travel Expense Policy.

Please note that the NCEL will be paying for an auditor to conduct the Services hereunder; therefore, it is not necessary that the auditor be a CPA. However, a CPA may perform the Services as an auditor, payable at the auditor compensation rate. The NCEL will only compensate at the higher CPA rate if a CPA is expressly required for the work being completed.

Contractors shall provide the pricing in the two formats presented in **5.3 COST PROPOSAL**: 1) total cost per drawing; and 2) hourly rate. One of the pricings presented will be selected by the NCEL for the Successful Contractor and will be the pricing used in the Contract for Draw Auditing Services. No reimbursement will be available to the Successful Contractor beyond the amount agreed to be paid as the cost of the Services provided. 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

Subject to the availability of funds and any other restrictions imposed by the Act or legislative authority of North Carolina, the NCEL will pay to the Successful Contractor all non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of the Successful Contractor's invoice. Electronic billing shall be available to the NCEL.

5.2 COST PROPOSAL

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

(Responding Contractor's Name)

Use this form for your pricing. It is the intent of the NCEL to evaluate the two (2) pricings below individually. If this cost proposal is chosen, one of the two prices below will be selected as the price for the contract to be signed by the NCEL and the Successful Contractor.

PRICING I: Flat Rate (consists of **all** charges and expenses, including, but not limited to, management time, local driving time, local transportation expenses, and report preparation expenses for work requested by the RFP for each drawing, and any expenses 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 Contractor to the NCEL:

Flat Rate per drawing

1. Drawing Audit Services:

\$ _____

PRICING II: Hourly Rate (consists of **all** charges and expenses, including, but not limited to, management time, local driving time, local transportation expenses, and report preparation expenses for work requested by the RFP for each drawing, and any expenses 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 Contractor to the NCEL:

Cost Per Hour

One Auditor's Time (quote a blended rate)*

\$ _____

*Cost Per Hour will be charged based on actual hours worked at each drawing by the auditor assigned to perform the Services. Time shall be rounded to the nearest quarter hour and should address the difference in pricing rates between CPAs and non-CPAs. The Successful Contractor may also offer an option for a flat, per-draw pricing structure.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT A

CONTRACTOR CERTIFICATION

DRAW AUDITING 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 "Responding Contractor") are accurate and binding for 180 days from the Proposal due date (the "Proposal Offer Period");
2. All charges are, to the best of my knowledge, accurate and complete;
3. The Responding Contractor acknowledges and agrees that this Proposal will be considered valid and irrevocable for the Proposal Offer Period and, if an award is not made within the Proposal Offer period or if a Contract with the Successful Contractor is for any reason not executed within the Proposal Offer Period, it shall be incumbent upon the Responding Contractor to notify the designated contact person identified in Section 2.2 of the RFP in writing if it does not want its Proposal to be further considered beyond the Proposal Offer Period (i.e., in the event of a breach or termination, the NCEL may decide to return to the remaining Contractors' Proposals). Failure on the part of the Responding Contractor to notify the designated contact person identified in Section 2.2 of this RFP will mean that its Proposal remains valid even after the Proposal Offer Period;
4. The cost and other terms and provisions contained in the Proposal accurately reflect the Responding Contractor's total proposed cost, including any applicable discounts, and the Responding Contractor 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 Responding Contractor, will be allowed for any miscalculation, deficiency, oversight and failure to make suggestions regarding possible additional needs for desired features, or any other difference in cost if later discovered;
6. By submission of this Proposal, the Responding Contractor agrees to fully comply with all requirements of the RFP, and its separate parts, and any deviation noted in the Responding Contractor's submission may be the basis for rejection of its Proposal by the NCEL without recourse;
7. The Responding Contractor has read and understands the Act and all of the requirements contained in the RFP and any amendments thereto, the responses to written questions submitted by Contractors and its Proposal, and agrees to be bound by all the terms and conditions contained in each of these documents, without exception;
8. The Responding Contractor has taken appropriate steps to completely and fully familiarize itself with the requirements of the RFP in order to render full performance under any resulting relationship between the NCEL and Responding Contractor; and

9. This Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Proposal for the services and is in all respects fair and without collusion or fraud.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT B

BACKGROUND DISCLOSURE FORM

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

[These pages may be copied and used as needed]

PLEASE PROVIDE THE FOLLOWING INFORMATION:

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

Relationship to Contractor:

Address:

Telephone number, including area code:

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

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

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

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

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

- Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

- Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

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

Attachment B Certification

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

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

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT C

AUTHORIZATION FOR INVESTIGATION

I, _____, hereby authorize the North Carolina Education Lottery or its designee to conduct a Contract background investigation (N.C.G.S. §18C-152), including the civil litigation 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 through said photocopy does not contain an original writing of my signature.

(Signature)

(Print Name)

(Title)

(Date)

ATTACHMENT D
ACKNOWLEDGMENT AND AUTHORIZATION FOR BACKGROUND CHECK

I hereby authorize the obtaining of “consumer reports” and/or “investigative consumer reports” by the NCEL at any time after receipt of this authorization and throughout the term of my employer’s contract with the NCEL, if applicable. To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **FirstPoint, Inc., P.O. Box 26140 Greensboro, NC 27402, 800-449-0245, www.firstpointresources.com** and/or the NCEL. I agree that a facsimile (“fax”), electronic or photographic copy of this Authorization shall be as valid as the original.

Do not disclose any sealed or expunged records.

SIGNATURE _____
DATE _____

Please Print Clearly

Name (First, Middle, Last) _____

Date of Birth (mo/day/yr) _____

Maiden Name / Other name (First, Middle, Last) _____

Dates Used (yr) from _____ to _____

Last 4 Digits of Social Security # _____ **Driver’s License #** _____ **State** _____

Male/Female (circle one)

Current and previous address(es). PROVIDE ALL ADDRESSES FOR PREVIOUS 7 YEARS:

Street, City, State, Zip _____
From _____ To _____

Street, City, State, Zip _____
From _____ To _____

Street, City, State, Zip _____
From _____ To _____

California, Minnesota & Oklahoma residents only: I want to receive a free copy of any Consumer Report, Investigative Consumer Report or Credit Report on me that is requested. Yes No

NOTARY:

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 Contractor to the commitment herein set forth.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this ____ day of _____ 2018.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit B- Listing of Good Faith Efforts

State of _____

County of _____

Affidavit of _____ (Name of Contractor)

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

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

- **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Contractor, or available on State or local government maintained lists, at least 10 days before the Proposal date and notified them of the nature and scope of the work to be performed.
- **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the Proposals are due.
- **3 – (15 pts)** Divided or combined elements of work into economically feasible units to facilitate minority participation.
- **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the Proposal documents that provide assistance in recruitment of minority businesses.
- **5 – (10 pts)** Attended pre-Proposal meetings scheduled by the NCEL (if any).
- **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 Contractor's suppliers in order to help minority businesses in establishing credit.
- **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if declared to be the Successful Contractor, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of Contract to be executed with the NCEL. Substitution of contractors must be in accordance with N.C.G.S. §143-128.2(d). Failure to 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 Contractor to the commitment herein set forth.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this ____ day of _____ 2018.

Notary Public _____

My commission expires _____

[SEAL]

Affidavit C-- Intent to Perform Contract with Own Workforce

State of _____

County of _____

Affidavit of _____ (Name of Contractor)

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

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

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

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

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

NOTARY:

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 2018.

Notary Public _____

My commission expires _____

[SEAL]

ATTACHMENT F

CONTRACTOR DISPUTE RESOLUTION

SCOPE

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

I. FILING OF A DISPUTE RESOLUTION REQUEST

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

B. The Dispute Resolution Request shall be in writing and delivered via personal/courier or U.S. mail to the NCEL Executive Director with a copy to the NCEL General Counsel at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Protest
2728 Capital Boulevard, Suite 144
Raleigh, NC 27604

C. The Dispute Resolution Request shall include the following information:

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

For a Dispute Resolution Request to be considered timely filed, the original Dispute Resolution Request in compliance with Section I(C) above must be physically received by the NCEL within the time period prescribed in Time for Filing a Dispute Resolution Request Section below. Facsimile or any other electronically transmitted copies of the Dispute Resolution Request will not be accepted.

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

1. Discourage frivolous Dispute Resolution Requests and litigation;

2. Assure payment by the Petitioner of the costs incurred as a result of the Dispute Resolution Request, including reasonable attorney's fees of the NCEL, in the event Petitioner appeals and such costs are adjudged against the Petitioner; and

3. Assure payment of all other amounts for which the Petitioner may be found liable, including, but not limited to, any loss of income to the NCEL resulting from the institution of a frivolous or unsuccessful appeal.

Failure to provide such Dispute Bond with any Dispute Resolution Request will result in the dismissal of such Dispute Resolution Request. A Dispute Resolution Request shall not be considered timely filed unless the applicable Dispute Bond accompanies the Dispute Resolution Request.

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

II. TIME FOR FILING A DISPUTE RESOLUTION REQUEST

A. Dispute Resolution Requests concerning a solicitation.

1. A Dispute Resolution Request in regard to a Major Procurement Contract solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial bids shall be filed within five (5) business days after the deadline for Potential Contractor questions established in the solicitation.

2. Dispute Resolution Requests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the NCEL with respect to any solicitation or response thereto, that are apparent before the closing date for receipt of bids or any supplemental information requested by the NCEL shall be filed within five (5) business days after the deadline for Potential Contractor questions or the date of the amendment, whichever date is later.

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

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

C. Dispute Resolution concerning an award of contract.

1. Any Aggrieved Person may protest the NCEL's decision to award a contract. Any such written Dispute Resolution Request shall be filed in the case of either a contract that has or has not been competitively bid by the NCEL, within five (5) business days after the earlier occurrence of: (a) the NCEL's issuance of a notice of intent to award such contract; (b) the NCEL's award of such contract is posted, published or otherwise made publicly available; or (c) the execution of any such contract.

2. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is filed with the NCEL General Counsel in accordance with the above-referenced requirements and before a contract is executed, the NCEL may nonetheless award and enter into such contract if either: (a) such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures; or (b) the Commission shall have made a written determination that the award of such contract without delay is necessary to protect substantial interests of the NCEL.

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

D. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in Time for Filing a Dispute Resolution Request Section of these regulations, a Dispute Resolution Request must be filed within five (5) business days after the earlier occurrence of: (1) the announcement of the Commission's decision to award is posted, published or otherwise made publicly available; (2) the NCEL's issuance of a notice of intent to award such contract; or (3) the execution of any such contract.

E. In all cases other than those covered in Time for Filing a Dispute Resolution Request Section, the Dispute Resolution Request must be filed within five (5) business days after the Aggrieved Person knows or should have known of the facts giving rise to the action complained of.

F. Failure to file a written Dispute Resolution Request in accord with the Filing of a Dispute Resolution Request Section within the applicable time limit provided in Time for Filing a Dispute Resolution Request Section shall bar any further administrative, legal, or equitable action of any kind or nature and in any body, court or agency. Time is of the essence in the various procurements of the NCEL.

G. Failure to provide the applicable Dispute Bond in the amount required and as otherwise provided in the Filing of a Dispute Resolution Request Section within the applicable time frame shall result in an untimely filing and bar any further administrative, legal, or equitable action of any kind or nature and in any body, court or agency.

III. NOTICE OF FILING OF A DISPUTE RESOLUTION REQUEST

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

IV. CONFIDENTIAL INFORMATION

A. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.

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

V. DECISION BY THE EXECUTIVE DIRECTOR OR DESIGNATED HEARING OFFICER

A. The Executive Director (or his/her Designated Hearing Officer), shall have the exclusive authority to decide all Dispute Resolution Requests.

B. The Executive Director (or his/her Designated Hearing Officer) shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:

1. A brief description of the claim;
2. A reference to the pertinent contract provision;
3. A brief statement of the factual and legal issues raised or implicated; and
4. A statement of the Executive Director's decision, findings of facts and conclusions of law, with supporting rationale and the remedial action and/or award, if any.

C. The Executive Director (or his/her Designated Hearing Officer) shall furnish a copy of the decision to the Petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, fax or email.

D. The time limit for decisions set forth in the Decision by the Executive Director or Designated Hearing Officer may be extended by the Executive Director (or his/her Designated Hearing Officer), in his/her discretion, for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Executive Director (or his/her Designated Hearing Officer) shall notify the Petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

E. If the Executive Director (or his/her Designated Hearing Officer) fails to issue a decision within the time limits set forth in the Decision by the Executive Director or Designated Hearing Officer Section, the Petitioner may proceed as if the Executive Director (or his/her Designated Hearing Officer) had issued an adverse decision to the Petitioner.

F. In lieu of a written decision, the Executive Director may, in his/her sole discretion, within thirty (30) calendar days after a Dispute Resolution Request is filed, give written notice to the Petitioner that the Dispute Resolution Request shall be resolved by a hearing conducted by the Executive Director (or his/her Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section. Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a Dispute Resolution Request be resolved by a hearing conducted by the Executive Director (or his/her Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section.

VI. HEARING PROCEDURES

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

B. If the Executive Director determines under the Decision by the Executive Director or Designated Hearing Officer Section that the Dispute Resolution Request will be resolved after a hearing, the hearing shall be held within thirty (30) calendar days following the Executive Director's determination under the Decision by the Executive Director or Designated Hearing Officer Section to resolve a Dispute Resolution Request by this procedure for a hearing. A notice which will set forth the time, date and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.

- C. In connection with the hearing, the Hearing Officer may:
1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
 2. Hold pre-hearing conferences to:
 - a. settle, simplify or identify the issues involved in the hearing;
 - b. consider other matters that may aid in the expeditious disposition of the hearing; and/or
 - c. rule on any parties' request for injunctive or other equitable relief.
 3. require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
 4. require each party to produce for examination those relevant witnesses and documents under its control;
 5. rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope and extend of discovery available to the parties;
 6. regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
 7. establish time limits for submission of motions or memoranda;
 8. take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
 9. administer oaths or affirmations;
 10. issue subpoenas; and
 11. join any necessary parties to the hearing.

D. The hearing shall be conducted before a court reporter. The Petitioner shall procure at Petitioner's own cost and on Petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. If the Petitioner fails to do so, the Hearing Officer may suspend such hearing until the Petitioner has provided the court reporter, or the Hearing Officer may supply a court reporter and assess the costs thereof against Petitioner. The original transcript of any such proceedings shall be submitted to the Hearing Officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The Petitioner shall also submit a copy of the transcript (at Petitioner's expense) to all other parties to the Dispute Resolution Request as soon as the transcript is available.

E. Any party may appear and be represented with or without counsel at the hearing.

F. If a Hearing Officer, other than the Executive Director, conducts the hearing, such Hearing Officer shall make a written recommendation containing the Hearing Officer's ruling, in the form of a Proposed Decision, to the Executive Director, within thirty (30) calendar days after receiving an original transcript of the hearing pursuant to the Hearing Procedures Section above and deliver a copy of the Proposed Decision to the Petitioner. If a Proposed Decision is received by the Executive Director, he/she must render his/her final and binding decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the Proposed Decision from the Hearing Officer.

G. If the Executive Director received a recommendation in a Proposed Decision from a Hearing Officer other than himself/herself, he/she may:

- a. accept, modify or reject the Hearing Officer's recommendation in whole or in part;
- b. return the matter to that Hearing Officer with instructions;
- c. make any other appropriate disposition; or
- d. issue a no action response.

H. If the Executive Director issues a no action response, then the determination in the Proposed Decision of the Hearing Officer will be deemed to be accepted by the Executive Director.

I. If the Executive Director conducts the hearing, he/she must render a decision in writing and deliver the decision to the Petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.

J. The Executive Director's final and binding decision (and any previous recommended Proposed Decision made by a Designated Hearing Officer) shall be sent to the Petitioner by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email.

VII. PROCEDURE FOR FILING AN APPEAL TO THE COMMISSION

A. A Petitioner may appeal a decision of the Executive Director solely to the Commission. Any appeal from a decision of the Executive Director must be filed with the Commission within five (5) business days after receipt of such decision.

B. Any appeal shall be filed by delivery by hand or courier, to the Executive Director with a copy to the General Counsel at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Protest
2728 Capital Boulevard, Suite 144
Raleigh, NC 27604

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

C. Every appeal must be in writing and shall contain the following:

1. Copy of the decision of the Executive Director;
2. A copy of the transcript of any hearing; and
3. The basis for the precise factual or legal error in the decision of the Executive Director from which the appeal is taken.

D. The Commission may notify any other individuals or entities which it, in its sole discretion, determines it wishes to notify of the appeal (by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email) within five (5) calendar days after the appeal is filed.

E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

VIII. COMMISSION'S DECISION

A. The Commission, or a committee of the Commission, may review the record without a hearing or oral argument and issue a written decision on behalf of the Commission. The Commission, or a committee of the Commission, may, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances in its sole discretion: (1) conduct its own review or investigation; (2) a de novo review in whole or in part; or (3) allow oral argument.

B. A copy of the Commission's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email. The original written decision shall be retained by the Commission. The written decision of the Commission, or a committee of the Commission, will be final, and no further appeal to the Commission will be allowed.

IX. JUDICIAL REVIEW

Only after exhaustion of all remedies and procedures in these Dispute Resolution Procedures of the NCEL, if applicable law permits any further appeals, any such appeal must be brought solely in the Superior Court of Wake County, North Carolina. By submitting a bid covered by these Dispute Resolution Procedures, Potential Contractor or Contractor irrevocably waives, to the fullest extent permitted by law, any right which it has to appeal any final decisions of the Commission made pursuant to these Dispute Resolution Procedures, and Potential Contractor or Contractor irrevocably waives any objection which it has to the venue of any appeal being solely in the Superior Court of Wake County, North Carolina.

X. EXCLUSIVE REMEDY

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

XI. AMENDMENT

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

ATTACHMENT G
DRAW AUDITING AND RELATED SERVICES AGREEMENT

This Drawi Auditing and Related Services Agreement (the "**Agreement**") is made and entered into this ___ day of _____, 2018 (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 2728 Capital Boulevard, Suite 144, Raleigh, North Carolina, 27604, and _____, located at _____, a corporation organized under the laws of the _____ ("**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 _____, 2018 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposals dated September 3, 2018 (RFP #LC-000055) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were distributed by the NCEL on or about October 11, 2018 (the "**Questions and Answers**," Exhibit C). Exhibits A, B and C are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide a draw auditing and other 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. SYSTEM AND SERVICES

Subject to the terms and conditions set forth in this Agreement, the NCEL retains VENDOR to provide draw auditing and other related services to the NCEL as contemplated by this Agreement, the RFP and the Proposal (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

A. VENDOR and its Subcontractors will work in conjunction with the Executive Director of the NCEL, the NCEL staff, the NCEL Commission (the "**Commission**") and such other Contractors, 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 Questions and 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 Executive Director, his/her 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 Questions and Answers and the Proposal.

B. VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the Executive Director or his/her designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the Executive Director or his/her 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 providing the following services, in addition to any other duties as specified in the RFP and the VENDOR's Proposal:

[TO BE SPECIFIED AFTER CONTRACT AWARD, WHICH SHALL INCLUDE RFP SCOPE OF SERVICES AND VENDOR'S PROPOSAL]

3. **SUBCONTRACTORS**

A. Neither VENDOR nor any Subcontractors will subcontract or otherwise assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the NCEL in each instance, which consent may be withheld in the NCEL's sole discretion. The NCEL shall have the right to approve or disapprove of any subcontractor. VENDOR will provide the NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All approved subcontractors, sub-Contractors, 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 Executive Director or his/her 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 _____.

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.

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. 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 non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of the VENDOR’s invoice, 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. Electronic billing shall be available to the NCEL.

6. TERM

A. Unless sooner terminated in accordance with the provisions of Section 19 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence upon execution of the Agreement (“**Effective Date**”) through June 30, 2021. The NCEL has the option to renew this Agreement for three (3) additional one-year periods.

B. VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, the NCEL may award a new contract for 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 thirty (30) 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 tasks in a timely and efficient manner without any interruption to the NCEL’s current operations, 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, or 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, 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, 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 Executive Director or his/her 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 any 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

Upon request by the NCEL, VENDOR and each Subcontractor shall provide 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, by any authorized representative of the NCEL and/or the State of North Carolina Auditor of State's Office ("**State Auditor**"), and copies thereof shall be furnished to the NCEL and/or the State Auditor by the appropriate entity, at no cost to the NCEL or the State Auditor, if requested by the NCEL or the State

Auditor. The NCEL and/or the State Auditor shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the Services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

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, 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.

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 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 Executive Director or his/her 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 Executive Director or his/her 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. Upon request, VENDOR shall provide the NCEL 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 Contractors 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 Section 16 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 twenty-five thousand dollars (\$25,000), and (ii) a payment bond (the "**Payment Bond**") or letter of credit with the NCEL in an amount equal to twenty-five thousand dollars (\$25,000), 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; and
- (iii) Workers Compensation Insurance at or above levels required by the State of North Carolina.

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 sixty (60) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement.

C. The NCEL may cancel and terminate this Agreement with thirty (30) calendar day's prior written notice to VENDOR with no early termination fees.

D. 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.

E. 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
2128 Capital Boulevard, Suite 144
Raleigh, NC 27604
Attn: M. Mark Michalko, Executive Director

With copy to: General Counsel

If to VENDOR: []

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

"VENDOR"

By: _____
M. Mark Michalko
Its: Executive Director

By: _____
Its:

Date: _____

Date: _____

EXHIBIT A

[Proposal]

EXHIBIT B

[RFP]

EXHIBIT C

[QUESTIONS AND ANSWERS]