

NORTH CAROLINA EDUCATION LOTTERY
REQUEST FOR PROPOSAL #LC-000060
INTERACTIVE VOICE RESPONSE SYSTEM RALEIGH

MARCH 9, 2022



Table of Contents

Sections

<i>PART I – GENERAL INFORMATION</i>	<i>3</i>
<i>PART II – SCOPE OF WORK.....</i>	<i>5</i>
<i>PART III – PROPOSAL PROCESS.....</i>	<i>9</i>
<i>PART IV – PROPOSALS</i>	<i>10</i>
<i>PART V – STUFF THE LAWYERS MADE US INCLUDE</i>	<i>17</i>
<i>PART VI – ADDITIONAL FINALIST COMMITMENTS</i>	<i>19</i>
<i>ATTACHMENTS.....</i>	<i>24</i>
<i>EXHIBIT A.....</i>	<i>57</i>

1.1 Introduction

The North Carolina Education Lottery (“**NCEL**”), a state agency created pursuant to the North Carolina State Lottery Act (N.C.G.S. § 18C-101 et seq.), is issuing this Request for Proposal (“**RFP**”) to invite responses (“**Proposals**”) from qualified and reputable firms authorized to do business in North Carolina (“**Contractors**”) to provide Interactive Voice Response (“**IVR**”) Application and related services outlined in the scope of work as set forth in this RFP (collectively referred to as the “**System and Services**”). Specifically, the Successful Contractor shall provide telephone call processing services and telecommunications transport according to the specifications as set forth in Section 2.4 of this RFP. Any Contractor selected through this RFP process (a “**Successful Contractor**”) will work in cooperation with the NCEL’s MIS and Administrations Departments in the planning, designing and execution of the scope of services as contemplated under this RFP.

The NCEL desires to obtain the best creative solution, at the optimal price-value that will be responsive to the NCEL’s needs. The NCEL currently intends to execute only one Contract as a result of this procurement under this RFP (the “**Procurement**”) with a term of three (3) years from the date of execution and three (3) one-year renewal terms; provided, however, nothing obligates the NCEL to sign any Contract, or only one Contract, and the NCEL may do whatever it determines in its sole discretion to be in the best interests of the NCEL and the State of North Carolina. It is the NCEL’s desire to have a single Contractor that is able to provide (through itself or its subcontractors) the System and Services. All Contractors must fully acquaint themselves with the NCEL’s needs and requirements and obtain all necessary information and understandings to be able to submit responsive and effective Proposals.

All Proposals and any Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the “**Act**”) and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time (collectively, the “**Regulations, Policies and Procedures**”). Copies of these documents may be obtained upon request from the NCEL.

When we hear back from some great companies like yours, then we will look to select, through this RFP process, a “Successful Contractor,” an organization that will become a strategic partner with the NCEL and will work in cooperation with our MIS and Customer Services teams.

We’d like to learn more about your company; that is more about your team and more about your work. This is our chance to get to know about your relevant experience and what sets you apart. Any interested party is welcome to submit a completed Proposal describing its qualifications as described in the Submissions in Section 4.3.

We’ll want to see your Interactive Voice Response System in action.

The NCEL will evaluate, score, 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 in Section 4.1

1.2 PROPOSAL SUBJECT TO PUBLIC RECORD 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 foregoing information 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.

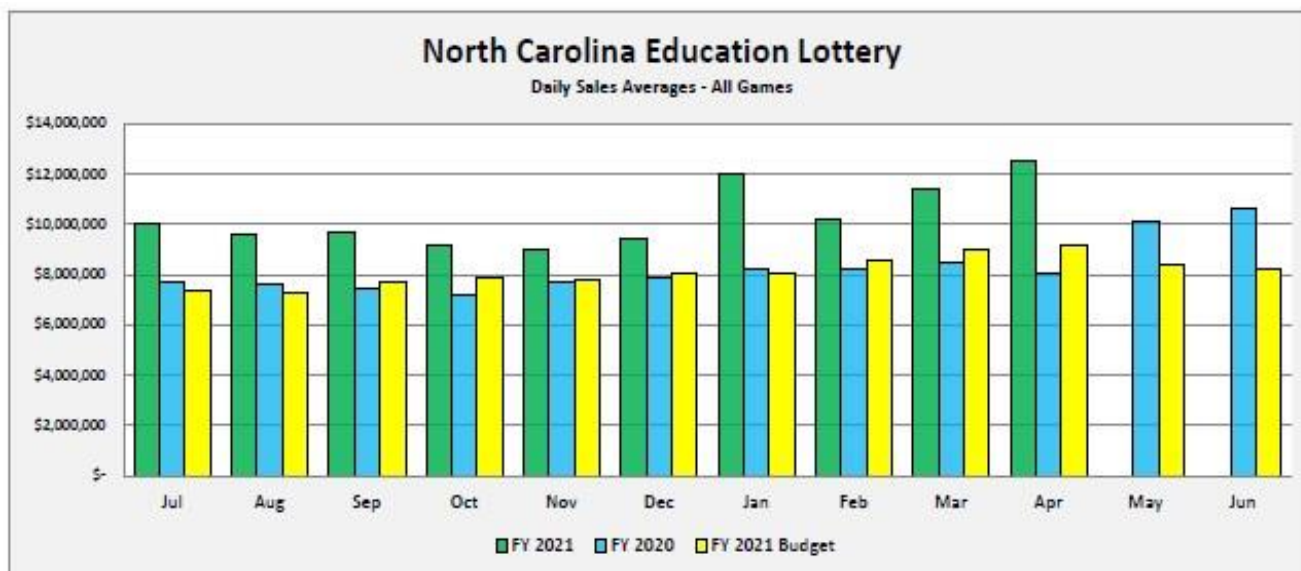
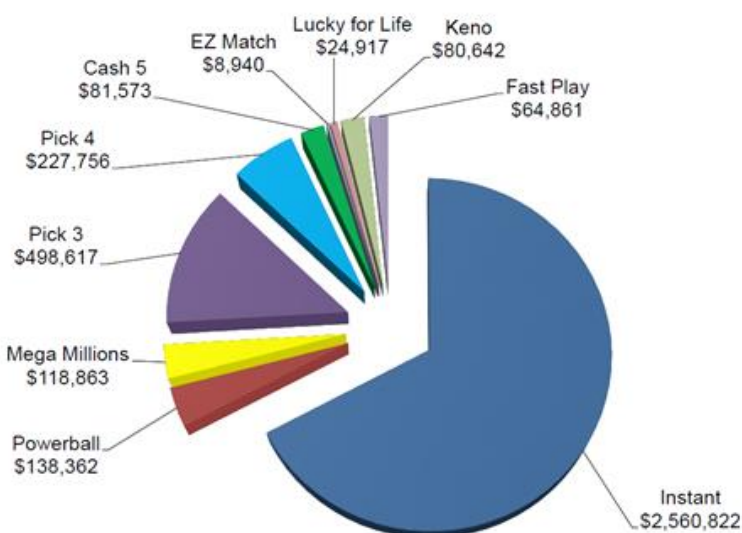
All Proposals shall remain valid for one hundred eighty (180) calendar days (the “Proposal Offer Period”) after 4:00 p.m. Eastern Time (“ET”) April 21, 2022 (the “Proposal Deadline”). A Proposal constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, the 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.

Our Online Games ***Igniting the Power to Dream***

Building brands is at the core of what we do every day and that will be supported as you provide the winning numbers to our players. 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 8 games that we have created and continue to grow.



FY 2021 Ticket Sales (\$ in thousands)



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 Interactive Voice Response Service Provider can help continue to raise the caliber of external communications.

2.2 GOALS AND OBJECTIVES

Performance, and management of the Interactive Voice Response System development is critical in helping to deliver the NCEL's winning numbers and promotions to our players and the citizens of North Carolina. When responding to this RFP, Contractors should be aware of the following NCEL goals and objectives:

- To provide the ability for our players to call your Interactive Voice Response System 24/7 to retrieve the NC winning lottery numbers.
- To ensure meaningful minority representation and a commitment to nondiscrimination (see Sections 6.8 of this RFP).
- To obtain the highest quality, Interactive Voice Response System and related services at competitive prices.

With the NCEL's extensive offerings and rapid pace of drawings, it is critical that the Successful Contractor for the Interactive Voice Response System Services demonstrates proficiency in keeping players engaged to support these initiatives by providing the NCEL winning numbers 365 days a year.

2.3 CUSTOMER SERVICE STANDARDS

The NCEL has very high customer services standards and it is critical that a Potential Contractor understand our commitment to providing accurate and timely information to our players in such a way as to engage the player and maintain accurate records to share with the NCEL weekly.

2.4 SCOPE OF SERVICES

Potential Contractor shall provide a written, detailed description of its methodology for providing the specified system and services. Rates for any upgrades must be included in the Cost Proposal (which must be submitted in a separately sealed envelope).

Subject to the instructions and decisions of the NCEL, the Potential Contractor shall describe in detail how it will provide the following specified requirements, including any features that may be added at a future date.

- The Successful Contractor(s) will perform all functions normally required of an IVR vendor. Please include the proposed hours of operation along with the Capacity/volume requirements. DTMF (touch tone) in English Language Only is a requirement.

Minimum Required Features:

- Options available for back office management systems, business intelligence and diversified accounting management reports
- Disaster recovery/business continuity plan (general overview)
- Players Interactive Voice Response (IVR) system providing winning numbers, player call tracking to provide player information by caller id along with previous call information.
- Ability to manage all systems remotely, i.e. a web-based or software-based program with enough licenses included to cover all current and future staffing

- plans. Secure web reporting to view call result with a secure FTP site and the ability to pull and create Web Reports.
- Ability to create customized reports that can be exported to track key trends.
 - Optimal duration of contract including extension that would provide best value for the NCEL, with recommended timeline for equipment refresh.
 - General overview of Contractor's implementation plan, including estimated timeline.
 - The IVR System will be updated automatically by pulling the information from the NCEL website using the following schedule: every ten (10) minutes for the first two (2) hours after a draw and every thirty (30) minutes thereafter until the next draw.
 - IVR will allow for remote changes to the welcome message. Welcome message can be changed by calling a back door administrative section of the IVR.
 - Past winning numbers to be stored for a six (6) month sliding window period.
 - 24x7 support
 - Allow calls from North Carolina area codes only
 - List of required tools. Ex:
 - Telephony infrastructure with computer telephony interface (CTI)
 - Interactive Voice Response (IVR) technology
 - Self-service knowledgebase tool
 - Reporting, analytics, and quality system
 - Customer satisfaction tools
 - Workforce management tool
 - Quality assurance tool
 - Security requirements
 - Secured system infrastructure and data architecture
 - Integration requirements
 - Data Recording/storage requirements
 - Start up training/support requirements
 - Vendor Support Requirements
 - Requirements for Go-Live date

Functionality:

- Duplicate call flow currently in place—RESPORG 877-962-7529
- Limit call length to five (5) minutes for incoming calls before transferring as outgoing call to a hotline; no limit on call length for outgoing calls.
- Limit the number of times that a call may loop through the menu before disconnecting the call.
- Ability to modify call flow in the future
- Ability to transfer the IVR calls to additional numbers without an additional charge

Potential Contractor Facility Information:

- Description of Potential Contractor's facility which shall include:
 - Redundant Telco Circuits
 - UPS and generator backup

- Redundant Internet connections
 - Environmental controls
 - Restricted access
 - 24/7 monitoring
 - Scalability of system, i.e. the ability to add additional IVR ports if required
- Redundant facility should provide the same features.
 - Approximately 1.5 million minutes per month (approximately 350,000 calls per week with an average call length 1-2 minutes). The NCEL anticipates that the volume could increase up to 1.9 million minutes per month or more.
 - Minimum 144 ports

Data Integration/Exchange:

- The best solution will be decided on by NCEL’s MIS personnel in consultation with the Successful Contractor’s engineers. The solution must integrate with the current Cisco phone system and call recording system.

Potential Contractor Information

- Number of years in business as a hosted IVR provider.
- Describe how the Potential Contractor will perform the required functions as specified above.
- Provide background and experience statement for the IVR System.
- Provide a list of current customers, especially those that are lotteries.
- If you are recommending to use a phone solution provided by you, we’ll need to understand how it will interact with the rest of the solutions in place.

Web Reports to include, but not limited to:

- Secure Web report
- Username and Password
- Summary Calls by day, week, month and date range (call detail stored for 60-days)
- Report data to include:
 - Caller ID
 - Call duration
 - Total Calls
 - Total Minutes
 - Call statistics report
 - Area Code Report
 - Current versus historical
 - Historical breakdown
 - Current breakdown
 - Call volume report
 - Caller ID CSV report
 - Calls by Game type
 - Player Complaints
 - Player Successes

PART III – PROPOSAL PROCESS

3.1 SUMMARY OF KEY DATES

RFP Issuance Date	March 9, 2022
Deadline for Submission of Questions 4:00 p.m. ET	March 24, 2022
Answers Posted	March 31, 2022
Deadline for Submission of Proposals 4:00 p.m. ET <u>DELIVERY ADDRESS:</u> North Carolina Education Lottery Interactive Voice Response System and Related Services Attn: Anthony Downey, Purchasing Manager RFP #LC-000060 2728 Capital Boulevard Suite 144 Raleigh, NC 27604	April 21, 2022
Target date for decision of Apparent Successful Contractor	June 15, 2022
Target date for Commission Approval	June 15, 2022
Contract negotiation and execution	
Go Live Date	December 15, 2022

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 Manager, who can be reached as follows:

Email: bid.submission@lotterync.net

Fax: 919-715-2711

North Carolina Education Lottery
Interactive Voice Response System and Related Services RFP #LC-000060
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 March 24, 2022 (**Question Deadline**). 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 –PROPOSALS

4.1 CONTRACTOR CAPABILITIES PROPOSAL

In the 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.

The response to the proposal will determine whether the Responding Contractor meets the minimum qualifications defined herein, and the business credentials.

To be eligible for 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, state of incorporation/organization, and the year the 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 two items:
 - a. Thorough description of the organization demonstrating the employee capacity to undertake and successfully carry out the proposed services.
 - b. At least 5 current clients of similar size and with similar needs as the NCEL that are willing to speak with the Evaluation Committee.

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.
2. In addition to any new technologies listed above, please describe established strengths of the proposed Interactive Voice Response System management.
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. Include a written demonstration of Responding Contractor's ability to handle highly active accounts.
5. Explain account planning capabilities, and how account planning interfaces with the various departments or areas of Responding Contractor's organization.
6. Describe how Responding Contractor would provide the NCEL information and insights from emerging caller trends.
7. Explain how Responding Contractor would monitor on an ongoing basis the effectiveness of the NCEL Interactive Voice Response System. Describe Responding Contractor's analysis methods.
8. Describe why Responding Contractor is uniquely suited to address the challenges and opportunities of the NCEL account.
9. As a condition of Contract award, each out-of-State Vendor that is a corporation, limited-liability company, or limited-liability partnership shall have received, and shall maintain throughout the term of the contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State (sosnc.gov), as required by North Carolina law.

F. Communication Services

Responding Contractor should also include an overview as to how the Interactive Voice Response System Provider would be evaluated for effectiveness and efficiency to ensure that dollars invested are being maximized and that the system is meeting its stated objectives. The proposal must include specific measurement tools and processes the Contractor intends to use to evaluate their system.

4.2. Cost Proposal

The NCEL desires to award the Interactive Voice Response System fulfilling the scope of services as provided in this RFP, at the best competitive price. However, the NCEL is not obligated to select the lowest price. It is required to choose the solution that will provide the overall best value and be in the best interests of the NCEL and the State of North Carolina.

4.3 PROPOSAL SUBMISSION AND FORMAT

Each Proposal must be submitted in two parts: (1) the Technical Proposal; and (2) the Cost Proposal, as described in this RFP. Parts (1) and (2) must completely address each question asked 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 bidder shall submit a signed original hard copy of the Cost Proposal, 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.

4.3.1 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.

DUE TO POTENTIAL TRANSPORTATION DELAYS, NCEL RECOMMENDS HAND DELIVERY OF PROPOSALS WHENEVER POSSIBLE.

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 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 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 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, Proposals 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 the section 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. 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.

Respondent's proposal will be evaluated by a Selection Committee, using a comprehensive set of criteria. The proposal will be evaluated on the basis of its technical, management and cost merits after a review of all aspects of each category in relationship to the requirements of this RFP. A partial list of the evaluation criteria follows:

- Is the Respondent's proposed solution capable of meeting the objectives and requirements set forth in this RFP?
- Has the Respondent clearly demonstrated the fee structure to ensure a cost-efficient model?
- Are the Respondent's experience and capabilities clearly stated in the proposal?
- Does the Respondent have the operational experience necessary to deliver the described services?
- Is the response clear and does it address the functional requirements provided?
- Has the Respondent demonstrated an ability to scale as necessary?
- Is the proposal complete and in the format requested?

Proposals are required to be valid for a minimum of one hundred twenty (120) days following the deadline for submission of the proposal. A proposal may not be modified, withdrawn or canceled by the Respondent for a 120-day period following the deadline for submission of the proposal. The Respondent so agrees to this condition by submission of the proposal.

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 Cost 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:

1. Review of Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions and requirements.
2. Detailed review of 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 Contractor Capabilities Proposals.
5. Evaluation of financial responsibility and stability based on financial statements provided.
6. Compilation of the Pricing score.
7. Ranking of Contractors based on final score to determine optimal price-value.
8. 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).
9. Review and Adoption of the Committee's Recommendation by the Commissioners.
10. Notice of Award to the Apparent Successful Contractor(s).
11. Negotiation of Contract (as needed).
12. 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) 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 this RFP will be evaluated based on the following criteria:

The Evaluation Committee will review Contractor Capabilities and Technical and Pricing Proposals, as outlined in the RFP.

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 contract service provider expertise demonstrated in the proposal. 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.

TECHNICAL AND COST PROPOSALS

1. Recommended Solution

Contractors shall provide their recommended Customer Service Platform(s) that include Interactive Voice Response System and Related Services which will meet the NCEL objectives. If the Contractor recognizes services that would be essential to the implementation, but are not specifically included in this RFI, a description of all such services should be included in this section.

2. Financial Viability

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

3. Cost Proposal

The Finance Department will open the Cost Proposals and will conduct an evaluation of such Proposals separately from the evaluation of the Technical Proposals. Every 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.

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 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 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 July 1, 2025, and three (3) one-year renewal option 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 design and development 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 §§18C114(a)(2) and 18C-130(e) establishing NCEL standards** 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 (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 foregoing 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 Proposals shall remain valid for one hundred eighty (180) calendar days (the “Proposal Offer Period”) after 4:00 p.m. Eastern Time (“ET”) on April 21, 2022 (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, by 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.

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 A (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.

5.7 CONTRACT ELEMENTS

The Potential Contractor shall propose appropriate liquidated damages for consideration by the NCEL for outages lasting more than thirty (30) consecutive minutes. The Potential Contractor shall disclose any early termination fees, if applicable.

PART VI – ADDITIONAL BIDDER 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 INFORMATION FORM

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 on the Vendor Contact Information Form which is included as **Attachment F**.

6.3 BACKGROUND INFORMATION AND BOND REQUIREMENT

The NCEL will investigate, at a minimum, the financial responsibility and security of any Responding Contractor that submits a Proposal for 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 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 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 an amount equal to fifty thousand dollars (\$50,000) and a payment bond (the "**Payment Bond**") or letter of credit an amount equal to fifty thousand dollars (\$50,000).

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)

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 (July 1, 2022, -June 30, 2023)	\$	\$
2nd Year (July 1, 2023 - June 30, 2024)	\$	\$
3rd Year (July 1, 2024 - June 30, 2025)	\$	\$

Signed by: _____

Title: _____

Date: _____

ATTACHMENT A

CONTRACTOR CERTIFICATION

PROFESSIONAL INTERACTIVE VOICE RESPONSE SYSTEM 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 3.2 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 3.2 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.

(Signature of Authorized Representative)

(Print Name)

(Title)

(Date)

ATTACHMENT B

BACKGROUND DISCLOSURE FORM

For any subcontractor that comprises at least twenty-five (25%) of the cost of the 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**, 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

From _____ to _____
Street _____
City, State, Zip _____

From _____ to _____
Street _____
City, State, Zip _____

From _____ to _____
Street _____
City, State, Zip _____

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

Affidavit A -- Identification of Minority Business Participation

State of _____

County of _____

Affidavit of _____
(Name of Responding Contractor)

I do hereby certify that on this Proposal, we will subcontract the following minority business enterprises as vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*Minority Category

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

The total value of minority business contracting will be (\$) _____.

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 Interactive Voice Response Voice System 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]

ATTACHMENT F



Vendor Name (Commonly Used Name)

Full Legal Entity Name (As Listed On Tax Returns)

State of Incorporation

Name of Person Signing Contract

Title

Contractor's Main Contact Person for NCEL

Title

Phone Number

Email Address

Legal Notice Information

Name of Person to Receive Legal Notices

Title

Street Address

Street Address Line 2

City

State

Zip Code

Phone Number

Email Address

* If you wish to have more than one person receive legal notices, please attach a second copy of this form.

EXHIBIT A

INTERACTIVE VOICE RESPONSE APPLICATION AND RELATED SERVICES AGREEMENT

This Interactive Voice Response Application and Related Services Agreement (the "**Agreement**") is made and entered into as of _____ (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 _____, 2022 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated [[RFP DATE]] (RFP #LC-0000**) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were last distributed by the NCEL on _____, 2022 (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 an Interactive Voice Response Application 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 an Interactive Voice Response Application ("**System**") and related services to the NCEL as contemplated by this Agreement, the RFP and the Proposal (collectively with the System, 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) Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 13) or this Agreement, the NCEL will pay to VENDOR all non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of the VENDOR's invoice, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by the NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors. All invoices must include sufficient

data on calls for the NCEL to verify the amounts charged. Electronic billing shall be available to the NCEL.

(e) In the event VENDOR is unable to provide the System and Services during the term of this Agreement such that the IVR hosting services for the NCEL are not functioning properly so as to materially and negatively impact the System and Services (“**Downtime**”), and such Downtime continues for a period longer than thirty (30) consecutive minutes (“**Grace Period**”), VENDOR will supply an incident report, and the NCEL shall have the right to assess VENDOR for liquidated damages based upon a one percent (1%) discount of the Services provided in the month in which the Downtime occurred for every two (2) hours the System is unavailable. Upon receipt of notice by VENDOR of NCEL’s assessment of liquidated damages, the VENDOR shall deduct the assessed liquidated damages (based upon the month in which the Downtime occurred) from the next invoice submitted by the VENDOR. The VENDOR shall not be liable for any liquidated or other damages which arise out of or relate to any event of force majeure that affects both of the VENDOR’s primary and secondary facilities. Routine and pre-scheduled maintenance that is pre-approved by the NCEL shall be excluded from Downtime. Such maintenance shall be performed at times that minimize the impact on the System and Services.

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

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

7. **WORK STANDARD**

A. VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable

policies and procedures of the NCEL and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards applicable to the VENDOR's industry.

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

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

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

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

F. VENDOR hereby designates [[INSERT NAME OF VENDOR REPRESENTATIVE]], 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 to 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.

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.

(i) In accordance with N.C.G.S. 18C-114(a)(8), CONTRACTOR shall, pay NCEL for all such background checks immediately upon receipt of an invoice from

the NCEL. The NCEL also reserves the right to deduct such background check fees from payments due to CONTRACTOR hereunder.

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 fifty thousand dollars (\$50,000), and (ii) a payment bond (the “**Payment Bond**”) or letter of credit with the NCEL in an amount equal to fifty thousand dollars (\$50,000), 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

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 days 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 REQUIRED INVESTIGATIONS AND INSURANCE

The NCEL and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the NCEL's receipt of the certificate of insurance required herein and 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 receipt of such certificate(s) of insurance.

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"
[[INSERT LEGAL ENTITY NAME
HERE]]

By:

[NAME]
Its: [TITLE]

EXHIBIT A
[PROPOSAL]

EXHIBIT B
[RFP]

EXHIBIT B
[QUESTIONS AND ANSWERS]