



# REQUEST FOR QUOTATION

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

NORTH CAROLINA STATE LOTTERY COMMISSION: CONTACT INFORMATION	
Date Issued:	October 21, 2024
Requisition Number:	N/A
Quote Response Due:	December 6, 2024
Issued By:	Anthony Downey, Purchasing Manager
Telephone /Fax/Email:	T – 919-301-3433 F – 919-715-0342 <a href="mailto:adowney@lotterync.net">adowney@lotterync.net</a>
Ship To Address:	2728 Capital Boulevard, Suite 144, Raleigh, NC 27604
Delivery/Start Date:	Upon Contract Execution
Comments:	Please provide quote for Succession Planning Services

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

**Additional Information:**

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

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

**Additional Information:**

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

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

# **North Carolina State Lottery Commission**

## **REQUEST FOR QUOTE: Succession Planning Services**

### **1.0 Intent of the Request for Quote**

#### Background:

The North Carolina State Lottery Commission ("Commission") is an independent, self-supporting, and revenue-raising agency of the State of North Carolina. It has been in operation since 2006 and is governed by Chapter 18C of the North Carolina General Statutes. The Commission's primary purpose is to generate funds for educational programs. In fiscal year 2023 the Commission's total sales revenue through its branded "North Carolina Education Lottery" operation exceeded \$4.3 billion. Since its inception, the Commission has transferred more than \$10 billion dollars to the State to support educational programs specified by the General Assembly. While the Commission continues to oversee and administer the North Carolina Education Lottery, the General Assembly has also recently expanded the Commission's duties and responsibilities significantly. Specifically, the Commission is now the state's licensing body and regulator for authorized wagering on sports and horse racing. In the future, the Commission's responsibilities may expand again, perhaps to include duties concerning regulation, licensing, oversight, and/or administration of other kinds of authorized gaming.

With the organization's expansion into new business lines, including more robust online product offerings, new (and possible) regulatory responsibilities, and the potential retirement of several key staff in coming years, the Commission wants to ensure that it has qualified staff, with the appropriate knowledge and training to address foreseeable upcoming business needs. The Commission wishes to contract for talent assessment and succession planning services to assist with retaining high-potential, key employees and to develop a succession plan for the Commission's staff leadership positions. The Commission is committed to establishing a pipeline of talented individuals who are developed and ready to take on leadership roles to address future business needs and guide the agency's ongoing success for years to come.

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

### **2.0 RFQ Clarification Questions**

Responding Contractors may submit written questions regarding this RFQ via email to the Contact Person according to the schedule specified in Section 6.1 (Summary of Key Dates). Submit questions in both PDF and Microsoft Word formats.

An RFQ inquiry from a Responding Contractor:

1. Must be written in generic (i.e., non-proprietary) terms inasmuch as all responses to inquiries will be available to Responding Contractors;
2. Must not contain price data or information; and
3. Must cite a specific RFQ section number

### **3.0 Scope of Services**

The services that the Commission seeks to obtain through this procurement should be designed and implemented to meet the following objectives:

- Identify key leadership positions within the organization that require succession planning.

- Develop a comprehensive succession plan that includes strategies for identifying and developing potential successors.
- Implement the succession plan and provide ongoing support and guidance throughout the process.
- On an on-going basis, evaluate the effectiveness of the succession plan and make necessary adjustments as needed.

Agency leadership and Human Resources are interested in establishing a succession plan that includes processes and related tasks that staff will support and engage with. These goals are more important than implementing a “big” plan – or a well-conceived but, ultimately, onerous plan – that is not well accepted or that managers view as a burden.

For that reason, we would like all responding bidders to submit a project proposal that can be accomplished in stages, including recommendations for which stages should come first, second, etc. While our ultimate intention in the future is to implement a comprehensive, tailored succession plan across the entire organization, we are presently interested in recommendations for how to phase implementation. A phased approach will give the organization a sense of accomplishment, confidence, and “buy-in” that serves as a foundation for a broader initiative. For example, a proposal could include project stages(s) that identify a discreet set of priority positions, competencies, or risks that could be the subject of the agency’s initial focus, to be followed later by other project stages concerning other matters (e.g., other “tiers” or groups of positions or matters). Phased proposals that prioritize or emphasize other aspects of succession planning are also welcome.

By way of further background, the Commission is comprised of approximately 300 employees, located in 6 regional offices across the state; a majority of staff (approximately 200 employees) are based out of the Commission’s headquarters in Raleigh. The Executive Team, which reports to the Chief Executive Officer and Executive Director (CEO), consists of the leaders of 10 divisions. The next level of managers consists of 14 Directors. The average tenure of the Executive Management team is 9 years and the average tenure of the director team is 13 years. Average tenure for all staff is 9 years. Average organization turnover is approximately 4-5%, with much of that is due to retirement. Projected headcount for 6/30/25 is 315, up from 273 as of 6/30/23. The organization recently completed a strategic planning process and a copy of that plan will be made available to the successful bidder.

#### **Minimum Required Services**

1. Written project plan with (at least) defined phases, objectives, allocation of resources, and responsible parties.
2. Conduct a thorough assessment of the organization’s current leadership structure, policies and practices related to succession planning.
3. Identify and select organization leadership competencies.
4. Develop a succession plan that includes strategies for identifying and developing potential successors, as well as a timeline for implementation.
5. Provide training and support to key stakeholders involved in the succession planning process.
6. Provide recommendations and strategies for communicating the plan, including gaining employee buy-in and managing any potential negativity around the plan.
7. Assist with the implementation of the succession plan
8. Provide guidance on reporting tools that will allow us to monitor and evaluate the effectiveness of the plan.
9. Documentation of all findings and recommendations; timely provide written status reports as directed by Commission staff.
10. Present the recommendations and succession plan to staff and Commissioners, if requested.

#### **4.0 Proposal / Quote – Required Content**

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

4.1. The bid shall contain suggested categories and a descriptions of the activities the responder will undertake in order to satisfy each aspect described in Section 3: Scope of Work. In addressing requirements, the proposal shall at minimum include:

- a Identifiable project phases or stages.
- b The specific activities to be conducted at each stage.
- c A timeline for the activities at each stage.
- d Milestones and deliverables tied to those activities
- e A detailed budget for each stage, along with a proposed payment schedule tied to project milestones and/or deliverables.

4.2 Submit a staffing plan, which includes how vendor's workforce will be deployed to ensure the scope of work and project objectives are met. This could include, without limitation and as applicable, staffing numbers, schedules, types of positions, location of personnel or any other information that demonstrates how vendor will provide staffing support for the Work.

4.3 Describe data collection methods and assessment instruments to be used. Provide samples.

4.4 Describe how the collection of data will be supervised and secured.

4.5 Describe how vendor will communicate with the (i) Commission's project champions for this initiative and (ii) Commission staff involved with the project. At minimum describe how vendor will engage with Commission personnel and present the collected data, analysis and proposed strategies, and required deliverables.

4.6 Identify any optional phases or deliverables arising from this engagement that vendor may provide the Commission.

## **5.0 Proposal / Quote Format**

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

### **5.1 Qualifications**

- A brief description of the company or organization, including major product lines, typical customer and size, organizational structure, etc.
- Brief description of company/organization's and team members' experience and record of accomplishment on similar projects with similar organizations
- If applicable, detail the manner in which it intends to utilize any resources or workers outside the U.S.

### **5.2 Written Response to Scope of Services**

- Please provide a written, detailed description of each specified requirement listed in Sections 3 and 4 and include the specific item by section and number. Include a "Yes" or "No" and explanatory or informational text, as needed or requested. If a requirement cannot be met or met only partially, provide a detailed clarification explaining the solution's capabilities and limitations.

- Responding Contractor shall clearly describe any assumptions for the Succession Planning Project.
- Responding Contractor shall identify particular areas where the Commission may exercise certain flexibilities with regard to the approach.
- Project timeline outlining key project milestones.
- The Responding Contractor may propose additional services, products, product components, or features not required, i.e., Offered Options. If an additional service, product, product component, or feature is proposed, it should be clearly marked as an OFFERED OPTION.

### **5.3 Costs (see Attachment A)**

- Submit a cost proposal including a detailed itemized proposed overall cost to complete the entire scope of work, as well as the costs associated with implementing the project in phases (including optional phases).
- As applicable, the cost proposal should include cost of billable hours or flat fees or other cost structures for annual application development, training, data volume, and/or consulting for added integrations and reports
- Any additional costs for unspecified but recommended options/additions/accessories/etc. should be included on separate line(s).
- **Cost proposal must be in a separate document from the rest of the proposal.**

### **5.4 References**

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

### **5.5 Previous Work Product Samples**

- The best evidence a Responding Contractor can provide the Commission of its capabilities is the work it has done for others. Therefore, Responding Contractor shall provide a portfolio demonstrating its track record of similar work on similar projects. Please describe at least three projects, including information regarding client size, client industry, solution(s) provided, and business objectives achieved by the client.

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

## **6.0 RFQ Process and Other Important Information**

### **6.1 SUMMARY OF KEY DATES**

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

**October 21, 2024**

RFQ Issuance Date

**November 1, 2024**

Deadline for Submission of **any and all** Questions 4:00 p.m. ET

<b>November 15, 2024</b>	Answers posted
<b>December 6, 2024</b>	Written proposals due by 4:00 p.m. ET by email (late proposals will not be accepted) (the " <b>Submission Deadline</b> ")
	<u>DELIVERY ADDRESS:</u> North Carolina State Lottery Commission Headquarters Attn: Anthony Downey adowney@lotterync.net RFQ – Succession Planning Services
<b>December 20, 2024</b>	Commission reserves the right to schedule meetings with responsive contractors, based upon the strength and responsiveness of written proposals.
<b>January 3, 2025</b>	Target date for Decision of Apparent Successful Contractor
<b>Immediately following contract execution</b>	Implementation project begins

## 6.2 CONTACT PERSON

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

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

Fax: **919-755-0342**

North Carolina State Lottery Commission  
RFQ – Succession Planning Services  
2728 Capital Boulevard, Suite 144  
Raleigh, NC 27604

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

## 6.3 PROPOSAL VALIDITY; INCURRED EXPENSES

All proposals shall remain valid for one hundred eighty (180) calendar days (the "Offer Period") following the Proposal Submission Deadline. A proposal constitutes an offer by the Potential Contractor to contract with the Commission in accordance with the terms of the proposal and this RFQ, which offer is irrevocable for the duration of the Offer Period and may not be withdrawn or amended during the Offer Period without the written consent of the Commission, which may be granted or withheld in its sole discretion. The Commission shall not be liable or responsible for any costs, expenses, reimbursements, or fees incurred by

a Potential Contractor in preparing and submitting a proposal or in performing any other action in connection with this Procurement.

#### **6.4 BID SUBMISSION AND FORMAT**

Proposals must be received by the Contact Person no later than the proposal Submission Deadline. A Responding Contractor may submit its unredacted proposal and supporting documents electronically to the Contact Person in PDF (or another appropriate) format.

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

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

#### **6.5 EVALUATION**

A variety of factors (including, but not limited to, experience, integrity, proposed solution, satisfying specified requirements, implementation process and time, data security, cost/price and value to the Commission, background, financial viability, minority business participation, and ability to perform the Contract) shall be considered by the Commission in determining the Successful Contractor it believes provides the best overall solution at a fair and reasonable price and consistent with the goals and objectives of the Commission.

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

It is not the intent of the Commission to disqualify any proposal based on minor technicalities. However, the Commission reserves the right to determine if a particular deficiency or inadequacy is significant enough to disqualify the proposal and Contractor. The Commission also reserves the right to disqualify the Contractor's proposal if the Contractor has violated Section 6.2 of this RFQ. It is the intent of the evaluation procedure established by the Commission to determine whether each proposal meets the needs of the Commission, as outlined in this RFQ, and then to determine which proposal best suits those needs.

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

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

#### **6.6 BACKGROUND INVESTIGATION**

The Commission reserves the right to investigate, at a minimum, the financial responsibility and security of any Successful Contractor and its Subcontractors. A Contractor must complete and submit as part of its proposal the Background Disclosure Form, included as Attachment B 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 proposal, for itself and all of the individuals listed in this paragraph, the Authorization for Contractor Investigation Form, included as Attachment C and made a part hereof, and Acknowledgment and Authorization for Background Check, included as Attachment D and made a part hereof, in both cases to allow the Commission access to the criminal, civil, and financial history of the Contractor and its employees assigned to this project.

## **6.7 DISPUTE PROCEDURE**

All claims and disputes, including but not limited to protests related to this RFQ, the Procurement and the award of the Contract to the Successful Potential Contractor shall be handled solely and exclusively under and in accordance with the North Carolina Education Lottery Contractor Dispute Resolution Procedures (the "**Dispute Procedures**"), as adopted and/or amended from time to time by the Commission. See the Commission's website at:

<https://nclottery.com/Content/Docs/6.02%20Vendor%20Dispute%20Resolution.pdf>

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

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

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

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

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

## **6.9 NONEXCLUSIVE RIGHTS**

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

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

All proposals, quotes, data, materials, and documentation originated, prepared, and submitted to the Commission pursuant to this RFQ shall belong exclusively to the Commission and may become available to the public in accordance with the North Carolina Public Records Act as provided in N.C.G.S. §132-1 et. seq.



(the “**Public Records Laws**”). The Commission will make reasonable attempts to maintain, in accordance with the Public Records Laws and the Act and all applicable laws of the State of North Carolina and the United States of America (all of the forgoing being collectively defined as, the “**Applicable Laws**”), the confidentiality of any trade secrets or confidential information that meets the requirements of N.C.G.S. §132-1.2 of the Public Records Laws (collectively, “**Confidential Information**”) if such Contractors properly and conspicuously identify the particular data or other materials which are Confidential Information in accordance with the Public Records Laws. If an action is brought or threatened against Commission pursuant to N.C.G.S. §132-9 to compel Commission to disclose information marked as confidential or a trade secret, Commission will promptly notify Potential Contractor in writing of such to allow Potential Contractor to determine if it will intervene and defend such action, Commission, and its commissioners, officers, and employees. If Potential Contractor opts to not intervene and defend such action and the Commission, its commissioners, officers, and employees, the Commission may, in its sole discretion decide whether to defend such action or release the requested records. The Commission shall have no liability to Potential Contractor with respect to any such disclosures.

### **6.11 PRICING OPTIONS**

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

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

### **6.12 PAYMENT**

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

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

The North Carolina State Lottery Act has specific references to minority participation in the formation and operation of the Commission and requires compliance with N.C.G.S. Article 8 Chapter 143 as applicable. The Commission strongly encourages participation by, and involvement of, minority-owned businesses. In order to achieve or exceed the goals established by the Act and Applicable Laws, and to provide equal business opportunities in the procurement process, the Commission encourages Potential Contractors to contract with minority-owned businesses whenever and wherever possible. Given the Commission policy regarding participation of minority businesses and the express provisions of the Act, a Potential Contractor shall carefully consider the inclusion, of, and shall commit not to discriminate against, minority businesses in the development of its proposal and provisions of its services.

### **6.14 NON-DISCRIMINATION**

Each Potential Contractor must describe in its proposal what actions it currently takes, in the areas of: (a) ensuring a workplace free of all discrimination on the basis of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status, disability or otherwise; (b) ensuring a diverse workforce

and providing equal opportunities; and (c) ensuring and maintaining a work environment free of harassment, intimidation and coercion. Additionally, all Potential Contractors must complete and return either Affidavits A and B or Affidavit C, which are attached hereto at **Attachment E**, Equal Business Opportunity Forms.

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

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

**ATTACHMENT A  
COST SUBMISSION**

**Succession Planning Services**

**(MUST BE IN A SEPARATE DOCUMENT FROM THE TECHNICAL PROPOSAL)**

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(Potential Contractor's Name)

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

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

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

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(Title)

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(Date)

**BACKGROUND DISCLOSURE FORM**

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

[These pages may be copied and used as needed]

**PLEASE PROVIDE THE FOLLOWING**

**INFORMATION:**

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

b. Name:

Relationship to Responding Contractor:

Address:

Telephone number, including area code:

Social Security number:

c. Name:

Relationship to Responding Contractor:

Address:

Telephone number, including area code:

Social Security number:

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

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

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

a. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

b. State:

Type of license:

Status of license:

Fines or penalties:

Circumstances:

c. State:

Type of license:

Status of license:

Fines or penalties: Circumstances:

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

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian of records concerning this proceeding:

Outcome of proceeding:

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

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

Charge:

Date of proceeding:

Custodian or records concerning this proceeding:

Outcome of proceeding:

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

a. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

b. Filing or action:

Date of filing or action:

Court of filing or action:

Date of discharge if bankruptcy:

Pending litigation:

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

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

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

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

15. List any conflict of interest with the products, promotions and goals contemplated by the Commission that could result from other projects in which the Responding Contractor Team or any of the staff members designated to work on the project are involved. Failure to disclose any such conflict may be cause for Contract termination or disqualification of the proposal.
16. List all lobbyists and consultants working on behalf of the Responding Contractor Team in connection with this proposal or any subsequent Contract.



Attachment B Certification

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

I further certify that the Responding Contractor and each member of the Responding Contractor Team recognizes and acknowledges that there are certain limitations on their activities, including, but not limited to, limitation on certain political contributions, limitation of the ability to submit proposals, in response to subsequent Requests for Proposals or Requests for Quotations issued by the Commission, limitation on the ability to purchase lottery tickets, and other requirements that the Commission may impose in the future via contract or administrative rules. Current restrictions on the ability to purchase lottery tickets and enter into contracts or other arrangements as well as future restrictions related to gaming activities apply to the employees of the Responding Contractor and the members of the Responding Contractor Team as well as the members of all such employees' households, and the Responding Contractor and each member of the Responding Contractor Team will enforce such restrictions upon its employees and subcontractors.

---

(Signature of Authorized Representative)

---

(Print Name)

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(Title)

---

(Date)

**ATTACHMENT C**

***AUTHORIZATION FOR CONTRACTOR INVESTIGATION***

I, \_\_\_\_\_, hereby authorize the North Carolina State Lottery Commission 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 State Lottery Commission or its designee to provide such information. A photocopy of this release will be valid as an original thereof, even though said photocopy does not contain an original writing of my signature.

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

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

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

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

ATTACHMENT D

**ACKNOWLEDGMENT AND AUTHORIZATION FOR  
BACKGROUND CHECK**

I hereby authorize the obtaining of the “consumer reports” and /or “investigation consumer reports” by the Commission at any time after receipt of this authorization and throughout the term of my employer’s contract with the Commission, if applicable. To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **FirstPoint, Inc., P.O. Box 26140 Greensboro, NC 27402, 800-449-0245, [www.firstpointresources.com](http://www.firstpointresources.com)**, the Commission, and/or the Commission’s designee. I agree that a facsimile (“fax”), electronic or photographic copy of this authorization shall be as valid as the original. **Do not disclose any sealed or expunged records.**

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

**Please Print Clearly**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Notary:**

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

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

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

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

**[SEAL]**

**ATTACHMENT E**

**Equal Business Opportunity Forms**

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

**Affidavit A -- Identification of Subcontractors**

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

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

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

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

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

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Not a Minority Business (**N/A**)

**The total value of minority business contracting will be (\$):** \_\_\_\_\_  
 \_\_\_\_\_

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

---

(Signature of Authorized Representative)

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(Print Name)

---

(Title)

---

(Date)

**NOTARY:**

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

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

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

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

**[SEAL]**

## Affidavit B- Listing of Good Faith Efforts

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

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

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

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

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

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

- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

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

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

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(Signature of Authorized Representative)

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(Print Name)

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(Title)

---

(Date)

**NOTARY:**

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

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

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

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

[SEAL]



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

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

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

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

Responding Contractor is a Certified HUB Vendor: Yes  No

Responding Contractor is a Minority Vendor: Yes  No

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

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

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

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

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

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

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

**NOTARY:**

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

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

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

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

**ATTACHMENT F**

**COMMISSION VENDOR INFORMATION FORM**

**Vendor Name (Commonly Used Name)**

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

**State of Incorporation**

**Name of Person Signing Contract**

**Title**

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

**Title**

**Telephone Number**

**Email Address**

**Legal Notice Information**

**Name of Person to Receive Legal Notices**

**Title**

**Street Address**

**Street Address Line 2**

**City**

**State**

**Zip Code**

**Telephone Number**

**Email Address**

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

**SUCCESSION PLANNING SERVICES RFQ  
PROPOSAL REQUIREMENTS CHECKLIST**

Proposal/Quote – Signed	
Redacted Proposal/Quote	
Attachment A – Cost Proposal - Separate File	
Attachment B – Background Disclosure Form(s)	
Attachment C – Authorization for Contractor Investigation Form(s)	
Attachment D – Authorization for Background Check Form(s) (Notarization Needed)	
Attachment E - Equal Business Opportunity Forms  Affidavits A and B, <b>OR</b> Affidavit C (Notarization Needed)	
Attachment F - Vendor Information Form	
Disclosure of Litigation and legal matters - Separate Document	

## ATTACHMENT G



### SAMPLE CONTRACT

### SUCCESSION PLANNING SERVICES AGREEMENT

This Succession Planning Services Agreement (the "**Agreement**") is made and entered on the date of the last signature below by and between the North Carolina State Lottery Commission (sometimes the "North Carolina Education Lottery") (the "**Commission**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq. and Session Law 2023-42) (as may be amended from time to time, the "**Act**"), located at 2728 Capital Boulevard, Suite 144, Raleigh, North Carolina, 27604, and \_\_\_\_\_, located at \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_ ("**VENDOR**").

#### WITNESSETH:

WHEREAS, the Commission was created to organize and operate a state lottery in the State of North Carolina (the "**Lottery**") and is also responsible for licensing and regulating sports wagering and pari-mutuel wagering in the State of North Carolina; and

WHEREAS, VENDOR submitted the Proposal, dated \_\_\_\_\_, 2024 (the "**Proposal**," Exhibit A) to the Commission in response to the Commission's Request for Quotations dated [RFQ PUBLICATION DATE] (the "**RFQ**," Exhibit B), as integrated by the Commission's Questions and Answers concerning the RFQ, which were last distributed by the Commission on or around [Q&A PUBLICATION DATE] (the "**Questions and Answers**," Exhibit C). Exhibits A, B and C are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Commission desires to retain VENDOR to provide Succession Planning Services and other related services for the Commission, and VENDOR desires to provide such Services and Deliverables for the Commission.

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

#### 1. SERVICES AND DELIVERABLES

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

## 2. DUTIES AND RESPONSIBILITIES OF VENDOR

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

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

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

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

## 3. SUBCONTRACTORS

A. VENDOR shall not subcontract or otherwise assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the Commission in each instance, which consent may be withheld in the Commission's sole discretion. The Commission shall have the right to approve or disapprove of any subcontractor. VENDOR will provide the Commission with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties working with or for VENDOR in performing or providing Services and Deliverables under this Agreement or for the Commission will be defined collectively as the "**Subcontractors**" and individually as a "**Subcontractor**" and will become a Subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the Commission may require. VENDOR agrees that it will obtain the prior consent of the Executive Director or their designee(s) prior to having any Subcontractor perform any activities for the Commission under this Agreement.

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

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

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

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

A. Both the Commission and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents, or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees, or subcontractors. It is expressly understood and agreed that VENDOR is an independent contractor of the Commission in all manners and respects and that neither party to this Agreement is authorized to bind the other party to any liability or obligation or to represent that it has any such authority, except for the limited authority of VENDOR to procure selected materials and services as authorized by the Commission and as specifically set forth in, and subject to the limitations described in, the RFQ and/or this Agreement. No Subcontractor is authorized to bind the Commission to any liability or obligation or to represent that it has any such authority.

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

#### 5. **COMPENSATION**

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

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B. VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to travel, mileage, meals, telephone calls, copying, color copies, postage, and delivery charges from VENDOR to the Commission.

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

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

## 6. **TERM**

The term of this Agreement shall commence on the date of the last signature below (the "**Effective Date**") and, unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFQ, expire on [Date], (the "**Initial Term**"). Notwithstanding the foregoing, the Commission may elect to renew this Agreement for two additional one-year periods on the same terms (each an "**Extension Term**", and collectively with the Initial Term, the "**Term**"). Commission may exercise its option to extend this Agreement by providing written notice to VENDOR at least ninety (90) days before the expiration of the Initial Term or, if applicable, the then-current Extension Term.

## 7. **WORK STANDARD**

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

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

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

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

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

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

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

## **8. CHANGES IN WORK**

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

## **9. BOOKS AND RECORDS**

Upon request of the Commission, VENDOR and each Subcontractor shall provide to the Commission a copy of its latest audited financial statements for such year; provided, however, if VENDOR and/or a Subcontractor does/do not obtain audited financial statements, then its/their financial statements must be certified by its chief financial officer. VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed and provided under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by the



Commission from time to time. VENDOR and all Subcontractors shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by the Commission, by any authorized representative of the Commission and/or the State of North Carolina Auditor of State's Office ("**State Auditor**"), and copies thereof shall be furnished to the Commission and/or the State Auditor by the appropriate entity, at no cost to the Commission or the State Auditor, if requested by the Commission or the State Auditor. The Commission and/or the State Auditor shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the Services to be performed and provided pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

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

A. For purposes of this Agreement, when identified in writing or otherwise explicitly indicated, at the time of initial disclosure:

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

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

B. In recognition of the need of VENDOR to protect its legitimate business interests, **provided that such information is designated or indicated as "Confidential" or "Trade Secret" at the time of its initial disclosure to the Commission**, the Commission hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, the Commission will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement, its licensing and/or

regulatory obligations under the Act, or conduct the North Carolina Education Lottery. The Commission shall not be liable; however, to VENDOR or to any other person or entity, if despite the Commission's reasonable efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary the Act, the Governing Laws and Regulations, the Open Meetings Law G.S. §143-318.9 et. seq. and the Public Records Law G.S. §132-1 et. seq. (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and the Commission's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFQ or Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes. If an action is brought pursuant to N.C.G.S. §132-9 to compel Commission to disclose information marked as confidential or a trade secret, VENDOR agrees that it will intervene in the action through its counsel and participate in defending the Commission, including any public official(s) or public employee(s). Commission agrees to promptly notify VENDOR in writing of any action seeking to compel the disclosure of VENDOR Confidential Information. Commission shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Commission shall have no liability to VENDOR with respect to the disclosure of VENDOR Confidential Information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable Law.

C. In recognition of the need of the Commission to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) Commission Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors will regard and treat all such items as strictly confidential and wholly owned by the Commission 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 Commission Confidential Information or Commission 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 Commission. 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 Commission Confidential Information, Commission Trade Secrets or other information or property of the Commission, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 10(C), VENDOR shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all Subcontractors which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit Commission to independently enforce the requirements set forth in such agreements.

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

E. Neither the VENDOR nor any of its approved Subcontractors shall have any proprietary rights or interests in any intellectual properties (including, without limitation,

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

## 11. **NONDISCRIMINATION**

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

B. Consistent with the Act and all other applicable North Carolina laws, VENDOR agrees to make every reasonable effort to include the participation by minorities in the performance and provision of its Services and Deliverables pursuant hereto. Specifically, and without limitation, any human resources services performed for the Commission 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 Commission from time to time.

**12. LIMITATION OF LIABILITY**

Any and all payments to VENDOR are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Commission for the purposes set forth in the Agreement. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in this Agreement. If funds to effect payment are not available, the Commission will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Commission under the Agreement, and relieve the Commission of any further obligation thereof. The Commission shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**13. COMPLIANCE WITH LAWS**

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

**14. ANTITRUST ACTIONS**

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

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

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

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

constitutes the valid and legally binding obligation of VENDOR, enforceable against VENDOR in accordance with its terms.

B. VENDOR and its Subcontractors have disclosed or will disclose to the Commission all matters required to be disclosed under the Governing Laws and Regulations. VENDOR shall ensure that it is aware of any statutory limitations or restrictions affecting its Agreement with the Commission, such as certain political contributions, its ability to conduct future business with the Commission and/or its ability to conduct business with certain third parties. Any employee of the VENDOR who works directly on the Commission Contract/Account, and members of such employee's households, shall be prohibited from purchasing Commission tickets and/or claiming any Commission prizes.

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

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

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

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

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

H. Neither VENDOR nor any Subcontractors, nor any of its or their respective employees, officers, directors, partners or major shareholders, shall use Commission'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 Executive Director or his/her designee(s) in each instance.

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

**16. OBLIGATIONS OF VENDOR**

A. Upon execution VENDOR shall provide the Commission current Certificate of Authority from the North Carolina Secretary of State showing that it and each Subcontractor are qualified to transact business in the State of North Carolina. Vendor shall ensure that the Certificate of Authority remains current at all times during the term of this Agreement.

B. To avoid not only actual impropriety but also the appearance of impropriety, VENDOR is expected to establish and enforce a code of conduct for all employees and Subcontractors that will help achieve the Commission'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 Commission.

C. VENDOR and its Subcontractors shall disclose all written and oral agreements with all lobbyists and consultants doing work on its behalf in the State of North Carolina and before the federal government. VENDOR and its approved Subcontractors shall also comply with all state and federal lobbying laws. This Agreement may be terminated, at the sole option and discretion of the Commission, if VENDOR has not complied with these disclosure requirements.

D. VENDOR agrees to fully disclose to the Commission all matters materially affecting the Commission, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform and legally required background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the Commission or the State of North Carolina. In addition, VENDOR acknowledges that to the extent under Applicable Laws some or all of its employees, officers, directors and its Subcontractors and their respective employees, officers and directors may be required to submit to background and other investigations, VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees that it will routinely update all information disclosed to the Commission pursuant to this Agreement or the RFQ; including, without limitation, any breaches of all representations, warranties and additional covenants set forth in Section 15 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify the Commission upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to the Commission under this Agreement or the RFQ and which materially affect the Commission, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the Commission: (i) as soon as possible, but no more than five (5) days after the filing of any criminal proceeding

or issuance of any indictment involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor or any officer, director or employee of VENDOR or any Subcontractor; provided, however, if any such proceeding would have a material adverse effect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to the Commission no more than five (5) days after VENDOR learns of such proceeding.

E. VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement (i) a performance bond (the "Performance Bond") or letter of credit with the Commission in an amount equal to fifty thousand dollars (\$50,000), and (ii) a payment bond (the "Payment Bond") or letter of credit with the Commission in an amount equal to fifty thousand dollars (\$50,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by the Commission in its sole discretion. The security provided by VENDOR pursuant to the Performance Bond shall provide funds to the Commission in the event the Commission suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely perform any or all of the requirements contained in this Agreement, including, without limitation, VENDOR's obligation to indemnify the Commission pursuant hereto. The security provided by VENDOR pursuant to the Payment Bond shall provide funds to the Commission in the event the Commission suffers any liability, loss, damage or expense as a result of VENDOR's failure to fully and completely pay any obligation contained in this Agreement. The Bonds may be renewable annually, provided that: (i) each Bond provides that, in the event such Bond will not be renewed for an additional year, the Commission will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if such Bond is not renewed for an additional year, VENDOR must obtain a replacement equivalent Bond or letter of credit to be in place so that at no time is VENDOR in violation of its obligation pursuant to this Section to maintain a performance bond and a payment bond at least throughout the term of this Agreement.

F. VENDOR shall at all times maintain at least the following types and amounts of insurance during the term of this Agreement and for a period of two (2) years thereafter:

(i) Commercial General Liability (CGL) insurance on an ISO form number CG 00 01 (or equivalent) covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Agreement, including coverage for premises, products, and completed operations, on an occurrence basis, with limits no less than \$500,000 per occurrence, \$1,000,000 aggregate;

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

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

(v) Cyber Liability, Technology Errors & Omissions, and Network Security & Privacy Liability insurance, including extended reporting conditions of two (2) years

with limits no less than \$2,000,000 per claim and in the aggregate, inclusive of defense cost;

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

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

## **17. TAXES**

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

## **18. TERMINATION**

- A. Notwithstanding anything herein to the contrary, the Commission may cancel and terminate this Agreement if VENDOR fails to correct or cure any breach of this Agreement within three (3) business days of the earlier of: (a) VENDOR's having knowledge of such breach; or (b) VENDOR's receiving oral or written notice of such breach from the Commission; or
- B. VENDOR may cancel and terminate this Agreement if the Commission, after sixty (60) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement.
- C. The Commission may cancel and terminate this Agreement with thirty (30) calendar day's prior written notice to VENDOR with no early termination fees.
- D. In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.



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

**19. INDEMNIFICATION**

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

**20. CONFLICT RESOLUTION PROCEDURES**

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

**21. NOTICES**

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

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

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

If to VENDOR: [ ]

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

**22. MISCELLANEOUS**

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

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

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

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

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

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

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

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

**23. ADDITIONAL SERVICES**

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

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

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

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

M. Mark Michalko

Its: Executive Director

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

"VENDOR"  
**VENDOR FULL LEGAL NAME**

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

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

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

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

EXHIBIT A  
[PROPOSAL AND COST PROPOSAL]

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EXHIBIT B  
[RFQ]

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EXHIBIT C  
[QUESTIONS AND ANSWERS]