



# REQUEST FOR QUOTATION

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

NC EDUCATION LOTTERY CONTACT INFORMATION	
Date Issued:	August 3, 2022
Requisition Number:	N/A
Quote Response Due:	August 22, 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 Janitorial Services for Greenville Location

ITEM	QUANTITY	UNIT OF MEASURE	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1	Dollar	Janitorial Services – Greenville Office		
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 #50 Form. The form can be located using the following link, <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 Quote bid response or fax it to 919-715-0342.

**JANITORIAL SPECIFICATIONS**

**SCOPE OF SERVICES TO BE RENDERED**

- A. The CONTRACTOR hereby agrees, at a minimum, to perform to the satisfaction of the AGENCY the following services with all equipment and supplies, **including paper products** furnished by the CONTRACTOR. Paper products must be compatible with dispensers in place.
- B. FIVE (5) DAYS PER WEEK - MONDAY THROUGH FRIDAY, EXCLUDING STATE HOLIDAYS. WORK TO BE STARTED DURING BUSINESS HOURS of 8:30 A.M. to 5:00 P.M. Daily. WORKING HOURS MUST BE CONSISTENT AND CONCLUDE BY 5:00 P.M.  
**Office is located at: 2790 Dickinson Avenue, Suite A Greenville, NC 27834**
- C. The CONTRACTOR shall provide an itemized list as to which of their employees is responsible for each duty listed.
- D. A **MANDATORY** background check will be performed for each person assigned (or could be assigned) to clean the NCEL Headquarters location at CONTRACTOR'S expense. Cost is approximately \$150.00 per person. CONTRACTOR MUST inform NCEL of any personnel changes.
- E. Company MUST be bonded and insured and provide proof of such. CONTRACTOR shall reimburse NCEL for damages caused by the CONTRACTOR or its employees but not covered by its insurance.
- F. CONTRACTOR must provide a minimum of three references.

**MANDATORY SITE VISIT:** It shall be **MANDATORY** that each bidder representative be present for a pre-bid site visit on **Tuesday, August 9, 2022**. Attendees are to meet promptly at **2:00 pm ET**. All attendees must sign in at this time. The purpose of this visit is for all prospective bidders to acquaint themselves with the conditions and requirements of the task to be performed. Attendees will be apprised of all conditions and should take any necessary measurements. Bidders shall stay for the duration of the site visit. No allowances will be made for unreported conditions which a prudent bidder would recognize as affecting the work called for or implied by this bid. **FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN REJECTION OF YOUR BID.**

In order to confirm your attendance at scheduled site visit, contact Anthony Downey at 919-301-3433.

NAME OF ATTENDEE IN ATTENDANCE AT SITE VISIT: \_\_\_\_\_

Bidder is cautioned that any information released to attendees during site visit, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this eQuote must be confirmed by written addendum (issued by Purchasing) before it can be considered to be a part of this eQuote document. Bidder bidding otherwise does so at his own risk.

**QUESTIONS:** Questions concerning the specifications in this RFQ will be received until **August 12, 2022, 4:00 pm ET**. NO QUESTIONS WILL BE ACCEPTED AFTER THIS DATE AND TIME. **All questions must be submitted in MS Word format and emailed** to Anthony Downey [adowney@lottery.nc.net](mailto:adowney@lottery.nc.net). A summary of all questions and answers will be emailed only to Vendors attending the site visit as an addendum to the RFQ.

**It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

## I. DAILY SERVICES

### A. Office Area

1. Empty trash receptacles, changing trash liners as needed, and remove trash to collection point.
2. Check all entrances to building and vacuum, sweep and/or mop as necessary inside and out.
3. Hard surface floors swept and dust mopped with treated dust mops. Damp mop to remove spills as needed.
4. Vacuum all readily accessible carpets, moving light furniture, and removing light spillage.
5. Thoroughly dust all horizontal surfaces in mid-range areas including desktops, tops of cubicle walls and cubicle desktops, files, chairs, tables and ledges, etc. as needed, no less than weekly, where accessible. Paper and personal articles are not to be disturbed.
6. Remove fingerprints and spot clean partition glass and glass in doors.
7. Remove fingerprints, smudges and graffiti from all doors, frames, windows, light switches and walls.
8. Lock all doors previously locked.
9. Desks, filing cabinets, bookcases, chairs, tables and other office furniture; dusted with control treated cloths or other effective tools and left clean and free of dust.

### B. Restrooms

1. Restock restroom supplies from janitorial stock (provided by Vendor) including paper towels, toilet tissue, seat covers, and hand soap as required.
2. Wet mop all restroom floors with disinfectant solution. Check all restroom floor drains. Sanitize daily with germicidal cleaner.
3. Clean and polish all mirrors, bright work, enameled surfaces, vanities, flush meters, faucet piping and toilet seat hinges with non-scratch and non-corrosive disinfectant cleaners.
4. Wash, sanitize, and wipe dry all toilet seats, toilets, urinals and sinks with non-scratch and non-corrosive disinfectant germicidal solution.
5. Toilets, urinals, and washbasins to be cleaned and disinfected. Wipe dry all wash-basins.
6. Spot clean all partitions, dispensers and receptacles and remove fingerprints, graffiti, splash marks from walls around washbasins.
7. Empty and sanitize all waste and sanitary napkin and tampon receptacles, if installed
8. Remove all restroom trash from area.

### C. Lobbies and Corridors

1. Thoroughly sweeps, spot clean and damp mop lobby and entry corridors.
2. Vacuum carpeted areas thoroughly.
3. Spot clean all bright work including signage, door hardware, kickplates, wastebaskets, waste paper receptacles, planters and sanitize drinking fountains.
4. Spot clean entrance glass doors and surrounding glass plates inside and outside
5. Empty, clean and sanitize, as required, all wastepaper baskets and refuse receptacles.
6. Empty, clean and sanitize, as required, all cigarette urns at entrances and designated smoking areas.
7. Dust and wipe when necessary all ledges, railings, moldings and pottery.
8. Dust and/or scrub to remove debris from all metal door thresholds.
9. Spot clean carpets as needed.
10. Vacuum and clean under all entrance mats.

### D. Other

1. Remove all trash from all of the above areas.
2. Maintain sufficient supply of janitorial supplies to prevent depletion of stock.
3. Maintain an orderly arrangement of all janitorial supplies and paper products in the storage rooms.
4. Maintain an orderly arrangement of all equipment stored in these areas such as mops, buckets, brooms, vacuum cleaners, scrubbers, etc.
5. Sweep and damp mop service closet floors, deodorize and disinfect as required
6. All employees will exercise extreme caution in the use of janitorial equipment so as not to damage building finishes, especially doors, baseboards and carpet.
7. Claims area – clean bulletproof glass with non-corrosive ammonia free cleanser

## II. WEEKLY SERVICES

### A. Office Areas/Lobby Areas/Corridors

1. Dust and wipe all vinyl bases.
2. Edge all carpeted areas. Dust inside of doorjambs.
3. Wipe clean and polish all bright work, light switches, doors and frames, ledges, moldings, picture frames and other low dusting areas.
4. Clean windows and glass doors inside and outside of front lobby and claims center.
5. Clean and mop all building standard resilient and/or composition flooring.

### B. Restrooms

1. Spot clean partitions using disinfectant.
2. Clean exposed plumbing under sink.
3. Scrub restroom floors.
4. Dust all **low** reach and high reach areas including, but not limited to: structural ledges, mirror tops, partition tops and edges, air conditioning diffusers and return air grills.
5. Check toilet seats and tighten loose seats as needed. Report all damage to the NCEL Facilities Manager
6. Inspect rest room lighting and report deficiencies to the NCEL Facilities Manager
7. Use a CLR cleaner to remove calcium, lime and rust stains.

### C. Kitchen/Break Area

1. Wipe down countertop and sink.
2. Clean inside and outside of microwave and refrigerator.

### **III. MONTHLY**

#### **A. Office Area**

1. Vacuum upholstered furniture and wipe down any leather or vinyl furniture.
2. Dust all **high** reach areas including, but not limited to: the tops of doorframes, filing cabinets, structural and furniture ledges, air conditioning diffusers and return air grills, tops of partitions, picture frames, signage, graphs, charts and other similar wall hangings.
3. Mop and buff all tile floors.
4. Wipe all windowsills with soap and water.

### **IV. QUARTERLY**

1. Wipe clean and dust all window blinds.
2. Dust light fixtures as needed.

### **V. SEMI-ANNUALLY**

1. Wax and buff all tile floors.

### **VI. ANNUALLY**

1. Carpet Cleaning – Date to be determined by Facilities Manager, or Regional Office Manager.
2. Strip and wax all tile floors.

### **VII. SUCH OTHER SERVICES APPROPRIATE TO JANITORIAL SERVICES AS NEEDED.**

**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.**

## 2.1 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 through email.

<b>August 3, 2022</b>	RFQ Issuance Date
<b>August 12, 2022</b>	Deadline for submission of <b>any and all</b> Questions 4:00 p.m. ET
<b>August 12, 2022 – August 16, 2022</b>	Answers Posted ( <b>The NCEL will publish answers as soon as possible following submitted questions throughout the Questions and Answers period</b> ).
<b>August 22, 2022</b>	Deadline for submission of Bids 4:00 p.m. ET (“ <b>Bid Submission Deadline</b> ”)  <u>DELIVERY ADDRESS:</u> North Carolina Education Lottery Headquarters RFQ – Janitorial Services (Greenville) 2728 Capital Boulevard, Suite 144 Raleigh, NC 27604
<b>August 23, 2022</b>	Target date for Decision of Apparent Successful Contractor as approved by the NCEL Commission, if required.

## 2.2 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 – Janitorial Services Greenville  
2728 Capital Boulevard, Suite 144, Raleigh, NC 27604

**No direct or indirect contact or other solicitation initiated by Contractors or their representatives, in connection with this Procurement, should occur with any NCEL employee or commission member other than the Contact Person.** 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.

## 2.3 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 (see Section 2.1). 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.



## 2.4 BID SUBMISSION AND FORMAT

Bids must be received by the Contact Person no later than the Bid Submission Deadline (see Section 2.1) in sealed envelopes or containers.

A Contractor should submit one (1) signed original and three (3) reproduced complete copies of its Bid and one (1) USB thumb drive containing a complete copy of the Bid and, if desired by the Contractor, a copy of the Bid *with redacted information that Contractor deems as confidential or contains trade secrets or such other proprietary rights as dictated by law.*

Bids must be received by the Bid Submission Deadline (see Section 2.1). Late bids will not be accepted. Postmarks and/or shipping receipts will not be considered as proof of timely submissions. Also, the Bid must designate a single authorized official from one of the entities to serve as the sole contact between the NCEL and the Contractor.

## 2.5 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**") selected by the Executive Director. The Evaluation Committee may request clarifications or answers to any questions it may have of a Potential Contractor as a result of any information or representations contained in its 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 2.2 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.

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

A Contractor must complete and submit, as part of its Bid, for itself and all of the individuals listed in this paragraph, the Authorization for Contractor Investigation Form, included as **Attachment B** and made a part hereof, and Authorization for Individual Investigation, included as **Attachment C** and made a part hereof, in both cases to allow the NCEL access to the criminal, civil, and financial history of the Contractor and its employees assigned to this project.

## 2.6 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 D**, 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.

## **2.7 NEGOTIATION AND EXECUTION OF CONTRACT**

A Successful Potential Contractor under this RFQ shall execute a Contract containing such terms and conditions as shall be satisfactory to the NCEL. The currently proposed draft Contract is attached to this RFQ as **Attachment E**. The NCEL may modify the language of the proposed Contract prior to the execution of the Contract with the Successful Contractor, which may, in the sole discretion of the NCEL, include changes requested by the Successful Contractor. 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.

## **2.8 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.

## **2.9 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.

## **2.10 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.

## **2.11 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.

## 2.12 MINORITY BUSINESSES PARTICIPATION

Each Potential Contractor should describe in its Bid what actions it currently takes in the areas of: (a) utilizing minority-owned businesses; (b) encouraging full participation of qualified, capable, competent and competitive minority-owned businesses; (c) assisting minority businesses or minority persons; and (d) any plans to continue to provide interested minority businesses with adequate information about any subcontracting opportunities. Bids should describe the following: What minority businesses the Potential Contractor uses or intends to use. Plan to continue to provide interested minority businesses with adequate information about any subcontracting opportunities available in connection the NCEL. Plan to continue to provide equal opportunity to minorities when replacing or adding subcontractors and suppliers. Efforts that have been undertaken to recruit qualified minority employees named in its Bid and efforts that will be undertaken to recruit minority employees for positions that are not yet filled, including outreach to educational institutions. The total number of full-time positions for this project that are or will be held by minorities, and the number and percentage of the above that are or will be residents of the State of North Carolina. The percentage and number of supervisory positions that will be filled by minority employees. To facilitate that process, each Potential Contractor should complete and include in its Bid either Affidavits A and B, or Affidavit C (**Attachment F**, Equal Business Opportunity Forms). Any additional and supplemental information in this area is also highly encouraged. **If the Potential Contractor is a minority business Potential Contractor (certified or otherwise), the Potential Contractor is still required to submit the requested information, excluding its own business.**

## 2.13 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, sexual orientation, gender identity, 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**

**BACKGROUND DISCLOSURE FORM**

*For any subcontractor that comprises at least twenty-five (25%) of the cost of the Contractor's Bid (a "25% Subcontractor"), disclose all the same information for each 25% Subcontractor as if each 25% Subcontractor were itself the Contractor. In addition, disclose all of the same information for each member of a joint venture, a strategic partnership or a prime contractor team as if each such joint venture, strategic partner or member of a prime contractor team were itself the Contractor. (Contractor and all members of a joint venture, a strategic partnership or a prime contractor team are sometimes herein referred to as "Contractor Team.")*

[These pages may be copied and used as needed]

**PLEASE PROVIDE THE FOLLOWING INFORMATION:**

1. Name of Business:
2. Type of legal entity and the state under whose laws the business entity is organized:
3. EIN:
4. List the name, address, area code and telephone number, and social security number of the Contractor's officers, directors and each stockholder if the Contractor is a corporation (in the case of a publicly-traded corporation, only those stockholders known to the corporation to own beneficially five percent (5%) or more of such corporation's securities), as well as the same information for a parent corporation of such Contractor corporation if the parent corporation's shares are publicly traded; if the Contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust; if the Contractor is an association, the member, officers and directors; if the Contractor is a partnership or joint venture, all general partners, limited partners or joint venturers:

a. Name:

Relationship to Contractor:

Address:

Telephone number, including area code:

Social Security number:

b. Name:

Relationship to Contractor:

Address:

Telephone number, including area code:

Social Security number:

c. Name:

Relationship to Contractor:

Address:

Telephone number, including area code:

Social Security number:

5. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Contractor Team does business and the nature of the business for each such state or jurisdiction:

6. Disclose all the states and jurisdictions (domestic and foreign) in which any member of the Contractor Team has contracts to supply goods or services, including, but not limited to, lottery goods and services, and the nature of the good or services involved for each such state or jurisdiction:

7. List all states and jurisdictions (domestic and foreign) in which any member of the Contractor Team has applied for, sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or lottery contract of any kind or has had fines or penalties assessed to his or its license, contract or operation and the disposition of such in each such state or jurisdiction. Include all facts or circumstances underlying the revocation or non-renewal of any lottery or gaming license or contract or any lottery or gaming license or application that has been either denied or is pending and has remained pending for more than six (6) months:

State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

\*If more than one State, please include in a separate attachment.

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

9. For each member of the Contractor Team, if applicable, list the details of any finding or plea, conviction or adjudication of guilt in a state or federal court, or in another jurisdiction, of any involving

gambling, theft, computer offenses, forgery, perjury, dishonesty or for unlawfully selling or providing a product or substance to a minor by:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

10. For each member of the Contractor Team, if applicable, list the details of any bankruptcy, insolvency, reorganization or corporate or individual purchase or takeover of another business, including bonded indebtedness, or any pending litigation:

Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

11. List the business entities that are a part of the Contractor Team, and list the Fiscal Years for each team member. Complete an Authorization For Contractor Investigation for each (see Attachment B.)

12. List all the individuals constituting the Contractor Team who will work on the NCEL Contract. Complete an Authorization For Individual Investigation for each (see Attachment C).

13. Does the Contractor Team or any individual member thereof have an ownership interest in any entity that has supplied consultation services under contract to the NCEL regarding this RFP? If yes, please provide details.

14. Does any "public officer" or employee of such public officer have an ownership interest of five percent (5%) or more in any member of the Contractor Team? If yes, please provide details.

15. List any conflict of interest with the products, promotions and goals contemplated by the NCEL that could result from other projects in which the Contractor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the Bid.

16. List all lobbyists and consultants working on behalf of the Contractor Team in connection with this Bid or any subsequent Contract.

**ATTACHMENT B**

**AUTHORIZATION FOR CONTRACTOR INVESTIGATION**

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

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

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

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

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

**ATTACHMENT C**

**ACKNOWLEDGMENT AND AUTHORIZATION FOR INDIVIDUAL BACKGROUND CHECK**

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

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

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

**Please Print Clearly**

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

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

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

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

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

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

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

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

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

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

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

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



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

**Notary:**

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

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

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

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

**[SEAL]**

**CONTRACTOR DISPUTE RESOLUTION POLICY**

**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.

**JANITORIAL SERVICES AGREEMENT**

This Janitorial Services Agreement (the "**Agreement**") is made and entered into as of \_\_\_\_\_ (the "**Effective Date**"), by and between the North Carolina Education Lottery (the "**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 *et seq.*) (as may be amended from time to time, the "**Act**"), located at 2728 Capital Boulevard, Suite 144, Raleigh, North Carolina, 27604, and [[NAME]], located at [[ADDRESS]], a [[ENTITY TYPE]] organized under the laws of the State of [[STATE OF ORGANIZATION]] ("**CONTRACTOR**").

**WITNESSETH:**

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

**WHEREAS**, CONTRACTOR submitted a Quote, dated [[BID DATE]] (the "**CONTRACTOR's Quote**," Exhibit A) to the NCEL in response to the NCEL's Request for Quotation dated [[August 3, 2022]] (the "**RFQ**," Exhibit B). Exhibits A & 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 CONTRACTOR to provide janitorial services to the NCEL, and CONTRACTOR desires to provide such services for the NCEL.

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

**1. SERVICES**

Subject to the terms and conditions set forth in this Agreement, the NCEL retains CONTRACTOR to provide janitorial services to the NCEL at the NCEL's Greenville Regional Office, as contemplated by this Agreement, the RFQ and the CONTRACTOR's Quote (collectively, the "**Services**"), and CONTRACTOR agrees to provide such Services to the NCEL. Specifically, such Services shall encompass the duties and obligations as specified in the Janitorial Specifications attached to the RFQ. Capitalized terms not otherwise defined herein shall be defined as set forth in the RFQ.

**2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

- A. CONTRACTOR will work in conjunction with the Executive Director of the NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other contractors, subcontractors, employees, agents, retailers and consultants of the NCEL. CONTRACTOR will provide the Services to the NCEL as detailed in the RFQ and the CONTRACTOR's Quote and will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the Director, his/her designee(s) and/or the Commission. Except as otherwise set forth herein, CONTRACTOR 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 CONTRACTOR's Quote.
- B. CONTRACTOR 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 CONTRACTOR's obligations pursuant to this Agreement. No employee or agent of CONTRACTOR 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. CONTRACTOR will provide the NCEL, as requested from time to time, written reports of the names and work schedules of CONTRACTOR's who will be performing services pursuant to this Agreement.

### **3. INDEPENDENT CONTRACTOR**

A. Both the NCEL and CONTRACTOR, 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 CONTRACTOR 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.

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

### **4. COMPENSATION**

A. As full and complete compensation for all Services and deliverables provided by CONTRACTOR pursuant to this Agreement, the NCEL will pay CONTRACTOR, and CONTRACTOR will accept, an amount (the "**Contractor's Fee**") equal to [[INSERT MONTHLY FEE HERE]] dollars (\$[[XXX]]) per month.

B. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR (or any other individual or entity) in connection with any Services or the CONTRACTOR'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 referenced in Section 12 or this Agreement, the NCEL will pay to CONTRACTOR all non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of CONTRACTOR'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.

### **5. TERM**

Unless sooner terminated in accordance with the provisions of Section 16 or other provisions of this Agreement and the RFQ, the term of this Agreement shall commence [[START DATE]] through [[END DATE]] (the "**Initial Term**"). This Agreement shall be automatically renewed for a period of one (1) year (each a "**Renewal Term**") upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than two (2) Renewal Terms, unless the NCEL sends CONTRACTOR at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be. If the

NCEL and CONTRACTOR fail to mutually agree in writing on a Contractor's Fee for any Renewal Term prior to the beginning of any such Renewal Term, then the Contractor's Fee shall be the same as specified for the preceding year.

## **6. WORK STANDARD**

- A. CONTRACTOR hereby agrees that it 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. CONTRACTOR further agrees that it 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 CONTRACTOR's industry.
- B. CONTRACTOR hereby agrees that it 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. CONTRACTOR further agrees that neither it, nor any of its 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 or the working relationship with any of the individuals assigned to perform Services under this Agreement by CONTRACTOR, the NCEL may require the prompt replacement of any or all of such individuals. Personnel identified in CONTRACTOR's Quote 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 CONTRACTOR; (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) CONTRACTOR wishes to have them replaced by someone of equal or better qualifications and CONTRACTOR obtains NCEL's prior written consent to such change.
- D. Nothing in this Agreement shall prohibit the NCEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by CONTRACTOR. The NCEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the Services of CONTRACTOR.
- E. CONTRACTOR hereby designates[[NAME]], [[TITLE]], 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. CONTRACTOR must notify the NCEL, in writing and within five (5) business days, regarding designation of a new primary contact person for the CONTRACTOR

## **7. CHANGES IN WORK**

By written or oral request by the Director or his/her designee(s) to CONTRACTOR, the NCEL may from time to time make changes in the Services to be provided by CONTRACTOR, or the place of performance of such Services. CONTRACTOR 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 RFQ or CONTRACTOR's Quote), the NCEL and CONTRACTOR shall negotiate in good faith any changes required to this Agreement or the compensation to be provided pursuant hereto.

8. **BOOKS AND RECORDS**

CONTRACTOR 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. CONTRACTOR 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, or by any authorized representative of the NCEL, and/or the North Carolina State Auditor's Office ("State Auditor") and copies thereof shall be furnished to the NCEL and/or State Auditor by the appropriate entity, at no cost to the NCEL and/or State Auditor, if requested by the NCEL and/or State Auditor. The NCEL and/or State Auditor shall have the right to audit the records and operations of CONTRACTOR with respect to the Services to be performed pursuant to this Agreement. CONTRACTOR shall also comply with all other requirements of the Act and Governing Laws and Regulations.

9. **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 Contractor's corporate financial statements provided pursuant to this Agreement, but not invoices and pricing information, shall be deemed to be CONTRACTOR'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 the NCEL to protect its legitimate business interests, CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR covenants and agrees that it shall comply with such greater restrictions or prohibitions.

C. Notwithstanding the foregoing, the nondisclosure restrictions of Section 9(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.

**10. NONDISCRIMINATION; AFFIRMATIVE ACTION**

- A. CONTRACTOR shall not discriminate against any employee or applicant for employment because of his or her race, color, religion, sex, sexual orientation, gender identity, handicap, disability, national origin or ancestry. Breach of this covenant by CONTRACTOR may be regarded as a material breach of this Agreement. CONTRACTOR 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, CONTRACTOR 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.

**11. 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.**

**12. COMPLIANCE WITH LAWS**

CONTRACTOR 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**").

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

CONTRACTOR hereby represents, warrants or covenants, as the case may be, to NCEL that as of the Effective Date and at all times throughout the term of this Agreement, as follows:

- A. CONTRACTOR has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, enforceable against CONTRACTOR in accordance with its terms.

- B. CONTRACTOR and its Subcontractors have disclosed or will disclose to the NCEL all matters required to be disclosed under the Governing Laws and Regulations. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR nor any of its 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 is CONTRACTOR or any of its 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. CONTRACTOR shall be obligated to notify the NCEL if CONTRACTOR 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 this Agreement (NCGS §18C-151(a)(5)).
- D. No "public official" has an ownership interest of five percent (5%) or more in CONTRACTOR.
- E. To the extent required by applicable law, CONTRACTOR 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. Neither CONTRACTOR nor any of its respective employees, officers, directors, partners or major shareholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement or the Services without the prior written consent of the Director or his designee(s) in each instance.
- G. Neither CONTRACTOR nor any of its respective employees, officers, directors, partners or major shareholders, shall use NCEL's name, logos, images or any other information or data related to the Services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising without the prior written consent of the Director or his/her designee(s) in each instance.
- H. All Services rendered 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 are normally performed.

#### **14. OBLIGATIONS OF CONTRACTOR**

- A. CONTRACTOR shall provide the NCEL, upon request, an updated certificate of existence showing that it is qualified to transact business in the State of North Carolina.

- B. To avoid not only actual impropriety but also the appearance of impropriety, CONTRACTOR is expected to establish and enforce a code of conduct for all employees, independent contractors 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. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR has not complied with these disclosure requirements.
- D. CONTRACTOR 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 CONTRACTOR, its 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, CONTRACTOR acknowledges that to the extent under Applicable Laws some or all of its employees, officers, directors and its respective employees, officers and directors may be required to submit to background and other investigations, CONTRACTOR shall cause any such individuals to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. CONTRACTOR 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 Section 13 hereof, no less often than every six (6) months; provided, however, CONTRACTOR shall as soon as possible notify the NCEL upon the occurrence of any event the effect or results of which CONTRACTOR 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, CONTRACTOR and any of its respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. CONTRACTOR 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 CONTRACTOR or any officer, director or employee of CONTRACTOR; and (ii) within thirty (30) days of CONTRACTOR's first learning of any civil or administrative proceeding involving CONTRACTOR or any officer, director or employee of CONTRACTOR; provided, however, if any such proceeding would have a material adverse affect on CONTRACTOR or its ability to perform pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after CONTRACTOR learns of such proceeding.
- i. Notwithstanding anything to the contrary contained herein, (a) all members, owners, partners, and/or shareholders with a five percent (5%) or more interest in CONTRACTOR, (b) all officers and directors, and, (c) prior to their performing Services at the NCEL Wilmington Regional Office, all employees who will be performing such Services, shall submit to an NCEL background check. This Agreement is contingent upon the NCEL's reasonable satisfaction of the results of such background checks for CONTRACTOR and all such persons.*
- ii. Notwithstanding anything to the contrary contained herein, the NCEL reserves the right to require additional background checks*



on CONTRACTOR and all persons referenced in Section 14(D)(i) above at any time and requires that all new employees of CONTRACTOR who will be performing any of the Services shall also submit to an NCEL background check prior to their performing any Services. CONTRACTOR shall, pay NCEL for all such background checks immediately upon receipt of an invoice from the NCEL. The NCEL also reserves the right to deduct such background check fees from payments due to CONTRACTOR hereunder.

- E. CONTRACTOR 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
  - (ii) 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 CONTRACTOR and NCEL written notice at least ten (10) days prior to the effective date of any termination, cancellation or modification. CONTRACTOR shall be required to provide proof of insurance coverage in accordance with this Agreement and CONTRACTOR's Quote prior to execution of this Agreement and at least annually during the term hereof. Renewed insurance policies must be submitted to the NCEL within five (5) days prior to the expiration of the then existing insurance policies. All insurance required of CONTRACTOR 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.

## **15. TAXES**

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

## **16. TERMINATION**

- A. Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement if CONTRACTOR fails to correct or cure any breach of this Agreement within three (3) business days of the earlier of: (a) CONTRACTOR's having knowledge of such breach; or (b) CONTRACTOR's receiving oral or written notice of such breach from the NCEL;
- B. Notwithstanding anything herein to the contrary, the NCEL may immediately terminate this Agreement at any time, for any reason or for no reason, by delivering thirty (30) days written notice thereof to CONTRACTOR; or
- C. CONTRACTOR may cancel and terminate this Agreement if the NCEL, after sixty (60) calendar day's prior written notice from CONTRACTOR, fails to correct or cure any breach of this Agreement.

- 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. In the event the NCEL temporarily closes the Greenville Regional Office due to one of the aforementioned reasons or for any reason at all, CONTRACTOR's Services may, in the sole discretion of the NCEL, be curtailed and the compensation paid to CONTRACTOR during such period shall be reduced accordingly at the discretion of NCEL.

**17. INDEMNIFICATION**

CONTRACTOR 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 any breach of this Agreement or any other act or omission of CONTRACTOR, 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.

**18. 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, CONTRACTOR 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**").

**19. NOTICES**

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

If to NCEL:	North Carolina Education Lottery 2728 Capital Boulevard, Suite 144 Raleigh, NC 27604 Attn: M. Mark Michalko, Executive Director
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With copy to:	North Carolina Education Lottery 2728 Capital Boulevard, Suite 144 Raleigh, NC 27604 Attn: William Traurig, Chief Legal Officer
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If to CONTRACTOR:	[[NAME]] [[ADDRESS]] [[ADDRESS]] Attn: [[NAME]], [[TITLE]]
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- 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.

## **20. MISCELLANEOUS**

- A. This Agreement, together with the CONTRACTOR's Quote 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 CONTRACTOR's Quote 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 CONTRACTOR's Quote. 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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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, CONTRACTOR will be deemed an assignment for which the NCEL's consent is required.
- D. This Agreement shall be binding on CONTRACTOR, 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 (physically or electronically), 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 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.

**21. ADDITIONAL SERVICES**

In the event the NCEL desires to retain the services of CONTRACTOR for activities in addition to those contemplated by this Agreement, and CONTRACTOR 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 CONTRACTOR 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 EDUCATION LOTTERY**

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

"CONTRACTOR"

**[[CONTRACTOR LEGAL NAME]]**

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

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

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

EXHIBIT A

RFQ

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EXHIBIT B

CONTRACTOR's QUOTE

**ATTACHMENT F**

**Equal Business Opportunity Forms**





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

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

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

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

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

**NOTARY:**

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

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

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

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

**[SEAL]**

## Affidavit B- Listing of Good Faith Efforts

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

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

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

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

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

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

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

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

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

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

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

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

**NOTARY:**

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

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

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

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

**[SEAL]**

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

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

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

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

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 NCEL contract for Digital Support and Related Services.

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

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

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

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

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

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

**NOTARY:**

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

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

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

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

**ATTACHMENT G**

**NCEL 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 NCEL**

**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.