

PROFESSIONAL CREATIVE, ADVERTISING, MARKETING COMMUNICATIONS AND RELATED
SERVICES AGREEMENT

This Professional Creative, Advertising, Marketing Communications and Related Services Agreement (the "**Agreement**") is made and entered into this 26 day of June, 2019 (the "**Effective Date**"), by and between the North Carolina Education Lottery (the "**NCEL**"), a state agency created pursuant to the North Carolina State Lottery Act (G.S. § 18C-101 et seq.) (as may be amended from time to time, the "**Act**"), located at 2728 Capital Boulevard, Suite 144, Raleigh, North Carolina, 27604, and J. Walter Thompson USA, LLC d/b/a Wunderman Thompson, located at 3630 Peachtree Road NE, Atlanta, GA, 30326, a limited liability company organized under the laws of the State of Delaware ("**VENDOR**").

WITNESSETH:

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

WHEREAS, VENDOR submitted the proposal, dated April 17, 2019 (the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated January 29, 2019 (RFP #LC-000056) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were last distributed by the NCEL on March 22, 2019 (the "**Questions and Answers**," Exhibit C), and VENDOR's revised Cost Proposal dated June 4, 2019 ("**Exhibit D**"). Exhibits A, B, C and D are attached hereto and incorporated by reference herein; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the NCEL desires to retain VENDOR to provide professional advertising and related services to the NCEL, and VENDOR desires to provide such services for the NCEL.

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

1. SERVICES

Subject to the terms and conditions set forth in this Agreement, the NCEL retains VENDOR to provide professional creative, advertising, marketing communications and related services to the NCEL as contemplated by this Agreement, the RFP and the Proposal (collectively, the "**Services**"), and VENDOR agrees to provide such Services to the NCEL. Capitalized terms not otherwise defined herein shall be defined as set forth in the RFP.

2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS

VENDOR and its Subcontractors, defined below, will work in conjunction with the Executive Director of the NCEL (the "**Director**"), the NCEL staff, the NCEL Commission (the "**Commission**") and the other vendors, subcontractors, employees, agents, retailers and consultants of the NCEL. VENDOR and its Subcontractors will provide the Services to the NCEL as detailed in the RFP, the Answers and the Proposal and will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the Director, his/her designee(s) and/or the Commission. Except as otherwise set forth herein, VENDOR agrees that all Services and deliverables to be provided to the NCEL under this Agreement shall meet or exceed the requirements as set forth in this Agreement, the RFP, the Answers and the Proposal.

A. VENDOR shall meet regularly with the Director or his/her designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the Director or his designee(s).

B. VENDOR hereby agrees to use its best efforts to make available to the NCEL, such of its employees and its Subcontractors as may be necessary or appropriate for the timely

performance of VENDOR's obligations pursuant to this Agreement. VENDOR will provide the NCEL, as requested from time to time, the names of VENDOR's and the Subcontractors' primary employees who will be performing services pursuant to this Agreement.

C. **Scope of Services:** In addition to the services as specified in the RFP and VENDOR's Proposal, VENDOR shall be responsible for providing the following products and/or services:

- (1) Under Digital Advertising (RFP 2.8.3(F)), the KPIs and measurement services will be allocated to VENDOR.
- (2) Under Media Plan Return-on-Investment Performance Analysis (RFP 2.8.4(G)), analytical tools for performance analysis and media modeling for return-on-investment will be provided by VENDOR. VENDOR shall put in place appropriate tools and processes to monitor, maintain, and improve the ROI effectiveness of all media buys. The NCEL's media planning and buying provider, the Spurrier Group ("Spurrier"), shall provide specific and detailed media purchase and post-buy information for this purpose. Spurrier will utilize the analytical tools and modeling provided by VENDOR to inform future media recommendations and enhance effectiveness.
- (3) Under Media Research & Strategy Development (RFP 2.8.4(C)), Spurrier will utilize research tools to be provided by VENDOR, in addition to any other proprietary research tools. The NCEL should receive quarterly presentations of media strategies and tactics based on the findings and opportunities gained through use of VENDOR's research tools. Presentations should include both Spurrier and VENDOR.
- (4) Under Placement and Verification (RFP 2.8.4(D)(4)), VENDOR shall be responsible for the management and traffic of broadcast creative, and Spurrier will be provide the remaining services under Section 2.8.4(D)(4) of the RFP.

3. **SUBCONTRACTORS**

A. Neither VENDOR nor any Subcontractors will subcontract more than 25% of the value of this Agreement or subcontract thereunder or assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the NCEL in each instance, which consent may be withheld in the NCEL's sole discretion. VENDOR will provide the NCEL with the name, qualifications, experience and expected duties of each subcontractor proposed to perform more than 25% of the work under this Agreement. All approved subcontractors, sub-vendors, employees, joint venturers, partners or other parties working with or for VENDOR in performing services under this Agreement or for the NCEL will be defined collectively as the "Subcontractors" and individually as a "Subcontractor" and will become a subcontractor for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act. Notwithstanding the foregoing or anything to the contrary in this Agreement, it is understood and agreed that VENDOR may use third party vendors or suppliers to provide ancillary or incidental services or services that are not Services customarily performed solely and directly by VENDOR ("Ancillary Providers"). VENDOR's use of Ancillary Providers will not be considered an assignment or subcontract hereunder and references to Subcontractors do not include any Ancillary Providers. VENDOR will use commercially reasonable efforts to cause Ancillary Providers to perform their obligations but VENDOR will not be responsible for any failure to perform except in the case of VENDOR's gross negligence.

B. The NCEL shall have the right, at any time and from time to time, to instruct VENDOR not to use the services of any Subcontractor, individual or employee in connection with the work to be performed for the NCEL under this Agreement, and VENDOR agrees to comply with all such instructions. Notwithstanding anything herein to the contrary, VENDOR will remain fully responsible for all Services, deliverables and work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by VENDOR or under VENDOR's control, and VENDOR will ensure the compliance of

its employees, and will exercise its best efforts to ensure the compliance of, and in any event be responsible for, Subcontractors and their employees with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as the NCEL may establish from time to time.

4. **INDEPENDENT CONTRACTOR**

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

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

5. **COMPENSATION**

A. As full and complete compensation for all Services and deliverables provided by VENDOR pursuant to this Agreement, the NCEL will pay VENDOR, and VENDOR will accept, an amount (the "Vendor's Fee") equal to rates as specified below; provided, however, that notwithstanding anything herein to the contrary, advertising expenditures of the NCEL, including production costs and media costs, shall not exceed one percent (1%) of the NCEL's total annual fiscal year revenues.

(1) Fiscal Year 2020 (July 1, 2019 – June 30, 2020) - \$2,750,000 annually or \$229,166.67 per month;

(2) Fiscal Year 2021 (July 1, 2020 – June 30, 2021) - \$2,805,000 annually or \$233,750 per month; and

(3) Fiscal Year 2022 (July 1, 2021 – June 30, 2022) - \$2,861,100 annually or \$238,425 per month.

B. The NCEL will reimburse VENDOR for travel expenses, including airline tickets, rental car, mileage, meals, and hotel accommodation, associated with industry conferences/tradeshows as identified by the NCEL (i.e., PGRI, NASPL and WLA). Reimbursement for mileage, meals, and hotel accommodation will be made at the approved travel rate as specified in the NCEL Travel Policy.

C. Unless otherwise noted, VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from VENDOR to the NCEL.

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

E. The NCEL shall, at its own expense, conduct trademark and service mark searches and will provide usage approval with respect to trademarks, service marks, logos or trade names

developed by VENDOR for use by and in connection with the NCEL. Copies of all such search reports will be delivered to the NCEL and its General Counsel. New trademarks and service marks developed for the NCEL will be registered by legal counsel chosen by the NCEL solely in the name of the NCEL for its sole use. The NCEL shall pay all costs related to registration of trademarks and service marks developed for the NCEL. Notwithstanding the above, VENDOR, at its own expense, shall conduct preliminary trademarks scans of any proposed trademarks for the NCEL prior to presenting materials to the NCEL for its consideration.

F. Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 13) or this Agreement, the NCEL will pay to VENDOR all non-disputed amounts due under this Agreement within thirty (30) days upon receipt and verification of Vendor's invoice for production invoices and VENDOR's monthly payment rate, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by the NCEL from time to time.

6. **TERM**

A. Unless sooner terminated in accordance with the provisions of Section 18 or other provisions of this Agreement and the RFP, the term of this Agreement shall commence as of the Effective Date and shall continue until June 30, 2022 (the "Initial Term"). This Agreement shall be automatically renewed for a period of one (1) year (each a "Renewal Term") upon the completion of the immediately preceding Initial Term or Renewal Term, as the case may be, for a total of no more than three (3) Renewal Terms, unless a party sends the other party at least sixty (60) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be. If the NCEL and VENDOR fail to mutually agree in writing on a Vendor Fee for any Renewal Term prior to the beginning of any such Renewal Term, then the Vendor Fee shall be the same as specified for the preceding year until such time as a new Vendor Fee is agreed upon by the parties, at which time the new Vendor Fee shall be effective upon the agreement of the new Vendor Fee.

B. VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, the NCEL may award a new contract for replacement of the Services and deliverables provided by VENDOR under this Agreement and that VENDOR has no right or expectation in or to any such new contract. VENDOR further agrees that the NCEL may use the final one hundred eighty (180) days or less, of the term of this Agreement for transitioning the provision of such Services and deliverables; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such period. VENDOR shall cooperate fully and in good faith, and shall assist the NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner without any interruption to the NCEL's current marketing efforts, at no additional cost to the NCEL or such new contractor.

7. **WORK STANDARD**

A. VENDOR hereby agrees that it and its Subcontractors shall at all times comply with and abide by all terms and conditions set forth in this Agreement, all applicable policies and procedures of the NCEL that have been provided to and agreed upon by VENDOR and all applicable 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 professional and technical guidelines and standards applicable to the VENDOR's industry.

B. VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political

influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, nor any of their respective employees or agents will solicit or accept, or attempt to solicit or accept, any kickbacks or other inducements from any offeror, supplier, manufacturer, subcontractor or other individual or entity in connection with the performance of its obligations under this Agreement.

C. If the NCEL becomes dissatisfied with the Services, deliverables or work product of or the working relationship with any of the individuals assigned to perform Services under this Agreement by VENDOR or any Subcontractors, the NCEL may require the prompt replacement of any or all of such individuals. Important personnel identified in VENDOR's Proposal as performing Services under this Agreement will continue to perform such Services in their designated capacities until such Services are completed unless: (i) they cease to be employed by VENDOR or a Subcontractor; (ii) the NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to the NCEL, in its discretion, will be substituted forthwith; or (iii) VENDOR wishes to have them replaced by someone of equal or better qualifications and VENDOR obtains NCEL's prior written consent to such change.

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

A. Nothing in this Agreement shall prohibit the NCEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by VENDOR or a Subcontractor. The

NCEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the Services of VENDOR or any Subcontractors.

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

8. **CHANGES IN WORK**

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

9. **BOOKS AND RECORDS**

Upon request by the NCEL, VENDOR and Subcontractors who perform more than 25% of the work hereunder shall provide, as soon as it is available, to the NCEL a copy of its latest audited financial statements; provided, however, if VENDOR does not obtain audited financial statements, then its financial statements must be certified by its chief financial officer. VENDOR shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles. VENDOR shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by the NCEL, by any authorized representative of the NCEL and/or the State of North Carolina Auditor of State's Office ("State Auditor"), and copies thereof shall be furnished to the NCEL and/or the State Auditor by the appropriate entity, at no cost to the NCEL or the State Auditor, if requested by the NCEL or the State Auditor. The NCEL and/or the State Auditor shall have the right on reasonable notice and not more than once every 12 months to audit the records and operations of VENDOR with respect to the Services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations. In no event will the State Auditor have access to individual payroll and personnel files; any information relating to VENDOR's other clients; any of VENDOR's overhead costs or related information; fixed pricing arrangements for other clients; any information subject to restrictions in contracts with third parties; VENDOR's IT infrastructure, servers and systems; any other internal VENDOR costs or non-billable expenses; any information relating to agreements entered into by VENDOR as principal; or any information that is subject to legal restrictions. For the purposes of this Section 9 only, the term "VENDOR" shall also apply to those Subcontractors providing more than 25% of the work hereunder.

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

A. For purposes of this Agreement:

(i) "Confidential Information" means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B)

valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "Trade Secret" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors. For purposes of this Agreement, the financial statements provided pursuant to Section 9 of this Agreement shall be deemed to be VENDOR's Confidential Information; and 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 thorough independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

B. In recognition of the need of VENDOR to protect its legitimate business interests, the NCEL hereby covenants and agrees that with regard to any: (i) VENDOR Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) VENDOR Trade Secrets, at all times such information remains a Trade Secret under applicable law, the NCEL will regard and treat all such items as strictly confidential and wholly owned by VENDOR and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such VENDOR Confidential Information or VENDOR Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of VENDOR or except to the extent necessary to fulfill the purposes of this Agreement or conduct the North Carolina Education Lottery. Notwithstanding anything hereto the contrary, the entirety of Section 1.5 of the RFP, the Act, the Governing Laws and Regulations, the Open Meetings Law

G.S. §143-318.9 et. seq. and the Public Records Law G.S. §132-1 et. seq. (collectively, the "Superseding Provisions and Statutes") shall supersede and control any provision of this Agreement, and the NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFP or Proposal, shall be subject to, and never be greater than, as set forth in any of the Superseding Provisions and Statutes.

C. In recognition of the need of the NCEL to protect its legitimate business interests, VENDOR hereby covenants and agrees that with regard to any: (i) NCEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a Trade Secret under applicable law, VENDOR and all Subcontractors providing more than 25% of the work hereunder will regard and treat all such items as strictly confidential and wholly owned by the NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the NCEL. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any NCEL Confidential Information, NCEL Trade Secrets or other information or property of the NCEL and provided that the NCEL advises the VENDOR in writing about such restrictions or prohibitions, VENDOR covenants and agrees that it shall comply with such greater restrictions or prohibitions. To ensure the compliance 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.

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.

D. Neither the VENDOR nor any of its approved Subcontractor shall have any proprietary rights or interests in any intellectual properties (including, without limitation, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith)) (all of the foregoing being collectively defined as the "**Intellectual Property Rights**") products, materials, intellectual properties developed, data, documentation, or other content or items of any kind or nature developed, produced or provided in connection with the Services provided for the NCEL under this Agreement (collectively, the "**NCEL Intellectual Properties**"). All deliverables, written materials, campaigns, designs, tangible or intangible materials, intellectual or other property or other work product of any kind or nature produced, revised, created, modified or prepared by VENDOR and any of its Subcontractors in connection with this Agreement, the RFP or for the NCEL (collectively, the "**Work Product**") will be deemed, to the greatest extent possible, "work made for hire" under Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 to be exclusively owned by the NCEL. To the extent that any Work Product does not qualify as a "work made for hire," VENDOR and each of the Subcontractors hereby irrevocably transfer, assign and convey to the NCEL all right, title and interest in the Work Product, together with all copyrights, patents, trade secrets, confidential information, trademarks and service marks (and the goodwill associated therewith) and rights (all of the foregoing being collectively defined as the "**Intellectual Property Rights**"), free and clear of any liens, security interests, hypothecations, pledges, claims or other encumbrances of any kind or nature, to the fullest extent permitted by law. At the NCEL's request, VENDOR and its Subcontractors shall execute, and shall cause its or their personnel to execute, all assignments, applications, writings, instruments or other documentation of any kind or nature deemed necessary or beneficial by the NCEL so that the NCEL may perfect or protect its rights as provided herein. VENDOR and its Subcontractors shall require its and their employees, and permitted agents, independent contractors and consultants to execute agreements assigning all of their rights in the Work Products, and all Intellectual Property Rights therein, to the NCEL, directly or indirectly, and shall provide the NCEL with documentation evidencing its compliance with this requirement upon the NCEL's request. The intent of the NCEL is that the NCEL is the sole owner of, and is able to continue to use any or all of, the Work Product that it chooses in the conduct of its lottery games and other activities.

E. The NCEL grants to VENDOR during the period from the Effective Date until the expiration of this Agreement, or is otherwise earlier terminated, a non-exclusive license to use, sublicense, modify and create derivative works of the NCEL Intellectual Properties which are owned by the NCEL and created solely by VENDOR or its Subcontractors, provided such use by VENDOR or its Subcontractors is only for the benefit of the NCEL and solely for the purpose of performing the Agreement.

F. Notwithstanding anything set forth herein to the contrary, the NCEL acknowledges and agrees that all materials, methodologies, information, businesses processes, tools, data and/or intellectual property in existence prior to this Agreement (and/or created outside the scope of this Agreement) and all code or portions thereof developed or provided by VENDOR hereunder (collectively, "Vendor Property"), shall remain the sole and exclusive property of VENDOR.

Unless otherwise set forth in the applicable SOW, to the extent any such Vendor Property is integrated into the Work Product, VENDOR hereby grants a fully paid-up, perpetual, non-exclusive, non-transferable license to the NCEL to use (without modification) the applicable Vendor Property solely in connection with the Work Product and for the benefit of the NCEL. VENDOR shall own all modifications, improvements or enhancements to the Vendor Property and the NCEL may not reverse engineer, decompile, modify, create derivative works, or otherwise exploit Vendor Property alone or apart from the Work Product commissioned by the NCEL.

11. THIRD PARTY MATERIALS, TALENT AND UNION CONTRACTS

- A. Third Party Materials. Notwithstanding anything set forth herein to the contrary, the NCEL acknowledges and agrees that all materials, rights, and intellectual property owned and/or controlled by third parties (collectively, "Third Party Materials") shall remain the sole and exclusive property of such third parties. The NCEL agrees to use any Third Party Materials consistent with the restrictions and limitations for such Third Party Materials as communicated to the NCEL and the NCEL acknowledges and agrees that Third Party Materials (and/or corresponding Work Product) used, published or distributed otherwise may violate one or more applicable laws, rules or regulations or third party rights, and that the NCEL shall bear the sole risk and have the sole responsibility for all such violations.
- B. Talent and Union Contracts. VENDOR's agreements with talent guilds, unions and other collective bargaining entities (collectively, the "Guilds") provide for VENDOR to be ultimately liable to performers under guild codes ("Guild Talent") for payments that may become due to the extent such Work Product fall under the applicable Guild codes ("Guild Material"); and (ii) the pension, health, welfare and similar funds of the Guilds (the "Funds") for contributions that may become due arising out of Guild Talent contracts (the "Contributions"). The NCEL acknowledges that the NCEL is responsible to reimburse VENDOR for all payments, taxes and liabilities, including the Contributions, to the Guild Talent, the Guilds and/or the Funds that arise hereunder, that VENDOR disclosed to the NCEL and approved by the NCEL in connection with the creation of the Work Product. Therefore, the NCEL will reimburse VENDOR for any losses, penalties, benefits or payments that VENDOR may sustain resulting from any Claim made or brought against VENDOR arising from a Guild Talent contract and/or the use of any VENDOR produced Guild Materials by the NCEL or any other person or entity authorized by the NCEL, when such Claim arises out of (i) the NCEL's breach of its obligations hereunder to satisfy VENDOR's disclosed obligations under the Guild Codes (including, without limitation, as applicable, SAG and AFTRA), Guild Talent contracts and/or the Funds; (ii) such party's use in excess of, or outside the scope of, the rights granted in violation of applicable Guild Codes or Guild Talent contracts relating to the production or use of Guild Materials; or (iii) a Claim by the Guilds that alleging a violation of the Guild Materials, provided such allegation is not the result of the negligent acts or omissions of the VENDOR.

12. NONDISCRIMINATION: AFFIRMATIVE ACTION

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

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

13. LIMITATION OF LIABILITY

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

IN NO EVENT SHALL VENDOR BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF VENDOR OR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, DELIVERY, OR LICENSING OF THE DELIVERABLES OR WORK PRODUCT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MOREOVER, VENDOR'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THREE (3) TIMES THE AMOUNTS PAID BY THE NCEL UNDER THIS AGREEMENT.

14. COMPLIANCE WITH LAWS

VENDOR agrees to comply with all applicable rules, procedures and regulations adopted by the NCEL under the Act as of the date of this Agreement 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").

15. ANTITRUST ACTIONS

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

16. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

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

A. 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.

VENDOR and its Subcontractors performing more than 25% of the work under this Agreement have disclosed or will disclose to the NCEL all matters required to be disclosed under the Governing Laws and Regulations. VENDOR shall ensure that it is aware of any statutory limitations or restrictions affecting its Agreement with the NCEL, such as certain political contributions, its ability to conduct future business with the NCEL and/or its ability to conduct business with certain third parties. Any employee of the VENDOR who works directly on the NCEL Contract/Account, and members of such employee's households, shall be prohibited from purchasing NCEL tickets and/or claiming any NCEL prizes.

B. Neither VENDOR, the Subcontractors performing more than 25% of the work under this Agreement, nor any of its or their respective officers, directors, partners or major shareholders have ever been found guilty of, or plead guilty to, any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction, nor are VENDOR, the Subcontractors performing more than 25% of the work under this Agreement, nor any of its or their respective officers, directors, partners or major shareholders currently under indictment for any crime in any way related to the security, integrity or operation of any lottery in any jurisdiction. VENDOR shall be obligated to notify the NCEL if VENDOR or any one of its officers and directors has been convicted of a felony or any gambling offense in any state or federal court of the United States within ten (10) years of entering into the contract (NCGS §18C-151(a)(5)).

C. No "public official" has an ownership interest of five percent (5%) or more in VENDOR or any of the Subcontractors performing more than 25% of the work under this Agreement.

D. 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.

E. 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 defamatory, libelous or constitute an invasion of privacy of any individual or entity.

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

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

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

17. OBLIGATIONS OF VENDOR

A. Upon request by the NCEL, VENDOR shall provide the NCEL an updated certificate of existence showing that it and each Subcontractor are qualified to transact business in the State of North Carolina.

B. To avoid not only actual impropriety but also the appearance of impropriety, VENDOR is expected to establish and enforce a code of conduct for all employees, independent vendors and subcontractors that will help achieve the NCEL's objective of maintaining integrity in its operation, as well as, follow the rules and procedures established, and from time to time, amended, by the NCEL.

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

D. VENDOR agrees to fully disclose to the NCEL all matters materially affecting the NCEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform and legally required background and security investigations with respect to VENDOR, the Subcontractors performing more than 25% of the work under this Agreement, their respective officers, directors and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the NCEL or the State of North Carolina. In addition, VENDOR acknowledges that to the extent under Applicable Laws some or all of its employees, officers, directors and its Subcontractors and their respective employees, officers and directors may be required to submit to background and other investigations, VENDOR shall cause any such individuals or Subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. VENDOR further agrees that it will routinely update all information disclosed to the NCEL pursuant to this Agreement or the RFP; including, without limitation, any breaches of all representations, warranties and additional covenants set forth in 14 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify the NCEL upon the occurrence of any event the effect or results of which VENDOR would be required to disclose, or to update a previous disclosure, to the NCEL under this Agreement or the RFP and which materially affect the NCEL, VENDOR, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement. VENDOR further agrees to notify the NCEL: (i) as soon as possible, but no more than five (5) days after first learning of any filing of any criminal proceeding or issuance of any indictment involving VENDOR or any Subcontractor providing more than 25% of the work hereunder or any officer, director or employee of VENDOR or any Subcontractor providing more than 25% of the work hereunder; and (ii) within thirty (30) days of VENDOR's first learning of any civil or administrative proceeding involving VENDOR or any Subcontractor providing more than 25% of the work hereunder or any officer, director or employee of VENDOR or any Subcontractor providing more than 25% of the work hereunder; provided, however, if any such proceeding would have a material adverse affect on VENDOR or a Subcontractor providing more than 25% of the work hereunder or their ability to perform pursuant to this Agreement, then such notice must be delivered to the NCEL no more than five (5) days after VENDOR learns of such proceeding.

E. VENDOR 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 NCEL in an amount equal to two hundred and

fifty thousand dollars (\$250,000), and (ii) a payment bond (the "Payment Bond") or letter of credit with the NCEL in an amount equal to five hundred thousand dollars (\$500,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by the NCEL in its sole discretion. The security provided by VENDOR pursuant to the Performance Bond shall provide funds to the NCEL in the event the NCEL 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 NCEL pursuant hereto. The security provided by VENDOR pursuant to the Payment Bond shall provide funds to the NCEL in the event the NCEL 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 NCEL 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:

(i) General liability insurance in the amount of at least one million dollars (\$1,000,000);

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

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

(iii) An advertising agency liability insurance policy which shall insure against any and all claims against the NCEL based on libel, slander, piracy, plagiarism, invasion of privacy or Intellectual Property Rights infringement arising out of any Work Product, other product or service prepared by, or services performed by, VENDOR, its employees or its Subcontractors, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of at least five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) in the aggregate.

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

18. TAXES

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

19. TERMINATION

A. Notwithstanding anything herein to the contrary, the NCEL may cancel and terminate this Agreement if VENDOR fails to correct or cure any breach of this Agreement within thirty (30) calendar days of the earlier of: (a) VENDOR's having knowledge of such breach; or (b) VENDOR's receiving oral or written notice of such breach from the NCEL; or

B. VENDOR may cancel and terminate this Agreement if the NCEL, after thirty (30) calendar day's prior written notice from VENDOR, fails to correct or cure any breach of this Agreement.

C. The NCEL may cancel and terminate this Agreement with sixty (60) calendar day's prior written notice to VENDOR with no early termination fees. VENDOR shall similarly be entitled to cancel and terminate this Agreement on sixty (60) days written notice to the NCEL without penalty.

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.

20. INDEMNIFICATION

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

To the extent permitted by law, the NCEL shall be responsible for any claims or actions resulting from any breach of this Agreement or any other act or omission of NCEL or any of its agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards or any other conduct. For the sake of clarity, it is understood and agreed that VENDOR or its Subcontractors shall not be responsible for any claims resulting from (i) any materials provided to VENDOR for inclusion into the Work Product; (ii) any claims relating to or involving any of the NCEL's products or services; or (iii) any claims alleging that approved Work Product is deceptive or unsubstantiated.

21. CONFLICT RESOLUTION PROCEDURES

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

22. NOTICES

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

If to NCEL:

North Carolina Education Lottery
2728 Capital Boulevard, Suite 144
Raleigh, NC 27604
Attn: M. Mark Michalko, Executive Director
Email: mark.michalko@lotterync.net

If to VENDOR:

J. Walter Thompson USA, LLC d/b/a Wunderman Thompson
3630 Peachtree Road NE
Atlanta, GA, 30326
Attn: Eleni Martine, Sr. Director, Client Finance
Email: eleni.martine@jwt.com

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.

23. **MISCELLANEOUS**

A. This Agreement, together with the Proposal, the Answers and the RFP, 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 RFP, the terms of this Agreement, as may be amended pursuant hereto, shall control the Answers, the terms of the Answers shall control the RFP, and the terms of the RFP shall control the Proposal. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

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

C. VENDOR has notified the NCEL regarding the potential merger of VENDOR and Wunderman, which upon the merger becoming effective, will not be considered an assignment under the provision of this Agreement. Unless otherwise stated, neither party hereto shall assign this Agreement, in whole or in part, without the prior written consent of the other party hereto, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect; provided, however, nothing herein shall prevent the NCEL from freely assigning this Agreement, without requiring VENDOR's prior written consent, to any entity which operates or

will operate the Lottery. For purposes of this Section, any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR will be deemed an assignment for which the NCEL's consent is required.

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

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

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

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

H. Upon the request of either party, the other party agrees to take and VENDOR agrees to cause any Subcontractor providing more than 25% of the work hereunder 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.

24. ADDITIONAL SERVICES

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

25. APPROVAL OF COMMISSION AND REQUIRED INVESTIGATIONS

The NCEL and VENDOR hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the approval of the Commission and the successful completion of all criminal and other background investigations required by the Act, other Applicable Laws, Governing Laws and Regulations or NCEL. This Agreement will not be binding upon the NCEL until the completion of all such investigations and the Commission has expressly approved the awarding of the Agreement to VENDOR and executed this Agreement.

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

"NCEL"

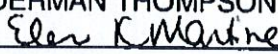
NORTH CAROLINA EDUCATION LOTTERY

By: 

M. Mark Michalko
Its: Executive Director

"VENDOR"

J. WALTER THOMPSON USA, LLC d/b/a
WUNDERMAN THOMPSON

By: 

Eleni K. Martine
Its: Sr. Director, Client Finance

EXHIBIT A
[PROPOSAL]

EXHIBIT B
[RFP]

EXHIBIT C
[QUESTIONS AND ANSWERS]

EXHIBIT D
[REVISED COST PROPOSAL]