

**NORTH CAROLINA EDUCATION LOTTERY**  
**REQUEST FOR PROPOSALS #LC-000056**  
**PROFESSIONAL ADVERTISING, MEDIA AND**  
**RELATED SERVICES**

**January 31, 2019**



## PART I- GENERAL INFORMATION

### 1.1 INTRODUCTION

The North Carolina Education Lottery (“**NCEL**”), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 *et seq.*), is issuing this Request for Proposal (“**RFP**”) to invite responses (“**Proposals**”) from qualified and reputable Advertising and Media Agency Services firms licensed to do business in North Carolina (“**Contractors**”) to provide: (1) Creative, Advertising and Marketing Communication Services; and (2) Media Planning and Buying Services. The NCEL’s goal is to award a contract covering each of these two (2) types of services to a Successful Contractor or Contractors to provide Advertising and Media Agency Services to the NCEL. Any Contractor responding to this RFP may submit a Proposal to provide services in one or both of the areas in which services are sought. For this reason, costs must be provided separately for (1) Creative, Advertising and Marketing Communication Services; and (2) Media Planning and Buying Services.

Depending on the Proposals received, the NCEL will decide whether to award contracts to two (2) separate Contractors, or to award a contract to a single Contractor for services in both areas. Any Contractor selected through this RFP process (a “**Successful Contractor**”) will become a strategic partner with the NCEL and will work in cooperation with the NCEL Brand Management staff in planning, developing and executing impactful, innovative and effective NCEL advertising, marketing and media programs that will drive business and achieve the NCEL’s objectives including maximizing net revenues for education.

**Two Phases:** This RFP is being issued by the NCEL in two (2) distinct phases.

- In Phase I, any interested firm may submit a completed Contractor’s Capabilities Proposal describing its qualifications as described in the Phase I submissions section. The NCEL will evaluate and assign a score to each Contractor’s Capabilities Proposal according to the evaluation criteria specified in this RFP. The Contractors receiving the highest scores (not more than five (5) firms in each of the two (2) service areas for which Proposals are sought) will be selected as finalists and invited to submit detailed Phase II Proposals for further evaluation.
- In Phase II, finalists will submit detailed Technical and Cost Proposals and will be invited to make formal in-person presentations of their Proposals at their offices. For a finalist competing only for one of the two available contracts, the NCEL will schedule a presentation session of up to 90 minutes. For a finalist competing for both of the available contracts, the NCEL will schedule a presentation session of up to two (2) hours. The NCEL will evaluate and assign a score to each of the finalists’ Proposals and rank the Proposals in each of the two service areas 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 in each of the two service areas and proceed to signing two separate contracts (one for each of the service areas) or a single contract (if one Contractor receives the highest scores in both service areas). If a contract award fails for any reason, the NCEL may proceed to award a contract to the Contractor who submitted the next highest ranked Proposal in each of the two service areas until both contracts are successfully awarded and executed.

### 1.2 NCEL OVERVIEW

The mission of the North Carolina Education Lottery is to raise revenue to maximize contributions to education for the State of North Carolina through the sale of lottery tickets/products. This is accomplished by providing entertaining games through a dynamic

business enterprise built upon honesty, integrity, innovation and teamwork. Lottery ticket/product sales began in March 2006. Since then, the NCEL has contributed more than \$6.24 billion to education and has grown fiscal year sales to more than \$2.6 billion, making it one of the most successful sales and marketing organizations in the State. The NCEL is the only US lottery to achieve year-over-year growth in sales for every year since its inception. Critical to this success is the NCEL's relationship with its approximately 6,933 NCEL licensed retailers which include convenience stores, grocery stores, bars, restaurants, pharmacies and other community based commercial enterprises. A sales force of more than 100 personnel operating out of corporate headquarters and five (5) regional offices provide support service to the NCEL's growing retailer base.

Other highlights of FY18 include (for purposes of this RFP, NCEL Fiscal Year (FY) is based upon the time period of July 1 through June 30):

- \$2.61 billion in sales, an increase of 7.3% over FY17
- \$670.3 million in earnings for education, up 7.7% over FY17
- \$20.88 billion in total sales since inception
- Paying \$182 million in commissions to retailers in FY18.
- Supporting Historically Underutilized Businesses (HUB) and self-identified minority-owned businesses in North Carolina with \$8.3 million in contracts either from the NCEL or its Contractors in FY18.

**NCEL Brand** – In 2015, the NCEL opted to complete its first in-depth branding initiative. The goal was to provide a foundation for sustainable growth by creating a brand purpose and positioning that would elevate the NCEL's role in the mind of players, the public and employees. This was done by crafting a more emotionally relevant and unique brand narrative that not only aligned with the NCEL's mission to raise funds for education, but was also motivating for players, the NCEL's most important stakeholder. This process included stakeholder interviews, work sessions, qualitative testing, and quantitative testing. During this process, the NCEL learned that lottery players opt to play for the chance to dream about life changing possibilities for themselves and their community. Dreaming about a personal win made these players feel energized and optimistic. Dreaming of life changing possibilities also extended to the positive impact play can have on education and the community as a whole. Based on the insights gained, a messaging framework was developed that tapped into lottery players' inherent optimism and desire to dream about a possible win. The NCEL articulates its brand purpose as igniting the power to dream. Specifically, playing and supporting the NCEL creates a world of winning possibilities for the entire state. Through the fun of play and the billions raised for education, the NCEL provides the fuel for our community's most important dreams. This positioning has provided a way to talk about the NCEL that is relatable and relevant to all North Carolinians and helpful in building a deeper emotional connection among players. In all communications, the NCEL strives for a voice that is playful, optimistic, fresh and approachable. To modernize its image and better bring the new brand to life, the NCEL chose to refresh its corporate and game specific graphic elements as part of this branding initiative. See Exhibit C for a detailed messaging framework and Exhibit D for the NCEL brand guidelines.

The NCEL offers various games of chance that are divided into two distinct categories: instant ("scratch-off") ticket games and draw style games.

**Instant Scratch-Off Games** – The NCEL typically creates and distributes up to fifty or more instant ticket games per year ranging in price from \$1 to \$30. Instant ticket games offer players the opportunity to scratch off a latex cover and immediately see if they have won a prize. The NCEL's goal is to keep these games fresh and to offer a wide variety of tickets based on theme,

price point and play style. In FY13, the NCEL took steps to improve the overall portfolio of instant games and their prizes resulting in instant ticket sales exceeding the \$1 billion mark for the first time in its history and becoming only the 12th US lottery to achieve \$1 billion in instant ticket sales in a year. In FY14, the NCEL implemented a monthly launch strategy for instant tickets releasing games on the first Tuesday of each month and once again achieved instant sales of more than \$1 billion. In FY18 total gross sales of Instant Scratch-Offs reached \$1.78 billion, accounting for 68.43% of total sales.

**Draw Games** – The current draw game product mix consists of *Carolina Pick 3, Carolina Pick 4, Carolina Cash 5, Carolina Keno, Lucky For Life, Mega Millions, and Powerball*. Tickets are generated from a Lottery terminal (either from counter sales or self-service vending machines) for specific draws as requested by lottery players. Tickets can be purchased online using an NCEL Online Play account for Carolina Cash 5, Lucky For Life, Mega Millions and Powerball. Winning tickets typically must match the numbers drawn for that particular game for the corresponding drawing date and time. With the help of TV draw station partners throughout the state, the NCEL airs one to two live drawings for Carolina Pick 3, Carolina Pick 4, and Carolina Cash 5 games each day, seven days a week. Powerball and Mega Millions are televised on the days their respective drawing occur. Lucky For Life drawings are shown live on the NCEL Website. Carolina Keno drawings occur every five minutes and are updated on the NCEL website and NCEL terminals in licensed Keno retailers. Current station partners include: WRAL (Raleigh/Durham/Fayetteville), WITN (Greenville/New Bern), WLOS (Asheville), WGHP (Winston-Salem, Greensboro & High Point) and WAXN (Charlotte). Draw games play a major role in the NCEL's sales and return to education. The record Powerball roll starting on November 7, 2015 and ending on January 13, 2016 with a jackpot of \$1.5865 billion, resulted in North Carolina Powerball ticket sales of \$101,613,485 million and \$40.1 million returned to education during that span. In FY18, total gross sales of all draw games reached \$822.51 million, accounting for 31.57% of total sales.

#### **Draw Games – Carolina Pick 3**

Carolina Pick 3 is a three-digit numbers game offered two times per day, seven days a week. Daytime drawing winning numbers are webcast on the NCEL's website and can be viewed shortly after the daily 3:00pm drawing. Evening drawings are televised on the NCEL drawing station network at approximately 11:22pm. Pick 3 winning numbers are selected via a ball drawing machine. Carolina Pick 3 can be played for fifty cents or \$1.00 and players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. Carolina Pick 3 can be played in a variety of ways and players win a fixed prize amount. To play Carolina Pick 3, players select any three-digit number between 000 and 999. Players can then select a play type. To win with an EXACT play type, a player's ticket must match the winning three-digit number in exact order. To win with an ANY ORDER play type, a player's ticket must match the winning three-digit number in any order. PAIR play types, known as FRONT PAIR or BACK PAIR, can be played by selecting the first two digits (front pair) or the last two digits (back pair) of a three-digit number. To win, a player's ticket must match the selected two digits (pair) of the winning three-digit number. In addition, a play type known as 1-OFF may be selected. A player wins with 1-OFF if one or more of the numbers selected are one digit off (one above or one below) the numbers drawn. A feature known as SUM IT UP can be added to any Carolina Pick 3 play. If a player adds SUM IT UP to a Pick 3 play, they will win a prize if the sum of the numbers they select matches the sum of the numbers drawn. Other features of the Pick 3 game include advance play options that allow future play up to two times per day for seven days. In FY18, total gross sales of Carolina Pick 3 reached \$317.14 million, accounting for 12.17% of total sales.

#### Draw Games – Carolina Pick 4

Carolina Pick 4 is a four-digit numbers game offered two times per day, seven days a week. Daytime drawing winning numbers are webcast on the NCEL's website and can be viewed shortly after the daily 3:00pm drawing. Evening drawings are televised on the NCEL drawing station network at approximately 11:22pm. Pick 4 winning numbers are selected via a ball drawing machine. Carolina Pick 4 can be played for fifty cents or \$1.00 and players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. Like Carolina Pick 3, Carolina Pick 4 can be played in a variety of ways and players win a fixed prize amount. To play Carolina Pick 4, players select any four-digit number between 0000 and 9999. Players can then select a play type. To win with an EXACT play type, a player's ticket must match the winning four-digit number in exact order. To win with an ANY ORDER play type, a player's ticket must match the winning four-digit number in any order. PAIR play types, known as FRONT PAIR or BACK PAIR, can be played by selecting the first two digits (front pair) or the last two digits (back pair) of a four-digit number. To win, a player's ticket must match the selected two digits (pair) of the winning four-digit number. In addition, a play type known as 1-OFF may be selected. A player wins with 1-OFF if one or more of the numbers selected are one digit off (one above or one below) the numbers drawn. A feature known as SUM IT UP can be added to any Carolina Pick 4 play. If a player adds SUM IT UP to a Pick 4 play, they will win a prize if the sum of the numbers they select matches the sum of the numbers drawn. Other features of the Pick 4 game include advance play options that allow future play up to two times per day for seven days. In FY18, total gross sales of Carolina Pick 4 reached \$145.06 million, accounting for 5.57% of total sales.

#### Draw Games – Carolina Cash 5

Carolina Cash 5 is a daily jackpot game with a rolling jackpot prize that begins at \$100,000 and continues to roll each day until a player wins by matching all five numbers drawn. Drawings are held seven days a week. Cash 5 drawings occur only once daily and are televised on the NCEL drawing station network at approximately 11:22pm. Carolina Cash 5 winning numbers are selected via a ball drawing machine. Each Carolina Cash 5 play costs \$1.00 and players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. To play Carolina Cash 5, players select any five numbers between 1 and 43. To win a prize, a player's ticket must match 2, 3, 4, or all 5 of the numbers drawn. Matching all 5 numbers wins the jackpot prize and matching fewer than 5 numbers wins a lesser prize. Carolina Cash 5 offers fixed prizes as well as pari-mutuel prizes. Pari-mutuel prizes are prizes which are shared equally among winners if there is more than one winner for a prize level. At a retail location, up to 28 consecutive drawings can be played using Multidraw. For an additional dollar, a feature known as EZ Match can be added to any Carolina Cash 5 play bought in a retail location for the chance to win prizes instantly. Carolina Cash 5 is available for play with a NCEL Online Play account. Up to 52 weeks, or 364 consecutive draws, can be purchased online. In FY18, total gross sales of Carolina Cash 5 reached \$56.52 million, accounting for 2.17% of total sales. Total gross sales of EZ Match reached \$8.83 million, accounting for 0.34% of total sales.

#### Draw Games – Carolina Keno

In FY18, the NCEL launched Carolina Keno. Carolina Keno is a fast-paced lottery draw-style game that is easy to play, with a chance to win cash prizes of up to \$100,000 (or \$1,000,000 with \$10 wager) every 5 minutes. Carolina Keno expanded the NCEL's retailer footprint to include bars, restaurants and other food service establishments, as the game's play style is suited to social environments. Carolina Keno drawings occur every 5 minutes between 05:05 a.m. (ET) until 01:45 a.m. (ET) seven days a week. For each Keno drawing, 20 numbers between 1 and 80 will be selected as winning numbers and displayed on a monitor and the NCEL website. Players decide how many of these numbers (called Spots) they will try to match

and exactly which numbers they will try to match. In step 1 players choose how much to play per draw, selecting \$1, \$2, \$3, \$5 or \$10. In step 2 players choose between 1 and 10 Spots to play. In step 3 players choose how many consecutive draws to play, choosing 1, 2, 3, 4, 5, 10 or 20. In step 4 players choose the numbers between 1 and 80 they wish to play corresponding to the number of Spots they selected in step 2. They can alternately choose Quick Pick to allow the lottery terminal computer to choose their numbers in step 4. Keno is still in early development with an expanding retailer base. The NCEL is actively recruiting new establishments to offer this exciting lottery game. In FY18, total gross sales of Carolina Keno reached \$28.52 million, accounting for 1.09% of total sales.

#### Draw Games – Lucky For Life

Lucky For Life is a twice-weekly, multi-jurisdictional lottery game with drawings on Mondays and Thursdays at approximately 11:45pm ET. Lucky For Life winning numbers are selected via a ball drawing which is conducted by another State Lottery. To play Lucky For Life, players select five numbers from 1 to 48 and one Lucky Ball number from 1 to 18. Each Lucky For Life ticket costs \$2. Players win the top prize by matching all 5 numbers and the Lucky Ball number. Players win the second-level prize by matching all 5 numbers. Lucky For Life is unique in that the top two prizes levels in the game are “For Life” prizes. The top prize is \$1,000/day for life. The second-level prize is \$25,000/year for life. There are eight additional prize levels of pari-mutuel and fixed prize amounts won by matching fewer numbers to the numbers drawn. Players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. Players may opt to play for up to 26 future draws at lottery retailers. Lucky for Life is available for play with a NCEL Online Play account. Up to 52 weeks, or 104 consecutive draws, can be purchased online. In FY18, total gross sales of Lucky For Life reached \$19.18 million, accounting for 0.74% of total sales.

#### Draw Games – Mega Millions

Mega Millions is a twice-weekly, multi-jurisdictional lottery game with drawings on Tuesdays and Fridays at approximately 11:00pm ET. Mega Millions winning numbers are selected via a ball drawing which is conducted by another State Lottery. Jackpots for this game start at \$40 million and continue to grow until won. The jackpot prize is won by matching five numbers (1-70) and an additional number (1-25) for a total of six numbers played. In addition to the jackpot prize, players have eight more ways to win by matching fewer numbers to the numbers drawn. There are two play options for Mega Millions: (1) a \$2 Mega Millions ticket; or (2) a \$3 Mega Millions ticket with Megaplier. For all drawings, the Megaplier feature allows players to multiply winnings on most prizes levels from two to five times with the exception of the jackpot prize. The randomly selected multiplier number (Megaplier) will be shown during the televised drawing. Players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. Mega Millions offers fixed prizes as well as pari-mutuel prizes. Players may opt to play for up to 26 future draws at lottery retailers. Mega Millions is available for play with a NCEL Online Play account. Up to 52 weeks, or 104 consecutive draws, can be purchased online. Mega Millions, along with Powerball, grow their jackpots until won. This creates the opportunity for jackpots to exceed \$1 billion. Mega Millions has had the second highest jackpot ever of \$1.537 billion, which was won in Oct. 2018. In FY18, total gross sales of Mega Millions reached \$78.57 million, accounting for 3.02% of total sales.

#### Draw Games – Powerball

Powerball is a twice-weekly, multi-jurisdictional lottery game with drawings on Wednesdays and Saturdays at approximately 10:59pm ET. Powerball winning numbers are selected via a ball drawing which is conducted by another State Lottery. Jackpots for this game start at \$40 million and continue to grow until won. The jackpot prize is won by matching five numbers (1-69) and an additional number (1-26) for a total of six numbers played. In addition to the jackpot prize, players

have eight more ways to win by matching fewer numbers to the numbers drawn. There are two play options for Powerball: (1) a \$2 Powerball ticket; or (2) a \$3 Powerball ticket with Power Play. For all drawings played, the Power Play multiplier feature allows players to multiply winnings on most prizes levels from two to ten times with the exception of the jackpot prize. The 10x multiplier is available when the jackpot is between \$40 million and \$150 million. The second-tier, Match 5+0 prize has a 2x multiplier automatically – increasing the prize amount to \$2 million with Power Play. The randomly selected multiplier number (Power Play multiplier) will be shown during the televised drawing. Players may select their own numbers or request a Quick Pick and allow the lottery terminal to select the numbers for them. Powerball offers fixed prizes as well as pari-mutuel prizes. Players may opt to play for up to 26 future draws at lottery retailers. Powerball is available for play with a NCEL Online Play account. Up to 52 weeks, or 104 consecutive draws, can be purchased online. Powerball, along with Mega Millions, grow their jackpots until won. This creates the opportunity for jackpots to exceed \$1 billion. Powerball has had the highest jackpot ever of \$1.586 billion, which was won in January 2016. In FY18, total gross sales of Powerball reached \$168.68 million, accounting for 6.47% of total sales.

**Event Marketing** – Part of the mission of the Marketing Department, within the Brand Management Division, is to build the brand of the NCEL through strategic relationships with many community, sport and collegiate events across the State. The local events provide opportunities to educate the public about our games and provide beneficiary information about the NCEL’s support for education. To that end, the NCEL is a sponsor of the following:

**Sport Sponsorships:**

Charlotte Motor Speedway, zMax Dragway, Carolina Panthers, Carolina Hurricanes, Charlotte Hornets, Charlotte Checkers, CIAA Tournament, So Con Tournament, Asheville Tourists, Carolina Mudcats, Charlotte Knights, Durham Bulls, Greensboro Grasshoppers, Hickory Crawdads, Kannapolis Intimidators, Winston-Salem Dash Baseball, Down East Wood Ducks, Tryon International Equestrian Center, and FC Carolina Courage.

**Collegiate Sponsorships**

University of North Carolina, Duke University, NC State, Wake Forest University, East Carolina University, Appalachian State, UNC Wilmington, UNC - Asheville, NC A&T, UNC Charlotte, North Carolina Central University, Western Carolina, and UNC Pembroke.

**Fairs and Festivals**

African American Cultural Festival, Historic Morganton Festival, NC Folk Festival, Mountain State Fair, Wide Open Bluegrass, International Folk Festival, Dixie Classic Fair, NC Seafood Festival, Wilmington Riverfest, Mumfest, NC Barbecue Festival, Azalea Festival, Fayetteville Dogwood Festival, Speed Street, and Taste of Charlotte.

**Online Play & Lucke-Rewards Web Marketing** – In 2011, the NCEL launched an online Player’s Club to share news, information and special features with players. These features include:

- Surveys and polls where players can give feedback on lottery games.
- E-mail alerts that allow players to customize the winning number results to the games they play.
- Interactive game demonstrations allowing players to learn how games are played.
- News and information including a community blog, videos and photographs, and listing of NCEL events.

In 2012, the NCEL enhanced the Player’s Club with the launch of Lucke-Rewards. The Lucke-Rewards program is a point based player rewards program that provides additional value at no

extra cost to players. Players earn points on eligible tickets and can use points to enter drawings for chances to win cash and other prizes. Currently the Player's Club has more than 1,001,000+ confirmed members. In FY18, players had a 78% point redemption rate and have won approximately \$450,000 in Lucke-Reward prizes and \$2.4 million in second-chance drawing prizes.

In 2013, the NCEL added another avenue for lottery game purchases via its internet based Online Play program. The program has defined purchase and play limits as established by the NCEL. Carolina Cash 5, Lucky For Life, Powerball and Mega Millions are available for purchase online. Players can purchase single-draw plays or purchase a subscription for multiple draws (up to a year) of plays.

In 2017, the NCEL relaunched its website to integrate the Lucke-Rewards program and the Player's Club with its primary website under the new nclottery.com. FY18 monthly web traffic to nclottery.com averaged 13 million monthly unique page views. FY18 Online Play gross sales accounted for \$6.11 million or 1.89% of total draw sales for Powerball, Mega Millions, Carolina Cash 5 and Lucky For Life during FY18. The NCEL also released a new iOS and Android app in November 2017, which currently has 205,000+ downloads.

**Beneficiary Programs** – In FY18, the NCEL earned \$670 million for education programs, the most money ever in a single year. Legislators determine how lottery proceeds are used. The state budget allocated lottery proceeds to the following programs:

- School construction and repairs, \$100 million
- Need-based school construction, \$30 million
- Non-instructional support staff, \$384 million
- Local Education Agencies transportation, \$43 million
- College scholarships and grants based on financial need, \$60.4 million
- N.C. Pre-K program to provide at-risk four-year-olds a year in an academic pre-school, \$78.3 million

The remaining lottery proceeds earned in FY18 will be allocated by legislators in the new state budget for FY19.

**Responsible Gaming** – The NCEL is committed to meeting the lottery industry's best practices in the area of responsible gaming. For guidance, the NCEL follows standards outlined by the North American and State Provincial Lotteries (NASPL's) and World Lottery Association (WLA's) Responsible Gaming Framework. Highlights of the NCEL efforts include:

- Providing \$1 million annually to the N.C. Department of Health and Human Services for gambling addiction, education and treatment programs.
- Creating and broadcasting of TV and radio ads each March during national Problem Gambling Awareness Month.
- Participating in holiday season campaign designed to raise public awareness that lottery tickets should not be given as gifts to children.
- Establishing a stakeholders panel to review its operations and provide feedback on how to improve.
- Using a new tool to evaluate new games for risks before they are offered to players.
- Making responsible gaming training mandatory for all lottery employees and retailers who sell lottery tickets.

In December 2017, the NCEL attained the World Lottery Association Level IV Responsible Gaming Certification, the highest possible level. It was only the 4<sup>th</sup> U.S. lottery, at the time,

recognized at this level for its responsible gaming efforts and the NCEL is the youngest lottery to achieve this certification.

**Goals and Objectives** – The Successful Contractor(s) awarded a contract will play a vital role in the future growth of the NCEL and our efforts to generate game sales to raise money for education. As such, the selection, performance and management of the advertising and media agencies are critical in helping to deliver the NCEL’s business and brand goals. When responding to this RFP, Contractors should be aware of the following NCEL goals and objectives:

- To provide innovative and effective solutions for the NCEL’s statewide, multi-channel advertising programs utilizing the most inventive and effective media for the individual campaign goals and objectives.
- To annually increase and maximize contributions to the education programs funded by Lottery proceeds.
- To expand top-of-mind awareness and market high-quality products which provide entertainment and customer satisfaction.
- To conduct advertising and related programs in such a manner as to promote the positive image and integrity of the NCEL and the programs funded with Lottery proceeds.
- To effectively and efficiently market the NCEL brand and products in accordance with the Lottery Act and within any rules, regulations, procedures and policies officially adopted by the NCEL.
- To obtain the highest quality, creative advertising and related services at competitive prices.
- To provide for innovation and the ability to respond to changes in the industry and the demands of the marketplace.
- To ensure meaningful minority representation and a commitment to nondiscrimination (see Section 4.6.2 of this RFP).
- To ensure that the Successful Contractor is capable of providing the services specified in this RFP and will be capable of continuing to provide these services during the term of the Contract.

The NCEL is a consistently active, retail account with multiple marketing, communications, research, creative, and media projects requiring on-going, concurrent services. On average, the NCEL launches 48 to 52 scratch-off games each year, supporting approximately ten of these with unique broadcast campaigns. In addition, the NCEL is on-air at least twice a year with unique draw game messaging. Campaigns are also required for branding, beneficiary and responsible gaming messaging. It is normal for the NCEL to have multiple campaigns/messaging running simultaneously throughout the state. It is therefore critical that the Successful Contractor(s) for Creative, Advertising and Marketing Communication Services and/or Media Planning and Buying Services demonstrates proficiency in purchasing and utilizing television, radio and digital to create entertaining messages for game and winner awareness, while at the same time creating brand and beneficiary advertising that brings the NCEL’s core mission to life. In addition to the media and advertising needs with respect to the NCEL’s traditional lottery games, beneficiary programs and winner awareness initiatives, substantial retail point-of-sale and educational materials must be developed and produced for timely distribution to more than 6,800 retailers to aid game launches and other key initiatives.

Pursuant to the North Carolina General Statutes §18C-162(a)(3), the NCEL’s advertising specific budget is currently set at one percent (1%) of its total annual revenues. The Successful Contractor(s) will perform all functions normally required of full-service advertising and/or media agencies. Section 2.8.2 outlines the scope of services requested. Services identified as

optional, outside of the scope of work include, but are not limited to, research, public relations, marketing promotions management, and retail design. Additional budget dollars will be made available for these services from the research, communications, and marketing budgets. Proposals must include fees associated with such out-of-scope services. Below is a listing of the NCEL's advertising and marketing budgets since inception:

<b>Fiscal Year</b>	<b>Advertising Budget</b>	<b>Marketing Budget</b>
2008	\$ 8,759,979.00	\$ 3,661,032.00
2009	\$ 12,000,000.00	\$ 3,093,739.00
2010	\$ 13,000,000.00	\$ 4,096,163.00
2011	\$ 13,800,000.00	\$ 3,985,988.00
2012	\$ 14,895,000.00	\$ 4,382,501.00
2013	\$ 15,500,000.00	\$ 4,784,597.00
2014	\$ 15,500,000.00	\$ 4,114,617.00
2015	\$ 19,500,000.00	\$ 4,881,195.00
2016	\$ 20,000,000.00	\$ 5,324,045.00
2017	\$ 22,000,000.00	\$ 5,361,928.71
2018	\$ 25,000,000.00	\$ 7,543,002.00
2019	\$ 26,000,000.00	\$ 6,712,786.37

Although there can be no assurance as to what advertising and marketing budgets the NCEL may adopt from year to year, it is important that the Successful Contractor(s) be able to manage significant budget growth with limited lead-time.

As an independent state government agency, the NCEL has detailed procedures for budget management and expenditure requirements to achieve timely submission of bills and invoices for payment. The Successful Contractor(s) will perform all functions normally required of full-service advertising and media agencies. Contractors that do not offer all of these services are invited to work with subcontractors that offer such services.

The NCEL has a current contract with MullenLowe Group Winston-Salem with an initial term until June 30, 2018. The contract was renewed for a one year period and is scheduled to end June 30, 2019. The NCEL intends to obtain what it believes to be the best creative advertising and media solutions, at the optimal price-value that will be responsive to the NCEL's needs. The NCEL intends to execute either one or two Contracts as a result of this procurement under this RFP (the "**Procurement**") with an initial term from date of execution of the Contract to June 30, 2022, and three (3) one-year renewal terms; provided, however, nothing obligates the NCEL to sign any Contracts, or only one Contract, or to allow the Auto-Renewal, and **the NCEL may do whatever it determines in its sole discretion to be in the best interests of the NCEL and the State of North Carolina**. It is the NCEL's desire to have a Contractor or Contractors who are able to provide (through itself or its subcontractors) full advertising and or media services subject to Sections 2.83 and 2.84 herein. All Subcontractors must fully acquaint themselves with the NCEL's needs and requirements and obtain all necessary information and understandings to be able to submit responsive and effective Proposals.

All Proposals and any Contract are automatically subject to the requirements of, and must comply with, the North Carolina State Lottery Act (the "**Act**"), **in particular NCGS §§18C-114(a)(2) and 18C-130(c) establishing NCEL standards for advertising**, and the regulations, policies and procedures of the NCEL as they may be adopted or amended from time to time

(collectively, the “**Regulations, Policies and Procedures**”). Copies of these documents may be obtained either from the NCEL or through a link on the NCEL’s website, [www.nclottery.com](http://www.nclottery.com) (the “**Website**”).

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

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

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

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

### **1.5 PROPOSAL VALIDITY; INCURRED EXPENSES**

All **Phase II** Proposals shall remain valid for one hundred eighty (180) calendar days (the “**Proposal Offer Period**”) after 4:00 p.m. Eastern Time (“**ET**”) April 17, 2019 (the “**Proposal Deadline**”). A Proposal constitutes an offer by the Contractor to contract with the NCEL in accordance with the terms of the Proposal and this RFP, which offer is irrevocable for the duration of the Proposal Offer Period and may not be withdrawn or amended during the Proposal Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Contractor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

### **1.6 RIGHT TO USE INFORMATION IN THE PROPOSAL**

Upon submission, all materials submitted to the NCEL by Contractors shall become the NCEL’s property and may be used as the NCEL deems appropriate for the purpose of selecting the Successful Contractor. Any original creative presented by the Responding Contractors, as requested in Phase II, may be marked appropriately as proprietary by Responding Contractors, and the NCEL will ensure that appropriate compensation is paid to the respective Contractor, even if such Contractor is not selected as the Successful Contractor, if the NCEL intends to utilize any portion of the original creative.

## **PART II - PROPOSAL PROCESS**

### **2.1 SUMMARY OF KEY DATES**

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

### **PHASE I (all Potential Contractors)**

RFP Issuance Date	January 31, 2019
Deadline for Submission of Phase I Questions 4:00 p.m. ET	February 14, 2019
Phase I Answers Posted	February 18, 2019
Deadline for Submission of Phase I Contractor Capability Proposals 4:00 p.m. ET <u>DELIVERY ADDRESS:</u> North Carolina Education Lottery Professional Advertising, Media and Related Services Attn: Anthony Downey, Purchasing Administrator RFP #LC-000056 2728 Capital Boulevard Suite 144 Raleigh, NC 27604	March 1, 2019
<b>PHASE II (invited Potential Contractors only)</b>	
Phase II Potential Contractors Selected and Notified	March 5, 2019
Phase II Phone Questions Session 4:00 p.m. ET	March 8, 2019
Deadline for Submission of Phase II Questions 4:00 p.m. ET	March 15, 2019
Phase II Answers Posted	March 19, 2019
Deadline for Submission of Phase II Proposals 4:00 p.m. ET	April 17, 2019
Phase II Presentations	April 22-26, 2019
Target date for Decision of Successful Contractor followed by Contract Execution, subject to Commission approval	May 7, 2019

## 2.2 CONTACT PERSON

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

Email: [bid.submission@lotterync.net](mailto:bid.submission@lotterync.net)

North Carolina Education Lottery  
Professional Advertising, Media and Related Services RFP #LC-000056  
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.

## 2.3 INQUIRIES

All inquiries regarding this RFP must be submitted in the form of questions or requests for clarification (collectively, the “**Questions**”). Such Questions must be in writing and received by the Contact Person identified in Section 2.2 of this RFP on or before 4:00 p.m. ET on February 14, 2019 (the “**Phase I Question Deadline**”) for Phase I questions and on or before 4:00 p.m. ET on March 15, 2019 (the “**Phase II Question Deadline**”) for Phase II questions. The NCEL’s responses (the “**Answers**”) to Questions properly received prior to the Question Deadlines will be posted on the NCEL’s Website <https://www.nclottery.com/Business>.

## 2.4 PROPOSAL SUBMISSION AND FORMAT

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

To be eligible to participate in the competition for contract awards, a Potential Contractor must first submit a completed Contractor’s Capabilities Proposal, as described in section 2.8.5 of this RFP. **One (1) signed original and three (3) paper copies of each completed Contractor’s Capabilities Proposal and one (1) USB flash drive containing a PDF version (or other suitable format) of the Contractor’s Capabilities Proposal must be submitted.** *In addition, Responding Contractor shall include one redacted hardcopy of its Contractor’s Capabilities Proposal with redacted information that Contractor deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law.* The NCEL will evaluate and score the Responding Contractor’s Capabilities Proposal. The Responding Contractors will then be ranked according to the assigned scores, and no more than five (5) finalists achieving the highest scores in each category of desired services will be invited to submit detailed Finalist Proposals for evaluation in Phase II.

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

Each finalist Proposal must be submitted in two parts: (1) the Technical Proposal; and (2) the Cost Proposal, as described in section 2.8.6 of this RFP. Parts (1) and (2) must completely address each question detailed in section 2.8.6 and be submitted at or before the time and date specified in Section 2.1 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. **Submit a signed original hard copy, three (3) paper copies, and one (1) USB flash drive containing a PDF version (or other suitable format) of the Technical Proposal and a signed original hard copy of the Cost Proposal. The Cost Proposal must be sealed separately from the Technical Proposal.** *In addition, Responding Contractor shall include one redacted hardcopy of its Technical Proposal with redacted information that Contractor deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law.*

### 2.4.3 FINALIST PROPOSAL FORMAT

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

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

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

single authorized official from one of the entities to serve as the sole contact between the NCEL and the Responding Contractor.

## **2.5 MULTIPLE CONTRACTORS AND JOINT PROPOSALS**

In response to this RFP, a combination of two or more qualified advertising and media agencies may submit a joint Proposal or Proposals seeking either or both of the available contracts. If a firm intends to participate in a joint Proposal, each participating firm must be identified in Phase I together with all the other intended participants in the joint Proposal, and each of the intended participants must submit a completed Contractor's Capabilities Proposal for Phase I evaluation. Even if Contractors opt for a joint Proposal, any Contractor responding to this RFP must also provide separately the costs associated with (1) Creative, Advertising and Marketing Communication Services; and (2) Media Planning and Buying Services. 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. Furthermore, each subcontractor of a Successful Contractor must comply with all of the requirements contained in this RFP. 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 IV, Proposal Requirements, for each such subcontractor.

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

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

## **2.7 PROPOSAL CONSTITUTES OFFER**

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

## **2.8 PROPOSAL EVALUATION**

A variety of factors (including, but not limited to, experience, integrity, proposed services, cost/price and value to the NCEL, background, financial viability, ability to perform the Contract) shall be considered by the NCEL in determining the Successful Contractor it believes provides

the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL. These factors are not necessarily listed in the order of importance or weight. Furthermore, the NCEL shall also consider the Potential Contractor's responses to Section 4.6 pertaining to Minority Business Participation, as part of the evaluation. Thus, while Potential Contractors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Potential Contractor offering the lowest price and total cost may not be selected as the Successful Contractor. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Proposals deemed responsive using an evaluation committee (the "**Evaluation Committee**") selected by the Executive Director. During Phase II, the Evaluation Committee may request clarifications or answers to any questions it may have of a Potential Contractor as a result of any information or representations contained in its Proposal or otherwise identified, and may ask a Potential Contractor to address technical questions or seek additional information regarding any Proposal before completing the initial evaluation.

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

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

### **2.8.1 NCEL ADVERTISING STANDARDS**

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

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

- All advertising shall include resources for responsible gaming information.
- No advertising may intentionally target specific groups or economic classes.
- No advertising may be misleading, deceptive or present any NCEL game as a means of relieving any person's financial or personal difficulties.
- No advertising may have the primary purpose of inducing persons to participate in the Lottery.

- To the extent reasonably possible, every effort should be made to comply with the advertising guidelines as established by NASPL Advertising Guidelines (see attached Exhibit A).

These standards shall continue to apply to all NCEL advertising created and executed by the Successful Contractor.

### **2.8.2 SCOPE OF SERVICES**

Prior to the start of each Fiscal Year (July), the NCEL will provide the Successful Contractor with a marketing plan, including product introduction schedules and business priorities, as well as an estimated annual budget (pending approval by the NC State Lottery Commission). The plan shall clearly define marketing and advertising strategies. The NCEL staff and the Successful Contractor staff will meet as required, and at least on a monthly basis, to review the marketing objectives and strategies, with modifications being made as market and/or business needs arise.

### **2.8.3 CREATIVE, ADVERTISING AND MARKETING COMMUNICATION SERVICES**

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

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

- A. **Business Development and Collaboration** – Become a partner in the development and evolution of the NCEL business, brand and product portfolio to further the NCEL's mission of maximizing net revenues for education. The NCEL expects that the entire Agency team will be committed to the same goals as the NCEL and will create and execute programs that will deliver on those objectives. Although some turn-over of agency staff is anticipated by the NCEL, agency staff should be trained on the business to minimize the impact of such turnover. Furthermore, the NCEL anticipates growth and expects agency's teams to increase as needed to manage such volume when necessary for the NCEL's continued growth.
  1. Agency personnel assigned to the account are expected to build and maintain an industry knowledge base that will support business decisions and recommendations.
    - a. Each year, two (2) individuals from the Agency team must attend industry conferences or training seminars, such as PGRI, NASPL and WLA, and share learnings and industry best practice with the broader team and NCEL Brand Management & Communications team.
  2. Manage the NCEL account without over dependence on email or other electronic correspondence. Although there are many acceptable uses for electronic correspondence, such as email, one-on-one meetings are required for presentations, creative and media, including additional follow up as a result of those meetings.
  3. On-site meetings at NCEL offices will be held as required and at a minimum of twice monthly to discuss the state of the business and plans for upcoming initiatives.
  4. The NCEL will be responsible for the travel expenses including airline tickets, rental car, mileage, meals, and hotel accommodation associated with these industry conferences/tradeshows. Reimbursement for mileage, meals, and hotel accommodation will be made at the approved state-rate.

- B. Dedicated Account Management** – Provide a seasoned, dedicated account team that will work collaboratively with the NCEL’s Advertising team to manage the daily activities of the account. This Account Group will be assigned exclusively to the NCEL business. A key role of the Account Management Team is to become thoroughly involved with the NCEL’s business and keep on top of industry trends, sales performance, and product developments. They will also work closely with the Account Planning group to ensure that consumer-centric strategies are being developed that tie into the NCEL’s business objectives. The Account Team will be responsible for establishing regular communications between the Media Team, Creative Team and any additional agency teams supporting the NCEL business to ensure seamless integration of the advertising program. The Account team will also be responsible for preparation of the following reports:
1. Status Report – Weekly status reports will be issued detailing all current projects, production jobs, promotional events, reporting and meetings. Status reports shall include timelines for all initiatives, allowing no fewer than five (5) business days for NCEL approval at any stage.
  2. Annual Advertising Plans – Based on the NCEL’s Fiscal Year (July - June) and following receipt of the NCEL’s Marketing Plan, the Agency is expected to prepare an annual advertising plan in partnership with the Director of Advertising which must include at a minimum:
    - a. Innovative approaches for planned business initiatives, including how these strategies achieve the NCEL’s goals with measurable Key Performance Indicators for post-initiative evaluations.
    - b. A general breakdown of proposed spending for production, talent, research, and other projected expenses.
    - c. Opportunities for special events, promotional activities, and any other topics specified by the NCEL.
- C. Strategic Account Planning / Market Research Recommendations / Brand Metric and Advertising Communication Tracking** – Provide a team of experts in strategic planning. The team’s responsibility will be to gain and transfer extensive knowledge of the NCEL’s current and potential player groups. Alongside the NCEL’s Advertising and Research Teams, it is also their responsibility to propose market research as necessary to gain such consumer insights to inform strategic direction for the account.
1. In conjunction with the NCEL and the Creative Management Team, develop and implement a brand campaign that significantly raises awareness and understanding of the NCEL, its games and beneficiary contributions, while fundamentally increasing the impact of the brand by creating an iconic relevance between the brand and the North Carolina culture.
  2. The Strategic Account Planners must be responsible for the development of consumer-led strategies for all initiatives, providing relevant consumer insights or recommendations to support the proposed initiatives in annual advertising planning and drafting of all creative briefs. Planners will work closely with the Account Team(s) to gain a thorough understanding of the NCEL’s business objectives and product specifications to enable the Planners to develop consumer insights to deliver effective marketing and advertising strategies that will achieve stated objectives for each initiative and the account as a whole.
  3. A Strategic Account Planner is expected to attend any research presentations or testing involving information the NCEL believes to be beneficial to the Successful Contractors lottery business knowledge even if the research has been conducted by another NCEL vendor/partner.

- D. Creative development and production of Advertising, Marketing Communications and Retail Point-of-Sale materials** – Develop effective, breakthrough creative and produce it with high-quality production standards in the most cost-efficient manner. Creative includes, but is not limited to, television, radio, print, out-of-home, and digital advertising, plus an extensive array of merchandising items and point-of-sale materials for a retailer network of more than 7,000. Agency may also be required to assist the NCEL in developing game names, product logos, or art for other use. The Agency shall ensure all creative elements are produced and distributed on time and on budget. In addition to the costs associated with image retouching and the production of mechanicals, the agency may bill an agreed upon hourly rate for the development of layouts for point-of-sale for campaigns.
1. **Creative Management** – Among other things, the Successful Contractor shall provide comprehensive creative management through direct involvement from a dedicated Creative Director, from concept presentation to final approval of produced work. This Creative Director may work with different creative teams and is not required to be exclusive to the NCEL, but must be the key creative team member and a part of all meetings involving creative and attend all productions.
  2. **Creative Brief** – The NCEL shall provide the Agency with a briefing document for each advertising initiative that provides business opportunity, product overview, campaign objectives, general strategy, key consumer insights, project budget, sales targets and other measurable Key Performance Indicators (KPIs) against which the campaign will be evaluated. The Agency Account Planning group and Account Management team will then develop a Creative Brief, to include a key message, which will inform the Creative Teams about strategy and the initiative details and guide creative development. The Agency's Creative Brief shall be approved by the NCEL prior to briefing the Creative Teams and all creative presented will be evaluated based on its delivery against the creative brief.
  3. **Creative Concepts** – The Agency shall develop advertising and marketing creative that represents the NCEL brand in a positive light and in a manner consistent with the brand identity, and where there is a relevant existing campaign platform (e.g., Instant Scratch Off's "First Tuesday") consistent with that campaign platform. For new campaigns, the Agency shall present overarching 360° big idea platforms, with at least three (3) on-brief creative routes for each potential platform. This 360° big idea platform includes creative executions for TV (story-boards required), radio (scripts required), digital, POS/POP, and social media and all elements should be presented during the creative presentation. For existing campaigns, the Agency shall present at least three (3) creative options for each medium that fit with the campaign's overarching 360° big idea platform.
  4. **Creative Timelines** – The Agency shall plan creative development schedules that allow sufficient time for developing and presenting integrated creative solutions, editing and revising selected options, obtaining final approvals from the NCEL staff, producing the final product, and distributing the finished product according to NCEL specifications. Creative development timelines should also allow for concept and script refinement, through concept testing ensuring message clarity, general comprehension and appeal. Additionally, Agency time plans need to allow for a signed off 360° big idea platform, creative route and executional style guides for use by the NCEL in-house creative department. Unless otherwise approved by the NCEL, all timelines shall include a minimum of five (5) business days for approval by the NCEL at every stage of each job or project. The Agency shall provide detailed production schedules with task milestones for each job.
  5. **Casting** – Talent recommendations must be made to the NCEL for any and all advertising and marketing creative. Casting auditions must be provided for all On-camera talent and must be presented with alternates, allowing the NCEL a minimum of three (3) business days for review and approval. In most instances, casting auditions will

also be required for Voice-over talent and must be presented with alternates, allowing the NCEL a minimum of three (3) business days for review and approval. In some instances, the NCEL may choose to review demo reels only for Voice-over talent; in such an instance alternates will still be required as well as a minimum review and approval period of two (2) business days.

- a. Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or nonspeaking.
  - b. The NCEL acknowledges that the Successful Contractor may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist (“AFTRA”), Screen Actors Guild (“SAG”) and/or American Federation of Musicians (“AFM”), and that the production of advertising material from which the employment of talent is required may necessitate the negotiation, review, approval and/or execution by the Successful Contractor and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent.
6. Creative Approvals – The Agency shall obtain written approval from the NCEL Executive Director and/or his/her Designee(s), prior to producing any advertisement, promotional item, related materials or other services. When producing any creative work, the Agency shall not vary from approved scripts, storyboards or print layouts without written approval from the NCEL. Failure to adhere to approved scripts, storyboards or layouts may void the NCEL’s approval of the estimate for the project. The Agency shall incorporate all changes required by the NCEL, as well as submit any other alternative creative solutions deemed prudent by the Agency. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by the Successful Contractor, and to direct the Successful Contractor to cease work in connection with any such plan. The Agency shall be responsible for all unauthorized expenses.
- E. **Advertising Effectiveness Analysis/Optimization** – The NCEL will evaluate the effectiveness of all advertising initiatives upon completion based on established KPIs from the corresponding relevant creative brief and monthly campaign tracking / brand metrics. KPIs may include improvements in participation, frequency and awareness measures, sales goals or other criteria determined as ‘What success looks like’ by the NCEL prior to the development of the work and detailed in each initiative brief and/or annual plan objectives.
1. Post-Campaign/Promotional Report – In the quarter following the conclusion of a campaign phase or promotional event, the Agency shall provide a recap of the initiative, including total expenses and performance against established KPIs to assist the NCEL in the evaluation of its success.
- F. **Digital Advertising** – Create innovative digital advertising campaigns to effectively communicate with target audiences through all digital consumer touch points. There will be an emphasis placed on creativity and effectiveness of digital initiatives, with KPIs and measurement tools established with the NCEL prior to the development of any campaign. Digital programs must work synergistically with other advertising communications to achieve stated goals. The Agency must remain current on all emerging technologies and provide the NCEL with timely recommendations for digital marketing opportunities.
- G. **Social Media** – As part of the comprehensive, 360° big idea platform, assist in strategic development of the NCEL’s social media including content and creative development. The goal of the social program is to build brand advocacy by increasing engagement with the

NCEL brand among existing players and future players, communicating brand and product news, and reinforcing the NCEL's advertising and marketing initiatives in the social arena. The Successful Contractor's responsibilities will also include optimization and performance analysis through monthly reporting.

- H. **Multi-cultural Marketing** – The Successful Contractor shall develop effective strategies for reaching the diverse North Carolina population and integrate such marketing efforts into general market advertising to achieve stated goals, as defined by the NCEL. If a distinct communications initiative would better serve the NCEL's diversity business objectives, the Successful Contractor shall provide a recommendation and rationale for the effort to the NCEL for approval.
- I. **Budget/Billing Management** – Due to the size of the NCEL's advertising budget, a dedicated budget/billing staff is required to work directly with the NCEL Advertising Department on a daily basis. This individual must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis.

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

1. Expense Bidding and Approval – The Successful Contractor shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the NCEL Executive Director or his/her Designee. In connection with such authorization, the Successful Contractor is subject to the following guidelines:
  - a. The Successful Contractor must prepare and evaluate competitive bids for productions, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis.
  - b. The Successful Contractor must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, the Contractor shall provide written documentation of such to accompany the cost estimate.
  - c. If the Successful Contractor recommends any vendor other than the lowest vendor, the Successful Contractor shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow the Successful Contractor's recommendation.
  - d. Bids shall be secured from North Carolina-based vendors whenever possible. If local vendors are not available for project as approved, the Contractor shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.
  - e. Cost estimates shall be presented by the Successful Contractor to the NCEL in a timely manner, no less than three (3) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.
  - f. The estimate number used to track each project will be issued by the Successful Contractor and invoices shall be numbered consistent with estimate number.

- g. All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his/her Designee and the Successful Contractor may not begin work until the Successful Contractor has received a signed estimate/authorization from the NCEL.
  - h. A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previously approved amounts and/or history of amounts.
  - i. Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. The Successful Contractor is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.
  - j. The NCEL's Fiscal Year ends June 30th. All invoices for that Fiscal Year must be submitted by September 30th of the new Fiscal Year. The NCEL reserves the right not to pay any invoices received after September 30th.
  - k. Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested Successful Contractor invoices, unless as otherwise agreed upon by both parties.
  - l. The Successful Contractor shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to the Successful Contractor. In the event that the NCEL becomes aware of Successful Contractor's default of these terms, the NCEL will notify the Successful Contractor immediately.
  - m. The Successful Contractor agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.
2. Monthly Activity Report – Provide the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number; (ii) brief description of job; (iii) original estimate amount; (iv) an estimate of the costs incurred to date that have not yet been billed; and (v) billings rendered to date on each job.
  3. Approved Expenditure Report - Provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current Fiscal Year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid and the amounts committed that have not been billed.
  4. Agency Fee Reconciliation Reports – The Agency will be responsible for providing all back-up documentation on staffing hours on a monthly basis to enable NCEL to track labor costs against Annual Fee.
- J. **Annual Agency Review** – Once a year, the Successful Contractor shall participate in an Annual Agency Review of overall account performance to inform account decisions in next Fiscal Year, including determining if any staffing changes are required. This opportunity will also allow the NCEL to review the prior year's activity to ensure proper contract compliance by the Successful Contractor. The Annual Agency Review will consist of the following three (3) components:

1. Performance Evaluation – Based on written qualitative evaluation by the NCEL, the Successful Contractor’s performance across all disciplines will be evaluated based on the Successful Contractor’s ability to meet established client expectations.
2. Agency Metrics – As the second component of the Annual Agency Review process, the Successful Contractor will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing. At the Annual Agency Review, the NCEL will determine if the specific pre-determined brand metrics / KPI’s were met for each project initiative completed by the Successful Contractor during the Fiscal Year.
3. Business Metrics – The final component of the Annual Agency Review measures the Successful Contractor’s ability to help the NCEL deliver against pre-established sales goals.

#### **2.8.3.1 OPTIONAL PROFESSIONAL SERVICES (INCLUDE DESCRIPTION AND COST IN THE SPECIFIED COST PROPOSAL FOR OPTIONAL PROFESSIONAL SERVICES IN THE COST PROPOSAL SECTION)**

K. Optional Professional Services may be requested during the Contract period. Professional Services will be priced per project. Note: The estimated Optional Professional Services are intended to allow each Potential Contractor to respond to uniform requirements; these are not intended to completely describe all potential opportunities for Optional services for Successful Contractor throughout the term of the proposed contract. The Responding Contractors should respond with an hourly rate for any or all services offered. If the Responding Contractors does not offer one or any of the optional services it is acceptable to not respond with an hourly rate by leaving the rate blank. Responding Contractors will not be penalized for services not offered. Optional services are as follows:

1. **State & Local Marketing Efforts** – From time to time, the NCEL may request that the Successful Contractor(s) partner with the Marketing Department for development and analysis of sports marketing, experiential marketing, local events and promotions. This may include the Successful Contractor(s) bringing forward new and viable opportunities to build brand awareness and promote NCEL products and/or developing and providing creative assets for these marketing programs, ensuring that they work synergistically with the overall marketing and advertising plans. The cost of such marketing efforts will be paid from the NCEL’s existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

2. **Promotions** – From time to time, the NCEL may request that the Successful Contractor(s) assist in development and on-going management of promotional projects, including media-driven promotions and online promotions involving chance. The Successful Contractor will ensure that all promotional activity is effective and measurable based on KPIs pre-determined by the NCEL and is consistent with the NCEL brand character. The cost of promotion development will be paid from the NCEL’s existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

3. **Retail Design** – From time to time, the NCEL may request that the Successful Contractor(s) assist in design development and implementation for the refresh of NCEL claims centers and/or similar retail spaces designed to sale lottery tickets and pay lottery prizes. The cost of promotion development will be paid from the NCEL’s existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

4. **Research** – From time to time and in conjunction with the NCEL, the Successful Contractor may be asked to develop and facilitate advertising and market research studies that involve advertising research such as recall tests, copy and motivation tests, media weight tests and attitude studies. The Successful Contractor may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design. The cost of the research studies will be paid from the NCEL's existing research budgets or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

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

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

The cost of such public relations efforts will be paid from the NCEL's existing communications budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

6. **Direct Marketing / Database Management / Customer Relationship Marketing** – From time to time, the NCEL may request that the Successful Contractor(s) work as needed with the NCEL to develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the NCEL brand. This may be done through email marketing, Lucke-Rewards customer loyalty program, couponing, database management, and other tactics deemed appropriate to achieve the NCEL's business goals through all current and future channels. The cost of such direct marketing development will be paid from the NCEL's existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

7. **Creative Development / Content for NCEL Websites** – From time to time, the NCEL may request that the Successful Contractor(s) provide creative input into the design and content management of NCEL websites and a retailer-focused website to ensure they enhances the player/retailer experience with the NCEL brand and works synergistically with all other marketing and advertising communications. Actual programming will be conducted by the NCEL's web development team and its Contractors. The cost of such website content will be paid from the NCEL's existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

#### **2.8.4 MEDIA PLANNING AND BUYING SERVICES**

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

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

- A. **Business Development and Collaboration** – Become a partner in the development and evolution of the NCEL business, brand and product portfolio to further the NCEL’s mission of maximizing net revenues for education. The NCEL expects that the entire Agency team will be committed to the same goals as the NCEL and will create and execute programs that will deliver on those objectives. Although some turn-over of agency staff is anticipated by the NCEL, agency staff should be trained on the business to minimize the impact of such turnover. Furthermore, the NCEL anticipates growth and expects agency’s teams to increase as needed to manage such volume when necessary for the NCEL’s continued growth.
1. Agency personnel assigned to the account are expected to build and maintain an industry knowledge base that will support business decisions and recommendations.
    - a. Each year, two (2) individuals from the Agency team must attend industry conferences/tradeshows or training seminars, such as PGRI, NASPL and WLA, and share learnings and industry best practice with the broader team and NCEL Brand Management & Communications team.
  2. Manage the NCEL account without over dependence on email or other electronic correspondence. Although there are many acceptable uses for electronic correspondence, such as email, one-on-one meetings are required for presentations, creative and media, including additional follow up as a result of those meetings.
  3. On-site meetings at NCEL offices will be held as required and at a minimum of twice monthly to discuss the state of the business and plans for upcoming initiatives.
  4. The NCEL will be responsible for the travel expenses including airline tickets, rental car, mileage, meals, and hotel accommodation associated with these industry conferences/tradeshows. Reimbursement for mileage, meals, and hotel accommodation will be made at the approved state-rate.
- B. **Dedicated Account Management** – The Successful Contractor shall provide a seasoned, dedicated media account team that will work collaboratively with the NCEL’s Advertising team to manage the daily activities of the account. This Account group will be assigned to the NCEL business. The Account Team will be responsible for establishing regular communications between the Media Agency and the Creative Agency to ensure seamless integration of the advertising program. The Account team will also be responsible for preparation of the following report:
1. Status Report – Weekly status reports will be issued detailing all current projects and initiatives. Status reports shall include timelines and deadlines for all activity, allowing no fewer than five (5) business days for NCEL approval, unless authorized by the NCEL.
  2. Current Flowcharts – The Account group is responsible for maintaining current flowcharts for all Fiscal Year media activity. Detailed flowcharts must specify media type, market tiers, GRP levels, creative rotation, and costs for each campaign. Costs are to be summarized by campaign, by month, by quarter, and year. Any time there is a change in media plans or activity, flowcharts must be updated and provided to the NCEL within 48 hours.
- C. **Media Research & Strategy Development** – The Successful Contractor will utilize a wide range of syndicated and proprietary research tools to obtain key consumer insights and keep on top of media trends and emerging technologies to inform media strategies and tactics that will ensure an effective communications plan for the NCEL. A quarterly update should be presented to the NCEL of these findings, highlighting implications and/or opportunities relating to the NCEL business objectives.

- D. Strategic Media Planning, Buying and Placement** – The Successful Contractor shall deliver innovative and effective solutions for the NCEL’s statewide, multi-channel advertising program utilizing the most inventive and effective media for the individual campaign goals and objectives, as determined by the NCEL. Media for the NCEL typically includes, but is not limited to, television, radio, print, out-of-home and digital communications including social media.
1. Strategic Media Planning – The Successful Contractor shall use all the research, analytical tools and sales data required to develop the most creative and effective media plans to achieve stated objectives and drive business outcomes for the NCEL.
  2. Negotiation and Placement – The Successful Contractor shall be responsible for the placement and purchase of all media. The Successful Contractor’s experience and buying power in the local North Carolina advertising markets shall lead to cost savings for the NCEL for up front as well as last minute jackpot buys. In negotiating media purchases, the Agency shall make the NCEL aware of any savings that might be achieved through long-term commitments or other specialized programs. The Successful Contractor shall be responsible for adhering to current and potential future NCEL Drawing Station commitments which include a minimum percentage spend and/or minimum dollar spend with various TV stations throughout the state in return for the time required to air NCEL drawings.
  3. Media Audits – The Successful Contractor will be responsible for auditing and verifying all media outlets. If the Agency proposes a more viable and cost effective method, the Successful Contractor will make the report available for inspection and approval by the NCEL.
  4. Placement and Verification – The Successful Contractor shall provide for the management and traffic of creative. The Successful Contractor shall ensure that all media was broadcast or published according to any contracts or placement instructions. The Successful Contractor shall provide, at no cost to the NCEL, affidavits, tear sheets or any other placement verification documentation to the NCEL in connection therewith, and all media invoices must include a signed warranty statement or a statement of attestation which has been notarized. The Successful Contractor must notify the NCEL before approving any “make goods” for any ads that did not run as scheduled. Placement verification documents shall indicate the run dates and/or times and the circulation or ratings achieved. All such materials shall be maintained by the Successful Contractor and must be available for inspection by the NCEL or its authorized representatives. Affidavits and/or tear sheets must accompany any final billings submitted to the NCEL.
  5. Winning Numbers – Request and audit the airing and/or publishing of NCEL winning numbers from all radio stations, TV stations, digital sites and newspapers included in a NCEL buy.
  6. Bonus Spots and Added Value – Negotiate and track delivery of bonus spots and/or added value at no additional charge from all radio and TV stations included in a NCEL buy. Any bonus spots provided by participating stations must be assigned a value and reported monthly to the NCEL.
  7. Annual Media Plans - Based on the NCEL’s Fiscal Year (July – June), the Successful Contractor is expected to prepare annual media plans which must include at a minimum:
    - a. Definition of Audience(s) for each initiative with detailed rationale.
    - b. Allocation of dollars by media type and market with detailed rationale.
    - c. Gross Rating Point (GRP) objectives with reach/frequency and efficiency analysis.
    - d. Media Mix, Daypart Mix and Unit Mix recommendations and rationale for each initiative.

- e. Quarterly reviews with the NCEL Advertising team and to evaluate if any re-planning spend allocation is required to meet the NCEL Fiscal Business Objectives and maximize spend efficiencies based on ROI analysis.

After the Annual Media Plan is approved, it is possible that new initiatives are added to the NCEL's business plan. The Successful Contractor is expected to develop and implement specific media plans to address the needs of the new initiative(s). Additionally, the current strategy for supporting high level Jackpot games includes purchasing media leading up to the day of the draw. However, because these jackpot amounts cannot be predicted in advance, the media must be purchased in a timely and dynamic fashion in the event that a jackpot reaches a certain pre-determined threshold. This requires the Successful Contractor to remain constantly vigilant with the jackpots, and they must also be nimble, diligent and responsive in preparing, negotiating and implementing such last minute incremental media plans to maximize the NCEL's media investment. Analysis of the fiscal effectiveness of high jackpot media spending is required.

- D. **Digital Advertising** – Create innovative digital media plans to effectively communicate with target audiences through all digital consumer touch points. There will be an emphasis placed on efficiency and effectiveness of digital initiatives, with KPIs and measurement tools established with the NCEL prior to the development of any campaign. Digital programs must work synergistically with other media communications to achieve stated goals. The Agency must remain current on all emerging technologies and provide the NCEL with timely recommendations for digital advertising opportunities.
- E. **Social Media** – As part of the comprehensive, 360° big idea platform, assist in strategic development of the NCEL's social media campaigns. The goal of the social program is to build brand advocacy by increasing engagement with the NCEL brand among existing players and future players, communicating brand and product news, and reinforcing the NCEL's advertising and marketing initiatives in the social arena. The Successful Contractor's responsibilities will also include social media buys as well as optimization and performance analysis through monthly reporting.
- F. **Multi-cultural Marketing** – The Successful Contractor shall develop effective strategies for reaching the diverse North Carolina population and integrate such media efforts into general market media to achieve stated goals, as defined by the NCEL. If a distinct media opportunity would better serve the NCEL's diversity business objectives, the Successful Contractor shall provide a recommendation and rationale for the effort to the NCEL for approval.
- G. **Media Plan Return-on-Investment Performance Analysis** – The Successful Contractor shall put in place appropriate tools and processes to monitor, maintain and improve the ROI effectiveness of all media buys by providing specific and detailed media purchase information, data analytics, print audits, and post-buy and ROI analyses and sales data. The Agency shall also utilize analytical tools and modeling to further analyze the effectiveness of the advertising plans and to inform future media recommendations. It is expected that the modeling is kept up to date with the latest sales data, to be provided by the NCEL, and the outputs reviewed and presented to the NCEL on a quarterly basis. Initiatives will be evaluated against KPI's determined in advance by the NCEL. The Successful Contractor shall optimize all plans on an on-going basis to maximize the budget. At a minimum, the following specific reports shall be generated by the Successful Contractor on a regular basis as defined below:

1. Post Buy Report – No more than 90 days beyond the end of the broadcast quarter after the flight ends, the Agency shall issue a post-buy report indicating whether the reach, frequency and GRP goals of each buy were achieved within budget, or if a gross rating point shortfall were to occur, provide the NCEL with analysis as to how the Successful Contractor plans to rectify underachieved results with specific media during the next media purchase of that type. The acceptable range for post-buy percentage is 95-105%. If the goals were not achieved, the report shall contain a make good report where bonus spots were issued. In addition, post buy analyses shall be provided for media buys that utilize new rating information for the buy period, when available.

H. **Budget/Billing Management** – Due to the size of the NCEL’s advertising budget, a dedicated budget/billing staff is required to work directly with the NCEL Advertising Department on a daily basis. They must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis.

Note: The NCEL has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with media and/or production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation.

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

1. The Successful Contractor must prepare and evaluate competitive bids for media, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the media budget with the NCEL on a monthly and quarterly basis.
2. The Successful Contractor must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, the Successful Contractor shall provide written documentation of such to accompany the cost estimate.
3. If the Successful Contractor recommends any vendor other than the lowest vendor, the Successful Contractor shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL’s sole discretion, to follow the Successful Contractor’s recommendation.
4. Bids shall be secured from North Carolina-based vendors whenever possible. If local vendors are not available for project as approved, the Contractor shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.
5. Cost estimates shall be presented by the Successful Contractor to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.
6. The estimate number used to track each project will be issued by the Successful Contractor and invoices shall be numbered consistent with estimate number.

7. All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his/her Designee and the Successful Contractor may not begin work until the Successful Contractor has received a signed estimate/authorization from the NCEL.
  8. A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previous approved amounts and/or history of amounts.
  9. Media invoices will be paid only upon completion of the media flights and must include a notarized affidavit that lists all spots being billed, bonus spots received, station, date, number of spots aired and cost. Invoices, including credits, should be submitted to the NCEL within ninety (90) to one hundred twenty (120) days of the media spot run.
  10. Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. The Successful Contractor is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.
  11. The NCEL's Fiscal Year ends June 30th. All invoices for that Fiscal Year must be submitted by September 30th of the new Fiscal Year. The NCEL reserves the right not to pay any invoices received after September 30th.
  12. Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested Successful Contractor invoices, unless as otherwise agreed upon by both parties.
  13. The Successful Contractor shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to the Successful Contractor. In the event that the NCEL becomes aware of Successful Contractor's default of these terms, the NCEL will notify the Successful Contractor immediately.
  14. The Successful Contractor agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.
- I. **Annual Agency Review** – Once a year, the Successful Contractor shall participate in an Annual Agency Review of overall account performance to inform account decisions in next fiscal year, including determining if any staffing changes are required. This opportunity will also allow the NCEL to review the prior year's activity to ensure proper contract compliance by the Successful Contractor. The Annual Agency Review will consist of the following three components:
1. Performance Evaluation – Based on written qualitative evaluation by the NCEL, the Agency's performance across all disciplines will be evaluated based on the Successful Contractor's ability to meet established client expectations.
  2. Agency Metrics – As the second component of the Annual Agency Review process, the Successful Contractor will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing. At the Annual Agency Review, the NCEL will determine if the specific pre-determined brand metrics / KPI's were met for each project initiative completed by the Successful Contractor during the fiscal year.
  3. Business Metrics – The final component of the Annual Agency Review measures the Successful Contractor's ability to help the NCEL deliver against pre-established sales goals.

#### **2.8.4.1 OPTIONAL PROFESSIONAL SERVICES (INCLUDE DESCRIPTION AND COST IN THE SPECIFIED COST PROPOSAL FOR OPTIONAL PROFESSIONAL SERVICES IN COST PROPOSAL SECTION)**

J. Optional Professional Services may be requested, as needed during the Contract period. Professional Services will be priced per project. Note: The estimated Optional Professional Services are intended to allow each Potential Contractor to respond to uniform requirements; these are not intended to completely describe all potential opportunities for Optional services for Successful Contractor throughout the term of the proposed contract. The Responding Contractors should respond with an hourly rate for any or all services offered. If the Responding Contractors does not offer one or any of the optional services it is acceptable to not respond with an hourly rate by leaving the rate blank. Responding Contractors will not be penalized for services not offered. Optional services are as follows:

1. **State & Local Marketing Efforts** – From time to time, the NCEL may request that the Successful Contractor(s) partner with the Marketing Department for development and analysis of sports marketing, experiential marketing, local events and promotions. This may include the Successful Contractor(s) bringing forward new and viable opportunities to build brand awareness and promote NCEL products and/or developing and providing media planning and buying for these marketing programs, ensuring that they work synergistically with the overall marketing and advertising plans. The cost of such marketing efforts will be paid from the NCEL's existing marketing budget or other budgets as designated by the NCEL. An hourly fee for such Optional services should be included in Proposals.

2. **Promotions** – From time to time, the NCEL may request that the Successful Contractor(s) assist in development and on-going management of promotional projects, including media-driven promotions and online promotions of chance. The Successful Contractor will ensure that all promotional activity is effective and measurable based on KPIs pre-determined by the NCEL and is consistent with the NCEL brand character. The cost of promotion development will be paid from the NCEL's existing marketing budget or other budgets as designated by the NCEL. An hourly fee for such Optional services should be included in all Proposals.

3. **Research** – From time to time and in conjunction with the NCEL, the Successful Contractor may be asked to develop and facilitate market research studies that involve media research. The Successful Contractor will manage and contribute significantly to study design, questionnaire development, and analysis. The cost of the research studies will be paid from the NCEL's existing research budgets or other budgets as designated by the NCEL. An hourly fee for such Optional services should be included in all Proposals.

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

- a. Analyzing attitudes and issues that may impact the NCEL's operations or goals.
- b. Creating content to educate and engage citizens aiding organizational aims.
- c. Protecting the reputation of the NCEL.
- d. Pitching on-air interviews and campaigns with media outlets and/or advertising partners.
- e. Soliciting/evaluating promotional opportunities from media partners.
- f. Assisting with planning and scheduling public relations media events.

The cost of such public relations efforts will be paid from the NCEL's existing communications budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

**5. Direct Marketing/ Database Management/Customer Relationship Marketing** – From time to time, the NCEL may request that the Successful Contractor(s) work as needed with the NCEL to develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the NCEL brand. This can be done through email marketing, Lucke-Rewards customer loyalty program, couponing, database management, and other tactics deemed appropriate to achieve the NCEL's business goals through all current and future channels. The cost of such direct marketing development will be paid from the NCEL's existing marketing budget or other budgets as designated by the NCEL. An hourly rate for such Optional services should be included in Proposals.

### **2.8.5 PROPOSAL CONTENT – PHASE I: CONTRACTOR CAPABILITIES PROPOSAL**

In preparation of the Proposal, each Potential Contractor should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed non-responsive and removed from further consideration. Technical evaluations will be done in two (2) phases. Phase I will determine whether the Responding Contractor meets the minimum qualifications defined herein, and the business credentials. Responding Contractors who meet the minimum qualifications and receive a score higher than the minimum scored defined, will be notified that they are a finalist, and will proceed to Phase II, which will consist of development of responses to specific creative or media scenarios, based on the services in which they are bidding. No more than five (5) Potential Contractors will proceed to Phase II. If more than five (5) Responding Contractors meet the minimum qualifications and receive a score higher than the minimum score, the five (5) Responding Contractors with the highest scores will proceed to Phase II.

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

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

Each Responding Contractor must provide a cover letter signed by an individual authorized to legally bind the Responding Contractor. For multiple Responding Contractors submitting joint proposals, Responding Contractors must provide the information as required under Section 2.5 above.

#### **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. Contract(s) of Interest**

Responding Contractor must indicate for which services the Responding Contractor is bidding: (1) Creative, Advertising and Marketing Communication Services; and/or (2) Media Planning and Buying Services.

#### **E. Experience and Personnel**

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

2. Contractor must demonstrate that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must include the following:
  - a. Evidence that Contractor has annual billings of at least ten million dollars (\$10,000,000)
  - b. Thorough description of the organization demonstrating the employee capacity to undertake and successfully carry out the proposed services.
  - c. An organization diagram which indicates reporting relationships and location of the staff. Indicate staff positions that will be new hires.
3. In the following format, summarize the total billings for calendar years 2015, 2016 and 2017, number of employees, and number of accounts currently being handled directly by Responding Contractor's office.

	2015	2016	2017
<b>Total Billings Per Year</b>			
<b>Number of Employees</b>			
<b>Number of Accounts</b>			

4. Responding Contractor must include in its Proposal a list of its ten (10) largest, current accounts and the date of acquisition of each account. Responding Contractor should list the accounts by approximate annual billing size (beginning with the largest account) and must include for each account a description of the type of projects billed. Each Responding Contractor must disclose information regarding any potential, actual or apparent conflicts of interest between any current client of the Responding Contractor and the NCEL. Each Responding Contractor must provide a minimum of two (2) accounts and necessary contact information as references. References will be contacted.
5. Responding Contractor must also include a list of accounts terminated in the past two (2) years and reason for such termination.
6. If the Responding Contractor is responsible for media planning and buying, chart Responding Contractor's clients' 2017 spending by media—network TV, spot TV, radio, outdoor, print, digital, direct response, etc. Provide approximate figures and percentages by media using the following format.

<b>Television</b>			<b>Other</b>		
Network	\$	/ %	Radio	\$	/ %
Spot	\$	/ %	Outdoor	\$	/ %
Cable	\$	/ %	Print	\$	/ %
			Digital/Interactive	\$	/ %
			Direct Mail	\$	/ %

7. Provide one (1) example in one or both of the areas in which services are sought of how the Responding Contractor saved money and/or maximized value for a client, including the following areas:
  - a. Broadcast production cost efficiencies
  - b. Print production cost efficiencies
  - c. Media cost efficiencies
  - d. Additional example relevant and appropriate to the NCEL account

**F. Financial Information**

See Section 4.5 of this RFP.

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

1. Written description (not to exceed five (5) pages) outlining the various services offered by the Responding Contractor and the number of full time employees dedicated to each department (e.g. account management, strategic services (including account and communications planning, research, etc.), creative (including digital), media planning and buying (including digital media, social media, SEM), production (broadcast, online, print production, etc., CRM, PR, promotion and experiential marketing).
2. In addition to any digital services listed above, please describe established strengths and capabilities in the digital realm including Responding Contractor's online marketing, website development and database analytics and maintenance capabilities.
3. List any other specialized services Responding Contractor offers to its clients, either directly or indirectly through its parent or sister companies, subsidiaries or network of affiliations.
4. Written demonstration of Responding Contractor's ability to handle highly active retail advertising accounts.
5. Brief description of the Responding Contractor's strategic process including determination of audience, determination of insight and development of the strategy which delivers on this insight.
6. Explain account planning capabilities, and how account planning interfaces with the various departments or areas of Responding Contractor's organization.
7. Describe how Responding Contractor would provide the NCEL information and insights from emerging consumer trends, new ideas, new advertising techniques and advancement in media opportunities.
8. Explain how Responding Contractor would, on an ongoing basis, monitor the effectiveness of the NCEL advertising and/or media. Describe Responding Contractor's market, product, and consumer analysis methods.
9. Explain Responding Contractor's experience buying media in North Carolina markets including types of media purchased and spend levels by channel.
10. Describe why Responding Contractor is uniquely suited to address the challenges and opportunities of the NCEL account.
11. Responding Contractor must be licensed to do business in North Carolina. Responding Contractor is expected to meet with the NCEL regularly at the NCEL's Headquarters in Raleigh.

**H. Case Histories in one or both of the areas in which services are sought. Add attachments as necessary, and use whatever format(s) that best demonstrate(s) Responding Contractor's capabilities.**

1. Creative, Advertising and Marketing Communication Services – To demonstrate capabilities in these areas:
  - a. Present a case study of not more than ten (10) pages, excluding exhibits, in which Responding Contractor developed and executed a new brand platform.
    - i. What insights were leveraged in creation of the strategy? What research was implemented?
    - ii. Who was the audience? Why was this segment chosen?
    - iii. How was the brand platform launched? Provide examples of launched creative.
    - iv. What were the results?
  - b. Present a case study of not more than ten (10) pages, excluding exhibits, describing an advertising campaign to launch or promote a product that is representative of Responding Contractor's work from start to finish. (This case study must be from a different campaign than the case study submitted pursuant to Subsection 2.8.5(H)(1)(a), above). Of particular relevance to the NCEL is work in entertainment environments and and/or competitive retail-driven product categories such as soft

drinks, candy, etc. Responding Contractor must address the following items in the case study:

- i. What were key facts and problems/opportunities identified from research and analysis? What insights were leveraged in creation of the strategy? What research was implemented?
  - ii. What was the creative strategy and positioning?
  - iii. What was the budget?
  - iv. Advertising objectives?
  - v. How was the program executed? Showcase all mediums with particular emphasis on in-store communications
  - vi. Tools used by Responding Contractor to evaluate the campaign's effectiveness against the audience(s).
  - vii. What were the results (i.e., sales, market research)?
2. Media Planning and Buying Services – To demonstrate capabilities in these areas:
- a. Present a media case study of not more than ten (10) pages, excluding exhibits, in which a new brand platform was developed and executed.
    - i. What insights were leveraged in creation of the media strategy? What research was implemented?
    - ii. Who was the audience? Why was this segment chosen?
    - iii. How was the media for the brand platform launch executed?
    - iv. What were the results (i.e., sales, market research, media post-buy)? Describe added value and other savings.
    - v. What tools were used by Responding Contractor to evaluate the campaign's effectiveness against the audience(s) and media objectives?
  - b. Present a media case study of not more than ten (10) pages, excluding exhibits, describing an media campaign to launch or promote a product that is representative of Responding Contractor's work from start to finish. (This case study must be from a different campaign than the case study submitted pursuant to Subsection 2.8.5(H)(2)(a), above). Of particular relevance to the NCEL is work in entertainment environments and and/or competitive retail-driven product categories such as soft drinks, candy, etc. Responding Contractor must address the following items in the case study:
    - i. What were key facts and problems/opportunities identified from research and analysis? What insights were leveraged in creation of the strategy? What research was implemented?
    - ii. Media objectives/strategy?
    - iii. What was the budget?
    - iv. How was the program executed? Showcase all media utilized.
    - v. Tools used by Responding Contractor to evaluate the campaign's effectiveness against the audience(s) and media objectives.
    - vi. What were the results (i.e., sales, market research, media post-buy)? Describe added value and other savings.

## **2.8.6 PROPOSAL CONTENT – PHASE II: FINALIST PROPOSAL**

Phase II requires that each finalist prepare two parts: (1) the Technical Proposal, and (2) the Cost Proposal for one or both of the areas in which services are sought. Each proposal will be submitted in writing and also presented in person to the NCEL at the Contractor's offices, subject to approval by the NCEL, at a scheduled 90 minute or 2 hour (for Contractors bidding on both services) time slot during the weeks of April 22 through April 26, 2019. The Technical Proposals will include assignments that are based on the NCEL's business challenges, and Responding Contractor's solutions to these challenges will, in part, determine who is awarded the contract. Responding Contractor is not required to furnish completed creative materials;

however, the written assignments should be sufficiently detailed to enable the NCEL to evaluate accurately the capabilities of Responding Contractor for the respective areas in which services are sought.

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

1. Samples of Work - Responding Contractor shall submit with its Proposal creative samples produced within the past two (2) years by Responding Contractor's office and the creative director that will be servicing the NCEL account. Samples must be from at least two (2) different campaigns and must be different from the case studies submitted pursuant to Section 2.8.3(B), above. For each of the samples submitted pursuant to this Section, Responding Contractor must provide a write-up of not more than two (2) pages indicating the account name, product name, marketing objective, creative strategy, and creative team(s), and must identify the staff who will be assigned to the NCEL account. Responding Contractor should include the following items as available in the samples submitted in connection with this Section:
  - a. TV ads on a zip drive;
  - b. Radio ads on a zip drive;
  - c. Outdoor ads (5" x 7" or 8" x 10" photos are acceptable);
  - d. Retail POS/POP layout samples on a zip drive;
  - e. Additional items (any medium) that illustrate Responding Contractor's unique creative strengths.
2. Creative Assignment – Growing Mega Millions and Powerball

**Creative Assignment**

The NCEL is interested in the Contractor's process and approach to resolving communications challenges. The NCEL will assess the Contractor's ability to utilize available data and translate the findings into a concise advertising strategy that produces effective marketing messages.

**Introduction**

Powerball and Mega Millions are the two multi-state jackpot games offering the largest jackpot prizes available to US lottery players. For years, state lotteries offered one game or the other, but not both. Eventually rules were changed and lotteries had the opportunity to sell both exciting games to players. Other changes to these games have occurred over the years as well. At one time, each game cost a dollar per play, however to accommodate the demand for more frequent, large jackpots, as well as increased prize amounts for non-jackpot prizes, the minimum cost of each has increased to two dollars and new game matrixes have been introduced. Fast forward to now, the two games appear identical to most players, as each has –

- Two drawings per week
- Tickets cost \$2 per play
- Starting jackpot of \$40 million
- 9 ways to win
- Win the jackpot by matching five white balls plus the red Powerball or gold Mega Ball
- Second tier prize of \$1,000,000
- Multiplier feature – for another dollar Power Play or Megaplier feature can be added to increase most prizes
- Comparable odds

Marketing the games separately made sense at one time, but when changes were made to Mega Millions in the fall of 2017, which included raising the ticket cost to two dollars, this changed. Now the two national draw games have more commonalities than differences.

Both Powerball and Mega Millions have boasted exceedingly high jackpots over the years. Most recently, Mega Millions had its highest jackpot run to date beginning on July 25, 2018 and ending October 23, 2018 with a \$1.537 billion jackpot. Powerball reached a slightly higher jackpot of \$1.586 billion during a run which began on November 7, 2015 and ended January 13, 2016. When jackpots become very large, there is a huge increase in ticket sales. However, this comes at a cost typically described in the lottery industry as “jackpot fatigue,” resulting in a need for larger and larger jackpots to attract players. Lottery players often say that they wait to purchase tickets until a jackpot is over \$250 million as lower jackpots now feel “too low.” Both Powerball and Mega Millions have drawings twice each week. With large, rolling jackpots and a total of four weekly drawings, communicating changing jackpot amounts can prove challenging for these games and yet knowledge of the current jackpot amount remains critical to sales success. It is also important to note that due to their payouts, draw games such as Powerball and Mega Millions are more profitable for lotteries than scratch-off tickets, so increasing sales for these games can make a significant difference to the lottery’s return to education.

### **The Assignment**

For the purpose of this creative assignment, the NCEL plans to create a branded Powerball and Mega Millions campaign targeting 15% sales growth in the first year. The campaign should clearly communicate that with jackpots this large, players will always want to make these draw games part of their weekly routine. The campaign will also need to house a “high jackpot campaign” that can be used to communicate jackpots over \$150 million.

### **Communications Objective**

Inform North Carolinians that day in day out, Powerball and Mega Millions always offer an incredibly enormous jackpot prize; one that can’t be found anywhere else. Remind North Carolinians that there are four chances to win a huge, mind-blowing jackpot every week.

### **Key Success Metrics**

The product goals for the campaign are:

- Drive awareness of Powerball and Mega Millions always large jackpots and the four drawings each week
- Encourage trial for new or lapsed players
- Weekly ticket sales (compared to weeks with comparable jackpots), sales growth versus prior year and sales indices would be used to evaluate success of such a campaign.
- Increase frequency of play for each game
- Maintain a strong NCEL brand

### **How players currently think about these games**

I play the lottery but I don’t really think about Powerball or Mega Millions until I hear about a really high jackpot.

### **How we want players to think about these games after communications**

Now I’m going to play Powerball and Mega Millions every week, because whether it’s \$40 million or \$400 million, these games always offer enormous jackpots. No other games offer prizes like these and I always want to play because the jackpot is always huge.

### **Key Message**

Powerball and Mega Millions offer four chances every week to dream bigger.

The creative response at a minimum should include:

## **Advertising Strategy**

Each Responding Contractor must prepare a marketing and advertising strategy grounded in consumer insight and supporting creative 360° big idea and associated campaign(s) that will meet the stated objective. The campaign's creative strategy should present original and engaging ideas that demonstrate the Responding Contractor's creative capabilities and strategic thinking. The creative response should include at a minimum:

- One 30-second TV spot
- One 60-second radio spot
- Digital campaign with a minimum of one 15-second video spot
- Social media strategy and creative concepts for Facebook, Instagram, and Twitter
- In-store POS/POP
- One out-of-home execution
- PR event or stunt (ambient)

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

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

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

**Data required for the preparation of this assignment will be provided to agencies identified as finalists at the conclusion of Phase I. These documents include:**

- Mega Millions Sales by County (past 5 years)
  - Powerball Sales by County (past 5 years)
  - Jackpot History (past 5 years)
  - Brand Tracker Data
3. Staffing Plan - As part of the Phase II Technical Proposal evaluation, each Responding Contractor must provide an in-depth staffing plan and indicate the specific team(s) that will be Responding Contractor's proposed Account Team to work on the NCEL business if successful. Key members of the proposed Account Team should be a part of the on-site presentation.
- a. The in-depth staffing plan must identify the employees who will be responsible for work on the NCEL account and include resumés or other descriptions of their qualifications. Information about those employees should include nature and scope of each person's responsibilities, the percentage of their time that will be dedicated to the NCEL team, accounts handled by such staff person while employed by

- Responding Contractor and previous employers, and the level of responsibility on those accounts.
- b. Describe any new or currently vacant positions Responding Contractor will need to fill in order to execute the proposed plan for the NCEL and the timeline for filling those positions.
  - c. Subsequent to award, the NCEL must be notified of any personnel changes on the account at least five (5) days prior to the departure of any given employee in the event of resignation. In the event of termination, the NCEL must be notified within 24 hours. Agency senior management must present the NCEL with a transition plan within five (5) business days of an announcement that a position will be vacated.

## **B. Technical Proposal: Media Planning and Buying Services Media Assignment – Growing Mega Millions and Powerball**

The NCEL is interested in the Contractors process and approach to resolving communications challenges. The NCEL will assess the Contractors ability to utilize available data and translate the findings into a concise media strategy that points to effectiveness and efficiency in meeting communications goals.

### **Introduction**

Powerball and Mega Millions are the two multi-state jackpot games offering the largest jackpot prizes available to US lottery players. For years state lotteries offered one game or the other, but not both. Eventually rules were changed and lotteries had the opportunity to sell both exciting games to players. Other changes to these games have occurred over the years as well. At one time, each game cost a dollar per play, however to accommodate the demand for more frequent, large jackpots, as well as increased prize amounts for non-jackpot prizes, the minimum cost of each has increased to two dollars and new game matrixes have been introduced. Fast forward to now, the two games appear identical to most players, as each has –

- Two drawings per week
- Tickets cost \$2 per play
- Starting jackpot of \$40 million
- 9 ways to win
- Win the jackpot by matching five white balls plus the red Powerball or gold Mega Ball
- Second tier prize of \$1,000,000
- Multiplier feature – for another dollar Power Play or Megaplier feature can be added to increase most prizes
- Comparable odds

Marketing the games separately made sense at one time, but when changes were made to Mega Millions in the fall of 2017, which included raising the ticket cost to two dollars, this changed. Now the two national draw games have more commonalities than differences.

Both Powerball and Mega Millions have boasted exceedingly high jackpots over the years. Most recently, Mega Millions had its highest jackpot run to date beginning on July 25, 2018 and ending October 23, 2018 with a \$1.537 billion jackpot. Powerball reached a slightly higher jackpot of \$1.586 billion during a run which began on November 7, 2015 and ended January 13, 2016. When jackpots become very large, there is a huge increase in ticket sales. However, this comes at a cost typically described in the lottery industry as “jackpot fatigue,” resulting in a need for larger and larger jackpots to attract players. Lottery players often say that they wait to purchase tickets until a jackpot is over \$250 million as lower jackpots now feel “too low.” Both Powerball and Mega Millions have drawings twice each week. With large, rolling jackpots and a

total of four weekly drawings, communicating changing jackpot amounts can prove challenging for these games and yet knowledge of the current jackpot amount remains critical to sales success. It is also important to note that due to their payouts, draw games such as Powerball and Mega Millions are more profitable for lotteries than scratch-off tickets, so increasing sales for these games can make a significant difference to the lottery's return to education.

### **The Assignment**

For the purpose of this assignment, the NCEL plans to create a branded Powerball and Mega Millions campaign targeting 15% sales growth in the first year. The campaign will clearly communicate that with jackpots this large, players will always want to make these draw games part of their weekly routine. The campaign will also house a "high jackpot campaign" that can be used to communicate jackpots over \$150 million. Responding Contractors shall develop a media plan that will not only move the needle on Mega Millions and Powerball sales but in levels of frequency of play too. The primary goal of the program is to drive sales across all existing sales channels throughout North Carolina.

For this assignment, Responding Contractor shall prepare a media plan that will achieve the NCEL's objectives of driving sales. In addition to the media plan itself, each Responding Contractor must also clearly define how they approached or propose to approach the following areas as they relate to the Mega Millions/Powerball plan being presented:

- a. Analysis of the marketing situation
- b. Development of media strategy & tactics
- c. Media Planning Process
- d. Determination of project budget as part of the annual media allocation
- e. Analysis of Media Plan Effectiveness and Efficiencies

The Proposal should also include details of how the media will be purchased, monitored and analyzed to ensure maximum efficiencies and ROI on marketing investment for the NCEL. Responding Contractor should also include an overview as to how the advertising would be evaluated for effectiveness and efficiency to ensure that dollars invested are being maximized and that the plan is meeting its stated objectives. A specific discussion of evaluation criteria and analytical tools to be used to measure the program's effectiveness should be included detailing, via case studies, how Responding Contractor would use the outputs to inform future marketing investments. The NCEL's statewide distribution and relevant sales data should be considered in developing the media plan. Syndicated research, proprietary research, background data and consumer insights that led to the creation of the plan should be provided.

The media strategy should demonstrate the Responding Contractor's capabilities and strategic thinking and should include at a minimum:

- TV/Cable/OTT
- Terrestrial and non-terrestrial
- Digital communications campaign
- Paid social media strategy for Facebook, Instagram, and Twitter
- Out-of-home execution

The ultimate deliverable must include a media flowchart that clearly shows all the information indicated below. Written and oral presentation of the media plan must incorporate a comprehensive description of and detailed rationale for each of the following plan components:

- a. Audience
- b. Media Mix (detailed allocation of budget by media type)
- c. Market Coverage (detailed allocation of budget by market)
- d. Delivery Objectives (GRP goals with reach/frequency percentages by week)
- e. Unit Mix by media type

- f. Daypart Mix for Broadcast media
- g. Flighting/Scheduling
- h. Budget breakdown by media type and by month, with totals
- i. The submission shall incorporate the consumer insights that led to the strategy and creation of the plan(s), including the briefing documents against which the plan was developed.

**Data required for the preparation of this assignment will be provided to agencies identified as finalists at the conclusion of Phase I. These documents include:**

- Mega Millions Sales by County (past 5 years)
  - Powerball Sales by County (past 5 years)
  - Jackpot History (past 5 years)
  - Brand Tracker Data
1. ROI and Media Modeling Example – As part of the evaluation each Responding Contractor must provide an example of an ROI analysis and media measurement model that will illustrate the type of modeling to be utilized for measurement and optimization of NCEL media.
  2. Staffing Plan - As part of the Phase II Technical Proposal evaluation, each Responding Contractor must provide an in-depth staffing plan and indicate the specific team(s) that will be Responding Contractor's proposed Account Team to work on the NCEL business if successful. Key members of the proposed Account Team should be a part of the on-site presentation.
    - a. The in-depth staffing plan must identify the employees who will be responsible for work on the NCEL account and include resumés or other descriptions of their qualifications. Information about those employees should include nature and scope of each person's responsibilities, the percentage of their time that will be dedicated to the NCEL team, accounts handled by such staff person while employed by Responding Contractor and previous employers, and the level of responsibility on those accounts.
    - b. Describe any new or currently vacant positions Responding Contractor will need to fill in order to execute the proposed plan for the NCEL and the timeline for filling those positions.
    - c. Subsequent to award, the NCEL must be notified of any personnel changes on the account at least five (5) days prior to the departure of any given employee in the event of resignation. In the event of termination, the NCEL must be notified within 24 hours. Agency senior management must present the NCEL with a transition plan within five (5) business days of an announcement that a position will be vacated.

### **C. Cost Proposal**

#### **1. PRICING OPTIONS**

The NCEL desires to acquire (1) Creative, Advertising and Marketing Communication Services and (2) Media Planning and Buying Services fulfilling the scope of services as provided in this RFP, at the best competitive price. Any Contractor responding to this RFP may submit a Proposal to provide services in one or both areas in which services are sought. Costs must be provided separately for (1) Creative, Advertising and Marketing Communication Services; and (2) Media Planning and Buying Services.

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

All production charges incurred by the Contractor on behalf of the NCEL shall be billed to the NCEL at the Contractor's net cost, that is the net rate offered by the production source. The NCEL will not pay commissions or a percentage markup to the Contractor. Production costs are defined as the preparation and purchase of all materials, services and talents necessary to complete the scope of work, including but not limited to, production cost such as finished art, photography, mechanicals, printing, films, talent payments, recording sessions, TV and radio production charges, video tapes, and studio functions.

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

See Cost Proposal Section.

## **Media Planning and Buying Services**

All media charges incurred by the Contractor on behalf of the NCEL shall be billed to the NCEL at the Contractor's net cost, that is the net rate offered by the media. The NCEL will not pay commissions or a percentage markup to the Contractor for media.

For Media Planning and Buying Services, Responding Contractors must submit a cost proposal that is based on a percentage fee. Under the percentage fee formula, a percentage of the total annual advertising budget, as determined by the NCEL, will be utilized. A Responding Contractor must state the percentage of advertising budget required as its compensation to accomplish the tasks specified in the Media Planning and Buying Services Proposal and this RFP. The cost quotation should be presented on a separate, signed page and be expressed as a numeric percentage of the NCEL's annual media budget carried to no more than four (4) decimal places. For example, 1.0000%. Please note that the NCEL's total annual advertising budget, which shall not exceed one percent (1%) of the NCEL's revenues, includes Media Planning and Buying Services along with Responding Contractor's total compensation. Therefore, the total annual advertising budget is not spent completely on true advertising, but also includes

payments to the NCEL's Media Planning and Buying Services advertising agency for all services performed, fees, expenses, etc.

To calculate an inclusive agency fee, a Contractor should multiply the NCEL's media budget by the reciprocal of the proposed fee. Please see example below. The example is provided for illustrative purposes only.

<b>Estimate FY19 Sales</b>	<b>1.00%</b>
\$2,600,000,000	\$26,000,000
<b>Budget</b>	<b>\$26,000,000</b>
Production Budget	-\$3,000,000
Budget To Agency	\$23,000,000.00
Expenditure Total	\$21,296,296.30
<b>Agency Fee (8%)</b>	<b>\$1,703,703.70</b>

In the example above the Agency Media Planning and Buying Services fee is 8%. This fee is considered to be a part of the NCEL annual advertising budget. In this example the FY19 budget amount of \$26,000,000 is used. A reserve of \$3,000,000 is used for production cost with the balance of \$23,000,000 made available to the Media Planning and Buying Service Agency. To calculate the Expenditure Total –

$$\text{Budget to Agency} \div 1.08 = \text{Expenditure Total}$$

The Expenditure Total can then be subtracted from the Budget to Agency to determine the fee –

$$\text{Budget to Agency} - \text{Expenditure Total} = \text{Agency Fee}$$

The annual percentage fee must be stated for years one, two, and three. This percentage fee based on the annual media budget as determined by the NCEL will be paid on a monthly basis to the Successful Contractor. Responding Contractors are reminded that the cost quotation should cover all of the services and other items covered and required by this RFP, as well as other services deemed necessary by Responding Contractor, to be provided by the Successful Contractor during the entire term of the Contract. Specifically, the Successful Contractor shall be responsible for all charges incidental to the routine conduct of business including, but not limited to telephone calls, facsimile, copying, color copies, postage and delivery charges from the Successful Contractor to the NCEL.

See Cost Proposal Section.

## 2. PAYMENT

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

payments which will be considered during contract negotiations with the Apparent Successful Contractor.

## **COST PROPOSAL**

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

---

(Responding Contractor's Name)

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

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

<b>Contract Period</b>	<b>Annual Cost</b>	<b>Per Month</b>
1st Year (July 1, 2019 - June 30, 2020)	\$	\$
2nd Year (July 1, 2020 - June 30, 2021)	\$	\$
3rd Year (July 1, 2021 - June 30, 2022)	\$	\$

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

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

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

## COST PROPOSAL

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

(Responding Contractor's Name)

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

Responding Contractors submits the following compensations provisions for Optional Services including brief description of Contractor's experience providing such services:

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

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

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

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

## **COST PROPOSAL**

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

---

(Responding Contractor's Name)

### **Media Planning and Buying Services**

Responding Contractors are required to submit a percentage fee for professional services. Each pricing formula must be stated for years one, two, and three and will be paid on a monthly basis to the Successful Contractor.

Under the fixed percentage fee formula, a percentage of the total annual advertising budget used for media (media budget), as determined by the NCEL, will be utilized. The percentage should be expressed as a numeric percentage of the NCEL's media budget carried to no more than four (4) decimal places. For example, 1.0000%.

The following information is provided to show what the NCEL has spent on media over the last three years:

	FY2017	FY2018	FY2019
Estimated Media Spend	\$16,734,000	\$19,587,000	\$20,478,000

Please refer to page 41 for details on how to calculate the agency fee.

<b>Contract Period</b>	<b>Annual Percentage</b>
1st Year (July 1, 2019 - June 30, 2020)	%
2nd Year (July 1, 2020 - June 30, 2021)	%
3rd Year (July 1, 2021 - June 30, 2022)	%

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

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

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

# COST PROPOSAL

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

---

(Responding Contractor's Name)

## Media Planning and Buying OPTIONAL Services

Responding Contractors submits the following compensations provisions for Optional Services and brief description of Contractor's experience providing such services:

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

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

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

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

## **2.8.6 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 an Evaluation Committee (the "Committee"), as designated by the NCEL Executive Director, comprising of NCEL staff members, including those from the Brand Management, Sales and Finance Divisions. The NCEL reserves the right to make changes in the Committee's membership as necessary.

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

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

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

#### PHASE I

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

#### PHASE II

6. Detailed review by the Committee of the Phase II Technical Proposals relative to proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.
7. Proposal clarifications, if applicable.
8. Onsite Presentations.
9. Evaluation and scoring of Phase II Proposals and Onsite Presentations by the Committee.
10. Assessment and scoring of Pricing Proposals after finalization of Phase II Technical Scoring.
11. Compilation of the Phase I Technical score, Phase II Technical score, and Pricing score.
12. Ranking of Contractors based on final score to determine optional price-value.
13. 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).

14. Review and Adoption of the Committee's Recommendation by the Commissioners.
15. Notice of Award to the Apparent Successful Contractor(s).
16. Negotiation of Contract (as needed).
  - Review and approval by the North Carolina State Attorney General's Office for contracts greater than \$15 million.
17. Contract execution (preferably by May 30, 2015) to permit one (1) full month of 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 2.8 of this RFP, references will be checked regarding Responding Contractor's past experience. The NCEL reserves the right to contact references as many times as is necessary and to contact as many references as is necessary, to obtain a complete understanding of Responding Contractor's performance and experience.

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

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Section 2.8 – Information Required from Responding Contractors – of this RFP will be evaluated based on the following criteria:

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

## **PHASE I - CREDENTIALS**

### **CONTRACTOR CAPABILITIES PROPOSAL**

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

The depth and relevance of overall experience, values and current practices of Responding Contractor's organization – and North Carolina office, if applicable – will be evaluated in relation to its ability to provide the services defined in this RFP. Specifically, the NCEL will look at related branding, marketing, and advertising expertise demonstrated in the submitted case studies. Of particular interest is experience with gaming-related accounts or other mass market and high volume consumer goods accounts reaching an audience similar to that of the NCEL. The Agency 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, Financial Viability, 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 be evaluated on the financial viability and stability of the Responding Contractor. Responding Contractor will also be evaluated based on perceived compatibility of Contractor values/mission/culture, as well as the quality of references.

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

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

### **1. Technical Proposal – Challenge Assignments**

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

### **2. Cost Proposal**

After the Technical proposal is scored, the Finance Department will open the Pricing Proposals and will conduct an evaluation of such Proposals. Every Phase II Responding Contractor shall prepare and submit a cost proposal as described in Section 2.8.6 of this RFP. In addition, Responding Contractors are encouraged to be creative in proposing an alternative compensation package. Scoring is based upon all proposed pricing models that will produce the best value to the NCEL over the term of the Contract.

### **3. On-site visits and Oral presentations**

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

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

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

In addition to the above-referenced evaluation criteria, the NCEL shall also consider the Responding Contractor's responses to Section 4.6 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.

## **2.9 DISPUTE PROCEDURE**

All claims and disputes, including but not limited to protests related to this RFP, the Procurement and the award of the Contract to the Successful Contractor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Contractor Dispute Resolution Procedures (the “**Dispute Procedures**”), as adopted and/or amended from time to time by the NCEL Commission:

<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.

## **2.10 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.

## **2.11 NONEXCLUSIVE RIGHTS**

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

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

## **3.1 GOVERNING LAW**

This Procurement and any Contract resulting from this RFP shall be governed by and construed in accordance with the laws of the State of North Carolina, including the 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.

## **3.2 CONTRACT ELEMENTS**

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

The currently proposed draft Contract is attached to this RFP as Exhibit B (the “Proposed Contract”). The NCEL may modify the language of the Proposed Contract prior to the execution

of the Contract with the Successful Contractor, which may include any requested changes by the Successful Contractor.

## **PART IV – PROPOSAL REQUIREMENTS**

### **4.1 MANDATORY COMPONENTS; VENDOR COMMITMENT**

The integrity of the NCEL is essential. The NCEL must maintain control over all functions and be assured that they are performed to provide the greatest long-term benefit to the State of North Carolina, the greatest integrity for the NCEL and the best service for the public, all in a manner consistent with the dignity of the State of North Carolina. 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.

### **4.2 VENDOR CONTACT PERSON**

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

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

The NCEL will investigate, at a minimum, the financial responsibility and security of any Responding Contractor that submits a Proposal for Phase II evaluation. A 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) or §18C-152 and other applicable Sections of the Act or Applicable Laws.

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

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

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

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

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

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

#### **4.4 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. A 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.

#### **4.5 FINANCIAL SOUNDNESS**

Under the Act, a Contractor must provide adequate information to permit an evaluation of its financial responsibility, stability and its capabilities to undertake and complete satisfactorily any Contract awarded and, executed pursuant to this RFP. In that regard, a 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.

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

The Act has specific references to minority participation in the formation and operation of the NCEL and requires compliance with Article 8 Chapter 143 as applicable. The NCEL strongly encourages participation by, and involvement of, minority-owned businesses. In order to achieve or exceed the goals established by the Act and Applicable Laws, and to provide equal business opportunities in the procurement process, the NCEL encourages 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.

#### **4.6.1 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, or **Attachment E** (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.**

#### **4.6.2 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, 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.

## ATTACHMENT A

### CONTRACTOR CERTIFICATION

#### PROFESSIONAL ADVERTISING, MEDIA AND RELATED SERVICES

I do hereby certify as follows:

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

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

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

---

(Signature of Authorized Representative)

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

a. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

b. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

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

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

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

**Attachment B Certification**

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

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

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

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

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

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

**ATTACHMENT C**

**AUTHORIZATION FOR CONTRACTOR INVESTIGATION**

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

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

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

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

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

**ATTACHMENT D**

**ACKNOWLEDGMENT AND AUTHORIZATION FOR BACKGROUND CHECK**

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

**Do not disclose any sealed or expunged records.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Please Print Clearly**

Name (First, Middle, Last) \_\_\_\_\_ Date of Birth (mo/day/yr) \_\_\_\_\_

Maiden Name / Other Name (First, Middle, Last) \_\_\_\_\_

Date used (yr) from \_\_\_\_\_ to \_\_\_\_\_. Driver's License # \_\_\_\_\_ State \_\_\_\_\_

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

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

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

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

City, State, Zip \_\_\_\_\_ to \_\_\_\_\_

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

City, State, Zip \_\_\_\_\_ to \_\_\_\_\_

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

City, State, Zip \_\_\_\_\_ to \_\_\_\_\_

**California, Minnesota & Oklahoma residents only:** I want to receive a free copy of any Consumer Report, Investigative Consumer Report or Credit Report on me that is requested. [yes/no]

**Notary:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

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

**[SEAL]**

**ATTACHMENT E**

**Equal Business Opportunity Forms**



The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the 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 \_\_\_\_\_ 2019.

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 he or she has read the terms of the minority business commitment and is authorized to bind the Contractor to the commitment herein set forth.

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

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

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

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

**NOTARY:**

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

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

**[SEAL]**

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

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

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

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

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

In making this certification, the Responding Contractor states that the Responding Contractor does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her 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 he or she has read this certification and is 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 \_\_\_\_\_ 2019.

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

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

**[SEAL]**

## EXHIBIT A

### RESPONSIBLE MARKETING AND ADVERTISING STANDARDS

#### PURPOSE

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

#### **BACKGROUND**

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

#### POLICY

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

time and financial resources from the NCEL, a *Review Guide for Creative Concept Approval* must be completed at the onset of a project such that accountability and enforcement of responsible marketing is managed throughout the creative process. Although every effort will be made to avoid bringing forward for evaluation any concept which does not align with the NCEL's marketing and advertising Standards, diligent examination of concepts prior to production will allow sufficient time to make changes deemed necessary to successfully address a potential concern or risk.

7. A minimum of one director and deputy executive director, as well as the Executive Director, must review and sign the *Review Guide for Creative Concept Approval* before any production work may begin.
8. Original copies of all *Review Guides for Creative Concept Approval* and *Review Guides for Final Ad Approval* will be maintained by the originating department (marketing, advertising or communication) and will be subject to review by management and/or NCEL auditors.

## **RESPONSIBLE GAMING MARKETING STANDARDS**

### **Content**

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

### **Tone**

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor

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

## **Minors**

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

## **Game Information**

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

## **Beneficiaries**

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

## **MEDIA PURCHASE AND PLACEMENT**

As detailed in the *Responsible Gaming Marketing Standards* section, lottery advertising should not appear in media directed primarily to those under the legal age. The NCEL will make every reasonable effort to avoid such programming, and deems this *unapproved programming*.

In an effort to avoid unapproved programming, the lottery's agency of record will perform a detailed review of all media buys prior to submission to the NCEL. In turn, the NCEL will also review these

same buys for unapproved programming.

If an unapproved program is found, the NCEL will immediately contact the agency so that the identified spot (media weight) found in the unapproved programming can be moved to another acceptable program.

If a media outlet inadvertently airs a lottery spot in unapproved programming and this error is detected through the invoice review process by the agency or by the lottery, the NCEL will not pay for the spot. The spot will be noted on the invoice with the error message *unapproved programming* and a credit taken on the invoice.

Although the NCEL and/or the agency of record will make every effort to inform the media outlet of the necessity of avoiding unapproved programming, if the NCEL determines that the frequency of errors or nature of the programming poses unacceptable risk, the NCEL may at its discretion, cancel existing media at the earliest date to avoid penalty and no longer purchase the media outlet for an undetermined period of time.

If after such a time, the media outlet is able to show to the NCEL's satisfaction a way(s) found to avoid unapproved programming, then the NCEL at its sole discretion may opt to resume media buys with the network. Additional monitoring will be performed by the agency and lottery to review performance. At a minimum this will include flagging all media invoices from the network and an agency record of unapproved programming errors for a minimum of one quarter.

## **ADVERTISING COMPLAINTS AND TRACKING**

To establish best practices for the NCEL's Brand Management and Communications Division to track, address, and report all complaints received regarding NCEL advertisements in an effort to uphold and promote its corporate social responsibility commitment.

### **BACKGROUND**

From time to time, the NCEL receives complaints regarding ads. These complaints may be received by the NCEL through letters, emails, phone calls, and post to social media accounts such as Facebook and Twitter. To accurately track these complaints, the NCEL has developed a database where all complaints can be logged. In order to maintain a useful database and while respecting the individual's privacy preferences, the NCEL will endeavor to solicit as much information as possible, such as the specific ad and/or game at issue and the individual's identity. This information, along with a record of the NCEL's response, will be recorded in the database. The database is strictly for tracking purposes only.

Brand Management and/or Communications will address any and all concerns directly if the complaints were posted through social media or complaints that have been escalated from the customer service supervisor via phone or email. Any ad with twenty (20) or more complaints will be reported to the North Carolina State Lottery Commission. However, a Commission member may request information regarding any complaints, regardless of quantity, and the NCEL shall immediately provide the requested information.

The NCEL continues to maintain its right to withdraw an advertisement for any reason, including feedback and comments received by the public. The NCEL will continue to ensure that its advertisements will avoid poor or questionable taste or will never intentionally irritate through aural

or visual content or presentation. The NCEL will continue to apply high ethical standards in advertising and marketing communications.

## **POLICY**

1. Customer Service, Advertising, and Communications personnel will enter all ad complaints in the Advertising Complaints application located in RMS (Retailer Management System).
2. Complaint information includes (if provided): date, game, origin of complaint (blog, email, phone call, player hotline, social media, other), ad campaign, detail of offense, NCEL response
3. If provided, information about the ad campaign, game name, perceived offense, and the name of the individual reporting the offense will be recorded in the database.
4. The Advertising Department will review the reporting from the Advertising Complaints application on a weekly basis.
5. The database will enable the complaints to be sorted by ad. If a total of twenty (20) or more complaints are received regarding an advertisement, notification will be provided to the NCEL Commission along with information the various complaints/comments.
6. Any complaints received through any channel that require immediate response will be escalated to the Communications Department for prompt response.
7. Individuals may utilize multiple channels for the same complaint. The NCEL will log all complaints, noting such duplication whenever feasible. However, complaints cannot be deleted once an entry has been created.

## **CRITERIA FOR SPECIAL EVENTS**

### **Overview**

The NCEL is a sales and marketing organization whose primary goal is to raise funds for the State of North Carolina through the sale of lottery products. As most businesses who sell consumer products, the North Carolina Education Lottery continually strives to find ways to effectively create awareness of the NCEL, its games, beneficiary programs, and responsible gaming to generate higher sales, while informing and protecting citizens.

Community participation through event and sports sponsorships is just one of the means we employ to raise awareness of our brand and our games. The NCEL receives requests from as well as reaches out to various businesses, events, sports teams, and media outlets throughout the State for marketing and advertising services. The NCEL conducts all marketing initiatives in such a manner as to promote the positive image and integrity of the NCEL. Although no one event may possess all of the desired criteria, the following elements are taken into consideration when evaluating proposals:

1. Relevancy
2. Audience-Advertising by the NCEL should appropriately recognize diversity in both audience and media.
3. Established event-The NCEL should not advertise nor market at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
4. Attendance
5. Efficient costs
6. Duration
7. Ability to sell tickets

8. Promotional tie-ins
9. Media exposure
10. On-site signage/logo visibility
11. Corporate partnership opportunities
12. ROI potential

**EXHIBIT B**

**PROFESSIONAL ADVERTISING AND RELATED SERVICES AGREEMENT**

This Professional Advertising and Related Services Agreement (the "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019 (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**"); and

WHEREAS, VENDOR submitted the proposal, dated \_\_\_\_\_, 2019 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated January 29, 2019 (RFP #LC-000056) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were last distributed by the NCEL on \_\_\_\_\_, 2019 (the "**Questions and Answers**," Exhibit C). Exhibits A, B and C are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide professional advertising and related services to the NCEL, and VENDOR desires to provide such services for the NCEL.

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

**1. SERVICES**

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

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

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

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

([SCOPE OF WORK AS REFERENCED IN RFP AND NEGOTIATED TERMS])

### 3. **SUBCONTRACTORS**

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

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

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

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

### 4. **INDEPENDENT CONTRACTOR**

A. Both the NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes

whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of the NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of VENDOR to procure selected materials and services as authorized by the NCEL and as specifically set forth in, and subject to the limitations described in, the RFP and/or this Agreement. No Subcontractor is authorized to bind the NCEL to any liability or obligation or to represent that it has any such authority.

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

## 5. COMPENSATION

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

(b) Unless otherwise noted, VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from VENDOR to the NCEL.

(c) Except as otherwise provided herein, the NCEL shall not under any circumstances be liable or responsible for any costs, expenses, reimbursements or fees incurred by VENDOR or Subcontractors (or any other individual or entity) in connection with any Services or the VENDOR's performance under this Agreement.

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

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

## 6. TERM

A. Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence as of the Effective Date and shall continue until June 30, 2022 (the "Initial Term"). This Agreement shall be automatically renewed for a period of one (1) year (each a "Renewal Term") upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be,

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

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

## **7. WORK STANDARD**

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

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

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

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

E. Nothing in this Agreement shall prohibit the NCEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. The

NCEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the Services of VENDOR or any Subcontractors.

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

**8. CHANGES IN WORK**

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

**9. BOOKS AND RECORDS**

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

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

A. For purposes of this Agreement:

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

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

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

C. In recognition of the need of the NCEL to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) NCEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by the NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the NCEL. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any NCEL Confidential Information, NCEL Trade Secrets or other information or property of the NCEL, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 10(C), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit NCEL to independently enforce the requirements set forth in such agreements.

D. Notwithstanding the foregoing, the nondisclosure restrictions of Section 10(B) shall not apply to either party's information that is: (i) generally known to the public other than due to a disclosure by the Disclosing Party; (ii) already known to the Receiving Party at the time it is

disclosed by the Disclosing Party to the Receiving Party; (iii) independently developed by the Receiving Party; or (iv) received by the Receiving Party from a party that the Receiving Party believed in good faith had the right to make such disclosure.

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

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

**11. NONDISCRIMINATION; AFFIRMATIVE ACTION**

A. Neither VENDOR nor any Subcontractors shall discriminate against any employee or applicant for employment because of his or her race, color, religion, sex, handicap, disability, national origin or ancestry. Breach of this covenant by VENDOR, or VENDOR’s failure to use its best efforts to require all Subcontractors to comply with this covenant, may be regarded as a material breach of this Agreement. VENDOR and Subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

B. Consistent with the Act and all other applicable North Carolina laws, VENDOR agrees to make every reasonable effort to include the participation by minorities in the performance of its Services pursuant hereto. Specifically, and without limitation, any human resources services performed for the NCEL will include appropriate attention to the hiring and training of qualified minority applicants in accordance with the Act, all Governing Laws and Regulations, and the policies and procedures adopted by the NCEL from time to time.

**12. LIMITATION OF LIABILITY**

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

**13. COMPLIANCE WITH LAWS**

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

**14. ANTITRUST ACTIONS**

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

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

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

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

B. VENDOR and its Subcontractors have disclosed or will disclose to the NCEL all matters required to be disclosed under the Governing Laws and Regulations. VENDOR shall ensure that it is aware of any statutory limitations or restrictions affecting its Agreement with

the NCEL, such as certain political contributions, its ability to conduct future business with the NCEL and/or its ability to conduct business with certain third parties. Any employee of the VENDOR who works directly on the NCEL Contract/Account, and members of such employee's households, shall be prohibited from purchasing NCEL tickets and/or claiming any NCEL prizes.

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

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

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

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

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

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

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

## **16. OBLIGATIONS OF VENDOR**

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

E. VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement (i) a performance bond (the "**Performance Bond**") or letter of credit with the NCEL in an amount equal to five hundred thousand dollars (\$500,000), and (ii) a payment bond (the "**Payment Bond**") or letter of credit with the NCEL in an amount equal to five hundred thousand dollars (\$500,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by the NCEL in its sole discretion. The security provided by VENDOR pursuant to the Performance Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to indemnify the NCEL pursuant hereto. The security provided by VENDOR pursuant to the Payment Bond shall provide funds to the NCEL in the event the NCEL suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely pay any obligation contained in this Agreement. The Bonds may be renewable annually, provided that: (i) each Bond provides that, in the event such Bond will not be renewed for an additional year,

the NCEL will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if such Bond is not renewed for an additional year, VENDOR must obtain a replacement equivalent Bond or letter of credit to be in place so that at no time is VENDOR in violation of its obligation pursuant to this Section to maintain a performance bond and a payment bond at least throughout the term of this Agreement.

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

(i) General liability insurance in the amount of at least one million dollars (\$1,000,000);

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

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

(iii) An advertising agency liability insurance policy which shall insure against any and all claims against the NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or Intellectual Property Rights infringement arising out of any Work Product, other product or service prepared by, or services performed by, VENDOR, its employees or its Subcontractors, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of at least five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) in the aggregate.

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

## **17. TAXES**

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

## **18. TERMINATION**

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

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

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

D. In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party

and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

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

**19. INDEMNIFICATION**

VENDOR agrees to indemnify, defend and hold harmless the NCEL, the Commission, its Executive Director, directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from: (a) any breach of this Agreement or any other act or omission of VENDOR, the Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise; or (b) the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or item, trade secret, article or appliance furnished to the NCEL, or used in the performance of the Services or this Agreement, by VENDOR, its employees or any Subcontractor.

**20. CONFLICT RESOLUTION PROCEDURES**

Prior to bringing any judicial enforcement action with respect to any claims or controversies arising in connection with the performance of this Agreement, VENDOR must first pursue and exhaust any and all remedies available to it in accordance with the dispute resolution procedures adopted by the NCEL, as amended from time to time (collectively, the “**Dispute Resolution Procedures**”).

**21. NOTICES**

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

If to NCEL: North Carolina Education Lottery  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604  
Attn: M. Mark Michalko, Executive Director

If to VENDOR: [VENDOR INFORMATION]

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

**22. MISCELLANEOUS**

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

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

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

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

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

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

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

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

**23. ADDITIONAL SERVICES**

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

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

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

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

"NCEL"

"VENDOR"

**NORTH CAROLINA EDUCATION LOTTERY**

By: \_\_\_\_\_  
M. Mark Michalko  
Its: Executive Director

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

EXHIBIT A  
[PROPOSAL]

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EXHIBIT B  
[RFP]

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EXHIBIT C  
[QUESTIONS AND ANSWERS]