



REQUEST FOR QUOTATION

(This is an inquiry, not an order. Please reply promptly.)

NC EDUCATION LOTTERY CONTACT INFORMATION	
Date Issued:	November 7, 2018
Requisition Number:	N/A
Quote Response Due:	December 13, 2018
Issued By:	Anthony Downey , Purchasing Administrator
Telephone /Fax/Email:	T – 919-301-3433 F – 919-715-0342 adowney@lotterync.net
Ship To Address:	2728 Capital Boulevard, Suite 144 Raleigh, NC 27604
Delivery/Start Date:	Upon Contract Execution
Comments:	Please provide quote for Performance Audit and Related Services

ITEM	QUANTITY	UNIT OF MEASURE	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			Pricing see page 8 under “Cost Proposal”		
Payment Terms: 30 Days				Subtotal	
Ship Via:				Applicable Tax	
FOB				Shipping	
Quotation Valid For _____ Days			Tax Exempt #400055	TOTAL	

Additional Information:

Attachments: Yes No Substitute Products Allowed: Yes No Terms & Conditions: Yes No

VENDOR CONTACT INFORMATION	
Date:	
Company Name:	
Authorized Signature:	
Title:	
Telephone /Fax/Email:	
Tax ID Number:	
Comments:	

Additional Information:

Bidder is a certified HUB Vendor: Yes No

Bidder is a resident NC Vendor: Yes No

PERFORMANCE AUDIT AND RELATED SERVICES RFQ

1.0 SCOPE OF SERVICES

Background

The NCEL is an independent state government agency with its primary purpose to generate funds for educational programs as dictated by NCGS §18C-164(c). Thus far through June 30, 2018, the NCEL has transferred over \$5.89 Billion toward these specified educational programs. The NCEL sells its instant and draw game tickets through a network of over 7,000 licensed retailers, and sells jackpot/top prize draw games via its online play platform. The NCEL offers approximately 50 instant scratch-off games with 3-4 licensed property games per year and six (6) draw games consisting of Pick 3, Pick 4, Carolina Cash 5, Powerball, Mega Millions, Lucky For Life, and Keno (at selected retailers). Since March 30, 2006, the NCEL's total sales revenue has exceeded over \$20.8 Billion. Pursuant to NCGS § 18C-162(s)(3), the NCEL's advertising expenses may not exceed one percent (1%) of the NCEL's total revenue, and all NCEL advertisement must conform within the guidelines as established by the Lottery Act. (See NCGS §§18C-114(a) (2) and 18C-130(c) establishing NCEL standards for advertising).

The NCEL intends to obtain what it believes to be the best creative solution, at the optimal price-value that will be responsive to the NCEL's needs. The purpose of this RFQ is to acquire the services of an independent audit firm to review and analyze the NCEL's current performance with emphasis on increasing revenues and identify cost savings, while keeping in mind various statutory and legal restrictions. In particular, the NCEL desires the Successful Contractor to review and analyze key aspects of the NCEL's operations, such as retailers, players, advertising, marketing and promotions, administrative policy and systems, and any other areas to be identified by the Potential Contractor. All Potential Contractors must fully acquaint themselves with the NCEL's needs and requirements and obtain all necessary information and understanding to be able to submit responsive and effective Bids.

Scope of Service

The Successful Contractor is required to review and analyze the NCEL's current performance in specific areas of the NCEL operation, with emphasis on increasing revenues and identify cost savings, while keeping in mind various statutory and legal restrictions. Comparative standards with other lotteries should be based on such factors as geographic proximity, population, years in business, statutory requirements, etc.

The NCEL anticipates that the successful contractor provide an analysis of the following areas:

- 1) Review of NCEL's current instant ticket warehouse distribution practices and provide feedback and recommendations on how to improve performance and increase operating revenue.
- 2) Analysis of States that currently provide "Fast Play" and/or "Progressive Fast Play" instant products. NCEL also request a research-based recommendation for implementing "Fast Play" in North Carolina that would provide the best change for long-term growth. This research should offer potential sales, operating expense, staffing needs, advertising cost, etc.
- 3) Analyze the implementation and rollout plans for other lotteries that have recently launched a new online play platform with digital instants. Please note that the North Carolina State Lottery Commission has not approved the launch of digital instants via the NCEL's online play platform. Provide learnings, best practices and recommendations for the NCEL in preparation for its launch (once approved). This should include, but not be limited to, the following:
 - Marketing, promotions and advertising plans and budgets
 - Staffing and team structure
 - Traditional retailer integration

Required Elements

Successful Contractor may also be required to present and explain the performance audit report before the North Carolina State Lottery Commission, North Carolina legislative body and/or North Carolina Governor's office.

Each Potential Contractor's Bid must describe in detail the following:

- (1) The Potential Contactor's Methodology for conducting this performance audit
- (2) Identify the peer groups and the basis behind such identification
- (3) Assessment Measures
- (4) Specific Deliverables
- (5) Similar Projects conducted, with point of contact information (name, address and phone number)
- (6) Team Members, Background and Experience (with emphasis on Lottery experience)
- (7) Any Subject Matter Experts to be consulted as part of the audit.

At the conclusion of the performance audit, the Successful Contractor shall provide a signed, written report of their deliverables. Such reports shall be submitted to the NCEL's Executive Director and Internal Auditor.

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

2.1 SUMMARY OF KEY DATES

The NCEL reserves the right to change any dates and schedule contained in this RFQ, including those shown below. If changes are made, the changes will be communicated on the NCEL's Website (<https://www.nclottery.com/Business>).

November 7, 2018	RFQ Issuance Date
November 29, 2018	Deadline for submission of any and all Questions 4:00 p.m. ET
November 10 – December 3, 2018	Answers Posted (The NCEL will publish answers as soon as possible following submitted questions throughout the Questions and Answers period).
December 13, 2018	Deadline for submission of Bids 4:00 p.m. ET

DELIVERY ADDRESS:

North Carolina Education Lottery Headquarters
Performance Audit and Related Services
2728 Capital Boulevard, Suite 144
Raleigh, NC 27604

December 28, 2018

Target date for Decision of Apparent Successful Contractor as approved by the NCEL Commission, if required.

2.2 CONTACT PERSON

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

Email: bid.submission@lotterync.net

Fax: **919-301-3433**

North Carolina Education Lottery
Performance Audit and Related Services
2728 Capital Boulevard, 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 RFQ 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 RFQ.

2.3 BID SUBMISSION AND FORMAT

Bids must be received by the Contact Person no later than the Bid Deadline in sealed envelopes or containers. A Contractor should submit a signed original and three (3) reproduced complete copies of its Bid. *In addition, Responding Contractor shall include one redacted hardcopy of its Bid with redacted information that Contractor deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law.* Bids must be received by the NCEL by 4:00 p.m. (ET) December 13, 2018. Late Bids will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Also, the Bid must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Contractor.

2.4 BID 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. In particular, the following criteria shall be considered under experience, integrity, proposed solution and ability to perform the Contract, in the Bid Evaluation:

- (i) The Responding Contractor's experience and successful track record on similar projects.
- (ii) Whether the Responding Contractor's Team assigned to the NCEL Project possesses the required expertise to complete the Project assignment.
- (iii) The content of Responding Contractor's portfolio and case studies of similar work to demonstrate experience with similar projects.
- (iv) Whether the Responding Contractor clearly defined and described what methodology will be used to carry-on the engagement, including detailed project plan with defined scope, and whether the Responding Contractor has described its approach to stakeholder engagement.

These factors are not necessarily listed in the order of importance or weight. 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 Bids 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 Bid or otherwise identified, and may ask a Potential Contractor to address technical questions or seek additional information regarding any Bid before completing the initial evaluation.

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

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

The NCEL will investigate, at a minimum, the financial responsibility and security of any Successful Contractor. A Contractor must complete and submit as part of its Bid the Background Disclosure Form, included as **Attachment A** 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 Bid, for itself and all of the individuals listed in this paragraph, the Authorization for Contractor Investigation Form, included as **Attachment B** and made a part hereof, and Acknowledgment and Authorization for Background Check, included as **Attachment C** 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.

For reference only, **Attachment E** is a sample contract, which may be negotiated and modified subsequent to Contract award.

2.5 DISPUTE PROCEDURE

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

2.6 NEGOTIATION AND EXECUTION OF CONTRACT

A Successful Contractor under this RFQ 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 Bid, 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.

2.7 NONEXCLUSIVE RIGHTS

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

2.8 BID SUBJECT TO PUBLIC RECORDS LAWS

All Bids, data, materials and documentation originated, prepared and submitted to the NCEL pursuant to this RFQ 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.

2.9 REJECTION OF BIDS AND CANCELLATION OF RFQ; REISSUE OF RFQ

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

2.10 BID VALIDITY; INCURRED EXPENSES

All Bids shall remain valid for one hundred eighty (180) calendar days (the "**Bid Offer Period**") from 4:00 p.m. Eastern Time ("**ET**") December 13, 2018 (the "**Proposal Deadline**"). A Bid constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Bid and this RFQ, which offer is irrevocable for the duration of the Bid Offer Period and may not be withdrawn or amended during the Bid Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Contractor in preparing and submitting a Bid or in performing any other action in connection with this Procurement.

2.11 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.

2.12 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 RFQ 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.

2.13 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.

COST PROPOSAL

PERFORMANCE AUDIT AND RELATED SERVICES

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

(Responding Contractor's Name)

Fixed Rate

1. Performance Audit Services: \$ _____

Other Services and Hourly Rate

Cost Per Hour

\$ _____

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT A

BACKGROUND DISCLOSURE FORM

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

[These pages may be copied and used as needed]

PLEASE PROVIDE THE FOLLOWING INFORMATION:

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

c. Name:

Relationship to Contractor:

Address:

Telephone number, including area code:

Social Security number:

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

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

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

State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

*If more than one State, please include in a separate attachment.

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

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:

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:

11. List the business entities that are a part of the Contractor Team, and list the Fiscal Years for each team member. Complete an Authorization For Contractor Investigation for each (see Attachment C.)
12. List all the individuals constituting the Contractor Team who will work on the NCEL Contract. Complete an Authorization For Individual Investigation for each (see Attachment D).
13. Does the Contractor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this RFQ? 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 Bid.
16. List all lobbyists and consultants working on behalf of the Contractor Team in connection with this Bid or any subsequent Contract.

ATTACHMENT B

AUTHORIZATION FOR CONTRACTOR INVESTIGATION

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

(Signature)

(Print Name)

(Title)

(Date)

ATTACHMENT C

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 D

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 Bid 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 Bid 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 Bids 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 E
PERFORMANCE AUDIT AND RELATED SERVICES AGREEMENT

This Performance Audit 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 Bid, dated _____, 2018 (the "**Bid**," Exhibit A) to the NCEL in response to the NCEL's Request for Quotes dated November 8, 2018 (the "**RFQ**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFQ, which were distributed by the NCEL on or about December 3, 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 performance audit 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 performance audit and other related services to the NCEL as contemplated by this Agreement, the RFQ and the Bid (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 RFQ.

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 North Carolina State Lottery 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 RFQ, the Questions and Answers and the Bid 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 RFQ, the Questions and Answers and the Bid.

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 RFQ and the VENDOR's Bid:

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

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 RFQ 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 RFQ, the term of this Agreement shall commence upon execution of the Agreement (“**Effective Date**”) through June 30, 2019 or completion of the Services, whichever is later. The NCEL has the option to extend this Agreement for any reason.

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 Bid 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, RFQ or Bid), 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 RFQ, 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 RFQ or Bid, 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 RFQ 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 RFQ; 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 RFQ 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 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.

F. 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 Bid 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 Bid, the Answers and the RFQ, 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 Bid and/or the RFQ, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the RFQ, and the terms of the RFQ shall control the Bid. 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, may be 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

[Bid]

EXHIBIT B

[RFQ]

EXHIBIT C

[QUESTIONS AND ANSWERS]