



NC Education

**Lottery**<sup>TM</sup>

**Request For Proposals**

**#LC-000058**

**Professional Advertising and Related Services**

**May 24, 2021**

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## PART I – GENERAL INFORMATION

### 1.1 HELLO

We are the North Carolina Education Lottery and we're eager to join forces with an awesome advertising and creative services partner. If you don't already know us, the North Carolina Education Lottery ("**NCEL**") is a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq.) ("**Lottery Act**" or "**Act**"), and we are issuing this Request for Proposal ("**RFP**") to invite responses ("**Proposals**") from qualified and reputable Advertising Agency Services firms licensed to do business in North Carolina ("**Contractors**") to provide: Creative, Advertising and Marketing Communications Services.

When we hear back from some great agencies like yours, then we will look to select, through this RFP process, a "**Successful Contractor**," an agency who will become a strategic partner with the NCEL and will work in cooperation with our NCEL Brand Management and Communications staff in planning, developing and executing impactful, innovative and effective NCEL advertising, marketing and PR programs that will drive our business and help us to achieve the NCEL's key objectives, including maximizing net revenues for education.

To help us learn about your agency and ultimately make an informed choice, we've decided on a two-phased approach for this process, and so this RFP is being issued in two (2) distinct phases.

In the first phase, aptly named Phase I, we'd like to learn more about your agency; that is more about your team and more about your work. Phase I is our chance to get to know about your relevant experience and what sets you apart. Any interested agency is welcome to submit a completed Capabilities Proposal describing its qualifications as described in the Phase I submissions section. The NCEL will evaluate and assign a score to each Capabilities Proposal according to the evaluation criteria specified in this RFP. The Contractors receiving the highest scores (not more than six (6) firms) will be selected as finalists and invited to submit detailed Phase II Proposals for further evaluation.

If invited to submit for Phase II, we'll want to see your creative and strategic capabilities in action. Phase II finalists will submit detailed Technical and Cost Proposals and will be invited to make formal presentations of their Proposals. The Technical proposal will include a creative assignment that will allow each firm to demonstrate its capabilities. The NCEL will evaluate and rank the Proposals according to the evaluation criteria specified in this RFP. The NCEL will then issue a notice of award to the Contractor(s) receiving the highest score and will look to award a contract.

You can find the details about what should be submitted for Phase I in Section 4.1 and you can find all the submission information for Phase II in Section 4.2. Before we ask you to tell us about your agency, we want to tell you a little bit about the NCEL and what we are looking for in a partner.

### 1.2 OUR PURPOSE

Because we asked and listened to what they had to say, we know that lottery players in North Carolina opt to play for the chance to dream about life changing possibilities for themselves and their community. In fact, you might say, we're in the business of possibilities. Dreaming about a personal win can make our players feel energized and optimistic. But dreaming of life changing possibilities also extends to the positive impact play can have on education and the community as a whole in our state. Over the past 15 years, the North Carolina Education

Lottery has raised more than \$8 billion for education programs. Education Lottery dollars have been distributed to every county in our state. This money has helped build and repair school buildings, provide quality pre-kindergarten programs, fund school support staff, and provide college scholarships.

Our brand messaging taps into lottery players' inherent optimism and desire to dream about a possible win for themselves and for their community. This positioning has provided a way to talk about the NCEL that is relatable and relevant to all North Carolinians and helpful in building a deeper emotional connection among players. In all communications, the NCEL strives for a voice that is playful, optimistic, fresh and approachable.

**Our Brand Purpose**  
***Igniting the Power to Dream***

***Playing and supporting the NCEL creates a world of winning possibilities for the entire state. Through the fun of play and the billions raised for education, the NCEL provides the fuel for our community's most important dreams.***

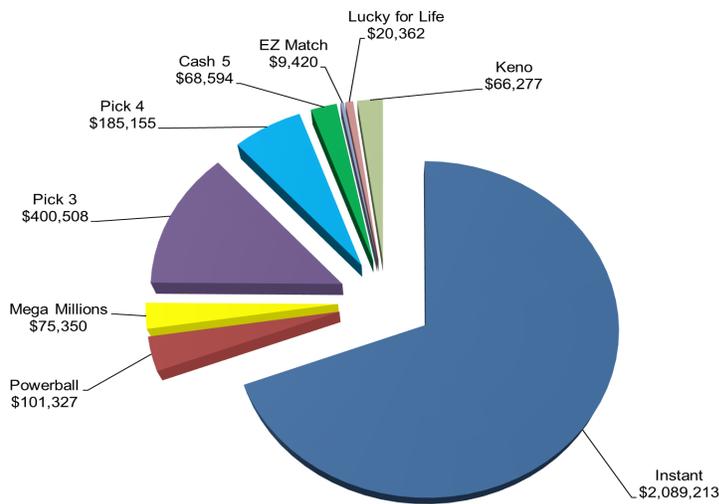
Building brands is at the core of what we do every day. The NCEL has built a strong corporate brand in the state and industry thanks to our commitment to driving consistent growth responsibly. We have a total of 11 brands that we have created and continue to grow.

**Our Brands**



In addition to our core brands identified above, we also have a robust pipeline of scratch-off games which allows us to launch four to five new scratch-off games every month. A key part of what we do is driving awareness around those monthly launches, each with their own unique themes and branding, to drive sales.

FY 2020 Ticket Sales (in \$ thousands)



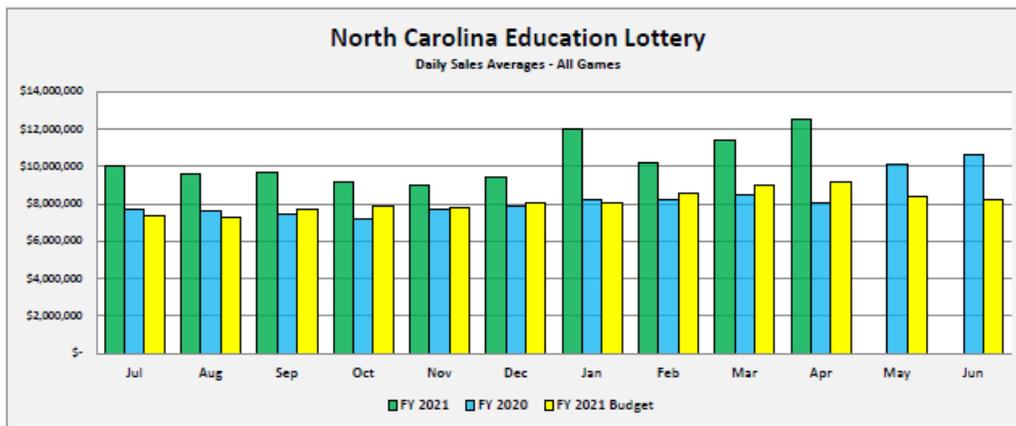
### 1.3 AN INDUSTRY GROWTH LEADER

Our mission is to raise revenue to maximize contributions to education for the State of North Carolina. This is accomplished by providing entertaining games through a dynamic business enterprise built upon honesty, integrity, innovation and teamwork. Over the past 15 years the NCEL has grown fiscal year sales to more than \$3 billion, making it one of the most successful lotteries in the country. The NCEL is the only US lottery to achieve year-over-year growth in sales for every year since its inception.

Other highlights of FY20 include (for purposes of this RFP, NCEL Fiscal Year (FY) is based upon the time period of July 1 through June 30):

- \$3.02 billion in sales, an increase of 5.5% over FY19
- \$729.4 million in earnings for education, up 2.8% over FY19
- Supporting Historically Underutilized Businesses (HUB) and self-identified minority-owned businesses in North Carolina with approximately \$24 million in spend either from the NCEL or its Contractors in FY20.

Despite the challenges that were faced over the last year by all businesses, we have experienced phenomenal growth of more than 31% in FY21 year-to-date versus FY20. This truly highlights our need for a strong agency partner that can keep pace with our continued rapid growth.



#### 1.4 GROWING RESPONSIBLY

We market and sell our games with a deep commitment to corporate social responsibility and responsible play. In short, we care about our players. These principles and values govern the protection of lottery players, cooperation with stakeholders, advertising practices and the monitoring of game activities, shaping every decision we make and allowing us to sustain our mission over time for the betterment of our state. Toward that end, we chose early on to obtain the highest certification possible for responsible gaming as outlined by the World Lottery Association’s Responsible Gaming Framework. In 2009, just three years after selling our first lottery ticket, we took the first step by obtaining Level 1 certification. We kept improving. We received Level 2 certification in 2011 and our Level 3 certification in 2014. We kept learning and refining. We reached our goal, Level 4 certification, in 2017. At that time, we were the youngest U.S. lottery to obtain Level 4 certification.

We believe that it is not only our responsibility to help raise awareness of treatment resources available for North Carolinians who might be experiencing a problem with gambling, but also our responsibility to prevent our players from developing a problem. That is why we created our own prevention program, Play Smart. With its creation in January 2020, we became the first U.S. lottery to create and develop an original player-focused, lottery-specific responsible gaming and prevention program centered on the education and empowerment of lottery players.

## PART II – SCOPE OF WORK

### 2.1 OVERVIEW

We are proud that the NCEL has experienced steady growth since inception and we want to continue becoming an integral part of the state’s culture in terms of awareness, perception, and entertainment value. We believe a best-in-class advertising partner can help continue to raise the caliber of external communications to drive our brand and business goals. Outstanding strategic guidance for optimization of current efforts can greatly aid the creation of new creative work. The NCEL strives to create effective communications programs that have the potential to work rationally in order to have immediate business effects, as well as emotionally to drive advocacy and brand equity over the long term. We believe quality ads should be persuasive and memorable. They should engage viewers and listeners and provide useful information in such a way that they can break through the clutter, all while building the brand.

### 2.2 GOALS AND OBJECTIVES

Our Successful Contractor will play a vital role in the future growth of the NCEL and our efforts to responsibly generate game sales to raise money for education. As such, the selection, performance, and management of the creative services agency is critical in helping to deliver the NCEL’s business and brand goals. When responding to this RFP, Contractors should be aware of the following NCEL goals and objectives:

- To provide innovative and effective solutions for the NCEL statewide, multi-channel advertising programs utilizing the most effective creative for the individual campaign goals and objectives.
- To expand top-of-mind awareness of the NCEL while responding to changes in the industry and the demands of the marketplace.
- To conduct advertising and related programs in such a manner as to promote the positive image and integrity of the NCEL and the programs funded with Lottery proceeds.
- To ensure meaningful minority representation and a commitment to nondiscrimination (see Sections 6.6 and 6.7 of this RFP).
- To obtain the highest quality, creative advertising and related services at competitive prices.

The NCEL is a consistently fast-paced, retail account with multiple marketing, communications, research, and creative projects requiring on-going, concurrent services. On average, the NCEL launches 48 to 52 scratch-off games each year, supporting approximately 12 of these monthly launches with unique broadcast campaigns. In addition, the NCEL is on-air at least four times a year with unique draw game messaging. Campaigns are also required for branding, beneficiary, and responsible gaming messaging, with typically three such campaigns per year. It is normal for the NCEL to have multiple campaigns running simultaneously throughout the state. Simply put, we stay busy.

With this rapid pace, it is critical that the Successful Contractor for Creative, Advertising and Marketing Communication Services demonstrates proficiency in developing television, radio, social, and digital campaigns to support these initiatives. Substantial time and creative development also go into the retail point-of-sale and educational materials that must be developed and produced for timely distribution to more than 7,100 retail locations to aid game launches and other key initiatives.

### 2.3 ADVERTISING STANDARDS

The NCEL has very specific guidelines outlining its advertising standards and it is critical that a Potential Contractor understand our commitment to designing and presenting ads in such a way

as to avoid appealing to minors. The use of cartoon characters or of false, misleading or deceptive information in NCEL advertising is prohibited. All advertising promoting the sale of NCEL tickets or shares for a particular game must include the actual or estimated overall odds of winning the game and any other items required by the Act. Every effort should be made to comply with the advertising guidelines as established by the National State and Provincial Lottery Association (NASPL) Advertising Guidelines (see attached Exhibit A). These standards shall continue to apply to all NCEL advertising created and executed by the Successful Contractor.

## 2.4 BUDGET

The NCEL’s advertising specific budget is currently set at one percent (1%) of its total annual revenues (pursuant to the North Carolina General Statutes §18C-162(a)(3)). Although there can be no assurance as to what advertising and marketing budgets the NCEL may adopt from year to year, it is important that the Successful Contractor be able to manage significant budget growth with limited lead-time. Below is a listing of the NCEL’s advertising and marketing budgets for the last five (5) years:

Fiscal Year	Total Advertising Budget	Total Marketing Budget	POS Budget
2017	\$22,000,000	5,361,929	\$1,066,831
2018	\$25,000,000	7,543,002	\$1,263,450
2019	\$26,000,000	6,712,786	\$1,026,479
2020	\$27,000,000	6,413,838	\$1,021,248
2021	\$29,000,000	5,582,289	\$900,000

## 2.5 SCOPE OF SERVICES

The Successful Contractor(s) will perform all functions normally required of full-service advertising agencies. Section 2.5.1 outlines the scope of services requested. Services identified as optional, outside of the scope of work include, but are not limited to, research, public relations, marketing promotions management, and retail design. Additional budget dollars will be made available for these services from the research, communications, and marketing budgets when these services are needed by the NCEL. Proposals must include fees associated with such out-of-scope services if the Successful Contractor anticipates providing any or all of these out-of-scope services.

### 2.5.1 CREATIVE, ADVERTISING AND MARKETING COMMUNICATION SERVICES

Each proposal to provide Creative, Advertising and Marketing Communication Services must address the following estimated Scope of Work. Note: This estimated Scope of Work is intended to allow each Potential Contractor to respond to uniform requirements to enable the NCEL to fairly compare and evaluate competing Proposals; it is not intended to completely describe all the requirements for the Creative, Advertising and Marketing Communication Services Contractor throughout the term of the proposed contract.

Subject to the instructions and decisions of the NCEL, the Successful Contractor will be responsible for the following services including, but not limited to, the following:

- A. Business Development and Collaboration** – Become a partner in the development and evolution of the NCEL business, brand and product portfolio to further the NCEL’s mission of maximizing net revenues for education. The NCEL expects that the entire Contractor team will be committed to the same goals as the NCEL and will create and execute programs that will deliver on those objectives. Prior to the start of each Fiscal Year (July), the NCEL will provide a marketing plan to the Contractor, including product introduction schedules and business priorities, as well as an estimated annual budget (pending approval by the NC State Lottery Commission). The plan shall clearly define marketing and advertising strategies. The NCEL staff and the Successful Contractor staff will meet as required, and at least on a monthly basis, to review the marketing objectives and strategies, with modifications being made as market and/or business needs arise.

Although some turn-over of Contractor staff is anticipated by the NCEL, Contractor staff should be trained on the business to minimize the impact of such turnover. Furthermore, the NCEL anticipates growth and expects agency’s teams to increase as needed to manage such volume when necessary for the NCEL’s continued growth.

1. The NCEL must be notified of any personnel changes on the account at least five (5) days prior to the departure of any given employee in the event of resignation. In the event of termination, the NCEL must be notified within 24 hours. Contractor senior management must present the NCEL with a transition plan within five (5) business days of an announcement that a position will be vacated.
2. Contractor personnel assigned to the account are expected to build and maintain an industry knowledge base that will support business decisions and recommendations.
3. Each year, two (2) individuals from the Contractor team must attend industry conferences or training seminars, presented by entities such as Public Gaming Research Institute, North American Association of State and Provincial Lotteries, and World Lottery Association, and share learnings and industry best practice with the broader team and NCEL Brand Management & Communications team. The NCEL will be responsible for the travel expenses including airline tickets, rental car, mileage, meals, and hotel accommodation associated with these industry conferences/tradeshows. Reimbursement for mileage, meals, and hotel accommodation will be made at the approved state-rate.
4. Manage the NCEL account without over dependence on email or other electronic correspondence. Although there are many acceptable uses for electronic correspondence, such as email, in-person or video-conference meetings are required for creative presentations, including additional follow up as a result of those meetings.
5. On-site meetings at NCEL offices or video conferences will be held as required and at a minimum of twice monthly to discuss the state of the business and plans for upcoming initiatives.

- B. Dedicated Account Management** – Provide a seasoned, dedicated account team that will work collaboratively with the NCEL’s Advertising team to manage the daily activities of the account. This Account Team will be assigned exclusively to the NCEL business. A key role of the Account Management Team is to become thoroughly involved with the NCEL’s business and keep on top of industry trends, sales performance, and product developments. They will also work closely with the Account Planning Team to ensure that consumer-centric strategies are being developed that tie into the NCEL’s business objectives. The Account Team will be responsible for establishing regular communications with the NCEL’s Media Agency, and any additional agency teams supporting the NCEL business to ensure seamless integration of the advertising program. The Account Team will also be responsible for preparation of the following reports:

1. Status Report – Weekly status reports will be issued detailing all current projects, production jobs, promotional events, reporting and meetings. Status reports shall include timelines for all initiatives, allowing no fewer than five (5) business days for NCEL approval at any stage.
2. Annual Advertising Plans – Based on the NCEL's Fiscal Year (July - June) and following receipt of the NCEL's Marketing Plan, the Contractor is expected to prepare an annual advertising plan in partnership with the Director of Advertising which must include at a minimum:
  - a. Innovative approaches for planned business initiatives, including how these strategies achieve the NCEL's goals with measurable Key Performance Indicators for post-initiative evaluations.
  - b. A general breakdown of proposed spending for production, talent, research, and other projected expenses.
  - c. Anticipated annual production calendar for all media channels.
  - d. Opportunities for special events, promotional activities, and any other topics specified by the NCEL.

**C. Strategic Account Planning / Market Research Recommendations / Brand Metric and Advertising Communication Tracking** – Provide a team of experts in strategic planning. The team's responsibility will be to gain and transfer extensive knowledge of the NCEL's current and potential player groups. Alongside the NCEL's Advertising and Research Teams, it is also their responsibility to propose market research as necessary to gain such consumer insights to inform strategic direction for the account.

1. The Strategic Account Planners must be responsible for the development of consumer-led strategies for all initiatives, providing relevant consumer insights or recommendations to support the proposed initiatives in annual advertising planning and drafting of all creative briefs. Planners will work closely with the Account Team(s) to gain a thorough understanding of the NCEL's business objectives and product specifications to enable the Planners to develop consumer insights to deliver effective marketing and advertising strategies that will achieve stated objectives for each initiative and the account as a whole.
2. A Strategic Account Planner is expected to attend any research presentations or testing involving information the NCEL believes to be beneficial to the Successful Contractor's lottery business knowledge even if the research has been conducted by another NCEL vendor/partner.

**D. Creative development and production of Advertising, Marketing Communications and Retail Point-of-Sale materials** – Develop effective, breakthrough creative and produce it with high-quality production standards in the most cost-efficient manner. Creative includes, but is not limited to, television, radio, print, out-of-home, and digital advertising, plus an extensive array of merchandising items/point-of-sale materials for a retailer network of more than 7,000. The Contractor shall ensure all creative elements are produced and distributed on time and on budget.

1. Creative Management – Among other things, the Successful Contractor shall provide comprehensive creative management through direct involvement from a dedicated Creative Director(s), from concept presentation to final approval of produced work. The Creative Director(s) may work with different creative teams and is not required to be exclusive to the NCEL, but must be the key creative team member(s) and a part of all meetings involving creative and attend all productions.
2. Creative Brief – The NCEL shall provide the Contractor with a briefing document for each advertising initiative that provides business opportunity, product overview, campaign objectives, general strategy, key consumer insights, project budget, sales

targets and other measurable Key Performance Indicators (KPIs) against which the campaign will be evaluated. The Contractor Account Planning team and Account Management team will then develop a Creative Brief, to include a key message, which will inform the Creative Teams about strategy and the initiative details and guide creative development. The Agency's Creative Brief shall be approved by the NCEL prior to briefing the Creative Teams and all creative presented will be evaluated based on its delivery against the creative brief.

3. Creative Concepts – The Contractor shall develop advertising and marketing creative that represents the NCEL brand in a positive light and in a manner consistent with the brand identity, and where there is a relevant existing campaign platform (e.g., Instant Scratch Off's "First Tuesday") consistent with that campaign platform. For new campaigns, the Contractor shall present overarching 360° big idea platforms, with at least three (3) on-brief creative routes for each potential platform. This 360° big idea platform includes creative executions for TV (story-boards required), radio (scripts required), digital, POS/POP layouts, and social media and all elements should be presented during the creative presentation. For existing campaigns, the Contractor shall present at least three (3) creative options for each medium that fit with the campaign's overarching 360° big idea platform.
4. Creative Timelines – The Contractor shall plan creative development schedules that allow sufficient time for developing and presenting integrated creative solutions, editing and revising selected options, obtaining final approvals from the NCEL staff, producing the final product, and distributing the finished product according to NCEL specifications. Creative development timelines should also allow for concept and script refinement, through concept testing ensuring message clarity, general comprehension and appeal. Additionally, Contractor time plans need to allow for a signed off 360° big idea platform, creative route, and executional style guides for use by the NCEL in-house creative department. Unless otherwise approved by the NCEL, all timelines shall include a minimum of three (3) business days for approval by the NCEL at every stage of each job or project. The Contractor shall provide detailed production schedules with task milestones for each job.
5. Casting – Talent recommendations must be made to the NCEL for any and all advertising and marketing creative. Casting auditions must be provided for all On-camera talent and must be presented with alternates, allowing the NCEL a minimum of three (3) business days for review and approval. In most instances, casting auditions will also be required for Voice-over talent and must be presented with alternates, allowing the NCEL a minimum of three (3) business days for review and approval. In some instances, the NCEL may choose to review demo reels only for Voice-over talent; in such an instance alternates will still be required as well as a minimum review and approval period of two (2) business days.
  - a. Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or nonspeaking.
  - b. The NCEL acknowledges that the Successful Contractor may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist ("AFTRA"), Screen Actors Guild ("SAG") and/or American Federation of Musicians ("AFM"), and that the production of advertising material from which the employment of talent is required may necessitate the negotiation, review, approval and/or execution by the Successful Contractor and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent.

6. **Creative Approvals** – The Contractor shall obtain written approval from the NCEL Executive Director and/or their Designee(s), prior to producing any advertisement, promotional item, related materials or other services. When producing any creative work, the Contractor shall not vary from approved scripts, storyboards or print layouts without written approval from the NCEL. Failure to adhere to approved scripts, storyboards or layouts may void the NCEL’s approval of the estimate for the project. The Contractor shall incorporate all changes required by the NCEL, as well as submit any other alternative creative solutions deemed prudent by the Contractor. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by the Successful Contractor, and to direct the Successful Contractor to cease work in connection with any such plan. The Contractor shall be responsible for all unauthorized expenses.
- E. **Digital Advertising** – Create innovative digital advertising campaigns to effectively communicate with target audiences through all digital consumer touch points. There will be an emphasis placed on creativity and effectiveness of digital initiatives, with KPIs and measurement tools established with the NCEL prior to the development of any campaign. Digital programs must work synergistically with other advertising communications to achieve stated goals. The Contractor must remain current on all emerging technologies and provide the NCEL with timely recommendations for digital marketing opportunities.
- F. **Social Media** – As part of the comprehensive, 360° big idea platform, assist in strategic development of the NCEL’s social media including content and creative development. The goal of the social program is to build brand advocacy by increasing engagement with the NCEL brand among existing players and future players, communicating brand and product news, and reinforcing the NCEL’s advertising and marketing initiatives in the social arena. The Successful Contractor’s responsibilities will also include optimization and performance analysis through monthly reporting.
- G. **Multi-cultural Marketing** – The Successful Contractor shall develop effective strategies for reaching the diverse North Carolina population and integrate such marketing efforts into general market advertising to achieve stated goals, as defined by the NCEL. If a distinct communications initiative would better serve the NCEL’s diversity business objectives, the Successful Contractor shall provide a recommendation and rationale for the effort to the NCEL for approval.
- H. **Budget / Billing Management** – Due to the size of the NCEL’s advertising budget, a dedicated budget/billing staff is required to work directly with the NCEL Advertising Department on a daily basis. This individual must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis.

Note: The NCEL has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation. Responding Contractors should give strong consideration to the allocation of at least one, full-time person for NCEL budget management support.

1. **Expense Bidding and Approval** – The Successful Contractor shall not incur any liability on the NCEL’s behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the

written authorization of the NCEL Executive Director or their Designee. In connection with such authorization, the Successful Contractor is subject to the following guidelines:

- a. The Successful Contractor must prepare and evaluate competitive bids for productions, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis.
- b. The Successful Contractor must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, the Contractor shall provide written documentation of such to accompany the cost estimate.
- c. If the Successful Contractor recommends any vendor other than the lowest vendor, the Successful Contractor shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow the Successful Contractor's recommendation.
- d. Bids shall be secured from North Carolina-based vendors whenever possible. If local vendors are not available for project as approved, the Contractor shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.
- e. Cost estimates shall be presented by the Successful Contractor to the NCEL in a timely manner, no less than three (3) business days prior to commencement of any work in order to allow for adequate processing time by the NCEL.
- f. The estimate number used to track each project will be issued by the Successful Contractor and invoices shall be numbered consistent with estimate number.
- g. All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or their Designee and the Successful Contractor may not begin work until the Successful Contractor has received a signed estimate/authorization from the NCEL.
- h. A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previously approved amounts and/or history of amounts.
- i. Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. The Successful Contractor is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.
- j. The NCEL's Fiscal Year ends June 30th. All invoices for that Fiscal Year must be submitted by September 30th of the new Fiscal Year. The NCEL reserves the right not to pay any invoices received after September 30th.
- k. Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested Successful Contractor invoices, unless as otherwise agreed upon by both parties.
- l. The Successful Contractor shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to the Successful Contractor. In the event that the NCEL becomes aware of Successful Contractor's default of these terms, the NCEL will notify the Successful Contractor immediately and such default shall be deemed a breach of the Contract.

- m. The Successful Contractor agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL’s accounting procedures for all submissions of work order, estimates and invoices.
  2. Monthly Activity Report – Provide the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number; (ii) brief description of job; (iii) original estimate amount; (iv) an estimate of the costs incurred to date that have not yet been billed; and (v) billings rendered to date on each job.
  3. Approved Expenditure Report - Provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current Fiscal Year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid and the amounts committed that have not been billed.
  4. Agency Fee Reconciliation Reports – The Contractor will be responsible for providing all back-up documentation on staffing hours on a monthly basis to enable NCEL to track labor costs against Annual Fee.
- I. **Advertising Effectiveness Analysis / Optimization** – The NCEL will evaluate the effectiveness of all advertising initiatives upon completion based on established KPIs from the corresponding relevant creative brief and monthly campaign tracking / brand metrics. KPIs may include improvements in participation, frequency and awareness measures, sales goals or other criteria determined as ‘What success looks like’ by the NCEL prior to the development of the work and detailed in each initiative brief and/or annual plan objectives.
  1. Post-Campaign/Promotional Report – In the quarter following the conclusion of a campaign phase or promotional event, the Contractor shall provide a recap of the initiative, including total expenses and performance against established KPIs to assist the NCEL in the evaluation of its success.
- J. **Annual Agency Review** – Once a year, the Successful Contractor shall participate in an Annual Agency Review of overall account performance to inform account decisions in next Fiscal Year, including determining if any staffing changes are required. This opportunity will also allow the NCEL to review the prior year’s activity to ensure proper contract compliance by the Successful Contractor. The Annual Agency Review will consist of the following three (3) components:
  1. Performance Evaluation – Based on written qualitative evaluation by the NCEL, the Successful Contractor’s performance across all disciplines will be evaluated based on the Successful Contractor’s ability to meet established client expectations.
  2. Agency Metrics – As the second component of the Annual Agency Review process, the Successful Contractor will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing. At the Annual Agency Review, the NCEL will determine if the specific pre-determined brand metrics / KPI’s were met for each project initiative completed by the Successful Contractor during the Fiscal Year.
  3. Business Metrics – The final component of the Annual Agency Review measures the Successful Contractor’s ability to help the NCEL deliver against pre-established sales goals.

### 2.5.2 OPTIONAL PROFESSIONAL SERVICES

Optional Professional Services may be requested during the Contract period. Professional Services will be priced per project. Note: The estimated Optional Professional Services are intended to allow each Potential Contractor to respond to uniform requirements; these are not

intended to completely describe all potential opportunities for Optional services for Successful Contractor throughout the term of the proposed contract. The Responding Contractors should respond with an hourly rate for any or all services offered. If the Responding Contractors does not offer one or any of the optional services it is acceptable to not respond with an hourly rate by leaving the rate blank. Responding Contractors will not be penalized for services not offered. Optional services are as follows:

1. **State & Local Marketing Efforts** – From time to time, the NCEL may request that the Successful Contractor(s) partner with the Marketing Department for development and analysis of sports marketing, experiential marketing, local events and promotions. This may include the Successful Contractor(s) bringing forward new and viable opportunities to build brand awareness and promote NCEL products and/or developing and providing creative assets for these marketing programs, ensuring that they work synergistically with the overall marketing and advertising plans.

2. **Promotions** – From time to time, the NCEL may request that the Successful Contractor(s) assist in development and on-going management of promotional projects, including media-driven promotions and online promotions involving chance. The Successful Contractor will ensure that all promotional activity is effective and measurable based on KPIs pre-determined by the NCEL and is consistent with the NCEL brand character.

3. **Retail Design** – From time to time, the NCEL may request that the Successful Contractor(s) assist in design development and implementation for the refresh of NCEL claims centers and/or similar retail spaces designed to sale lottery tickets and pay lottery prizes.

4. **Research** – From time to time and in conjunction with the NCEL, the Successful Contractor may be asked to develop and facilitate advertising and market research studies that involve advertising research such as recall tests, copy and motivation tests, and attitude studies. The Successful Contractor may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design.

5. **Public Relations** – From time to time, the NCEL may request that the Successful Contractor(s) assist in developing strategies and implementing integrated tactics to create differentiated positioning and amplify messaging to frame public perception of the NCEL. This may include:

1. Developing and executing large scale PR events to build brand awareness and/or launch new lottery products.
2. Analyzing attitudes and issues that may impact the NCEL's operations or goals.
3. Creating content to educate and engage citizens aiding organizational aims.
4. Protecting the reputation of the NCEL.
5. Pitching on-air interviews and campaigns with media outlets and/or advertising partners.
6. Soliciting/evaluating promotional opportunities from media partners.
7. Assisting with planning and scheduling public relations media events.

6. **Direct Marketing / Database Management / Customer Relationship Marketing** – From time to time, the NCEL may request that the Successful Contractor(s) work as needed with the NCEL to develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the NCEL brand. This may be done

through email marketing, Lucke-Rewards customer loyalty program, couponing, database management, and other tactics deemed appropriate to achieve the NCEL's business goals through all current and future channels.

**7. Creative Development / Content for NCEL Websites** – From time to time, the NCEL may request that the Successful Contractor(s) provide creative input into the design and content management of NCEL websites and a retailer-focused website to ensure they enhance the player/retailer experience with the NCEL brand and work synergistically with all other marketing and advertising communications. Actual programming will be conducted by the NCEL's web development team and its Contractors.

**8. Logo Design / Brand Work** – From time to time, the NCEL may request that the Successful Contractor(s) provide creative input into the design and content of various new logos or features as well as evolutions of existing logos, ensuring any new designs work synergistically with all other marketing and advertising communications. Along with logo development, the Successful Contractor(s) are responsible for developing and updating the NCEL's brand guidelines.

Optional Professional Services will be paid from other existing budgets as designated by the NCEL. An hourly rate should be included in all Proposals for Optional Professional Services.

## PART III – PROPOSAL PROCESS

### 3.1 SUMMARY OF KEY DATES

<b>PHASE I (all Potential Contractors)</b>	
RFP Issuance Date	May 24, 2021
Deadline for Submission of Phase I Questions 4:00 p.m. ET	June 3, 2021
Phase I Answers Posted	June 8, 2021
Deadline for Submission of Phase I Contractor Capability Proposals 4:00 p.m. ET <u>DELIVERY ADDRESS:</u> North Carolina Education Lottery Professional Advertising, Media and Related Services Attn: Anthony Downey, Purchasing Administrator RFP #LC-000058 2728 Capital Boulevard Suite 144 Raleigh, NC 27604	June 22, 2021
<b>PHASE II (invited Potential Contractors only)</b>	
Phase II Potential Contractors Selected and Notified	June 28, 2021
Deadline for Submission of Phase II Questions 4:00 p.m. ET	July 9, 2021
Phase II Answers Posted	July 16, 2021
Phase II Phone Questions Session 4:00 p.m. ET	July 19, 2021
Deadline for Submission of Phase II Proposals 4:00 p.m. ET	August 19, 2021
Phase II Presentations	August 25-27, 2021
Target date for Decision of Successful Contractor followed by Contract Execution, subject to Commission approval	September 21, 2021

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

### 3.2 CONTACT PERSON

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

Email: [bid.submission@lotterync.net](mailto:bid.submission@lotterync.net)  
Fax: 919-715-2711

North Carolina Education Lottery  
Professional Advertising, Media and Related Services RFP #LC-000058  
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 RFP issuance date until an Apparent Successful Contractor has been**

**approved by the NCEL Commission.** Employees of current Contractors who are required to work with the NCEL under existing Contracts will be permitted to continue their regular contacts under that agreement; however, they may not have any discussions or exchange any information in connection with or regarding this Procurement or RFP.

### **3.3 INQUIRIES**

All inquiries regarding this RFP must be submitted in the form of questions or requests for clarification (collectively, the “**Questions**”). Such Questions must be in writing and received by the Contact Person identified in Section 3.2 of this RFP on or before 4:00 p.m. ET on June 3, 2021 (the “**Phase I Question Deadline**”) for Phase I questions and on or before 4:00 p.m. ET on July 9, 2021 (the “**Phase II Question Deadline**”) for Phase II questions. The NCEL’s responses (the “**Answers**”) to Questions properly received prior to the Question Deadlines will be posted on the NCEL’s Website <https://www.nclottery.com/Business>.

## **PART IV – PHASE I AND PHASE II PROPOSALS**

### **4.1 PHASE I CONTRACTOR CAPABILITIES PROPOSAL**

In preparation of the Proposal, each Potential Contractor should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed non-responsive and removed from further consideration.

Phase I will determine whether the Responding Contractor meets the minimum qualifications defined herein, and the business credentials. Responding Contractors who meet the minimum qualifications and receive a score higher than the minimum scored defined, will be notified that they are a finalist, and will be invited to proceed to Phase II, which will consist of development of responses to specific creative scenarios. No more than six (6) Potential Contractors will proceed to Phase II. If more than six (6) Responding Contractors meet the minimum qualifications and receive a score higher than the minimum score, the six (6) Responding Contractors with the highest scores will proceed to Phase II.

**To be eligible for Phase I evaluation, each Responding Contractor must provide the following information in the order and format specified:**

#### **A. Cover Letter**

Each Responding Contractor must provide a cover letter signed by an individual authorized to legally bind the Responding Contractor. For multiple Responding Contractors submitting joint proposals, Responding Contractors must provide the information as required under Section 4.4.

#### **B. Address**

1. Name, address, principal place of business, email address, and telephone number of legal entity with whom the contract is to be written.
2. Name and location of major offices and other facilities that relate to the Contractor’s performance under the terms of this RFP.

#### **C. Responding Contractor’s Contact**

Name, address, email address, and business telephone number of the Responding Contractor’s contact person, for purposes of this procurement.

#### **D. Experience and Personnel**

1. Legal status and business structure (corporation, partnership, sole proprietorship, etc.) of the Contractor and the year entity was established.

2. Contractor must demonstrate that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must include the following:
  - a. Evidence that Contractor has annual billings of at least five million dollars (\$5,000,000)
  - b. Thorough description of the organization demonstrating the employee capacity to undertake and successfully carry out the proposed services.
  - c. An organization diagram which indicates reporting relationships and location of the staff.
  - d. Indicate staff positions that will be new hires.
3. In the following format, summarize the total billings for calendar years 2018, 2019 and 2020, number of employees, and number of accounts currently being handled directly by Responding Contractor's office.

	2018	2019	2020
<b>Total Billings Per Year</b>			
<b>Number of Employees</b>			
<b>Number of Accounts</b>			

4. Responding Contractor must include in its Proposal a list of its ten (10) largest, current accounts and the date of acquisition of each account. Responding Contractor should list the accounts by approximate annual billing size (beginning with the largest account) and must include for each account a description of the type of projects billed. Each Responding Contractor must disclose information regarding any potential, actual or apparent conflicts of interest between any current client of the Responding Contractor and the NCEL. Each Responding Contractor must provide contact information for a minimum of two (2) accounts to serve as references. References will be contacted.
5. Responding Contractor must also include a list of accounts terminated in the past two (2) years and reason for such termination.
6. Provide one (1) example of how the Responding Contractor saved money and/or maximized value for a client, including the following areas:
  - a. Broadcast production cost efficiencies
  - b. Print production cost efficiencies
  - c. Additional example relevant and appropriate to the NCEL account

**E. Scope and Nature of Contractor Services**

1. Written description (not to exceed five (5) pages) outlining the various services offered by the Responding Contractor and the number of full-time employees dedicated to each department (e.g. account management, strategic services (including account and communications planning, research, etc.), creative (including digital), production (broadcast, online, print production, etc.), CRM, PR, promotion and experiential marketing).
2. In addition to any digital services listed above, please describe established strengths and capabilities in the digital realm including Responding Contractor's online marketing, website development and database analytics and maintenance capabilities.
3. List any other specialized services Responding Contractor offers to its clients, either directly or indirectly through its parent or sister companies, subsidiaries or network of affiliations.
4. Written demonstration of Responding Contractor's ability to handle highly active retail advertising accounts.

5. Brief description of the Responding Contractor's strategic process including determination of audience, determination of insight and development of the strategy which delivers on this insight.
6. Explain account planning capabilities, and how account planning interfaces with the various departments or areas of Responding Contractor's organization.
7. Describe how Responding Contractor would provide the NCEL information and insights from emerging consumer trends, new ideas, and new advertising techniques.
8. Explain how Responding Contractor would, on an ongoing basis, monitor the effectiveness of the NCEL advertising. Describe Responding Contractor's market, product, and consumer analysis methods.
9. Describe why Responding Contractor is uniquely suited to address the challenges and opportunities of the NCEL account.
10. Responding Contractor must be authorized and registered to do business in North Carolina.

#### F. Case Histories

**Add attachments as necessary, and use whatever format(s) that best demonstrate(s) Responding Contractor's capabilities.**

1. Creative, Advertising and Marketing Communication Services – To demonstrate capabilities in these areas:
  - a. Present a case study of not more than ten (10) pages, excluding exhibits, in which Responding Contractor developed and executed a new brand platform.
    - i. What insights were leveraged in creation of the strategy? What research was implemented?
    - ii. Who was the audience? Why was this segment chosen?
    - iii. How was the brand platform launched? Provide examples of launched creative.
    - iv. What were the results?
  - b. Present a case study of not more than ten (10) pages, excluding exhibits, describing an advertising campaign to launch or promote a product that is representative of Responding Contractor's work from start to finish. (This case study must be from a different campaign than the case study submitted pursuant to Subsection 4.1(F)(1)(a), above). Of particular relevance to the NCEL is work in entertainment environments and and/or competitive retail-driven product categories such as soft drinks, candy, etc. Responding Contractor must address the following items in the case study:
    - i. What were key facts and problems/opportunities identified from research and analysis? What insights were leveraged in creation of the strategy? What research was implemented?
    - ii. What was the creative strategy and positioning?
    - iii. What was the budget?
    - iv. Advertising objectives?
    - v. How was the program executed? Showcase all mediums with particular emphasis on in-store communications
    - vi. Tools used by Responding Contractor to evaluate the campaign's effectiveness against the audience(s).
    - vii. What were the results (i.e., sales, market research)?

#### 4.2 PHASE II CONTRACTOR CAPABILITIES PROPOSAL/ FINALIST PROPOSALS

Phase II requires that each finalist prepare both a (1) the Technical Proposal, and (2) the Cost Proposal. Each proposal will be submitted in writing and also presented in person to the NCEL

at the Contractor's offices, or through video conferencing as needed, during a scheduled 90-minute time slot during the week of August 25 through August 27, 2021. The Technical Proposals will include assignments that are based on the NCEL's business challenges, and Responding Contractor's solutions to these challenges will, in part, determine who is awarded the contract. Responding Contractor is not required to furnish completed creative materials; however, the written assignments should be sufficiently detailed to enable the NCEL to evaluate accurately the capabilities of Responding Contractor for the respective areas in which services are sought.

**A. Technical Proposal: Creative, Advertising and Marketing Communication Services**

1. Samples of Work – Responding Contractor shall submit with its Proposal creative samples produced within the past two (2) years by Responding Contractor's office and identify the creative director that will be servicing the NCEL account. **Samples must be from at least two (2) different campaigns and must be different from the case studies submitted pursuant to Section 4.1(E)(1)(a) and 4.1(E)(1)(b) above.** For each of the samples submitted pursuant to this Section, Responding Contractor must provide a write-up of not more than two (2) pages indicating the account name, product name, marketing objective, creative strategy, and creative team(s) responsible for the work. Responding Contractor should include the following items as available in the samples submitted in connection with this Section:
  - a. TV ads on a zip drive;
  - b. Radio ads on a zip drive;
  - c. Digital ads on a zip drive;
  - d. Retail POS/POP layout samples on a zip drive;
  - e. Additional items (any medium) that illustrate Responding Contractor's unique creative strengths.
2. Creative Assignment – New Monthly Scratch-Off Launch Campaign  
The NCEL is interested in the Contractor's process and approach to product launches and communication challenges. The NCEL will assess the Contractor's ability to produce effective marketing messages based on the input document provide in Attachment F.
3. Instant Scratch-Off Games Overview – The NCEL typically creates and distributes 48 to 50 instant scratch-off games per year ranging in price from \$1 to \$30. Scratch-Off games offer players the opportunity to scratch off a latex cover and immediately see if they have won a prize. The NCEL's goal is to keep these games fresh and to offer a wide variety of tickets based on theme, price point and play style. In FY13, the NCEL took steps to improve the overall portfolio of instant games and their prizes resulting in instant ticket sales exceeding the \$1 billion mark for the first time in its history and becoming only the 12th US lottery to achieve \$1 billion in instant ticket sales in a year. In FY14, the NCEL implemented a monthly launch strategy for instant tickets releasing games on the first Tuesday of each month and once again achieved instant sales of more than \$1 billion. In FY20 total gross sales of Instant Scratch-Offs reached \$2.09 billion, accounting for 69.11% of total revenue.
4. Advertising Strategy – Each Responding Contractor must prepare a marketing and advertising strategy grounded in consumer insight and supporting creative 360° big idea and associated campaign(s) that will meet the stated objective. The campaign's creative strategy should present original and engaging ideas that demonstrate the Responding Contractor's creative capabilities and strategic thinking. The creative response should include at a minimum:
  - One 30-second TV spot

- One 30-second radio spot; with Pandora banner unit
- Live radio reads (live-liners)
- Digital campaign with a minimum of one 15-second video spot
- Social media strategy and creative concepts for Facebook, Instagram, and Twitter
- In-store POS/POP

In addition to showcasing Responding Contractor's creative product for this assignment, each Responding Contractor must also clearly define in their written and oral presentations how they approached the following areas as they relate to the creative campaign(s) being presented:

- a. Analysis of the marketing situation
- b. Determination of audience
- c. How the consumer insight was determined
- d. Development of marketing and advertising strategy to deliver on the consumer insight
- e. Creative Development Process
- f. Include Creative Brief against which campaign was developed
- g. Determination of Project budget as it relates to the annual budget allocation
- h. Production Process
- i. Tracking and Analysis of Effectiveness

Responding Contractor should also include an overview as to how the campaign(s) would be evaluated for effectiveness and efficiency to ensure that dollars invested are being maximized and that the creative is meeting its stated objectives. The proposal must include specific measurement tools and processes the Contractor intends to use to evaluate the campaign(s).

5. Staffing Plan - As part of the Phase II Technical Proposal evaluation, each Responding Contractor must provide an in-depth staffing plan and indicate the specific team(s) that will be the Responding Contractor's proposed Account Team to work on the NCEL business if successful. Key members of the proposed Account Team should be a part of the on-site presentation.
  - a. The in-depth staffing plan must identify the employees who will be responsible for work on the NCEL account and include resumés or other descriptions of their qualifications. Information about those employees should include nature and scope of each person's responsibilities, the percentage of their time that will be dedicated to the NCEL team, accounts handled by such staff person while employed by Responding Contractor and previous employers, and the level of responsibility on those accounts.
  - b. Describe any new or currently vacant positions Responding Contractor will need to fill in order to execute the proposed plan for the NCEL and the timeline for filling those positions.
  - c. The Responding Contractor must ensure that the recommended staffing planning can adequately support the NCEL's rapid pace and volume of work as described in Part II – Scope of Work. In particular, please note that while not all campaigns require fully new creative development each year, the Responding Contractor should plan at a minimum for the NCEL's current on-air advertising cadence, which includes 12 monthly scratch-off, four draw game and two NCEL brand/beneficiary on-air campaigns in a fiscal year.

## B. Cost Proposal

The NCEL desires to acquire Creative, Advertising and Marketing Communication Services fulfilling the scope of services as provided in this RFP, at the best competitive price.

All production charges incurred by the Contractor on behalf of the NCEL shall be billed to the NCEL at the Contractor's net cost, that is the net rate offered by the production source. The NCEL will not pay commissions or a percentage markup to the Contractor. Production costs are defined as the preparation and purchase of all materials, services and talents necessary to complete the scope of work, including but not limited to, production cost such as finished art, photography, mechanicals, printing, films, talent payments, recording sessions, TV and radio production charges, video tapes, and studio functions. Upon determination of the amount due to the Successful Contractor in the case of production invoices, the thirtieth (30<sup>th</sup>) day of every month, payment (less applicable damages and penalties which may be deducted) will be processed in an expedited manner. Responding Contractors may propose any alternative methods or schedules of payments which will be considered during contract negotiations with the Apparent Successful Contractor.

For Creative, Advertising and Marketing Communication Services, responding Contractors must submit a cost proposal that is based on an annual fee for professional services. The annual fee must be stated for years one, two, and three. This annual fee for professional services (retainer) will be paid on a monthly basis to the Successful Contractor. Responding Contractors are reminded that the cost quotation should cover all of the services and other items covered and required by this RFP, as well as other services deemed necessary by Responding Contractor, to be provided by the Successful Contractor during the entire term of the Contract. Specifically, the Successful Contractor shall be responsible for all charges incidental to the routine conduct of business including, but not limited to telephone calls, copying, color copies, postage and delivery charges from the Successful Contractor to the NCEL. The NCEL will reimburse the Successful Contractor at the State Rate for travel related expenses for up to three (3) employees, with prior NCEL approval, for production related travel expenses. Any additional mileage and meal related expenses will be the responsibility of the Successful Contractor. The Successful Contractor shall also coordinate and submit entries for award recognition designated by the NCEL. The NCEL shall be responsible for the associated entry fees and shall retain any awards, trophies, plaques, etc., that may be awarded for creative work that was created and produced by the Successful Contractor for the NCEL. Costs agreed to in the resulting contract shall be firm and remain constant throughout the life of the contract and any extensions thereof.

### 4.3 PROPOSAL SUBMISSION AND FORMAT

#### 4.3.1 PHASE I – SUBMISSION OF CONTRACTOR'S CAPABILITIES PROPOSALS (OPEN TO ALL POTENTIAL CONTRACTORS)

To be eligible to participate in the competition for contract awards, a Potential Contractor must first submit a completed Contractor's Capabilities Proposal, as described in Section 4.1 of this RFP. **Potential Contractor shall submit one (1) signed original and four (4) paper copies of each completed Contractor's Capabilities Proposal and one (1) USB flash drive containing an unredacted PDF version (or other suitable format) of the Contractor's Capabilities Proposal and a redacted PDF version (or other suitable format) of its Contractor's Capabilities Proposal with redacted information that Contractor deemed as**

**confidential or contained trade secrets or such other proprietary rights as dictated by law.** The NCEL will evaluate and score the Responding Contractor's Capabilities Proposal. The Responding Contractors will then be ranked according to the assigned scores, and no more than six (6) finalists achieving the highest scores in each category of desired services will be invited to submit detailed Finalist Proposals for evaluation in Phase II.

#### **4.3.2 PHASE II - SUBMISSION OF FINALIST PROPOSALS (OPEN TO INVITED POTENTIAL CONTRACTORS ONLY)**

Each finalist Proposal must be submitted in two parts: (1) the Technical Proposal; and (2) the Cost Proposal, as described in Section 4.2 of this RFP. Parts (1) and (2) must completely address each question detailed in Section 4.2 and be submitted at or before the time and date specified in Section 3.1 of this RFP. **Each Proposal must be submitted in a sealed envelope or container, with the Cost Proposal under separate cover in a separate, sealed envelope or container.** If multiple envelopes or containers for each part of the Proposal are used, the envelopes or containers must be numbered in the following fashion: 1 of 4, 2 of 4, etc. **Each finalist shall submit a signed original hard copy of the Cost Proposal, and a signed original hard copy, four (4) paper copies, and one (1) USB flash drive containing an unredacted PDF version (or other suitable format) of the Technical Proposal and a redacted PDF version (or other suitable format) of the Technical Proposal with redacted information that Contractor deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law.**

**THE COST PROPOSAL MUST BE SEALED SEPARATELY FROM THE TECHNICAL PROPOSAL.**

#### **4.3.3 FINALIST PROPOSAL FORMAT**

Each Proposal should provide a straightforward, concise description of a Responding Contractor's ability to meet the requirements of this RFP. Proposals should not contain unsolicited, extraneous or duplicative information.

Proposals should be organized and presented in the order and by the Section numbers assigned in this RFP. Pagination of a Proposal should be consecutive, and the two parts - the Technical Proposal and the Cost Proposal - must be separate as required by this RFP. All RFP requirements and specifications are mandatory unless stated otherwise and any failure to respond thereto may be the basis for disqualification.

Proposals must be received by the Contact Person no later than the Proposal Deadline in the sealed envelopes or containers. Late Proposals will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Responding Contractors must provide responses for all items contained herein that request or call for a response or information, and responses and signatures are required for any Attachments referenced within, or attached to, this RFP that are due with the Proposal. Proposals shall be complete and must convey all of the information requested by the NCEL. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Responding Contractor.

#### **4.4 MULTIPLE CONTRACTORS, JOINT PROPOSALS, AND SUBCONTRACTORS**

In response to this RFP, a combination of two or more qualified advertising agencies may submit a joint Proposal or Proposals seeking the available contract. If a firm intends to participate in a joint Proposal, each participating firm must be identified in Phase I together with all the other intended participants in the joint Proposal, and each of the intended participants must submit a completed Contractor's Capabilities Proposal for Phase I evaluation. A joint

proposal must clearly identify one company to serve as the principal contractor, which will be responsible for the performance of all participants in the joint Proposal. The joint proposal must define completely the roles, responsibilities, duties and obligations that each entity that is a part of a joint venture, strategic partnership or prime contractor team proposes to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The Proposal must be signed by an authorized officer or agent of each entity. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the joint venture, strategic partnership or prime contractor team. Any Contract resulting from a joint Proposal must be signed by an authorized officer or agent of each entity. Any entity which is part of a joint venture, strategic partnership or prime contractor team included in the submission of a joint Proposal will be jointly and severally liable during the term of the Contract.

The Successful Contractor that submits a Proposal whereby any subcontractor will provide some portion of the specifications of this RFP shall retain ultimate responsibility for all Services provided by any subcontractor, and any claims or liabilities arising from or related to the subcontractor's performance, and compliance with the requirements of this RFP, the terms and conditions of the Contract, and the requirements of any and all applicable laws, rules, and regulations.

A Responding Contractor who submits a Proposal whereby any subcontractor will provide twenty-five percent (25%) or more of the specifications of this RFP must also provide the information described in Part VI, Proposal Requirements, for each such subcontractor.

#### **4.5 CHANGES, MODIFICATIONS AND CANCELLATION**

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

#### **4.6 PROPOSAL CONSTITUTES OFFER**

By submitting a Proposal, a Contractor agrees to be governed by the terms and conditions set forth in this RFP, and any amendments thereto, and further agrees that the Contract will incorporate the terms and conditions of this RFP and any amendments hereto and the Questions and Answers, the Contractor's Proposal and any terms and conditions subsequently negotiated with such Contractor. A Contractor submitting a Proposal must complete and submit, as part of its Proposal, the Contractor Certification Form included as **Attachment A**, and made a part hereof, as referenced in Section 6.1.

#### **4.7 PROPOSAL EVALUATION**

A variety of factors (including, but not limited to, experience, integrity, proposed services, cost/price and value to the NCEL, background, financial viability, ability to perform the Contract) shall be considered by the NCEL in determining the Successful Contractor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL. These factors are not necessarily listed in the order of importance or weight. Furthermore, the NCEL shall also consider the Potential Contractor's responses to Section 6.7 pertaining to Minority Business Participation, as part of the evaluation. Thus, while Potential Contractors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Potential Contractor offering the lowest price and total cost may not be selected as the Successful Contractor. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Proposals deemed responsive using an evaluation committee (the "**Evaluation Committee**" or "**Committee**") selected by the Executive Director. During Phase II, the Evaluation Committee may request clarifications or answers to any questions it may have of

a Potential Contractor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Potential Contractor to address technical questions or seek additional information regarding any Proposal before completing the initial evaluation.

It is not the intent of the NCEL to disqualify any Proposal based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Proposal and Contractor. The NCEL also reserves the right to disqualify the Contractor's Proposal if the Contractor has violated Section 3.2 of this RFP. It is the intent of the evaluation procedure established by the NCEL to determine whether each Proposal meets the needs of the NCEL, as outlined in this RFP, and then to determine which Proposal best suits those needs.

The evaluation involves, at a minimum, a two-part process: Phase I Initial Evaluation of Contractors Capabilities and Phase II Final Competition.

#### **4.8 EVALUATION AND SELECTION**

This section describes the evaluation process that will be used to determine which Proposal provides the optimal price-value that will be responsive to the NCEL's needs. The ability of the NCEL to evaluate a Responding Contractor's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a Responding Contractor to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in rejection of Responding Contractor's Proposal or reduction in scoring during the evaluation.

##### **A. Evaluation Methodology**

The NCEL will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection, the NCEL will be represented by the Evaluation Committee, as designated by the NCEL Executive Director, comprising of NCEL staff members. The NCEL reserves the right to make changes in the Committee's membership as necessary.

Scoring of the Technical Proposals will be by consensus of the Committee. The Pricing Proposals will be scored separately by the NCEL Finance Department.

##### **B. Evaluation and Award Steps**

The evaluation and award process will comprise all of the following:

###### PHASE I

1. Review of Phase I Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions and requirements.
2. Detailed review by the Committee of the Phase I Contractor Capabilities Proposals relative to proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.
3. Proposal clarifications, if applicable.
4. Evaluation and scoring of Phase I Contractor Capabilities Proposals.
5. Phase I Finalist selection will be based on scores of at least 70% of points available for Phase I.

###### PHASE II

6. Detailed review by the Committee of the Phase II Technical Proposals relative to proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.

7. Evaluation of financial responsibility and stability based on financial statements provided.
8. Proposal clarifications, if applicable.
9. Onsite or video conference presentations.
10. Evaluation and scoring of Phase II Proposals and Presentations by the Committee.
11. Assessment and scoring of Pricing Proposals after finalization of Phase II Technical Scoring.
12. Compilation of the Phase I Technical score, Phase II Technical score, and Pricing score.
13. Ranking of Contractors based on final score to determine optional price-value.
14. Preparation and submission of a Final Report and Recommendation by the Evaluation Committee, to the Executive Director for review and acceptance of the Committee's recommendation to designate one or more Responding Contractor(s) as the Apparent Successful Contractor(s).
15. Review and Adoption of the Committee's Recommendation by the Commissioners.
16. Notice of Award to the Apparent Successful Contractor(s).
17. Negotiation of Contract (as needed).  
Review and approval by the North Carolina State Attorney General's Office for contracts greater than \$15 million.
18. Contract execution to permit a potential transition period.

### **C. Information from Other Sources**

The NCEL reserves the right to obtain from sources other than Responding Contractor, information concerning a Responding Contractor, Responding Contractor's offerings and capabilities, and Responding Contractor's performance, that the NCEL deems pertinent to this RFP and to consider such information in evaluating Responding Contractor's Proposal. This may include, but is not limited to, the Evaluation Committee engaging Responding Contractors and additional experts from outside the Committee to better inform the Committee's findings, as well as references from other lotteries and gaming jurisdictions (if applicable).

In addition, as provided in Section (4.1)(D)(4) of this RFP, references will be checked regarding Responding Contractor's past experience. The NCEL reserves the right to contact references as many times as is necessary and to contact as many references as is necessary, to obtain a complete understanding of Responding Contractor's performance and experience.

### **D. Evaluation and Selection Criteria**

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Section 4.1 and 4.2 of this RFP will be evaluated based on the following criteria:

The Evaluation Committee will review Contractor Capabilities Proposals for Phase I, and Technical and Pricing Proposals for finalists that move on to Phase II, as outlined in the RFP.

## **PHASE I - CREDENTIALS**

### **CONTRACTOR CAPABILITIES PROPOSAL**

#### **1. Relevant Experience & Capabilities**

The depth and relevance of overall experience, values and current practices of Responding Contractor's organization will be evaluated in relation to its ability to provide the services defined in this RFP. Specifically, the NCEL will look at related

branding, marketing, and advertising expertise demonstrated in the submitted case studies. Of particular interest is experience with gaming-related accounts or other mass market and high-volume consumer goods accounts reaching an audience similar to that of the NCEL. The Contractor will also be evaluated on specific capabilities, processes employed, and depth of industry knowledge as it relates to the scope of work outlined in this RFP.

2. **Management Philosophy and Organizational Structure** Responding Contractor will be evaluated on the type of systems and organizational structure in place to properly manage the account and deliver the end products in a timely manner and of the highest quality. Responding Contractor will also be evaluated based on perceived compatibility of Contractor values/mission/culture, as well as the quality of references.

**Only those Proposals that meet the minimum qualifying score of 70% of the total number of points available in Phase I will advance to Phase II. Those Proposals not meeting this minimum qualifying score will not be considered further in this evaluation process.**

## **PHASE II – TECHNICAL AND COST PROPOSALS**

### **1. Technical Proposal**

For those individuals identified to work on the NCEL account, their level of relevant experience and longevity with the Contractor will be evaluated as will the organization's approach to staff changes and training. Creative and Media assignments will be evaluated with respect to originality and clarity of strategic thinking, as well as quality of the executions. The NCEL is seeking responses that show innovation, creativity, and an understanding of the traditional NCEL business. The campaign(s) must also be designed to achieve the stated objectives of the assignment.

### **3. Financial Viability**

Responding Contractor will be evaluated on the financial viability and stability of the Responding Contractor.

### **2. Cost Proposal**

After the Technical proposal is scored, the Finance Department will open the Pricing Proposals and will conduct an evaluation of such Proposals. Every Phase II Responding Contractor shall prepare and submit a cost proposal as described in Section 4.2 of this RFP. In addition, Responding Contractors are encouraged to be creative in proposing an alternative compensation package. Scoring is based upon all proposed pricing models that will produce the best value to the NCEL over the term of the Contract.

### **3. Oral presentations**

Oral presentations will be evaluated based upon factors, including the Responding Contractor's ability to establish a rapport with the Committee; quality, originality, clarity and completeness of presentation; capabilities and resources; and a corporate atmosphere consistent with NCEL's brand character.

- Finalists may not modify their original Proposal (including written assignments).
- Finalists may submit samples of creative materials, such as commercials, print, graphics, etc. which demonstrate the concepts presented in the written assignments.

- The Evaluation Committee desires to meet the senior advertising agency management team and those staff individuals who will be assigned to manage the NCEL advertising account on a daily basis.

#### **4. Minority Business Participation**

In addition to the above-referenced evaluation criteria, the NCEL shall also consider the Responding Contractor's responses to Section 6.7 pertaining to Minority Business Participation as part of the evaluation.

#### **E. Final Composite Score and Determination of Award Process**

Both Technical Scores and Pricing score will be combined to determine the final composite score for each Responding Contractor. The Evaluation Committee's recommendation for contract award will be made to the responsive and responsible Responding Contractor who achieves the highest composite score.

#### **4.9 DISPUTE PROCEDURE**

All claims and disputes, including but not limited to protests related to this RFP, the Procurement and the award of the Contract to the Successful Contractor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Dispute Resolution Procedures (the "**Dispute Procedures**"), as adopted and/or amended from time to time by the NCEL Commission (<https://www.nclottery.com/Content/Docs/6.02%20Vendor%20Dispute%20Resolution.pdf>)

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

#### **4.10 NEGOTIATION AND EXECUTION OF CONTRACT**

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

#### **4.11 NONEXCLUSIVE RIGHTS**

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

### **PART V – STUFF THE LAWYERS MADE US INCLUDE**

The NCEL intends to obtain what it believes to be the best creative advertising solutions, at the optimal price-value that will be responsive to the NCEL's needs. The NCEL intends to execute one Contract as a result of this procurement under this RFP (the "**Procurement**") with an initial term from date of execution of the Contract to June 30, 2024, and three (3) one-year renewal terms; provided, however, nothing obligates the NCEL to sign any Contracts, or only one

Contract, or to allow the Auto-Renewal, and **the NCEL may do whatever it determines in its sole discretion to be in the best interests of the NCEL and the State of North Carolina**. It is the NCEL's desire to have a Contractor who is able to provide (through itself or its subcontractors) full advertising services. All Subcontractors must fully acquaint themselves with the NCEL's needs and requirements and obtain all necessary information and understandings to be able to submit responsive and effective Proposals.

All Proposals and any Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the "**Act**"), **in particular NCGS §§18C-114(a)(2) and 18C-130(e) establishing NCEL standards for advertising**, and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the "**Regulations, Policies and Procedures**"). Copies of these documents may be obtained either from the NCEL or through a link on the NCEL's website, [www.nclottery.com](http://www.nclottery.com) (the "**Website**").

### **5.1 PROPOSAL SUBJECT TO PUBLIC RECORDS LAWS**

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

### **5.2 REJECTION OF PROPOSALS AND CANCELLATION OF RFP; REISSUE OF RFP**

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

### **5.3 PROPOSAL VALIDITY; INCURRED EXPENSES**

All **Phase II** Proposals shall remain valid for one hundred eighty (180) calendar days (the "**Proposal Offer Period**") after 4:00 p.m. Eastern Time ("**ET**") August 19, 2021 (the "**Proposal Deadline**"). A Proposal constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Contractor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

### **5.4 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 for the purpose of selecting the Successful Contractor. Any original creative presented by the Responding Contractors, as requested in Phase II, may be marked appropriately as proprietary by Responding Contractors, and the NCEL will ensure that appropriate compensation is paid to the respective Contractor,

even if such Contractor is not selected as the Successful Contractor, if the NCEL intends to utilize any portion of the original creative.

### **5.5 GOVERNING LAW**

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

### **5.6 CONTRACT ELEMENTS**

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

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

## **PART VI – ADDITIONAL PHASE II FINALIST COMMITMENTS**

### **6.1 VENDOR COMMITMENT**

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

### **6.2 VENDOR CONTACT PERSON**

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

### **6.3 BACKGROUND INFORMATION AND BOND REQUIREMENT (PHASE II FINALISTS ONLY)**

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

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

Contemporaneously with the delivery of a Phase II Finalist Proposal, Responding Contractor must post a bond or letter of credit from a bank or credit provider acceptable to the NCEL in the amount of not less than five percent (5%) of the Cost Proposal. The calculation of the amount of the bond or letter of credit (5%) must be substantiated and explained in the Contractor's Proposal.

Responding Contractor must also submit a check or other similar financial instrument of immediately available funds (the "**Record Check Fee**") to the NCEL to cover the cost of criminal record check conducted under N.C.G.S. §114-19-6 pursuant to §18C-151(a)(3) of the Act. The Record Check Fee that must be submitted by EACH Responding Contractor with their Proposal in the amount equal to the sum of:

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

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

**The NCEL intends to conduct full background checks only on the apparent Successful Contractor. After the Contract is awarded, the NCEL will return all bonds and fees to the nonselected Contractor(s).**

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

A Responding Contractor should include in its Proposal a disclosure of any pending or overtly threatened civil or criminal litigation or indictment involving such Responding Contractor. Responding Contractor must also disclose any civil or criminal litigation or indictment involving any of its subcontractors participating in its Proposal. Specifically, Responding Contractor must disclose, on behalf of itself and each of the persons or entities described in N.C.G.S. §18C-152(b), all of the items and information described in N.C.G.S. §18C-152(c). This disclosure

requirement is a continuing obligation, and any litigation commenced after a Responding Contractor has submitted a Proposal under this RFP must be disclosed to the NCEL in writing within five (5) days after it is filed.

## **6.5 FINANCIAL SOUNDNESS**

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

## **6.6 COMMITMENT TO NONDISCRIMINATION AND MINORITY PARTICIPATION**

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

## **6.7 MINORITY BUSINESSES PARTICIPATION**

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

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

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

## **6.8 NON-DISCRIMINATION**

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

## **COST PROPOSAL**

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

---

(Responding Contractor's Name)

### **Creative, Advertising and Marketing Communication Services**

Responding Contractors are required to submit an annual fee for professional services. The annual fee must be stated for years one, two, and three. This annual fee for professional services (retainer) will be paid on a monthly basis to the Successful Contractor. Responding Contractors are reminded that the cost quotation should cover all of the services and other items covered and required by this RFP. Contractors are encouraged to submit a cost proposal that will provide best value solutions to the NCEL in order to maximize the NCEL's transfer of funds to North Carolina educational programs.

Contract Period	Annual Cost	Per Month
1st Year (October 1, 2021 - June 30, 2022)	\$	\$
2nd Year (July 1, 2022 - June 30, 2023)	\$	\$
3rd Year (July 1, 2023 - June 30, 2024)	\$	\$

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

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

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

## COST PROPOSAL

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

(Responding Contractor's Name)

### Creative, Advertising and Marketing Communication **OPTIONAL** Services

Responding Contractor submits the following compensation provisions for Optional Services:

<b>Hourly Rates</b>	
<b><i>Marketing Events</i></b>	<b><i>Hourly Rate</i></b>
Community	
Sports	
<b><i>Promotions</i></b>	<b><i>Hourly Rate</i></b>
Retailer	
Statewide	
<b><i>Public Relations</i></b>	<b><i>Hourly Rate</i></b>
<b><i>Research</i></b>	<b><i>Hourly Rate</i></b>
<b><i>Retail Design</i></b>	<b><i>Hourly Rate</i></b>
<b><i>Direct Marketing</i></b>	<b><i>Hourly Rate</i></b>
<b><i>Website Development</i></b>	<b><i>Hourly Rate</i></b>
Content Design	
Other	
<b><i>Logo Design/Brand Work</i></b>	<b><i>Hourly Rate</i></b>

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

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

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

## ATTACHMENT A

### CONTRACTOR CERTIFICATION

#### PROFESSIONAL ADVERTISING, MEDIA AND RELATED SERVICES

I do hereby certify as follows:

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

8. Responding Contractor has taken appropriate steps to completely and fully familiarize itself with the requirements of the RFP in order to render full performance under any resulting relationship between the NCEL and Responding Contractor; and

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

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(Signature of Authorized Representative)

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(Print Name)

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(Title)

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(Date)

## ATTACHMENT B

### BACKGROUND DISCLOSURE FORM

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

Telephone number, including area code:

Social Security number:

c. Name:

Relationship to Responding 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 Responding 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 Responding Contractor Team has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the good or services involved for each such state or jurisdiction:

7. List all states and jurisdictions (domestic and foreign) in which any member of the Responding 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 their or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:

a. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

b. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

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

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

10. For each member of the Responding Contractor Team, if applicable, list the details of any bankruptcy, insolvency, reorganization or corporate or individual purchase or takeover of another business, including bonded indebtedness, or any pending litigation:
  - a. Filing or action:  
Date of filing or action:  
Court of filing or action:  
Date of discharge if bankruptcy:  
Pending litigation:
  - b. Filing or action:  
Date of filing or action:  
Court of filing or action:  
Date of discharge if bankruptcy:  
Pending litigation:
11. List the business entities that are a part of the Responding 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 Responding Contractor Team who will work on the NCEL Contract. Complete an Authorization For Individual Investigation for each (see Attachment D).
13. Does the Responding Contractor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this RFP? If yes, please provide details.
14. Does any "public officer" or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Responding 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 Responding Contractor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Proposal.
16. List all lobbyists and consultants working on behalf of the Responding Contractor Team in connection with this Proposal or any subsequent Contract.

**Attachment B Certification**

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

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

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

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

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

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

**ATTACHMENT C**

**AUTHORIZATION FOR CONTRACTOR INVESTIGATION**

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

\_\_\_\_\_  
(Signature)

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

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

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

**ATTACHMENT D**

**ACKNOWLEDGMENT AND AUTHORIZATION FOR BACKGROUND CHECK**

I hereby authorize the obtaining of the “consumer reports” and /or “investigation 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](http://www.firstpointresources.com)**, the NCEL, and/or the NCEL’s designee. 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) \_\_\_\_\_

Date used (yr) from \_\_\_\_\_ to \_\_\_\_\_. Driver’s License

# \_\_\_\_\_ State \_\_\_\_\_

Social Security # \_\_\_\_\_ Male/Female (circle one)

Employer \_\_\_\_\_ Position \_\_\_\_\_

**Current and previous address(es). Provide all addresses for previous 7 years**

Street \_\_\_\_\_ from \_\_\_\_\_

City, State,

Zip \_\_\_\_\_ to \_\_\_\_\_

Street \_\_\_\_\_ from \_\_\_\_\_

City, State,

Zip \_\_\_\_\_ to \_\_\_\_\_

Street \_\_\_\_\_ from \_\_\_\_\_

City, State,

Zip \_\_\_\_\_ 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:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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

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

[SEAL]

**ATTACHMENT E**

**Equal Business Opportunity Forms**



The undersigned hereby certifies that they have read the terms of the minority business commitment and are authorized to bind the Responding Contractor to the commitment herein set forth.

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

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

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

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

**NOTARY:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

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

**[SEAL]**

## Affidavit B- Listing of Good Faith Efforts

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

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

Affidavit of \_\_\_\_\_ (Name of Responding Contractor)

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

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

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the Contractor, or available on State or local government maintained lists, at least 10 days before the Proposal date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the Proposals are due.
- 3 – (15 pts)** Divided or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the Proposal documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended pre-Proposal meetings scheduled by the NCEL.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. (Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.)
- 8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Contractor's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

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

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

The undersigned hereby certifies that they have read the terms of the minority business commitment and are authorized to bind the Contractor to the commitment herein set forth.

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

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

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

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

**NOTARY:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

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

**[SEAL]**

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

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

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

Affidavit of \_\_\_\_\_ (Name of Responding Contractor)

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

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

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

The undersigned hereby certifies that they have read this certification and are authorized to bind the Responding Contractor to the commitments herein contained.

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

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

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

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

**NOTARY:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

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

**[SEAL]**

NCEL / Monthly Scratch-Off Launch  
 Job #: TBD

**WHAT ARE WE TRYING TO ACHIEVE**

*Business objective and details of what it is we are trying to accomplish*

**Background –**

This month the NCEL is **launching four, exciting new scratch-off games**. Quite often scratch-offs are connected by a shared theme or playstyle and when the lottery launches these types of games, we communicate the unique feature(s) of the scratch-off family and why players would want to try them. However, this month, the NCEL will launch four scratch-offs that do not share a common theme or playstyle – giving us the opportunity to create a campaign that focuses on what motivates scratch-off play.

Lottery players play to win, so clearly the chance to win is a huge motivation. And players believe the most likely time to win is when “all” the new prizes are waiting to be won. For this reason, the introduction of new scratch-offs on the first Tuesday of each month fills players with optimism. Brand new games, loaded with brand new prizes, what’s not to love?

New scratch-offs and their new prizes feel like a fresh opportunity. They ignite players’ imaginations with thoughts of what could be. With new winning possibilities available, players are eager to seize the moment and try their luck. **Let’s focus on the world of winning possibilities that new scratch-offs offer. With new games and loads of new prizes available, it’s easy to imagine a winning experience could be just a scratch away.**

Campaign elements for the launch should be designed, wherever possible, so that the creative can be updated and used in the future.

See Additional Considerations.

This month’s games:

- **Fast \$50** (\$1) with a top prize of \$5,000
- **Fat Wallet** (\$2) with a top prize of \$20,000
- **Mega Bucks** (\$5) with a top prize of \$200,000
- **100X The Cash** (\$20) with a top prize of \$2,000,000

**How to Play** – Scratch-Off games are simple scratch and match games – understanding how to play is easy.

**Goal –**

- Generate awareness for this month’s new scratch-offs with over \$160 million in total prizes.
- Encourage trial for new or lapsed players
- Maintain a strong NCEL brand

<p><b>WHO ARE WE TALKING TO</b>  <i>The audience we are communicating with</i></p>	<p><b>Engaged Explorers</b> – Skew in their early 40s. Enjoy trying what is new and sharing those experiences with their friends. They use lottery as entertainment to feel alive and live in the moment.</p> <p><b>Informed Connectors</b> – Skew in their early 30’s. Are on the lookout to stay in-the-know. They are self-described risk takers always seeking adventure. Informed Connectors are social butterflies and want the guidance of their peers when shopping to ensure they make a good purchase.</p>
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<p><b>WHAT DO WE WANT OUR AUDIENCE TO THINK</b>          What should the audience think about this particular game or ticket launch?</p>	<p>“Look at all the prizes packed into these new scratch-off games. They do feel like they could really be my chance at a win.”</p>
<p><b>WHY SHOULD OUR AUDIENCE BELIEVE US</b>          Why should the audience believe us?</p>	<ul style="list-style-type: none"> <li>• Over \$160 Million in total prizes</li> <li>• Large \$2,000,000 top prize on the \$20 scratch-off</li> <li>• ISO Experience/Playstyle             <ul style="list-style-type: none"> <li>○ Key number match playstyle</li> <li>○ \$20 with multiplier feature and bonus win box</li> </ul> </li> <li>• Variety of price points</li> </ul>
<p><b>MAIN TAKEAWAY</b>          What is the one thing we want people to know?</p>	<p><b>With this month’s new scratch-offs and \$160 million in total prizes, my chance at a win could be just a scratch away.</b></p>

<p><b>TONE</b></p>	<p>Optimistic, Playful, Fresh, Approachable</p>
<p><b>COMMS HIEARCHY</b></p>	<p><b>TV and Radio</b></p> <ol style="list-style-type: none"> <li>1. <b>Over \$160 million in total prizes</b></li> <li>2. <b>New scratch-offs</b></li> <li>3. <b>Tickets</b> – see tickets/ticket art</li> </ol> <p><b>POS</b></p> <ol style="list-style-type: none"> <li>4. <b>Over \$160 million in total prizes</b></li> <li>5. <b>New scratch-offs; arranged to see the individual scratch-offs’ top prizes</b></li> <li>6. <b>2<sup>nd</sup> Chance Element</b> – \$20 ticket eligible second-chance drawing by entering ticket number online.</li> </ol>
<p><b>MANDATORIES</b>          What are the required must haves?</p>	<p><b>TV</b>  <b>MUST BE 18 TO PLAY.</b> Approximate overall odds of winning, including breakeven prizes, range from 1 in 3.35 to 4.81. Approximate odds to win the top prizes range from 1 in 1,020,000 to 1,260,000. \$2,000,000 annuity prize with lump sum cash value of \$1,200,000. Problem Gambling Helpline:</p>

	<p>877-718-5543.</p> <p><b>POS</b> MUST BE 18 TO PLAY. Approximate overall odds of winning, including breakeven prizes, range from 1 in 3.35 to 4.81. Approximate odds to win the top prizes range from 1 in 1,020,000 to 1,260,000. \$2,000,000 annuity prize with lump sum cash value of \$1,200,000. Problem Gambling Helpline: 877-718-5543.</p> <p><b>Radio</b> MUST BE 18 TO PLAY. Approximate overall odds of winning range from 1 in 3.35 to 4.81. Problem Gambling Helpline: 877-718-5543.</p> <p><b><u>Social and Digital /Ads should link to website for full legal</u></b> MUST BE 18 TO PLAY. Problem Gambling Helpline: 877-718-5543.</p>								
<p><b>DELIVERABLES</b> What assets do we need to deliver?</p>	<p>:30 TV :15 Video for YouTube and/or pre-roll (Potentially a cutdown of the :30 video) :30 Radio for terrestrial and streaming Live radio reads Pandora added value banner (300 X 250) Social Extensions for Facebook, Instagram &amp; Twitter –</p> <ul style="list-style-type: none"> <li>• Consider ways to make the launch feel bigger and engaging to lottery players</li> </ul> <p>Digital – will cover standard and/or rich media across six (6) standard sizes: 300x250, 320x50, 728x90, 300x50, 300x600, 970x250</p> <p>POS (dimensions and specs provided separately.)</p> <ul style="list-style-type: none"> <li>• Poster displayed at playcenter</li> <li>• Dispenser Topper displayed at the scratch-off point of purchase</li> <li>• Pole sign displayed outside of retail establishment</li> <li>• Window Cling typically displayed on store front (glass)</li> </ul>								
<p><b>ADDITIONAL CONSIDERATIONS</b> <i>Creative watch outs</i></p>	<p>Players feel lucky when new games go on sale, but they are not actually more likely to win. That is to say, the odds of winning are not different or better. Tapping into the optimism that new games bring is acceptable. Promising or guaranteeing a win is not. Showing someone winning is acceptable. Showing winning as the likely outcome is not.</p> <p>Examples:</p> <table border="0"> <tr> <td data-bbox="428 1564 909 1680">Acceptable statement –</td> <td data-bbox="909 1564 1531 1680">Packed with prizes With loads of chances to wins Could be your chance to win</td> </tr> <tr> <td data-bbox="428 1711 909 1785">Unacceptable statement –</td> <td data-bbox="909 1711 1531 1785">So many prizes you’re sure to win The best odds ever to win prizes</td> </tr> <tr> <td data-bbox="428 1785 909 1816">Acceptable winning experience –</td> <td data-bbox="909 1785 1531 1816">A player shouts, “I won.”</td> </tr> <tr> <td data-bbox="428 1816 909 1883">Unacceptable winning experience –</td> <td data-bbox="909 1816 1531 1883"><u>All</u> of the players shout, “I won.” <i>See Exhibit A: RESPONSIBLE MARKETING AND ADVERTISING STANDARDS</i></td> </tr> </table>	Acceptable statement –	Packed with prizes With loads of chances to wins Could be your chance to win	Unacceptable statement –	So many prizes you’re sure to win The best odds ever to win prizes	Acceptable winning experience –	A player shouts, “I won.”	Unacceptable winning experience –	<u>All</u> of the players shout, “I won.” <i>See Exhibit A: RESPONSIBLE MARKETING AND ADVERTISING STANDARDS</i>
Acceptable statement –	Packed with prizes With loads of chances to wins Could be your chance to win								
Unacceptable statement –	So many prizes you’re sure to win The best odds ever to win prizes								
Acceptable winning experience –	A player shouts, “I won.”								
Unacceptable winning experience –	<u>All</u> of the players shout, “I won.” <i>See Exhibit A: RESPONSIBLE MARKETING AND ADVERTISING STANDARDS</i>								

<b>CONTENT ASSETS</b>	NCEL logo and ticket art will be provided. Luck-e Rewards logo provided for POS.
<b>MEDIA CONSIDERATIONS</b>	Initial flight is 3-weeks. Creative maybe updated and used for a future launch.
<b>TIMING AND BUDGET</b>	<p><b>TV Budget</b> \$350,000 includes related COVID expenses.</p> <p><b>Timing</b> Anticipate a 16 to 20-week production timeline.</p>
<p><b>HOW WILL WE KNOW THAT IT WORKED AND KPIs</b> What needs to be measured?</p>	<ul style="list-style-type: none"> <li>• Overall ticket sales</li> <li>• YOY ticket sales; compared to same month of prior year</li> <li>• Game sales indices</li> <li>• Individual ticket sales compared to similar product launches</li> </ul>

## EXHIBIT A

### RESPONSIBLE MARKETING AND ADVERTISING STANDARDS

#### PURPOSE

To establish the best practices for the North Carolina Education Lottery's marketing and advertising efforts in order to uphold and promote its responsible gaming commitment.

#### **BACKGROUND**

The North Carolina Education Lottery recognizes that its marketing and advertising communications are critical to the responsible sale of lottery games. In an effort to ensure that our advertising and marketing practices fully reflect both State/Federal regulation and industry best practices, the NCEL has created a Marketing and Advertising Code of Conduct for all marketing and advertising endeavors based on World Lottery Association (WLA) and National State and Provincial Lottery Association (NASPL) standards as we believe they are in our best interest of the general public. We encourage individual responsibility in decision-making regarding lottery play by adults, and discourage abusive use of lottery products. NCEL advertising urges adults who choose to play the lottery, to do so responsibly. We support and comply with the laws of our state and are committed to applying the highest ethical standards and principals of the WLA and NASPL as outlined in our Standards. This policy establishes standards for responsible marketing and advertising to make certain all advertising, marketing and communications are conducted responsibly.

#### POLICY

1. All marketing, advertising, and communications initiatives conducted by the NCEL and potentially effecting lottery stakeholders will adhere to the standards and requirements outlined in the Standards section.
2. To ensure that these Standards are followed and all initiatives appropriately reviewed, routing forms will be utilized for the consideration and approval of all creative communications including but not limited to: TV ads, radio ads, point-of-sale material, social ads, digital ads, Hulu ads and out-of-home signage. This process provides an important safeguard to confirm consistent review of all marketing and advertising campaigns in order to guarantee that these meet responsible gaming principles as outlined in this Policy.
3. A *Review Guide for Final Ad Approval* must be completed for each communication. Required approvals are based on the specific communication for which approval is sought.
4. A minimum of two (2) individuals listed on the *Review Guide for Final Ad Approval* and the DED of Brand Management and Communications must review and sign for all ads including: social ads, digital ads, Hulu ads and out-of-home signage. Individuals included for potential review are as follows: Advertising Coordinator, Digital Communications Specialist, Digital Marketing Coordinator, Communications Director, Advertising Director, and Marketing Director.
5. A minimum of two (2) individuals listed on the *Review Guide for Final Ad Approval* and the NCEL Executive Director must review and sign for approval of all TV, radio, and point-of-sale. In the case of point-of-sale (POS) material, at least one piece of POS from a campaign must be reviewed and found compliant with the required standards. The Director of Marketing is responsible for applying the approved creative to any other

POS pieces included in the campaign.

6. For marketing and advertising communications that require a greater investment of creative time and financial resources from the NCEL, a *Review Guide for Creative Concept Approval* must be completed at the onset of a project such that accountability and enforcement of responsible marketing is managed throughout the creative process. Although every effort will be made to avoid bringing forward for evaluation any concept which does not align with the NCEL's marketing and advertising Standards, diligent examination of concepts prior to production will allow sufficient time to make changes deemed necessary to successfully address a potential concern or risk.
7. A minimum of one director and deputy executive director, as well as the Executive Director, must review and sign the *Review Guide for Creative Concept Approval* before any production work may begin.
8. Original copies of all *Review Guides for Creative Concept Approval* and *Review Guides for Final Ad Approval* will be maintained by the originating department (marketing, advertising or communication) and will be subject to review by management and/or NCEL auditors.

## **RESPONSIBLE GAMING MARKETING STANDARDS**

### **Content**

1. Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and the North Carolina Education Lottery.
  - Advertising should neither contain nor imply lewd or indecent language, images or actions.
  - Advertising should not portray product abuse, excessive play or a preoccupation with gambling.
  - Advertising should not imply nor portray any illegal activity.
  - No advertising may have the primary purpose of inducing persons to participate in the Lottery.
  - No advertising may intentionally target specific groups or economic classes.
2. Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Advertising should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Advertising should not encourage people to play excessively nor beyond their means.
  - Advertising and marketing materials should include a responsible play message when appropriate.
  - Responsible play public service announcement or purchased media messages are appropriate, especially during large jackpot periods.
  - Support for problem gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
  - Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
  - Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
  - Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

## **Tone**

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.
2. Lottery advertisements should not make false promises and should not present winning as the probable outcome.
3. Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
6. Advertising should not imply that lottery games are games of skill.

## **Minors**

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

## **Game Information**

1. Odds of winning must be readily available to the public and be clearly stated.
2. All advertising promoting the sale of lottery tickets or shares of a particular game must include the actual or estimated overall odds of winning the game and any other items required by the Lottery Act.
3. Advertising should state alternative cash and annuity values where reasonable and appropriate.

## **Beneficiaries**

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

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

This Professional Advertising and Related Services Agreement (the "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021 (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 State of \_\_\_\_\_ ("**VENDOR**").

**WITNESSETH:**

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

WHEREAS, VENDOR submitted the proposal, dated \_\_\_\_\_, 2021 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated May 24, 2021 (RFP #LC-000058) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were last distributed by the NCEL on \_\_\_\_\_, 2021 (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 professional advertising and related services to the NCEL, and VENDOR desires to provide such services for the NCEL.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

**1. SERVICES**

Subject to the terms and conditions set forth in this Agreement, the NCEL retains VENDOR to provide professional advertising and related services to the NCEL as contemplated by this Agreement, the RFP and the Proposal (collectively, the "**Services**"), and VENDOR agrees to provide such Services to the NCEL. Capitalized terms not otherwise defined herein shall be defined as set forth in the RFP.

**2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS**

VENDOR and its Subcontractors will work in conjunction with the Executive Director of the NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other vendors, subcontractors, employees, agents, retailers and consultants of the NCEL. VENDOR and its Subcontractors will provide the Services to the NCEL as detailed in the RFP, the Answers and the Proposal and will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the Director, their designee(s) and/or the Commission. Except as otherwise set forth herein, VENDOR agrees that all Services and deliverables to be provided to the NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the RFP, the Answers and the Proposal.

A. VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the Director or their designee(s) and shall establish work plans,

implementation schedules and timetables for completion as and when required by the Director or their designee(s).

B. 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.

C. Scope of Services: Subject to the instructions and decisions of the NCEL, VENDOR will be responsible for the scope of work in the RFP, Questions and Answers, the Proposal, and any additional terms contained herein.

### 3. **SUBCONTRACTORS**

A. Neither VENDOR nor any Subcontractors will subcontract or otherwise assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the NCEL in each instance, which consent may be withheld in the NCEL's sole discretion. The NCEL shall have the right to approve or disapprove of any subcontractor. VENDOR will provide the NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties working with or for VENDOR in performing services under this Agreement or for the NCEL will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the NCEL may require. VENDOR agrees that it will obtain the prior consent of the Director or their designee(s) prior to having any Subcontractor perform any activities for the NCEL under this Agreement.

B. Upon the request of the NCEL, VENDOR will promptly provide the NCEL with copies of all subcontracts and other agreements entered into by VENDOR with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

C. The NCEL shall have the right, at any time and from time to time, to instruct VENDOR not to use the services of any Subcontractor, individual or employee in connection with the work to be performed for the NCEL under this Agreement, and VENDOR agrees to comply with all such instructions.

D. Notwithstanding anything herein to the contrary, VENDOR will remain fully liable and responsible for all Services, deliverables and work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by VENDOR or under VENDOR's control, and VENDOR will ensure the compliance of its employees, and will exercise its best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as the NCEL may establish from time to time.

#### 4. **INDEPENDENT CONTRACTOR**

A. Both the NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of the NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of VENDOR to procure selected materials and services as authorized by the NCEL and as specifically set forth in, and subject to the limitations described in, the RFP and/or this Agreement. No Subcontractor is authorized to bind the NCEL to any liability or obligation or to represent that it has any such authority.

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

#### 5. **COMPENSATION**

(a) As full and complete compensation for all Services and deliverables provided by VENDOR pursuant to this Agreement, the NCEL will pay VENDOR, and VENDOR will accept, an amount (the "Vendor's Fee") equal to: **[SUCCESSFUL VENDOR'S RATE AFTER NEGOTIATION PURSUANT TO RFP]**.

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

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

#### 6. **TERM**

A. Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence as of the Effective Date and shall continue until June 30, 2024 (the "Initial

**Term**”). This Agreement shall be automatically renewed for a period of one (1) year (each a “**Renewal Term**”) upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than three (3) Renewal Terms, unless the NCEL sends VENDOR at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be. If the NCEL and VENDOR fail to mutually agree in writing on a Vendor Fee for any Renewal Term prior to the beginning of any such Renewal Term, then the Vendor Fee shall be the same as specified for the preceding year and this Agreement shall be terminated by the NCEL at any time during such Renewal Term.

B. VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, the NCEL may award a new contract for replacement of the Services and deliverables provided by VENDOR under this Agreement and that VENDOR has no right or expectation in or to any such new contract. VENDOR further agrees that the NCEL may use the final one hundred eighty (180) days or less, of the term of this Agreement for transitioning the provision of such Services and deliverables; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such period. VENDOR shall cooperate fully and in good faith, and shall assist the NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner without any interruption to the NCEL’s current marketing efforts, at no additional cost to the NCEL or such new contractor.

## **7. WORK STANDARD**

A. VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable policies and procedures of the NCEL and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards applicable to the VENDOR’s industry.

B. VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, nor any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer, subcontractor or other individual or entity in connection with the performance of its obligations under this Agreement.

C. If the NCEL becomes dissatisfied with the Services, deliverables or work product of or the working relationship with any of the individuals assigned to perform Services under this Agreement by VENDOR or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Important personnel identified in VENDOR’s Proposal as performing Services under this Agreement will continue to perform such Services in their designated capacities until such Services are completed unless: (i) they cease to be employed by VENDOR or a Subcontractor; (ii) the NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to the NCEL, in its discretion, will be substituted forthwith; or (iii) VENDOR wishes to have them replaced by someone of equal or better qualifications and VENDOR obtains NCEL’s prior written consent to such change.

D. Nothing in this Section 7 shall be construed to prevent VENDOR from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of such key personnel, including secretarial, clerical and common labor duties.

VENDOR shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by key personnel or other workers.

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

F. VENDOR hereby designates \_\_\_\_\_, or such other person or persons as it may from time to time notify the NCEL, as its primary contact with the NCEL for purposes of this Agreement. VENDOR must notify the NCEL, in writing and within five (5) business days, regarding designation of a new primary contact person for the VENDOR

**8. CHANGES IN WORK**

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

**9. BOOKS AND RECORDS**

Upon request by the NCEL, VENDOR and each Subcontractor shall provide, as soon as it is available, to the NCEL a copy of its latest audited financial statements; 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 through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

B. In recognition of the need of VENDOR to protect its legitimate business interests, the NCEL hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, the NCEL will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement or conduct the North Carolina Education Lottery. The NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite the NCEL's reasonable efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the entirety of Section 1.5 of the RFP, the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Public Records Law G.S. §132-1 et. seq. (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and the NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFP or Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes.

C. In recognition of the need of the NCEL to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) NCEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by the NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the NCEL. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any

NCEL Confidential Information, NCEL Trade Secrets or other information or property of the NCEL, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 10(C), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit NCEL to independently enforce the requirements set forth in such agreements.

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

E. Neither the VENDOR nor any of its approved Subcontractor shall have any proprietary rights or interests in any intellectual properties (including, without limitation, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith)) (all of the foregoing being collectively defined as the "**Intellectual Property Rights**") products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts, ideas or other content or items of any kind or nature developed, produced or provided in connection with the Services provided for the NCEL under this Agreement (collectively, the "**NCEL Intellectual Properties**"). All deliverables, written materials, campaigns, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, the RFP or for the NCEL (collectively, the "**Work Product**") will be deemed, to the greatest extent possible, "work made for hire" under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by the NCEL. To the extent that any Work Product does not qualify as a "work made for hire," VENDOR and each of the Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks and service marks (and the goodwill associated therewith) and rights (all of the foregoing being collectively defined as the "**Intellectual Property Rights**"), free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At the NCEL's request, VENDOR and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL's request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its lottery games and other activities.

F. The NCEL grants to VENDOR during the period from the Effective Date until the expiration of this Agreement, or is otherwise earlier terminated, a non-exclusive license to use, sublicense, modify and create derivative works of the NCEL Intellectual

Properties which are owned by the NCEL and created solely by VENDOR or its Subcontractors, provided such use by VENDOR or its Subcontractors is only for the benefit of the NCEL and solely for the purpose of performing the Agreement.

**11. NONDISCRIMINATION; AFFIRMATIVE ACTION**

A. Neither VENDOR nor any Subcontractors shall discriminate against any employee or applicant for employment because of their 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. VENDOR shall provide a monthly report to the NCEL, in a format prescribed or approved by the NCEL, detailing VENDOR's monthly purchases/spend with minority businesses.

**12. LIMITATION OF LIABILITY**

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

**13. COMPLIANCE WITH LAWS**

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

**14. ANTITRUST ACTIONS**

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

**15. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS**

VENDOR hereby represents, warrants or covenants, as the case may be, to NCEL, on its own behalf and with respect to each of its Subcontractors, that as of the Effective Date and at all times throughout the term of this Agreement, as follows:

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

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

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

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

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

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

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

H. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the Director or their 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 by the NCEL, 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 vendors and subcontractors that will help achieve the NCEL's objective of maintaining integrity in its operation, as well as, follow the rules and procedures established, and from time to time, amended, by the NCEL.

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

D. VENDOR agrees to fully disclose to the NCEL all matters materially affecting the NCEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform and legally required background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the NCEL or the State of North Carolina. In addition, VENDOR acknowledges that to the extent under Applicable Laws some or all of its employees, officers, directors and its Subcontractors and their respective employees, officers and directors may be required to submit to background and other investigations, VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees that it will routinely update all information disclosed to the NCEL pursuant to this Agreement or the RFP; including, without limitation, any breaches of all representations, warranties and additional covenants set forth in 14 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify the NCEL upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to the NCEL under this Agreement or the RFP and which materially affect the NCEL, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; provided, however, if any such proceeding would have a material adverse effect on

VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after VENDOR learns of such proceeding.

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

F. VENDOR shall at all times maintain at least the following types and amounts of insurance during the term of this Agreement:

- (i) General liability insurance in the amount of at least one million dollars (\$1,000,000);
- (ii) Such other types and amounts of insurance as the NCEL shall from time to time reasonably require;
- (iii) Workers Compensation Insurance at or above levels required by the State of North Carolina; and
- (iii) An advertising agency liability insurance policy which shall insure against any and all claims against the NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or Intellectual Property Rights infringement arising out of any Work Product, other product or service prepared by, or services performed by, VENDOR, its employees or its Subcontractors, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of at least five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) in the aggregate.

G. Such insurance policies shall name the NCEL as an additional insured, and shall provide that such policies cannot be terminated, canceled, or modified without giving VENDOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification. VENDOR shall be required to provide proof of insurance coverage in accordance with this Agreement and its Proposal prior to execution of this Agreement and at least annually during the term hereof. Renewed bonds and/or insurance policies must be submitted to the NCEL within five (5) days prior to the expiration of the then existing bonds and/or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are finally rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

**17. TAXES**

The NCEL will not be responsible for any taxes levied on VENDOR or any Subcontractor as a result of the execution, delivery or performance of the Services or this Agreement. VENDOR and Subcontractors shall pay and discharge any and all such taxes in a timely manner.

**18. TERMINATION**

A. Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement if VENDOR fails to correct or cure any breach of this Agreement within three (3) business days of the earlier of: (a) VENDOR's having knowledge of such breach; or (b) VENDOR's receiving oral or written notice of such breach from the NCEL; or

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

C. 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  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604  
Attn: M. Mark Michalko, Executive Director

With a copy to: North Carolina Education Lottery  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604  
Attn: William Traurig, Chief Legal Officer

If to VENDOR: [VENDOR INFORMATION]

B. Either party hereto may change the address and/or person to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section.

**22. MISCELLANEOUS**

A. This Agreement, together with the Proposal, the Answers and the RFP, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. Notwithstanding anything herein to the contrary, in the event of an inconsistency among this Agreement, the Proposal and/or the RFP, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the RFP, and the terms of the RFP shall control the Proposal. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

**B. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. ONLY AFTER EXHAUSTION OF ALL REMEDIES AND PROCEDURES IN THE DISPUTE RESOLUTION PROCEDURES OF THE NCEL, IF APPLICABLE LAW PERMITS ANY FURTHER APPEALS, ANY SUCH APPEAL MUST BE BROUGHT SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA. VENDOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT WHICH IT MAY NOW OR HEREAFTER HAVE TO APPEAL ANY FINAL DECISIONS OF THE COMMISSION MADE PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES, AND VENDOR IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY**

**APPEAL BEING SOLELY IN THE SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA.**

C. Neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent the NCEL from freely assigning this Agreement, without requiring VENDOR's prior written consent, to any entity which operates or will operate the Lottery. For purposes of this Section, any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR will be deemed an assignment for which the NCEL's consent is required.

D. This Agreement shall be binding on VENDOR, and its Subcontractors, successors and permitted assigns.

E. The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

G. If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

H. Upon the request of either party, the other party agrees to take, and VENDOR agrees to cause any Subcontractor to take, any and all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

**23. ADDITIONAL SERVICES**

In the event the NCEL desires to retain the services of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services, payment therefore shall not exceed the rates identified in this Agreement unless agreed to in writing by the NCEL. Any such services, the rates and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall VENDOR or any Subcontractor be paid for work not authorized, or for work in excess of that authorized, in writing by the NCEL.

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

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

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

"NCEL"

**NORTH CAROLINA EDUCATION LOTTERY**

By: \_\_\_\_\_

M. Mark Michalko

Its: Executive Director

"VENDOR"

By: \_\_\_\_\_

[NAME]

Its: [TITLE]

EXHIBIT A  
[PROPOSAL]

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EXHIBIT B  
[RFP]

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EXHIBIT C  
[QUESTIONS AND ANSWERS]