

NORTH CAROLINA EDUCATION LOTTERY RETAILER CONTRACT

This Retailer Contract (“Retailer Contract” or “Contract”) is made by and between the North Carolina State Lottery Commission d/b/a North Carolina Education Lottery (“NCEL”) and the undersigned lottery retailer (“Retailer”) (collectively referred to as “Parties”).

For and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. Term. Unless terminated earlier in accordance with the provisions of this Contract, the term of this Contract shall commence upon activation of the lottery terminal (“Commencement Date”) and **shall expire exactly three (3) years from the Commencement Date. All retailer contracts must be renewed every 3 years.** The NCEL will send a renewal application approximately sixty (60) days prior to the expiration of this Retailer Contract.
2. Compensation/Retailer Commission. The NCEL shall pay Retailer a commission of seven percent (7%) of the retail price of tickets or shares sold by Retailer for each lottery game (“Retailer Commission”).
3. Duties and Responsibilities of the NCEL. The NCEL and/or its Gaming Vendor(s) will be responsible for the following:
 - a. Providing, installing, and maintaining the lottery terminal(s) and other lottery equipment (“Issued Equipment”).
 - b. Providing adequate lottery supplies including, but not limited to, paper stock, play slips, pencils, and how-to-play brochures.
 - c. Ensure at least one (1) Retailer representative/employee completes NCEL approved retailer training.
 - d. Providing a toll-free retailer support hotline for equipment repair service and customer service.
 - e. Providing marketing and customer assistance to Retailer.
 - f. Bearing the cost of all normal maintenance associated with the Issued Equipment, other than costs incurred because of theft, neglect or abuse, whether by the Retailer or a third party, which costs shall be borne by the Retailer.
 - g. Providing weekly invoices to Retailer that reflect the balance due from the Retailer to the NCEL for the prior week’s sales as calculated by the NCEL gaming system.
 - h. Initiating an electronic funds transfer (“EFT”) from the Retailer’s dedicated lottery bank account to satisfy the balance due in accordance with the aforementioned weekly invoices.
4. Duties and conditions of Retailer. The Retailer shall:
 - a. Offer all available NCEL games for sale to the public during the Retailer’s normal business hours.
 - b. Make the purchase and redemption of tickets convenient and readily accessible to the public.
 - c. Make NCEL claim forms available to players.
 - d. Redeem and immediately pay the full prize value of winning tickets up to five hundred ninety-nine dollars (\$599), during Retailer’s normal business hours (subject to NCEL validation hours).
 - e. Instruct players with winning tickets with a prize value above \$599 to claim at one of the NCEL claim centers.
 - f. Conspicuously display the certificate of authority to sell NCEL tickets. Such certificate is not assignable or

transferable.

- g. Display NCEL issued point-of-sale materials and ticket dispensers in a prominent location near the cash register, service counter, or checkout; and make every effort to display NCEL- supplied exterior signage in compliance with local ordinances.
- h. Establish a separate bank account dedicated for lottery proceeds which shall be held and named “In Trust for the North Carolina Education Lottery” in institution(s) insured by the Federal Deposit Insurance Corporation (FDIC). **The dedicated lottery bank account shall be kept separate and apart from, and not commingled with, Retailer’s other funds and/or assets.**
- i. Make full financial settlement with the NCEL every week via an EFT or other recorded financial instrument as authorized, in writing, by the NCEL (full financial settlement may occur more than once a week, as determined by the NCEL in its sole discretion).
 - i) Ensure that proper funds are timely deposited in the designated lottery trust account for the scheduled EFT transfer.
 - ii) **At the time of sale, proceeds minus the Retailer Commission, shall be deemed to be the property of the NCEL.**
 - iii) To the extent allowed by law, the NCEL reserves the right, in its sole discretion, to adjust Retailer’s credit limit at any time.
- j. Pay a weekly terminal communication fee of fifteen dollars (\$15) for each authorized location.
- k. Pay all assessed interest, penalties, and late fee(s) for any occurrence of insufficient funds (“NSF”).
- l. Upon request, provide a security deposit, surety bond, or irrevocable standby letter of credit submitted for each NCEL authorized location regardless if there are multiple authorized locations under the same tax identification number. Each authorized location must provide a separate security deposit, surety bond, or irrevocable standby letter of credit.
- m. Comply with all provisions of Articles 1 through 8 of the North Carolina State Lottery Act, N.C.G.S. §18C-101 et seq., as amended, (“Lottery Act”), including, without limitation:
 - i) Not selling a lottery ticket or share or paying a lottery prize to any person under the age of eighteen (18) years;
 - ii) Not selling or re-selling a lottery ticket or share for more than the retail sales price established by the NCEL (including, but not limited to, adding a surcharge for use of a debit card);
 - (iii) Not residing in the same household as a member of the NCEL Commission, the Executive Director, or any employee of the NCEL;
 - (iv) Not engaging exclusively in the business of selling lottery tickets or shares or in operating electronic computer terminals or other devices solely for entertainment;
 - (v) Being current in filing all applicable business registrations and tax returns to the State of North Carolina and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes; and
 - (vi) Not paying, giving or making any economic opportunity, gift, special discount, favor, hospitality, or service to the Executive Director, to any employee of the NCEL, any member of the North Carolina State Lottery Commission, or to any member of the immediate family residing in the same household as one of these individuals.

- n. Comply with all policies, procedures, rules and regulations adopted from time to time by NCEL under the Lottery Act (individually and collectively, "NCEL Rules"), which are hereby incorporated as if set forth fully herein.
- o. Comply with 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. § 12101 et seq. ("ADA"), and all other labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein, which are hereby incorporated by reference.
- p. Work in conjunction with the NCEL sales staff and other employees, vendors, subcontractors, agents and consultants to establish promotional plans, training schedules, and timetables for terminal installation and ticket deliveries.
- q. Provide adequate power to operate all Issued Equipment.
- r. Sell lottery tickets or shares in exchange for only cash, check, debit/check card (as permitted by the issuer), money order or gift card, and not allow the purchase of lottery tickets or shares by food stamps, electronic benefit transfer (EBT) cards, credit cards, or any other form of credit whatsoever.
- s. Not condition the sale of lottery tickets or shares upon the purchase of other goods or services or charge any player a fee for the service of validating lottery tickets or paying lottery prizes.
- t. For prizes valued at \$599 or less, not discount the value of any winning ticket by paying less than the full value of the prize. For prizes \$600 or more, not purchase such winning ticket from a player, not process the claim, and shall direct the player to claim such prize at a NCEL office.
- u. Maintain minimum weekly sales averages, as determined by the NCEL, and communicated to Retailer.
- v. Keep a complete and current set of records accounting for all of its sales of lottery products and provide it for inspection upon request by the NCEL.
- w. Provide NCEL-approved security for all tickets, Issued Equipment and other NCEL property and immediately report any lost, missing in transit, stolen, damaged, or altered status of the same to the NCEL.
- x. Report any stolen tickets or equipment to local law enforcement officials and provide a copy of such report to the NCEL within the time period as established by the NCEL.
- y. Not transfer instant tickets or serialized ticket stock between locations owned by the same retailer.
- z. Not purchase, or acquire in any manner, tickets from another retailer and resell such tickets at the Retailer location(s) (packs of tickets are assigned to a particular retailer for security and tracking purposes).
- aa. Acquire and maintain sufficient property insurance to cover the cost and replacement of Issued Equipment and/or materials provided by the NCEL and provide evidence of such coverage to the NCEL upon request.
- bb. Cooperate fully with any and all inspections and/or investigations conducted by the NCEL as it relates to NCEL business.
- cc. Ensure that all employees handling lottery transactions are fully trained on the operation of the Issued Equipment and understand the Lottery Act and NCEL Rules.
- dd. Provide the NCEL with at least thirty (30) days advance written notice of any change of address (authorized location address and/or owner's home address), financial status, or ownership structure and written notice immediately following the death of an owner.
- ee. Be responsible for NCEL Issued Equipment which, at all times shall remain the sole and exclusive property

of the NCEL or its vendor.

- i) The NCEL grants Retailer a limited non-transferable license to utilize any and all Issued Equipment during the Term of this Retailer Contract.
- ii) Before installation of any Issued Equipment, the Retailer shall provide the appropriate counter, floor and/or wall space (as applicable to the Issued Equipment) in compliance with NCEL requirements.
- iii) The NCEL or its authorized vendor(s) shall pay all costs necessary to deliver, install and maintain the Issued Equipment, except that Retailer may be responsible for the replacement cost of lost/stolen/damaged/destroyed Issued Equipment.
- iv) The Retailer agrees that the Issued Equipment shall only be used for its intended purpose. Any violation of this provision shall subject the Retailer to removal of the applicable Issued Equipment, suspension, or termination of this Retailer Contract.
- v) The Retailer shall be responsible for contacting the NCEL or the service maintenance provider designated by the NCEL for any necessary maintenance to the Issued Equipment.
- vi) The NCEL and/or its authorized vendor(s) will conduct periodic inspections of the Issued Equipment to monitor placement, sales, inventory control and maintenance and the Retailer shall permit such access upon request.
- vii) If the Retailer is in breach of any provision of this Retailer Contract, NCEL Rules, and/or the Lottery Act, the NCEL may terminate this Contract and/or immediately remove any or all Issued Equipment from the Retailer's premises without notice or hearing. Additionally, the NCEL may terminate this Contract and/or remove any or all Issued Equipment from the Retailer's premises without notice or hearing if the NCEL's agreement with the applicable Issued Equipment vendor(s) is/are terminated or amended.

Retailer may not sell, subcontract or otherwise assign its duties or obligations under this Contract in whole or in part, without the prior written consent of NCEL. Any attempted assignment not in accordance herewith shall be null and void and of no force and effect.

5. Intellectual Property. Retailer has a limited, non-exclusive, non-sublicensable, non-assignable license for the sole purpose of using, reproducing, distributing, transmitting and publicly displaying NCEL logos subject to the following limitations:
- a. Retailer will not use NCEL's name, logos or images as a part of or in connection with any commercial advertising or signage without the prior written consent of the Executive Director or their designee(s), in each instance, or unless such commercial advertising or signage was provided by the NCEL.
 - b. Retailer is strictly prohibited from utilizing any licensed intellectual property which is printed on tickets, point-of-sale materials, advertising, etc., other than those provided by the NCEL for such purposes.
 - c. NCEL reserves the right, in its sole discretion, to change its logos, trademarks, service marks, trade dress, and other intellectual property at any time. Retailer shall comply with NCEL instructions and timelines regarding any and all such changes.
 - d. Upon the expiration or termination of this Contract, Retailer shall immediately cease all uses of NCEL logos and all other NCEL intellectual property.
6. Representations and Warranties. Retailer hereby represents and warrants to NCEL as follows:
- a. Retailer is duly organized, validly existing and in good standing under the laws of the state in which it is incorporated/organized, and shall, at all times throughout the term of this Contract, remain qualified to do business in North Carolina and current in the payment of all applicable North Carolina taxes.

- b. Neither Retailer nor any of its owners, officers, or directors have been convicted of or plead guilty (including if a prayer for judgment was granted) or nolo contendere to a felony or any gambling offense in any state or federal court of the United States in the 10 years prior to the date of this Contract Application/Retailer Contract.
 - i) Retailer is required to notify the NCEL, in writing, within 10 business days, if Retailer or any of its owners, officers, or directors is arrested, charged, convicted, or pleads guilty (including if a prayer for judgment is granted) or nolo contendere to any criminal offense, whether misdemeanor or felony, including, but not limited to, any gambling offense in any state or federal court of the United States on after the date of this Retailer Contract.
 - ii) Retailer is also required to notify the NCEL, in writing, within 10 business days, if any of its employees is arrested, charged, convicted, or pleads guilty (including if a prayer for judgment is granted) or nolo contendere to any criminal offense, whether misdemeanor or felony, including, but not limited to, any gambling offense, but only if the act resulting in such arrest, charge, etc. occurred on the premises of the Retailer.
- c. Retailer has the full power, authority, ability and legal right to execute this Retailer Contract and to perform its obligations hereunder, and the execution of this Retailer Contract and the performance of its obligations hereunder have been duly authorized by all necessary action of Retailer. In addition, the designated representative who signed this Retailer Contract has the authority to sign any and all documents as required by the NCEL and shall bind the Retailer to the terms thereof.
- d. The execution, delivery and performance of this Retailer Contract will not cause or result in a breach of or default under any other agreement, contract or understanding to which Retailer is a party.
- e. Retailer has truthfully, accurately, and thoroughly completed the Retailer Contract Application or Contract Renewal Application and the NCEL may rely upon those answers. Retailer shall promptly notify the NCEL of all material changes to answers on the applicable application and the NCEL relies on this ongoing duty.
- f. All proceeds from the sale of lottery tickets or shares shall be deemed to be held in trust for the NCEL until paid to the NCEL either directly, to the NCEL's authorized collection representative, or to players as lottery prizes in accordance with the Lottery Act and NCEL Rules. Retailer, its owners and officers understand and agree that they have a fiduciary duty to preserve and account for all lottery proceeds. Each natural person signing this Retailer Contract on behalf of Retailer acknowledges and agrees that they shall personally be jointly and severally liable with Retailer for lottery net proceeds (proceeds from the sale of any and all NCEL products plus service fees, NSF fees, interest, and other fees due the NCEL, less Retailer Commissions, bonuses (if any), and lottery prizes paid to winners in accordance with the Lottery Act and NCEL Rules), Issued Equipment, unsold instant scratch off tickets received by Retailer, and all costs incurred by the NCEL in enforcing this Contract and/or in collecting any amounts due to NCEL from Retailer hereunder, including, without limitation, court costs and attorney fees.
- g. Only NCEL-supplied or NCEL-approved products shall be affixed to or loaded into dispensers or placed in or on Issued Equipment. The NCEL may remove and/or replace the Issued Equipment, other NCEL owned equipment, products, and supplies at any time, with or without cause.
- h. Retailer is an independent contractor approved by the NCEL strictly to sell approved lottery game tickets. As such, the Retailer's action and/or inaction associated with its business shall not be imputed to the NCEL, its Commissioners, officers, employees, vendors and agents or the State of North Carolina.

7. Termination.

- a. Notwithstanding anything herein to the contrary, NCEL may immediately suspend, cancel, or terminate this Retailer Contract if Retailer directly or indirectly (through its owners, officers, directors, or employees):
 - i) Violates any provision of the Lottery Act or other governing laws, including, without limitation,

repeated sales to minors or noncompliance with the ADA;

- ii) Breaches any provision of this Contract, including, without limitation, repeated NSF's or a change in substantive ownership of Retailer;
 - iii) Breaches any provision of the NCEL's Rules as they may be adopted or amended from time to time;
 - iv) If Retailer or any of Retailer's owners, officers, or directors is convicted, pleads guilty (including if a prayer for judgment was granted) or nolo contendere of any state or federal criminal offense, whether misdemeanor or felony, including, but not limited to any offense relating to gambling activities; and/or
 - v) If any of Retailer's employees is arrested, charged, convicted, or pleads guilty (including if a prayer for judgment is granted) or nolo contendere to any criminal offense, whether misdemeanor or felony, including, but not limited to, any gambling offense, but only if the act(s) resulting in such arrest, charge, etc. occurred on the premises of the Retailer.
 - vi) If Retailer fails to notify the NCEL in accordance with Section 6(b) above.
- b. Upon cancellation of the Retailer's certificate of authority and/or termination of this Contract, the Retailer shall permit the NCEL representative(s) and/or Vendor to retrieve and remove any and all lottery equipment including, without limitation, Issued Equipment and/or materials issued by the NCEL.

8. Indemnification. Retailer agrees to indemnify, defend (to the extent allowed by North Carolina law), and hold harmless the NCEL, its commissioners, agents, officers, and employees, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees (individually and collectively, "Indemnitees"), against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Contract or any other act or omission of Retailer or any of its agents or employees, whether the same may be the result of negligence, willful misconduct, responsibility under strict liability standards, any other substandard conduct or otherwise. Retailer also agrees to indemnify, defend and hold harmless the Indemnitees for any claim(s) for lost profit or revenue, regardless of the reason for any interruption, suspension, failure of, or defects in the operation or design of the NCEL games, equipment, products or systems. Notwithstanding the foregoing, the Retailer will not be responsible for any damage to person or property, including reasonable attorney's fees, incurred by Retailer as a result of Retailer's use of the Issued Equipment in accordance with this Agreement and which arise from defects of the Issued Equipment, provided that such damages are not the result of the negligent acts, omissions or willful misconduct of the Retailer, its owners, officers, directors, employees, or any third party. To the fullest extent permitted by law, it shall be the Retailer's duty to indemnify, defend, and hold harmless the NCEL for any acts herein and no liability arising herein shall be discharged, forgiven, or otherwise extinguished or diminished by any filing, petition or adjudication of bankruptcy of the Retailer, which includes any individual filing, petition, or adjudication regarding the Retailer's owners, shareholders, partners, or members as individuals.

9. Conflict Resolution Procedures. Retailer irrevocably waives, to the fullest extent permitted by law, any right which it may have to bring any judicial enforcement action with respect to any claims or controversies arising in connection with this Retailer Contract and its role as a retailer. Retailer may pursue and exhaust any and all remedies available to it in accordance with the Retailer Dispute Resolution procedures adopted by NCEL, as amended from time to time. If applicable law permits further appeals after exhaustion of all remedies and procedures in the Retailer Dispute Resolution procedures of NCEL, any such appeal must be brought solely in the Superior Court of Wake County, North Carolina. Retailer irrevocably waives any objection which it may have to the venue of any appeal being solely in the Superior Court of Wake County, North Carolina.

10. Notices. All notices and statements provided for or required by this Contract shall be in writing, and shall be (i) personally delivered, (ii) mailed by United States Postal Service certified or registered mail, return receipt requested, or (iii) delivered by a recognized national overnight courier service. Notices to Retailer must be sent to the address provided on the Retailer Contract Application or, if applicable, Contract Renewal Application, unless Retailer has provided NCEL with written notice of a different address and/or recipient, in accordance with this Section 10. Notices to NCEL shall be sent to the following address (unless Retailer is otherwise notified in writing in accordance with

this Section 10):

North Carolina Education Lottery
2728 Capital Blvd., Suite 144
Raleigh, North Carolina 27604
Attn: Retailer Contracts Department

AND with a copy to:

North Carolina Education Lottery
2728 Capital Blvd., Suite 144
Raleigh, North Carolina 27604
Attn: Legal Department

11. Miscellaneous.

- a. Retailer's status as a NCEL Retailer shall be subject to the approval of the NCEL and the completion of all background investigations required by the Lottery Act and the NCEL Rules.
- b. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina.
- c. If any provision of this Contract shall be held void, voidable, invalid or inoperative, no other provision of this Contract shall be affected as a result thereof, and accordingly, the remaining provisions of this Contract shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

This Contract contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. No waiver, termination or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. No waiver by either party hereto of any term or provision of this Contract 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.

Signature accepting terms and conditions of this Retailer Contract is located on the Retailer Contract Application