



# REQUEST FOR QUOTES

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

NORTH CAROLINA STATE LOTTERY COMMISSION: CONTACT INFORMATION	
Date Issued:	July 11, 2024
Requisition Number:	N/A
Proposal Response Due:	July 18, 2024
Issued By:	Anthony Downey, Purchasing Manager
Telephone /Fax/Email:	T – 919-301-3433 F – 919-715-0342 <a href="mailto:adowney@lotterync.net">adowney@lotterync.net</a>
Ship To Address:	2728 Capital Boulevard, Suite 144, Raleigh, NC 27604
Delivery/Start Date:	Upon Contract Execution
Comments:	Please provide proposal for Brand Ambassador Staffing Services

ITEM	QUANTITY	UNIT OF MEASURE	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			See Attachment A for cost submission		
Payment Terms: 30 Days				Subtotal	
Ship Via:				Applicable Tax	
FOB				Shipping	
Quotation Valid For _____ Days			Tax Exempt #400055	TOTAL	

**Additional Information:**

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

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

**Additional Information:**

Bidder is a certified HUB Vendor: Yes  No  Bidder is a resident NC Vendor: Yes  No

If you are interested in participating in the Price-Matching Preference, please fill out the e-Quote Executive Order #50Form. The form can be located using at <https://files.nc.gov/ncdoa/pandc/Documents/Contract-Administration-and-Monitoring-Guide/eQuoteExecutiveOrder50Form.pdf> Please sign the form and either attach the form to your Proposal bid response or fax it to 919-715-0342.

# North Carolina State Lottery Commission REQUEST FOR QUOTES: Brand Ambassador Staffing Services

## 1.0 Intent of the Request for Quotes

### Background:

The North Carolina State Lottery Commission (“Commission”) is an independent, self-supporting, and revenue-raising agency of the State of North Carolina. It has been in operation since 2006 and is governed by Chapter 18C of the North Carolina General Statutes. The Commission’s primary purpose is to generate funds for educational programs. From its inception through June 30, 2022, the Commission’s total sales revenue through its branded “North Carolina Education Lottery” operation has exceeded \$34.4 billion and the Commission has transferred billions of dollars to the State to support educational programs specified by the General Assembly.

### Scope of Work:

The North Carolina Education Lottery (“NCEL”) is requesting quotes for brand ambassadors to support all NCEL event staffing needs for a term up to three (3) years. All events will be held in North Carolina and will take place from September 2024 – June 2027.

The brand ambassadors will be responsible for interacting with the public within the NCEL event footprint. The primary responsibility of the brand ambassador will be to run the promotional spin wheel and provide players with promotional prizes such as t-shirts, water bottles, koozies, etc. The brand ambassador will be representing the NCEL and the goal is to treat the public with care and consideration so they have a fun and positive experience.

NCEL Display & Spin Wheel



The Commission desires to obtain what it believes to be the best flexible solution within the required specifications with optimal price-value and responsiveness to the Commission's needs. All Potential Contractors must fully acquaint themselves with the Commission's needs and requirements and obtain all necessary information and understanding to be able to submit responsive and effective Proposals.

## **2.0 Intentionally Left Blank**

## **3.0 Scope of Services**

### **Requirements**

- Responding Contractor must have capability to provide bilingual Spanish speaking staff when requested from NCEL for specific events.
- All brand ambassadors must be 18 years of age or older and shall comply with NCEL policies and procedures. Failure to comply with such policies and/or procedures may subject the brand ambassador to immediate dismissal and the NCEL will not be responsible for the cost of such personnel.
- All brand ambassadors must pass a criminal background check to be conducted by the NCEL security team before working an event.
- When possible, the NCEL requests that the same brand ambassadors be used for multiple events.

## **4.0 Proposal – Required Content**

All of the questions and information included in this Section are required. Please review Section 6.10 (Proposal Subject to Public Records Laws) before responding and label each applicable answer, report, document, etc. as "Confidential" or "Trade Secret." Only information that qualifies as confidential or a trade secret under North Carolina Public Records Laws should be marked as such. Do NOT mark the entire Proposal as "Confidential."

### **Specifications**

- Quote should include set hourly rate and any additional fees per event on an annual basis for three years. See section 5.3 for more detailed requirements for the cost proposal.
- Staffing hours are based on estimated hours needed to conduct event. Actual event hours needed will be provided to Selected Contractor prior to each fall and spring event season. Selected Contractor will submit an estimate based on contracted hourly rate and additional fees (if any) to the NCEL prior to each event season for review and approval.
- NCEL reserves the right to cancel and add events at any time and the NCEL will only be billed for actual services provided.

## **5.0 Proposal Format**

Proposals should be concise and limited to information requested. Each Proposal shall include the following information:

### **5.1 Qualifications**

- A brief description of the company or organization, including major product lines, typical customer and size, organizational structure, etc.
- Brief description of company/organization's and team members' experience and record of accomplishment on similar projects with similar organizations

- If applicable, detail the manner in which it intends to utilize any resources or workers outside the U.S.

## 5.2 Written Response to Scope of Services

- Please provide a written, detailed description of each specified requirement listed in Sections 3 and 4 and include the specific item by section and number. Include a "Yes" or "No" and explanatory or informational text, as needed or requested. If a requirement cannot be met or met only partially, provide a detailed clarification explaining the solution's capabilities and limitations.
- The Responding Contractor may propose additional services, products, product components, or features not required, i.e., Offered Options. If an additional service, product, product component, or feature is proposed, it should be clearly marked as an OFFERED OPTION.

## 5.3 Costs (see Attachment A)

- A worksheet with the estimated annual event staffing needs is included in Attachment A.
- **A cost proposal must be provided, based upon the estimated annual event staffing needs, in the format presented on page 2 of Attachment A.**
- **A fixed hourly rate must be provided as well as any per event charges.**
- **The rates shall remain constant throughout the three-year term of the contract.**
- **The cost proposal must be signed by an authorized representative of the Potential Contractor.**
- The estimated events and hours are a projection of possible staffing needs and can change.

## 5.4 References

- Provide references of similar organizations for whom your organization or key individual(s) within your organization have performed similar services within the last three (3) years. Include company name, contact name, and contact information, as well as a brief summary of the scope of the services provided along with the technical platform.

**Issuance of this RFQ does not constitute a commitment on the part of the Commission to award or execute a contract. The Commission 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 RFQ, 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 Commission.**

## 6.0 RFQ Process and Other Important Information

### 6.1 SUMMARY OF KEY DATES

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

**July 11, 2024**

RFQ Issuance Date

**July 18, 2024**

Written Quotes / Proposals due by 4:00 p.m. ET by email or physical delivery (late Proposals will not be accepted) (the "**Proposal Submission Deadline**")

DELIVERY ADDRESS:

North Carolina State Lottery Commission Headquarters  
 Attn: Anthony Downey  
 adowney@lotterync.net  
 RFQ – Brand Ambassador Staffing

**July 22, 2024**

Target date for Decision of Apparent Successful Contractor

## **6.2 CONTACT PERSON**

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

Email: [adowney@lotterync.net](mailto:adowney@lotterync.net)

Fax: **919-755-0342**

North Carolina State Lottery Commission  
RFQ – Brand Ambassador Staffing Services  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604

**No direct or indirect contact or other solicitation initiated by Potential Contractors or their representatives, in connection with this Procurement, should occur with any Commission employee or Commission member other than the Contact Person. This contact limitation extends from the RFQ issuance date until an Apparent Successful Contractor has been approved by the Commission.** Employees of current Contractors who are required to work with the Commission under existing contracts will be permitted to continue their regular contacts under that agreement; however, they may not have any discussions or exchange any information in connection with or regarding this Procurement or RFQ.

## **6.3 PROPOSAL VALIDITY; INCURRED EXPENSES**

All Proposals shall remain valid for one hundred eighty (180) calendar days (the “Proposal Offer Period”) following the Proposal Submission Deadline. A Proposal constitutes an offer by the Potential Contractor to contract with the Commission in accordance with the terms of the Proposal and this RFQ, 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 Commission, which may be granted or withheld in its sole discretion. The Commission shall not be liable or responsible for any costs, expenses, reimbursements, or fees incurred by a Potential Contractor in preparing and submitting a Proposal or in performing any other action in connection with this Procurement.

## **6.4 PROPOSAL SUBMISSION AND FORMAT**

Proposals must be received by the Contact Person no later than the Proposal Submission Deadline. A Responding Contractor may submit its unredacted Proposal and supporting documents electronically to the Contact Person in PDF (or another appropriate) format. If submitting physical copies, Responding Contractor must provide one (1) signed original and five (5) paper copies of its Proposal and supporting documents plus one (1) USB flash drive containing an unredacted PDF version (or other suitable format) of its Proposal and supporting documents.

In addition, Responding Contractor may include one redacted electronic copy of its Proposal and supporting documents with information that Contractor deems confidential or contains trade secrets or such other proprietary rights as dictated by law redacted. **Pursuant to North Carolina Public Record Laws, in order for information to be maintained as confidential or trade secret, it MUST be received at the same time as the unredacted versions.**

Late Proposals will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Also, the Proposal must designate a single authorized official from one of the entities to serve as the sole contact between the Commission and the Contractor.

## **6.5 PROPOSAL EVALUATION**

A variety of factors (including, but not limited to, experience, cost/price, minority business participation, and ability to perform the Contract) shall be considered by the Commission 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 Commission.

These factors are not necessarily listed in the order of importance or weight. Thus, while Potential Contractors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Potential Contractor offering the lowest price and total cost may not be selected as the Successful Contractor. The Commission will conduct a fair, comprehensive, and impartial evaluation of all Proposals deemed responsive.

Failure to provide pricing will result in disqualification. Failure to provide the required information such that the Commission is unable to evaluate your product(s) and compare it/them with the products of other bidders will result in disqualification.

## **6.6 BACKGROUND INVESTIGATION**

The Commission reserves the right to investigate, at a minimum, the financial responsibility and security of any Successful Contractor and its Subcontractors. Upon request, the Contractor awarded the contract as a result of this RFQ, must complete and submit the applicable background investigation forms. 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.

All brand ambassadors must pass a criminal background check conducted by the NCEL before working any event.

## **6.7 DISPUTE PROCEDURE**

All claims and disputes, including but not limited to protests related to this RFQ, the Procurement and the award of the Contract to the Successful Potential 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 Commission. See the Commission's website at:

<https://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 RFQ, Procurement, Contract, offer, quote, Proposal, bid or agreement entered into by the Commission; (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 RFQ or its contents.

## **6.8 NEGOTIATION AND EXECUTION OF CONTRACT**

A Successful Potential Contractor under this RFQ shall negotiate and execute a contract containing such terms and conditions as shall be satisfactory to the Commission.

Attachment E is a draft of the contract, which contains the terms and conditions required by the Commission. At the sole discretion of the Commission, certain provisions may be negotiated and modified subsequent to Contract award. Please be aware that, as an agency of the State of North Carolina, the Commission is limited in its ability to accept certain provisions that are commonly found in commercial non-governmental contracts.

The occurrence of negotiations with any Potential Contractor(s) conveys no right or status on such Potential Contractor(s). By submitting a Proposal, each Contractor acknowledges and agrees that the Commission may negotiate with one or more Contractors, under such circumstances, at such times and in such a manner as Commission determines to be in the best interest of the Commission.

## **6.9 NONEXCLUSIVE RIGHTS**

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

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

All Proposals, data, materials, and documentation originated, prepared, and submitted to the Commission pursuant to this RFQ shall belong exclusively to the Commission 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 Commission will make reasonable attempts to maintain, in accordance with the Public Records Laws and the Act and all applicable laws of 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. If an action is brought or threatened against Commission pursuant to N.C.G.S. §132-9 to compel Commission to disclose information marked as confidential or a trade secret, Commission will promptly notify Potential Contractor in writing of such to allow Potential Contractor to determine if it will intervene and defend such action, Commission, and its commissioners, officers, and employees. If Potential Contractor opts to not intervene and defend such action and the Commission, its commissioners, officers, and employees, the Commission may, in its sole discretion decide whether to defend such action or release the requested records. The Commission shall have no liability to Potential Contractor with respect to any such disclosures.

## **6.11 PRICING OPTIONS**

Potential Contractors are requested to provide costs for providing the requested deliverables detailed in this RFQ. Potential Contractors are also requested to propose rates for any additional optional and/or related equipment and services beyond the anticipated work under the RFQ. Potential Contractors are reminded that the cost quotation should cover all the equipment, services, and other items covered and required by this RFQ, as well as other services deemed necessary by the Contractors, to be provided by the Successful Contractor. Specifically, the Successful Contractor shall be responsible for all charges incidental to the routine conduct of business including, but not limited to any and all travel expenses including mileage, meals, telephone calls, facsimile, copying, color copies, shipping, postage and delivery charges from the Successful Contractor to the Commission.

If the Potential Contractor has more than one solution or pricing structure that may be appropriate, please submit pricing for all such options along with sufficient information to demonstrate clearly the differences between the possible solutions.

#### **6.12 PAYMENT**

Upon review and approval of the Commission, the Successful Contractor shall be paid within thirty (30) days from the Successful Contractor's submission of an invoice to the Commission and after all services and deliverables have been provided to the Commission.

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

The North Carolina State Lottery Act has specific references to minority participation in the formation and operation of the Commission and requires compliance with N.C.G.S. Article 8 Chapter 143 as applicable. The Commission 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 Commission encourages Potential Contractors to contract with minority-owned businesses whenever and wherever possible. Given the Commission policy regarding participation of minority businesses and the express provisions of the Act, a Potential Contractor shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its Proposal and provisions of its services.

#### **6.14 NON-DISCRIMINATION**

Each Potential Contractor must describe in its Proposal what actions it currently takes, in the areas of: (a) ensuring a workplace free of all discrimination on the basis of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status, 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. Additionally, all Potential Contractors must complete and return either Affidavits A and B or Affidavit C, which are attached hereto at **Attachment B**, Equal Business Opportunity Forms.

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

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



**ATTACHMENT A  
COST SUBMISSION  
BRAND AMBASSADOR STAFFING SERVICES**

<b>ESTIMATED ANNUAL EVENT STAFFING NEEDS</b>					
<b>Events</b>	<b>Month of Event</b>	<b>City</b>	<b>Event Days</b>	<b># of BA's Needed for Each Event Day</b>	<b>Estimated Staffing Hours <i>(includes 2 BA's for all event days)</i></b>
Apple Festival	September	Hendersonville, NC	3	2	60
African American Cultural Festival	September	Raleigh, NC	2	2	40
Historic Morganton Festival	September	Morganton, NC	2	2	50
NC Folk Festival	September	Greensboro, NC	3	2	35
Wide Open Bluegrass	September	Raleigh, NC	2	2	40
International Folk Festival	September	Fayetteville, NC	2	2	30
zMax Dragway (NHRA Carolina Nationals)	September	Concord, NC	3	2	50
Bank of America ROVAL 400	September	Concord, NC	3	2	32
Hola Festival	October	Charlotte, NC	1	2	15
NC Seafood Festival	October	Morehead City, NC	3	2	60
Wilmington Riverfest	October	Wilmington, NC	2	2	35
Mumfest	October	New Bern, NC	3	2	40
NC State Fair	October	Raleigh, NC	10	2	200
NC Barbecue Festival	October	Lexington, NC	1	2	20
World of Outlaws	November	Concord, NC	3	2	50
Whirligig Festival	November	Wilson, NC	2	2	25
Azalea Festival	April	Wilmington, NC	2	2	40
Brewgaloo	April	Raleigh, NC	2	2	25
Fayetteville Dogwood Festival	April	Fayetteville, NC	3	2	45
zMax Dragway (spring)	April	Concord, NC	3	2	55
NCEL 200 / Coca-Cola 600	May	Concord, NC	2	2	40
Got to Be NC Festival	May	Raleigh, NC	3	2	60
Black Bear Festival	May	Plymouth, NC	2	2	30
Taste of Charlotte	June	Charlotte, NC	3	2	55
Blueberry Festival	June	Burgaw, NC	1	2	25
Carolina Panthers	November - April	Charlotte, NC	3	2	24
Carolina Hurricanes	November - April	Raleigh, NC	3	2	24
<b>TOTAL</b>			<b>72</b>		<b>1205</b>

**ATTACHMENT A**  
**COST SUBMISSION**  
**BRAND AMBASSADOR STAFFING SERVICES**

<b>FY25</b>		
July 1, 2024 - June 30, 2025		
<b>Hourly Rate Per Event for each BA</b>	<b>Administrative/Agency Fees Per Event</b>	<b>Include Any Other Fees Per Event</b>

<b>FY26</b>		
July 1, 2025 - June 30, 2026		
<b>Hourly Rate Per Event for each BA</b>	<b>Administrative/Agency Fees Per Event</b>	<b>Include Any Other Fees Per Event</b>

<b>FY27</b>		
July 1, 2026 - June 30, 2027		
<b>Hourly Rate Per Event for each BA</b>	<b>Administrative/Agency Fees Per Event</b>	<b>Include Any Other Fees Per Event</b>

**POTENTIAL CONTRACTOR'S  
NAME:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title** \_\_\_\_\_

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

**ATTACHMENT B**

**Equal Business Opportunity Forms**

All respondents must complete and return either the attached Affidavits A and B **OR** Affidavit C



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

---

(Signature of Authorized Representative)

---

(Print Name)

---

(Title)

---

(Date)

**NOTARY:**

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

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

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

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

**[SEAL]**

## Affidavit B- Listing of Good Faith Efforts

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

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

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

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

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

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a Proposal 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 Proposal 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 Commission.
- 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)** Provide 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 Commission. Substitution of contractors must be in accordance with N.C.G.S. §143-128.2(d). Failure to abide by this statutory provision will constitute a breach of the Contract.

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

---

(Signature of Authorized Representative)

---

(Print Name)

---

(Title)

---

(Date)

**NOTARY:**

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

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

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

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

[SEAL]

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

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

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

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

Responding Contractor is a Certified HUB Vendor: Yes  No

Responding Contractor is a Minority Vendor: Yes  No

I hereby certify that it is our intent to perform 100% of the work required for the Commission contract for Brand Ambassador Staffing Services.

In making this certification, the Responding Contractor states that the Responding Contractor does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with its own current work forces; and the Responding Contractor agrees to provide any additional information or documentation requested by the Commission in support of the above statement.

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

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

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

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

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

**NOTARY:**

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

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

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

My commission expires \_\_\_\_\_ [SEAL]



**ATTACHMENT C**

**COMMISSION VENDOR INFORMATION FORM**

**Vendor Name (Commonly Used Name)**

**Full Legal Entity Name (As Listed on Tax Returns)**

**State of Incorporation**

**Name of Person Signing Contract**

**Title**

**Contractor's Main Contact Person for Commission**

**Title**

**Telephone Number**

**Email Address**

**Legal Notice Information**

**Name of Person to Receive Legal Notices**

**Title**

**Street Address**

**Street Address Line 2**

**City**

**State**

**Zip Code**

**Telephone Number**

**Email Address**

Note: If you wish to have more than one person receive legal notices, please attach additional copies of this form.

**ATTACHMENT D**

**BRAND AMBASSADOR STAFFING SERVICES RFQ  
PROPOSAL REQUIREMENTS CHECKLIST**

Proposal – Signed	
Attachment A – Cost Proposal - Separate File	
Attachment B - Equal Business Opportunity Forms Affidavits A and B, <b>OR</b> Affidavit C (Notarization Needed)	
Attachment C - Vendor Information Form	
Disclosure of Litigation and legal matters - Separate Document	

**ATTACHMENT E**



**BRAND AMBASSADOR SERVICES AGREEMENT**

This Brand Ambassador Services Agreement (the "**Agreement**") is made and entered into on the date of the last signature below by and between the **NORTH CAROLINA STATE LOTTERY COMMISSION** d/b/a 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 \_\_\_\_\_, **INC.** located at \_\_\_\_\_, a \_\_\_\_\_ organized under the laws 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 \_\_\_\_\_, 2024 (the "Proposal," **Exhibit A**) to the NCEL in response to the NCEL's Request for Quotes dated [RFQ Publication Date] (the "RFQ," **Exhibit B**). Exhibits A and B are attached hereto and incorporated as by reference as if set forth fully herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide brand ambassador and other related services for the NCEL, and VENDOR desires to provide such Services and Deliverables 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 AND DELIVERABLES**

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

## 2. DUTIES AND RESPONSIBILITIES OF VENDOR

A. VENDOR and its Subcontractors (defined in Section 3(A) below) will work in conjunction with the Executive Director of the NCEL, the NCEL staff, the North Carolina State Lottery Commission (the "Commission") and such other Contractors, subcontractors, employees, agents, retailers and consultants as directed by the NCEL. VENDOR and its Subcontractors will provide the Services and Deliverables to the NCEL as detailed in the RFQ and the Proposal and as requested, from time to time, orally or in writing, by the Executive Director, their designee(s) and/or the Commission. Except as otherwise set forth herein, VENDOR agrees that all Services and Deliverables to be provided to the NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the RFQ, and the Proposal.

B. VENDOR, and its Subcontractors as requested from time to time, shall meet regularly with the Executive Director or their designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the Executive Director or their designee(s).

C. VENDOR hereby agrees to use its best efforts to make available to the NCEL, such of its employees and its Subcontractors as may be necessary or appropriate for the timely performance of VENDOR's obligations pursuant to this Agreement. No employee or agent of VENDOR or any of its Subcontractors shall undertake or participate in, during the term of this Agreement, any other engagement which will interfere with the completion of the work contemplated by this Agreement. VENDOR will provide the NCEL, as requested from time to time, written reports of the names and work schedules of VENDOR's and the Subcontractors' employees who will be performing and providing Services and Deliverables pursuant to this Agreement.

D. Scope of Services and Deliverables: Subject to the instructions and decisions of the NCEL, VENDOR will be responsible for providing the Services and Deliverables as specified in the RFQ and VENDOR's Proposal.

## 3. SUBCONTRACTORS

A. VENDOR shall not 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 or providing Services and Deliverables under this Agreement or for the NCEL will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a Subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the NCEL may require. VENDOR

agrees that it will obtain the prior consent of the Executive Director or their designee(s) prior to having any Subcontractor perform any activities for the NCEL under this Agreement.

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

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

D. Notwithstanding anything herein to the contrary, VENDOR will remain fully liable and responsible for all Services and 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 and provision of Services and Deliverables pursuant to this Agreement and such other standards or policies as the NCEL may establish from time to time.

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

A. Both the NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of the NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of VENDOR to procure selected materials and services as authorized by the NCEL and as specifically set forth in, and subject to the limitations described in the RFQ 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**”) as detailed in the Vendor’s Cost Proposal. Vendor shall submit an amended Cost Proposal solely with respect to the costs for additional events as mutually agreed upon with the NCEL. The amended Cost Proposal shall automatically be incorporated herein upon written acceptance by the NCEL.

B. VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to travel, mileage, meals, telephone calls, 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 and Deliverables or the VENDOR’s performance under this Agreement.

D. Subject to the availability of funds and any other restrictions imposed by the Act, the “Governing Laws and Regulations” (as defined in Section 13) of this Agreement, the NCEL will pay to VENDOR all non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of the VENDOR’s invoice, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by the NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors. Electronic billing shall be available to the NCEL.

## 6. TERM AND RENEWAL OPTION

The term of this Agreement shall commence upon full execution (the “**Effective Date**”) and, unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFQ, expire on June 30, 2027 (the “**Initial Term**”). Notwithstanding the foregoing, the NCEL may elect to renew this Agreement for three (3) additional one-year periods (each an “**Extension Term**”, and collectively with the Initial Term, the “**Term**”). NCEL may exercise its option to extend this Agreement by providing written notice to VENDOR at least ninety (90) days before expiration of the Initial Term or, if applicable, the then-current Extension Term. If NCEL exercises the option, Vendor shall submit an amended Cost Proposal solely with respect to the costs for applicable Extension Term(s) and such events as mutually agreed upon with the NCEL. The amended Cost Proposal(s) shall automatically be incorporated herein as upon written acceptance by the NCEL.

## 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 it, and none of its Subcontractors, or any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer, subcontractor or other individual or entity in connection with the performance of its obligations under this Agreement.

C. If the NCEL becomes dissatisfied with the Services and Deliverables or work product of or the working relationship with any of the individuals assigned to perform Services and Deliverables under this Agreement by VENDOR or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Important personnel, whether or not identified in VENDOR's Proposal as performing or providing Services and Deliverables under this Agreement, will continue to perform in their designated capacities until such Services and Deliverables are completed unless: (i) they cease to be employed by VENDOR or a Subcontractor; (ii) the NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to the NCEL, in its discretion, will be substituted forthwith; or (iii) VENDOR wishes to have them replaced by someone of equal or better qualifications and VENDOR obtains NCEL's prior written consent to such change.

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

E. Nothing in this Agreement shall prohibit the NCEL from retaining the services of any individual or entity, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. The NCEL is not prohibited by this Agreement from retaining the services of any individual or entity, and it is under no obligation to exclusively use the Services and Deliverables 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 of the Executive Director or their designee(s) to VENDOR, the NCEL may

from time to time make changes in the Services and Deliverables to be provided by VENDOR or any Subcontractor, or the place of performance or provision of any Services and Deliverables. 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 RFQ 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 of the NCEL, VENDOR and each Subcontractor shall provide to the NCEL a copy of its latest audited financial statements for such year; provided, however, if VENDOR and/or a Subcontractor does/do not obtain audited financial statements, then its/their 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 and Deliverables to be performed and provided 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 and Deliverables 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, when identified in writing or otherwise explicitly indicated, at the time of initial disclosure:

(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, 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.

(iii) Confidential Information and Trade Secrets shall collectively be referred to herein as “**Protected Information.**”

B. In recognition of the need of VENDOR to protect its legitimate business interests, provided that Vendor Confidential Information and Trade Secrets are properly marked as such in accordance with G.S. §132-1.2(1)(d), 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 herein to the contrary, 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 Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes. If an action is brought pursuant to N.C.G.S. §132-9 to compel NCEL to disclose Protected Information, VENDOR agrees that it will intervene in the action through its counsel and participate in defending the NCEL, including any public official(s) or public employee(s). NCEL agrees to promptly notify VENDOR in writing of any action seeking to compel the disclosure of such VENDOR Protected Information. NCEL shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The NCEL shall have no liability to VENDOR with respect to the disclosure of VENDOR Protected Information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable Law.

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 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 Subcontractors 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 and Deliverables provided for the NCEL under this Agreement (collectively, the "**NCEL Intellectual Properties**"). All deliverables, written materials, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, 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 "**NCEL 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 and other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL's request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its lottery games and other activities.

**11. NONDISCRIMINATION; AFFIRMATIVE ACTION**

A. Neither VENDOR nor any Subcontractors shall discriminate against any employee or applicant for employment because of their race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 and provision of Services and Deliverables 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, OTHER THAN THE NCEL, 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 and 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 been convicted of a felony or any gambling offense in any state or federal court of the United States within ten (10) years prior to entering into this Agreement (NCGS §18C-151(a)(5)) or ever been found guilty of, or plead guilty to, any crime in any way related to gambling or 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 gambling or the security, integrity or operation of any lottery in any jurisdiction. VENDOR shall notify the NCEL if VENDOR, the Subcontractors or any one of its or their respective officers, directors, partners or major shareholders has been convicted of a felony or any gambling offense in any state or federal court of the United States at any time during the Term of this Agreement.

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, inflammatory, derogatory, discriminatory, 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 and Deliverables without the prior written consent of the Executive Director or their designee(s) in each instance.

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

I. All Services and Deliverables rendered and 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 and provided.

## **16. OBLIGATIONS OF VENDOR**

A. Upon execution, VENDOR shall provide the NCEL a current Certificate of Authority, from the North Carolina Secretary of State, showing that it and each Subcontractor are qualified to

transact business in the State of North Carolina. VENDOR shall ensure that the Certificate of Authority remains current at all times during the Term of this Agreement.

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 the RFQ or this Agreement; including, without limitation, all breaches of any representation, warranty, or covenant set forth in Section 15 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 the RFQ or this Agreement and which materially affect the NCEL, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; provided, however, if any such proceeding would have a material adverse effect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after VENDOR learns of such proceeding.

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

(i) Commercial General Liability (CGL) insurance on an ISO form number CG 00 01 (or equivalent) covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Agreement, including coverage for premises, products, and completed operations, on an occurrence basis, with limits no less than \$2,000,000 per occurrence, \$5,000,000 aggregate;

(ii) Workers Compensation insurance with statutory limits, as required by the state in which the work takes place;

(iii) Employer's Liability insurance with limits no less than \$1,000,000 per accident for bodily injury or disease. Insurer will be licensed to do business in the state in which the work takes place;

(iv) Automobile Liability insurance on an ISO form number CA 00 01 covering all hired and non-owned automobiles with limit of \$1,000,000 per accident for bodily injury and property damage;

(v) Cyber Liability, Technology Errors & Omissions, and Network Security & Privacy Liability insurance, including extended reporting conditions of two (2) years with limits no less than \$2,000,000 per claim and in the aggregate, inclusive of defense cost; and

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

F. Such insurance policies shall name the NCEL as an additional insured, and shall provide that such policies cannot be terminated, canceled, or modified without giving VENDOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification. VENDOR shall be required to provide proof of insurance coverage in accordance with this Agreement and its Proposal prior to the Effective Date of this Agreement and at least annually during the term hereof. Renewed bonds, if applicable, and/or insurance policies must be submitted to the NCEL at least 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 and Deliverables and/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 (subject to North Carolina Department of Justice approval), 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; (b) the development, possession, license, modifications or use of any copyrighted or non-copyrighted work, 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 and Deliverables or this Agreement, by VENDOR, its employees or any Subcontractor; or (c) any NCEL Intellectual Properties, Intellectual Property Rights, Work Product or NCEL Intellectual Property Rights produced for, provided, assigned, transferred, granted, or conveyed, to NCEL by VENDOR, its employees or any Subcontractor hereunder.



**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 Contractor Dispute Resolute Policy 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, with delivery signature confirmation, as follows:

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

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

If to VENDOR: [\_\_\_\_\_]

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

**22. MISCELLANEOUS**

A. This Agreement, together with the RFQ and Proposal, 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 RFQ and the Proposal, the terms of this Agreement, as it may be amended pursuant hereto, shall control and supersede the RFQ, and the terms of the RFQ shall control and supersede 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 or products of VENDOR for activities in addition to those contemplated by this Agreement, and VENDOR agrees to perform such services or provide such products, payment therefore shall not exceed the rates identified in this Agreement unless agreed to in writing by the NCEL. The rates and the terms of payment for any such service 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.

**[SIGNATURE PAGE FOLLOWS]**

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

"NCEL"  
**NORTH CAROLINA STATE  
LOTTERY COMMISSION**

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

M. Mark Michalko

Its: Executive Director

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

"VENDOR"  
**VENDOR FULL LEGAL NAME**

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

Name: \_\_\_\_\_

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

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

EXHIBIT A  
[PROPOSAL AND COST PROPOSAL]

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EXHIBIT B  
[RFQ]

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