



# REQUEST FOR QUOTATION

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

NC EDUCATION LOTTERY CONTACT INFORMATION	
Date Issued:	February 17, 2022
Requisition Number:	N/A
Quote Response Due:	4:00 PM (EST) – March 10, 2022
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 quote for Compensation Evaluation Services

ITEM	QUANTITY	UNIT OF MEASURE	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1	Dollar	Compensation Evaluation Services		
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

Are you a Minority Vendor: Yes  No

# North Carolina Education Lottery

## COMPENSATION EVALUATION SERVICES – REQUEST FOR QUOTE

### 1. INTENT OF THE REQUEST FOR QUOTE (RFQ)

#### Background:

The North Carolina Education Lottery (NCEL) is an independent, self-supporting, and revenue-raising agency of the State of North Carolina, in operation since 2006 and governed by [Chapter 18C](#) of the North Carolina General Statutes. All net revenues generated are used for education. Since its inception, the Lottery has increased ticket sales every year of its operations, 15 years in a row, and raised more than \$8.27 billion for the state of North Carolina to support valuable programs and causes. The North Carolina Education Lottery partners with nearly 7,000 retailers who sell tickets; and the revenue they earn from the sale of lottery products works to keep their profits and workforces stable. For additional information visit the website at: [www.nclottery.com](http://www.nclottery.com)

The North Carolina Education Lottery (NCEL) is comprised of approximately 270 full time equivalent (FTE) positions in 6 locations, and about 80 of those positions are commissioned sales people. We have approximately 120 distinct positions. Our last compensation and classification study was completed in 2017 and represented a transition from point factor methodology to a market-based pay system. Our job descriptions were updated and streamlined. Every position was evaluated, a new salary structure was developed and several employees received adjustments to pay as a result of the evaluation or because of internal compression. These changes were implemented over a two-year period, during 2017 and 2018.

Work on this project will begin on or after July 1, 2022 and should be completed no later than January 31, 2023.

### 2. SCOPE OF SERVICES:

The scope of Services required include:

- a. Study and evaluate all full-time positions within NCEL for purposes of determining the proper classification and salary for each employee. If evaluation of all positions is not deemed necessary, propose an alternative method that ensures an equitable treatment for all NCEL positions.
- b. Review the effectiveness of NCEL's overall compensation system including hiring rates and compression issues.
- c. Review NCEL salary structure and pay plan to ensure we are able to effectively support recruitment and retention of employees.
- d. Develop and present final recommendations and implementation plan, including financial impact of implementing recommended adjustments to current salaries both immediately and in the future.

- e. Make recommendations to NCEL about any changes to the pay plan, strategies, policies, best practices and other compensation-related items in order to maintain a competitive place in the labor market.
- f. Provide assistance to the NCEL HR staff to enable ease of maintaining the compensation classification system.
- g. Provide guidance and explanation for communicating to management and staff the methodology and rationale behind the revised compensation program.
- h. Provide information and pricing for follow up support after the completion of the project. For instance, for benchmarking new jobs, determining exempt/non-exempt status, salary administration questions, etc.

### **3. Proposal Format and Content:**

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

#### **3.1. Qualifications:**

- Provide a brief description of the firm, including major practice areas, typical client type and size, organizational structure, etc.
- Brief description of Responding Contractor's experience and track record on similar projects with similar organizations, including its experience/reputation in this field.
- Provide qualifications of the key personnel to be assigned to the project and list similar compensation projects that they have coordinated within the last three years.

#### **3.2. Work Plan:**

- Written, detailed description of its methodology for providing the specified Services, including detailed project plan with defined scope. Please include detailed list of salary sources used as well as an explanation for why those sources were selected.
- Projection of support needed from the Human Resources staff and for what phases of the project.
- Responding Contractor shall clearly describe any assumptions for the NCEL Project and any required tasks and/or information from the NCEL to successfully complete the project, including any foreseeable risks.
- Estimate of time required to complete project and a proposed timeline to include estimate of time on each phase through completion.

#### **3.3. Costs (see Attachment A):**

- Submit a cost proposal including a proposed amount for each task and the overall cost to complete the entire scope of work.

#### **3.4. References:**

- Provide three references of similar organizations for whom you have performed similar services within the last three (3) years. Include company name, contact name and contact information,

size of company's workforce, what services were provided, and project begin/end date.

### 3.5. Selection Process:

The selection will be made based upon the following criteria:

- Experience with organizations of a similar size and type
- Understanding of the scope of work
- Strategy for providing the required Services
- Demonstrated ability of key personnel
- Cost competitiveness

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

### 4.1 SUMMARY OF KEY DATES

The NCEL reserves the right to change any dates and schedule contained in this RFQ, including those shown below. If changes are made, the changes will be communicated on the NCEL website and, to the extent possible, through email.

<b>February 17, 2022</b>	RFQ Issuance Date
<b>March 10, 2022</b>	Written Proposals due by 4:00 p.m. (ET) by email (late Proposals will not be accepted) (the "Bid Submission Deadline")
<b>March 21 – April 1, 2022</b>	Phone interviews with finalists
<b>April 8, 2022</b>	Bidders notified
<b>After July 1, 2022</b>	Work begins

DELIVERY ADDRESS:

North Carolina Education Lottery Headquarters  
Attn: Anthony Downey  
[adowney@lotterync.net](mailto:adowney@lotterync.net)  
RFQ – Compensation Evaluation Services  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604

## 4.2 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: **919-715-0342**

North Carolina Education Lottery  
RFQ – Compensation Evaluation Services  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604

**No direct or indirect contact or other solicitation initiated by Contractors or their representatives, in connection with this Procurement, should occur with any Lottery employee or commission member other than the Contact Person. This contact limitation extends from the RFQ issuance date until an Apparent Successful Contractor has been approved by the NCEL.**

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

## 4.3 BID VALIDITY; INCURRED EXPENSES

All Bids shall remain valid for one hundred eighty (180) calendar days (the “Bid Offer Period”) following the Bid Submission Deadline. A Bid constitutes an offer by the Potential Contractor to contract with the NCEL in accordance with the terms of the Bid and this RFQ, which offer is irrevocable for the duration of the Bid Offer Period and may not be withdrawn or amended during the Bid Offer Period without the written consent of the NCEL. The NCEL shall not be liable or responsible for any costs, expenses, reimbursements or fees incurred by a Potential Contractor in preparing and submitting a Bid or in performing any other action in connection with this Procurement.

## 4.4 BID SUBMISSION AND FORMAT

Proposals must be received by the Contact Person no later than the Bid Submission Deadline. A Contractor may submit its Proposal electronically to the Contact Person. In addition, Responding Contractor may include one redacted electronic copy of its Proposal with redacted information that Contractor deemed as confidential or contained trade secrets or such other proprietary rights as dictated by law. 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 NCEL and the Contractor.

#### 4.5 PUBLIC RECORD LAWS

All Proposals, data, materials, and documentation originated, prepared and submitted to the NCEL pursuant to this RFQ shall belong exclusively to the NCEL and may become available to the public in accordance with the North Carolina Public Records Act as provided in N.C.G.S. §132-1 et. seq. (the “Public Records Laws”). The NCEL will make reasonable attempts to maintain, in accordance with the Public Records Laws and the Act, 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.***

#### 4.6 BID EVALUATION

A variety of factors (including, but not limited to, experience, integrity, proposed solution, cost/price and value to the NCEL, background, financial viability, ability to perform the Contract) shall be considered by the NCEL in determining the Successful Contractor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the NCEL.

These factors are not necessarily listed in the order of importance or weight. Thus, while Potential Contractors are strongly encouraged to offer the lowest price and total cost and highest value possible, the Potential Contractor offering the lowest price and total cost may not be selected as the Successful Contractor. The NCEL will conduct a fair, comprehensive and impartial evaluation of all Bids deemed responsive using an evaluation committee (the “**Evaluation Committee**”). The Evaluation Committee may request clarifications or answers to any questions it may have of a Potential Contractor as a result of any information or representations contained in its Bid or otherwise identified, and may ask a Potential Contractor to address technical questions or seek additional information regarding any Bid before completing the initial evaluation.

It is not the intent of the NCEL to disqualify any Bid based on minor technicalities. However, the NCEL reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the Bid and Contractor. The NCEL also reserves the right to disqualify the Contractor’s Bid if the Contractor has violated Section 4.2 of this RFQ. It is the intent of the evaluation procedure established by the NCEL to determine whether each Bid meets the needs of the NCEL, as outlined in this RFQ, and then to determine which Bid best suits those needs.

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

#### 4.7 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 Dispute Resolution Procedures (the “Dispute Procedures”), included as **Attachment C**, as adopted and/or amended from time to time by the NCEL

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

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

**Attachment B** is a sample contract, which contains the terms and conditions required by the NCEL. At the sole discretion of the NCEL, certain provisions may be negotiated and modified subsequent to Contract award.

#### **4.9 NONEXCLUSIVE RIGHTS**

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

#### **4.10 PRICING OPTIONS**

Potential Contractors are requested to provide costs for performing the requested Services as detailed in this RFQ. Potential Contractors are also requested to propose rates for any additional optional and/or related services beyond the anticipated work under the RFQ. Potential Contractors are reminded that the cost quotation should cover all of the 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 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 any and all travel expenses including mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from the Successful Contractor to the NCEL.

#### **4.11 PAYMENT**

Upon review and approval of the NCEL, the Successful Contractor shall be paid within thirty (30) days from

the Successful Contractor's submission of an invoice to the NCEL and after all Services and deliverables have been provided to the NCEL.

#### **4.12 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 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 Potential 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 Potential Contractor shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its Bid and provisions of its Services.

#### **4.13 NON-DISCRIMINATION**

Each Potential Contractor should describe in its Bid 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**

**COST SUBMISSION  
COMPENSATION EVALUATION SERVICES  
(MUST BE IN A SEPARATELY SEALED ENVELOPE  
FROM THE TECHNICAL BID)**

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(Potential Contractor's Name)

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

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

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

## ATTACHMENT B

### SAMPLE CONTRACT

#### COMPENSATION EVALUATION AND RELATED SERVICES AGREEMENT

This Compensation Evaluation and Related Services Agreement (the "**Agreement**") is made and entered into \_\_\_\_\_ (the "**Effective Date**"), by and between the North Carolina Education Lottery (the "**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq.) (as may be amended from time to time, the "**Act**"), located at 2728 Capital Boulevard, Suite 144, Raleigh, North Carolina, 27604, and \_\_\_\_\_, located at \_\_\_\_\_, a corporation organized under the laws of the \_\_\_\_\_ ("**VENDOR**").

#### WITNESSETH:

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

WHEREAS, VENDOR submitted the Proposal, dated \_\_\_\_\_, 2022 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Quotes dated **February 17, 2022** (the "**RFQ**," Exhibit B), Exhibits A and B 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 Compensation Evaluation 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. SYSTEM AND SERVICES**

Subject to the terms and conditions set forth in this Agreement, the NCEL retains VENDOR to provide Compensation Evaluation and other related services for the NCEL as contemplated by this Agreement, the RFQ 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 RFQ.

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

A. VENDOR and its Subcontractors will work in conjunction with the Selection Committee comprising of the Executive Director and/or one or more members of the North Carolina State Lottery Commission or the Director of Human Resources (the "**Selection Committee**"). VENDOR will provide the Services to the NCEL as detailed in the RFQ 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 Selection Committee and/or the Director of Human Resources. 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, as requested from time to time, shall meet regularly with the Selection Committee and/or the Director of Human Resources and shall establish work plans, implementation schedules and timetables for completion as and when required by the Selection Committee and/or Director of Human Resources.

C. VENDOR hereby agrees to use its best efforts to make available to the NCEL, such of its employees as may be necessary or appropriate for the timely performance of VENDOR's obligations pursuant to this Agreement. No employee or agent of VENDOR 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 employees who will be performing the Services pursuant to this Agreement.

D. Scope of Services: Subject to the instructions and decisions of the NCEL, VENDOR will be responsible for providing the Services and Deliverables as specified in the RFQ and the 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 ventures, 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 Selection Committee 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 ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of the NCEL in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of VENDOR to procure selected materials and services as authorized by the NCEL and as specifically set forth in, and subject to the limitations described in, the RFQ and/or this Agreement. No Subcontractor is authorized to bind the NCEL to any liability or obligation or to represent that it has any such authority.

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

#### **5. COMPENSATION**

A. As full and complete compensation for all Services and/or Deliverables provided by VENDOR pursuant to this Agreement, the NCEL will pay VENDOR, and VENDOR will accept, an amount (the "**Vendor's Fee**") equal to \_\_\_\_\_.

B. VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from VENDOR to the NCEL. VENDOR's travel-related expenses must be pre-approved by the NCEL prior to booking and will be reimbursed by the NCEL at the North Carolina State Rate. Travel-related expenses are limited to airline tickets, rental car, meals and/or hotel accommodations, as applicable or required.

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

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

## **6. TERM**

Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFQ, the term of this Agreement shall commence upon execution of the Agreement until December 31, 2022.

## **7. WORK STANDARD**

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

B. VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, or any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer, subcontractor or other individual or entity in connection with the performance of its obligations under this Agreement.

C. If the NCEL becomes dissatisfied with the Services, Deliverables or work product of or the working relationship with any of the individuals assigned to perform Services under this Agreement

by VENDOR or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Important personnel identified in VENDOR's 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, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. The NCEL is not prohibited by this Agreement from retaining the services of any individual or entity, and it is under no obligation to exclusively use the Services of VENDOR or any Subcontractors.

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

**8. CHANGES IN WORK**

By written or oral request by the Selection Committee and/or the Director of Human Resources to VENDOR, the NCEL may from time to time make changes in the Services or Deliverables to be provided by VENDOR or any Subcontractor, or the place of performance of any Services. VENDOR and all applicable Subcontractors shall promptly comply with such requests and take all necessary or appropriate actions to effect such change. If such changes add material obligations or expenses not contemplated by this Agreement (including the 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 by 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 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 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 Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Public Records Law G.S. §132-1 et. seq. (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and the NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFQ or 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 11(C), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit NCEL to independently enforce the requirements set forth in such agreements.

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

E. Neither the VENDOR nor any of its approved Subcontractor shall have any proprietary rights or interests in any intellectual properties (including, without limitation, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith)) (all of the foregoing being collectively defined as the "**Intellectual Property Rights**") products, materials, intellectual properties developed, data,



documentation, approaches, systems, programs, methodologies, or concepts, ideas or other content or items of any kind or nature developed, produced or provided in connection with the Services provided for the NCEL under this Agreement (collectively, the “**NCEL Intellectual Properties**”). All deliverables, written materials, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, the RFQ or for the NCEL (collectively, the “**Work Product**”) will be deemed, to the greatest extent possible, “work made for hire” under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by the NCEL. To the extent that any Work Product does not qualify as a “work made for hire,” VENDOR and each of the Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks and service marks (and the goodwill associated therewith) and rights (all of the foregoing being collectively defined as the “**Intellectual Property Rights**”), free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At the NCEL’s request, VENDOR and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL’s request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its lottery games and other activities.

#### **11. NONDISCRIMINATION; AFFIRMATIVE ACTION**

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

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

12. **LIMITATION OF LIABILITY**

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

13. **COMPLIANCE WITH LAWS**

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

14. **ANTITRUST ACTIONS**

VENDOR hereby conveys, sells, assigns and transfers to the NCEL all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of North Carolina relating to any Services 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 her designee(s) in each instance.

H. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a

part of or in connection with any commercial advertising without the prior written consent of the Director or her designee(s) in each instance.

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

**16. OBLIGATIONS OF VENDOR**

A. Upon execution, VENDOR shall provide the NCEL a current Certificate of Authority 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 this Agreement or the RFQ; including, without limitation, any breaches of all representations, warranties and additional covenants set forth in 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 this Agreement or the RFQ and which materially affect the NCEL, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR

further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; provided, however, if any such proceeding would have a material adverse 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) General liability insurance in the amount of at least one million dollars (\$1,000,000);

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

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

F. Such insurance policies shall name the NCEL as an additional insured, and shall provide that such policies cannot be terminated, canceled, or modified without giving VENDOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification. VENDOR shall be required to provide proof of insurance coverage in accordance with this Agreement and its 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, North Carolina 27604  
Attn: M. Mark Michalko, Executive Director

With copy to: North Carolina Education Lottery  
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 Proposal and the RFQ, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. Notwithstanding anything herein to the contrary, in the event of an inconsistency among this Agreement, the Proposal and/or the RFQ, the terms of this Agreement, as may be amended pursuant hereto, shall control the RFQ, and the terms of the RFQ 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.

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: \_\_\_\_\_

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

Name: M. Mark Michalko

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

Its: Executive Director

Its: \_\_\_\_\_

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

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

## ATTACHMENT C

### CONTRACTOR DISPUTE RESOLUTION

#### SCOPE

These Dispute Resolution Procedures apply to and shall constitute the exclusive procedures for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind filed by an Aggrieved Person (but specifically excluding Lottery Game Retailers) relating in any way to any agreement entered into by the North Carolina Education Lottery ("NCEL"), whether in an administrative proceeding or litigation, at law or equity, including, but not limited to, those arising out of or relating to any aspect of a solicitation or bid or a failure to conduct a solicitation or bid, the performance of any party, the interpretation of any contractual provision, the applicability or interpretation of any law, rule or regulation, or any decision to award, deny, suspend or cancel, terminate or not renew any contract or agreement.

#### I. FILING OF A DISPUTE RESOLUTION REQUEST

- A. Any Aggrieved Person may file a Dispute Resolution Request seeking a determination with respect to any matter which is included within the scope of these Dispute Resolution Procedures as set forth herein. An Aggrieved Person who files a Dispute Resolution Request is hereinafter referred to as a "Petitioner." Other than expressly set forth in these Dispute Resolution Procedures, nothing contained herein shall confer any rights or remedies upon any Aggrieved Person and/or Petitioner, or impose any duties or obligations upon the NCEL, which are not otherwise so conferred or imposed by the North Carolina Lottery Act.
  
- B. The Dispute Resolution Request shall be in writing and delivered via personal/courier or U.S. mail to the NCEL Executive Director with a copy to the NCEL Chief Legal Officer at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Protest  
2728 Capital Boulevard  
Suite 144  
Raleigh, NC 27604

- C. The Dispute Resolution Request shall include the following information:
  - 1. The name, address, telephone number and email address of the Petitioner;
  - 2. The signature of the Petitioner;

3. Identification of the solicitation or contract number or other matter that is the subject of the dispute;
4. A statement of the legal and factual grounds supporting the position of the Petitioner, including copies of relevant documents;
5. Any other documentation the Petitioner wishes to submit in support of Petitioner's position; and
6. A statement of the relief requested whether legal, equitable or otherwise. If a monetary award is requested, the amount shall be stated.

For a Dispute Resolution Request to be considered timely filed, the original Dispute Resolution Request in compliance with Section I(C) above must be physically received by the NCEL within the time-period prescribed in Time for Filing a Dispute Resolution Request Section below. Facsimile or any other electronically transmitted copies of the Dispute Resolution Request will not be accepted.

- D. The Petitioner shall be required to provide a suitable Dispute Bond (as defined in the filing of a dispute resolution request section) to the NCEL in certified funds at the time the Dispute Resolution Request is filed. The purpose of this bond is to:
  1. Discourage frivolous Dispute Resolution Requests and litigation;
  2. Assure payment by the Petitioner of the costs incurred as a result of the Dispute Resolution Request, including reasonable attorney's fees of the NCEL, in the event Petitioner appeals and such costs are adjudged against the Petitioner; and
  3. Assure payment of all other amounts for which the Petitioner may be found liable, including, but not limited to, any loss of income to the NCEL resulting from the institution of a frivolous or unsuccessful appeal.

Failure to provide such Dispute Bond with any Dispute Resolution Request will result in the dismissal of such Dispute Resolution Request. A Dispute Resolution Request shall not be considered timely filed unless the applicable Dispute Bond accompanies the Dispute Resolution Request.

- E. The amount of the Dispute Bond shall be the amount established in the applicable solicitation; provided, however, in the event that no amount is specified in the applicable solicitation, the Dispute Bond shall be the lesser of One Million Dollars (\$1,000,000.00) or ten percent (10%) of the contract amount in controversy.

## II. TIME FOR FILING A DISPUTE RESOLUTION REQUEST

### A. Dispute Resolution Requests concerning a solicitation.

1. A Dispute Resolution Request in regard to a Major Procurement Contract solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial proposals shall be filed within five (5) business days after the deadline for Potential Contractor questions established in the solicitation.
2. Dispute Resolution Requests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the NCEL with respect to any solicitation or response thereto, that are apparent before the closing date for receipt of proposals or any supplemental information requested by the NCEL shall be filed within five (5) business days after the deadline for Potential Contractor questions or the date of the amendment, whichever date is later.
3. Subject to the provisions of Section II(C) below, if a Dispute Resolution Request is timely filed in accordance with these Dispute Resolution Procedures before the award of a contract, the award of such contract may be made before a decision is rendered on the Dispute Resolution Request.

### B. If the Commission or Executive Director announces their/his/her intent not to require competitive bidding of a Major Procurement Contract, the Dispute Resolution Request must be filed within five (5) business days of the date such announcement is made, posted, published or otherwise made available to the public.

### C. Dispute Resolution concerning an award of contract.

1. Any Aggrieved Person may protest the NCEL's decision to award a contract. Any such written Dispute Resolution Request shall be filed in the case of either a contract that has or has not been competitively bid by the NCEL, within five (5) business days after the earlier occurrence of: (a) the NCEL's issuance of a notice of intent to award such contract; (b) the NCEL's award of such contract is posted, published or otherwise made publicly available; or (c) the execution of any such contract.
2. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is filed with the NCEL Chief Legal Officer in accordance with the above-referenced requirements and before a contract is executed, the NCEL may nonetheless award and enter into such contract if either: (a) such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures; or (b) the Commission shall have made a written determination that the award of such contract without delay is necessary to protect substantial interests of the NCEL.

3. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is timely filed in accordance with these Dispute Resolution Procedures after a contract is executed, the NCEL and other party or parties to such contract may nonetheless continue to perform in accordance therewith until such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures such that the contract must be set aside and/or terminated and no further work can be performed thereunder. By submitting a bid or proposal governed by these Dispute Resolution Procedures, each Potential Contractor or Contractor acknowledges and agrees that at any time that the Commission determines that the award and performance of a contract without delay is necessary to protect substantial interests of the NCEL, such award and contract shall not be enjoined, and by submitting such bid or proposal all Potential Contractors or Contractors waive any right they might have had to seek injunctive relief to enjoin such award or contract there being deemed to be an important State need, an adequate remedy at law, a waiver of injunctive relief by the Aggrieved Person, Potential Contractor or Contractor and an otherwise available mechanism to remedy any contract issues by either terminating it or awarding a new contract or re-bidding the contract.
- D. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in Time for Filing a Dispute Resolution Request Section of these regulations, a Dispute Resolution Request must be filed within five (5) business days after the earlier occurrence of: (1) the announcement of the Commission's decision to award is posted, published or otherwise made publicly available; (2) the NCEL's issuance of a notice of intent to award such contract; or (3) the execution of any such contract.
  - E. In all cases other than those covered in Time for Filing a Dispute Resolution Request Section, the Dispute Resolution Request must be filed within five (5) business days after the Aggrieved Person knows or should have known of the facts giving rise to the action complained of.
  - F. Failure to file a written Dispute Resolution Request in accord with the Filing of a Dispute Resolution Request Section within the applicable time limit provided in Time for Filing a Dispute Resolution Request Section shall bar any further administrative, legal, and/or equitable action of any kind or nature and in any body, court or agency. Time is of the essence in the various procurements of the NCEL.
  - G. Failure to provide the applicable Dispute Bond in the amount required and as otherwise provided in the Filing of a Dispute Resolution Request Section within the applicable time frame shall result in an untimely filing and bar any further administrative, legal, and/or equitable action of any kind or nature and in any body, court or agency.

### **III. NOTICE OF FILING OF A DISPUTE RESOLUTION REQUEST**

In the event a Dispute Resolution Request is filed, the Executive Director shall immediately give notice of the Dispute Resolution Request to the Commission and to the successful person or entity, if an award

has been made or a contract entered into, or, if no award has been made or contract entered into, to all persons or entities who have timely submitted responsive bids or proposals on that procurement.

#### **IV. CONFIDENTIAL INFORMATION**

- A. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
- B. If the Petitioner believes the Dispute Resolution Request contains confidential information or trade secrets, it must comply with all relevant provisions of the North Carolina Public Records Act to attempt to secure confidential treatment thereof; provided, however, all Petitioners acknowledge that the NCEL is subject to the Public Records Act and Open Meetings Laws of the State of North Carolina, and thus the NCEL is not liable for any disclosure of any material submitted by any Petitioner regardless of the circumstances.

#### **V. DECISION BY THE EXECUTIVE DIRECTOR OR DESIGNATED HEARING OFFICER**

- A. The Executive Director (or his/her Designated Hearing Officer), shall have the exclusive authority to decide all Dispute Resolution Requests.
- B. The Executive Director (or his/her Designated Hearing Officer) shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:
  - 1. A brief description of the claim;
  - 2. A reference to the pertinent contract provision;
  - 3. A brief statement of the factual and legal issues raised or implicated; and
  - 4. A statement of the Executive Director's decision, findings of facts and conclusions of law, with supporting rationale and the remedial action and/or award, if any.
- C. The Executive Director (or his/her Designated Hearing Officer) shall furnish a copy of the decision to the Petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, fax or email.
- D. The time limit for decisions set forth in the Decision by the Executive Director or Designated Hearing Officer may be extended by the Executive Director (or his/her Designated Hearing Officer), in his/her discretion, for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Executive Director (or his/her Designated Hearing Officer) shall notify the Petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

- E. If the Executive Director (or his/her Designated Hearing Officer) fails to issue a decision within the time limits set forth in the Decision by the Executive Director or Designated Hearing Officer Section, the Petitioner may proceed as if the Executive Director (or his/her Designated Hearing Officer) had issued an adverse decision to the Petitioner.
- F. In lieu of a written decision, the Executive Director may, in his/her sole discretion, within thirty (30) calendar days after a Dispute Resolution Request is filed, give written notice to the Petitioner that the Dispute Resolution Request shall be resolved by a hearing conducted by the Executive Director (or his/her Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section. Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a Dispute Resolution Request be resolved by a hearing conducted by the Executive Director (or his/her Designated Hearing Officer) pursuant to the procedures for hearings set forth in the Hearing Procedures Section.

## **VI. HEARING PROCEDURES**

- A. All hearings conducted under this Section shall be conducted by the Executive Director (or his/her Designated Hearing Officer). The decision as to whether the Executive Director or a Designated Hearing Officer will conduct the hearing shall be in the sole discretion of the Executive Director. In either case, any Hearing Officer's actions, decisions and orders shall be deemed to be on behalf of the Executive Director and effective as though taken by the Executive Director, subject to the appeals procedures as hereinafter provided.
- B. If the Executive Director determines under the Decision by the Executive Director or Designated Hearing Officer Section that the Dispute Resolution Request will be resolved after a hearing, the hearing shall be held within thirty (30) calendar days following the Executive Director's determination under the Decision by the Executive Director or Designated Hearing Officer Section to resolve a Dispute Resolution Request by this procedure for a hearing. A notice which will set forth the time, date and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the Hearing Officer may:
  - 1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
  - 2. Hold pre-hearing conferences to:
    - a. Settle, simplify or identify the issues involved in the hearing;
    - b. Consider other matters that may aid in the expeditious disposition of the hearing; and/or
    - c. Rule on any parties' request for injunctive or other equitable relief.

3. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
  4. Require each party to produce for examination those relevant witnesses and documents under its control;
  5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope and extent of discovery available to the parties;
  6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
  7. Establish time limits for submission of motions or memoranda;
  8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
  9. Administer oaths or affirmations;
  10. Issue subpoenas; and
  11. Join any necessary parties to the hearing.
- D. The hearing shall be conducted before a court reporter. The Petitioner shall procure at Petitioner's own cost and on Petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. If the Petitioner fails to do so, the Hearing Officer may suspend such hearing until the Petitioner has provided the court reporter, or the Hearing Officer may supply a court reporter and assess the costs thereof against Petitioner. The original transcript of any such proceedings shall be submitted to the Hearing Officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The Petitioner shall also submit a copy of the transcript (at Petitioner's expense) to all other parties to the Dispute Resolution Request as soon as the transcript is available.
- E. Any party may appear and be represented with or without counsel at the hearing.
- F. If a Hearing Officer, other than the Executive Director, conducts the hearing, such Hearing Officer shall make a written recommendation containing the Hearing Officer's ruling, in the form of a Proposed Decision, to the Executive Director, within thirty (30) calendar days after receiving an original transcript of the hearing pursuant to the Hearing Procedures Section above. If a Proposed Decision is received by the Executive Director, he/she must render his/her final and



binding decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the Proposed Decision from the Hearing Officer.

1. If the Executive Director received a recommendation in a Proposed Decision from a Hearing Officer other than himself/herself, he/she may:
    - a. accept, modify or reject the Hearing Officer's recommendation in whole or in part;
    - b. return the matter to that Hearing Officer with instructions;
    - c. make any other appropriate disposition; or
    - d. issue a no action response.
  2. If the Executive Director issues a no action response, then the determination in the Proposed Decision of the Hearing Officer will be deemed to be accepted by the Executive Director.
- G. If the Executive Director conducts the hearing, he/she must render a decision in writing and deliver the decision to the Petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The Executive Director's final and binding decision shall be sent to the Petitioner by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email.

## **VII. PROCEDURE FOR FILING AN APPEAL TO THE COMMISSION**

- A. A Petitioner may appeal a decision of the Executive Director solely to the Commission. Any appeal from a decision of the Executive Director must be filed with the Commission within five (5) business days after receipt of such decision.
- B. Any appeal shall be filed by delivery by hand or courier that provides delivery confirmation, to the Executive Director with a copy to the Chief Legal Officer at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Protest  
2728 Capital Boulevard  
Suite 144  
Raleigh, NC 27604

An appeal so delivered will be timely filed only if received by the NCEL at the above-stated address during its normal business hours on or before the fifth (5<sup>th</sup>) business day prescribed by the Procedure for Filing an Appeal to the Commission Section above.

- C. Every appeal must be in writing and shall contain the following:
  - 1. Copy of the decision of the Executive Director;
  - 2. A copy of the transcript of any hearing; and
  - 3. The basis for the precise factual or legal error in the decision of the Executive Director from which the appeal is taken.
- D. The Commission may notify any other individuals or entities which it, in its sole discretion, determines it wishes to notify of the appeal (by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email) within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

#### **VIII.COMMISSION'S DECISION**

- A. The Commission, or a committee of the Commission, may review the record without a hearing or oral argument and issue a written decision on behalf of the Commission. The Commission, or a committee of the Commission, may, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances in its sole discretion: (1) conduct its own review or investigation; (2) a de novo review in whole or in part; or (3) allow oral argument.
- B. A copy of the Commission's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax or email. The original written decision shall be retained by the Commission. The written decision of the Commission, or a committee of the Commission, will be final, and no further appeal to the Commission will be allowed.

#### **IX. JUDICIAL REVIEW**

By submitting a bid covered by these Dispute Resolution Procedures, Potential Contractor or Contractor irrevocably waives, to the fullest extent permitted by law, any right which it has to appeal any final decisions of the Commission made pursuant to these Dispute Resolution Procedures. Only after exhaustion of all remedies and procedures in these Dispute Resolution Procedures of the NCEL, if applicable law permits any further appeals, any such appeal must be brought solely in the Superior Court of Wake County, North Carolina, and Potential Contractor or Contractor irrevocably waives any objection which it may have to the venue of any appeal being solely in the Superior Court of Wake County, North Carolina.

## **X. EXCLUSIVE REMEDY**

These Dispute Resolution Procedures provide the exclusive procedure for asserting a claim against the NCEL arising out of or relating to any matter which is within the scope of these Dispute Resolution Procedures as set forth herein. Neither an Aggrieved Person, Petitioner nor any other interested party has a right to any remedy against the NCEL with respect to a matter within the scope of the Scope of these policies, except in accordance with the procedures set forth in these Dispute Resolution Procedures.

## **XI. AMENDMENT**

These Dispute Resolution Procedures may be amended from time to time by the Commission. Any Aggrieved Person or other individual or entity may, and should, obtain the latest version of these Dispute Resolution Procedures before proceeding in connection with any Dispute Resolution Request or dispute governed hereby.