

PROFESSIONAL ADVERTISING AND RELATED SERVICES AGREEMENT

This Professional Advertising and Related Services Agreement (the "**Agreement**") is made and entered into this 10 day of June, 2015 (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 2100 Yonkers Road, Raleigh, North Carolina, 27604, and Mullen Communications, Inc., located at 101 North Cherry Street, Winston-Salem, North Carolina, 27101, a corporation organized under the laws of the State of Massachusetts ("**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 March 2, 2015 for Phase I and April 20, 2015 for Phase II (collectively, the "**Proposal**," Exhibit A) to the NCEL in response to the NCEL's Request for Proposal dated February 2, 2015 (RFP #LC-000048) (the "**RFP**," Exhibit B), as integrated by the NCEL's Questions and Answers concerning the RFP, which were last distributed by the NCEL on February 27, 2015 (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 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 advertising 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 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, and its Subcontractors as requested from time to time, 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/her 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. 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 NCEL, 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 services pursuant to this Agreement.

C. Scope of Services:

Prior to the start of each Fiscal Year (July), the NCEL will provide VENDOR with a marketing plan, including product introduction schedules and business priorities, as well as an estimated annual budget (pending approval by the NC State Lottery Commission). The plan shall clearly define marketing and advertising strategies. The NCEL staff and VENDOR staff will meet as required, and at least on a monthly basis, to review the marketing objectives and strategies, with modifications being made as market and/or business needs arise. Subject to the instructions and decisions of the NCEL, VENDOR will be responsible for the following services including, but not limited to, the following:

CREATIVE, ADVERTISING AND MARKETING COMMUNICATION SERVICES

1. Business Development – VENDOR shall become a partner in the development and evolution of the NCEL business, brand and product portfolio to further the NCEL's mission of maximizing net revenues for education. The NCEL expects that the entire VENDOR team will be committed to the same goals as the NCEL and will create and execute programs that will deliver on those objectives.

(a) VENDOR personnel assigned to the account are expected to build and maintain an industry knowledge base that will support business decisions and recommendations.

(b) Each year, two (2) individuals from VENDOR team must attend industry conferences or training seminars, such as PGRI, NASPL and WLA, and share learnings and industry best practice with the broader team and NCEL Brand Management & Communications team.

(c) On-site meetings at NCEL offices will be held as required and at a minimum of twice monthly to discuss the state of the business and plans for upcoming initiatives.

2. Dedicated Account Management – VENDOR shall provide a seasoned, dedicated account team that will work collaboratively with the NCEL's Advertising team to manage the daily activities of the account. A key role of the VENDOR Account Management Team is to become thoroughly involved with the NCEL's business and keep on top of industry trends, sales performance, and product developments. They will also work closely with the VENDOR Account Planning group to ensure that consumer-centric strategies are being developed that tie into the NCEL's business objectives. The VENDOR Account Team will be responsible for establishing regular communications between the VENDOR Media Team and the VENDOR Creative Team to ensure seamless integration of the advertising program. The VENDOR Account team will also be responsible for preparation of the following reports:

(a) Status Report – Weekly status reports will be issued detailing all current projects, production jobs, promotional events, reporting and meetings. Status reports shall include timelines for all initiatives, allowing no fewer than five (5) business days for NCEL approval at any stage.

(b) Meeting Notes and Follow-Ups – Meeting notes will be captured by the VENDOR for every meeting and/or conference call that include the meeting purpose, key discussion points and follow-up items listing key deliverables, due dates and the responsible parties for each. Meeting notes and follow-ups should be distributed to the respective NCEL and VENDOR teams by the following business day after the meeting and/or conference call.

(c) Annual Advertising Plans – Based on the NCEL's Fiscal Year (July - June) and following receipt of the NCEL's Marketing Plan, VENDOR is expected to prepare an annual advertising plan in partnership with the NCEL Director of Advertising which must include at a minimum:

(1) Innovative approaches for planned business initiatives, including how these strategies achieve the NCEL's goals with measurable Key Performance Indicators for post-initiative evaluations.

(2) A general breakdown of proposed spending for production, talent, research, and other projected expenses.

(3) Opportunities for special events, promotional activities, and any other topics specified by the NCEL.

3. Strategic Account Planning/Market Research/ Brand Metric and Advertising Communication Tracking – VENDOR shall provide a team of experts in strategic planning. The team's responsibility will be to gain and transfer extensive knowledge of the NCEL's current and potential player groups. Alongside the NCEL's Advertising and Research Teams, it is also their responsibility to propose, conduct and analyze market research as necessary to gain such consumer insights to inform strategic direction for the account.

(a) In conjunction with the NCEL and the VENDOR Creative Management Team, implement a brand image refresh that significantly raises awareness and understanding of the NCEL, its games and beneficiary contributions, while fundamentally increasing the impact of the brand by creating an iconic relevance between the brand and the North Carolina culture. VENDOR shall develop a tagline with an impactful message to drive sales of the NCEL games.

(b) In conjunction with the NCEL, develop and conduct advertising and market research studies, as requested, that involve advertising research such as recall tests, copy and motivation tests, media weight tests and attitude studies. VENDOR may also conduct market research studies that assist the NCEL in the areas of strategic planning, retailer attitudes and retail audits. These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. The NCEL will manage and contribute significantly in developing study objectives and design. The cost of the research studies as well as related travel expenses at the State Rate for up to 3 (three) employees will be paid from the NCEL's existing research budgets or other budgets as designated by the NCEL. All research and related travel expenses must be pre-approved in writing by the NCEL.

(c) The VENDOR Account Planners must be responsible for the development of consumer-led strategies for all initiatives, providing relevant consumer insights or recommendations to support the proposed initiatives in annual advertising planning and drafting of all creative briefs. VENDOR Account Planners will work closely with the VENDOR Account Team to gain a thorough understanding of the NCEL's business objectives and product specifications to enable the VENDOR Account Planners to develop consumer insights to deliver effective marketing and advertising strategies that will achieve stated objectives for each initiative and the account as a whole.

4. Creative development, production and distribution of Advertising, Marketing Communications and Point-of-Sale materials – VENDOR shall develop effective, breakthrough creative and produce it with high-quality production standards in the most cost-efficient manner. Creative includes, but is not limited to, television, radio, print, out-of-home, and digital advertising, plus an extensive array of merchandising items and point-of-sale materials for a retailer network of approximately 6,800. VENDOR may also be required to assist the NCEL in developing game names, product logos, or art for other use. VENDOR shall ensure all creative elements are produced and distributed on time and on budget.

(a) Creative Management – Among other things, VENDOR shall provide comprehensive creative management through direct involvement from the Creative Director, from concept presentation to final approval of produced work.

(b) Creative Brief – The NCEL shall provide VENDOR with a briefing document for each advertising initiative that provides business opportunity, product overview, campaign objectives, general strategy, key consumer insights, project budget, sales targets and other measurable Key Performance Indicators (KPIs) against which the campaign will be evaluated. VENDOR Account Planning group and VENDOR Account Management team will then develop a Creative Brief which will inform the VENDOR Creative Teams about strategy and the initiative details and guide creative development. VENDOR's Creative Brief shall be approved by the NCEL prior to briefing the VENDOR Creative Teams and all creative presented will be evaluated based on its delivery against the creative brief.

(c) Creative Concepts – VENDOR shall develop advertising and marketing creative that represents the NCEL brand in a positive light and in a manner consistent with the brand identity, and where there is a relevant existing campaign platform (e.g., Instant Scratch Off's "First Tuesday") consistent with that campaign platform. For new campaigns, VENDOR shall present overarching 360° big idea platforms, with at least three (3) creative routes for each potential platform. For existing campaigns, VENDOR shall present at least three (3) creative options for each medium that fit with the campaign's overarching 360° big idea platform.

(d) Creative Timelines – VENDOR shall plan creative development schedules that allow sufficient time for developing and presenting integrated creative solutions, editing and revising selected options, obtaining final approvals from the NCEL staff, producing the final product, and distributing the finished product according to NCEL specifications. Creative development timelines should also allow for concept and script

refinement, through concept testing ensuring message clarity, general comprehension and appeal. Additionally, VENDOR time plans need to allow for a signed off 360° big idea platform, creative route and executional style guides for use by the NCEL in-house creative department. Unless otherwise approved by the NCEL, all timelines shall include a minimum of five (5) business days for approval by the NCEL at every stage of each job or project. VENDOR shall provide detailed production schedules with task milestones for each job. The NCEL will reimburse VENDOR at the State Rate for travel related expenses for up to three (3) employees, with prior NCEL approval, for production related travel expenses. Prior to conference calls between the VENDOR and the NCEL, all required materials must be sent via email no later than one (1) hour before the call unless otherwise approved by the NCEL. The NCEL will not be responsible for any additional costs incurred as a result of the VENDOR'S not adhering to set timelines.

(e) Casting – Talent recommendations must be made to the NCEL for any and all advertising and marketing creative. Casting auditions must be provided for all On-camera talent and must be presented with alternates, allowing the NCEL a minimum of two (2) business days for review and approval. In most instances, casting auditions will also be required for Voice-over talent and must be presented with alternates, allowing the NCEL a minimum of two (2) business days for review and approval. In some instances, the NCEL may choose to review demo reels only for Voice-over talent; in such an instance alternates will still be required as well as a minimum review and approval period of two (2) business days.

(f) Investigate and obtain talent releases for all persons appearing in any NCEL advertising, including television, radio, print and outdoor, whether or not the talent utilized is bound by a collective bargaining agreement and whether or not the talent appears at the forefront or in the background, and is speaking or nonspeaking.

(g) The NCEL acknowledges that VENDOR may be bound by certain agreements with respect to the employment of talent, including such agreements with the American Federation of Television and Radio Artist ("AFTRA"), Screen Actors Guild ("SAG") and/or American Federation of Musicians ("AFM"), and that the production of advertising material from which the employment of talent is required may necessitate the negotiation, review, approval and/or execution by VENDOR and/or the NCEL of a separate agreement with AFTRA, SAG and AFM or other relevant association with respect to employment of specific talent.

(h) Creative Approvals – VENDOR shall obtain written approval from the NCEL Executive Director and/or his/her Designee(s), prior to producing any advertisement, promotional item, related materials or other services. When producing any creative work, VENDOR shall not vary from approved scripts, story boards or print layouts without written approval from the NCEL. Failure to adhere to approved scripts, storyboards or layouts may void the NCEL's approval of the estimate for the project. VENDOR shall incorporate all changes required by the NCEL, as well as submit any other alternative creative solutions deemed prudent by VENDOR. The NCEL reserves the right to approve, and in its sole discretion to modify or reject any and all schedules and plans submitted by VENDOR, and to direct VENDOR to cease work in connection with

any such plan. VENDOR shall be responsible for all unauthorized expenses.

5. Advertising Effectiveness Analysis/Optimization – The NCEL will evaluate the effectiveness of all advertising initiatives upon completion based on established KPIs from the corresponding relevant creative brief and monthly campaign tracking/brand metrics. KPIs may include improvements in participation, frequency and awareness measures, sales goals or other criteria determined as 'What success looks like' by the NCEL prior to the development of the work and detailed in each initiative brief and/or annual plan objectives.

(a) Post-Campaign/Promotional Report – In the quarter following the conclusion of a campaign phase or promotional event, VENDOR shall provide a recap of the initiative, including total expenses and performance against established KPIs to assist the NCEL in the evaluation of its success.

6. Digital Marketing & Advertising – VENDOR shall create innovative digital marketing campaigns to effectively communicate with target audiences through all digital consumer touch points. There will be an emphasis placed on creativity and effectiveness of digital initiatives, with KPIs and measurement tools established with the NCEL prior to the development of any campaign. Digital programs must work synergistically with other advertising communications to achieve stated goals. VENDOR must remain current on all emerging technologies and provide the NCEL with timely recommendations for digital marketing opportunities.

7. Social Media – As part of the comprehensive, 360° big idea platform, VENDOR shall work with the NCEL Director of Corporate Communications and the NCEL's social media team to assist in strategic development of the NCEL's social media including content and creative development. The goals of the social program are to increase engagement with the NCEL brand among existing players and future players; to communicate brand and product news; and reinforce the NCEL's advertising and marketing initiatives in the social arena. VENDOR's responsibilities will also include optimization and performance analysis through monthly reporting.

8. Multi-cultural Marketing – VENDOR shall develop effective strategies for reaching the diverse North Carolina population and integrate such marketing efforts into general market advertising to achieve stated goals, as defined by the NCEL. If a distinct communications initiative would better serve the NCEL's diversity business objectives, VENDOR shall provide a recommendation and rationale for the effort to the NCEL for approval.

9. State & Local Marketing Efforts – VENDOR will partner, as needed, with the NCEL Marketing Department for development and analysis of sports marketing, experiential marketing, local events and promotions. VENDOR Media Team shall bring forward new and viable opportunities to build brand awareness and promote NCEL products. VENDOR Creative Team will develop and provide creative assets for these marketing programs as requested by the NCEL and ensure that they work synergistically with the overall marketing and advertising plans.

10. Promotions – As needed, VENDOR shall assist in development and on-going management of promotional projects, including media-driven promotions and online contests. VENDOR shall ensure that all promotional activity is effective and measurable based on KPIs pre-determined by the NCEL and is consistent with the NCEL brand character.

11. Public Relations – VENDOR shall assist the NCEL with public relations activities as needed, including:

- (a) Scheduling on-air interviews with advertising partners.
- (b) Solicit/evaluate promotional opportunities from media partners.
- (c) Assist with planning public relations media events.

12. Direct Marketing/Database Management/Customer Relationship Marketing – VENDOR shall work as needed with the NCEL to develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the NCEL brand. Achieve this through email marketing, Lucke-Rewards customer loyalty program, couponing, database management, and other tactics deemed appropriate to achieve the NCEL's business goals through all current and future channels.

13. Creative Development/Content for NCEL Websites – VENDOR shall provide creative input into the design and content management of NCEL websites and a retailer-focused website. A new website will be developed in 2015/16, and it will be the responsibility of VENDOR to work with the NCEL on creative aspects of the websites to ensure it enhances the player experience with the NCEL brand and works synergistically with all other marketing and advertising communications. Actual programming will be conducted by the NCEL's web development team and its Contractors.

14. Budget/Billing Management – Due to the size of the NCEL's advertising budget, a dedicated budget/billing staff is required to work directly with the NCEL Advertising Department on a daily basis. They must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis. The NCEL has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with media and/or production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation. VENDOR shall allocate at least one, full-time person for NCEL budget management support.

(a) Expense Bidding and Approval – VENDOR shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the NCEL Executive Director or his/her Designee. In connection with such authorization, VENDOR is subject to the following guidelines:

- (1) VENDOR must prepare and evaluate competitive bids for productions, prepare and submit estimates and invoices to the NCEL for all work performed under the Contract, and reconcile the advertising budget with the NCEL on a monthly and quarterly basis.

(2) VENDOR must provide a cost estimate to the NCEL that provides documentation of three (3) bids for any projects costing over five thousand dollars (\$5,000). If three (3) appropriate vendors are not available for the project as approved, the Contractor shall provide written documentation of such to accompany the cost estimate.

(3) If VENDOR recommends any vendor other than the lowest vendor, VENDOR shall provide written documentation supporting such recommendation, which shall accompany the cost estimate. The NCEL may or may not choose, in the NCEL's sole discretion, to follow VENDOR's recommendation.

(4) Bids shall be secured from North Carolina-based vendors whenever possible. However, all TV and radio commercials must be shot/filmed/recorded in the State of North Carolina. If local vendors are not available for project as approved, VENDOR shall provide written documentation to accompany the cost estimate and shall secure written approval from the NCEL prior to seeking out-of-state vendors.

(5) Cost estimates shall be presented by VENDOR to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.

(6) The estimate number used to track each project will be issued by VENDOR and invoices shall be numbered consistent with estimate number.

(7) All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his/her Designee and VENDOR may not begin work until VENDOR has received a signed estimate/authorization from the NCEL.

(8) A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previously approved amounts and/or history of amounts.

(9) Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. VENDOR is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.

(10) The NCEL's Fiscal Year ends June 30th. All invoices for that Fiscal Year must be submitted by September 30th of the new Fiscal Year. The NCEL reserves the right not to pay any invoices received after September 30th.

(11) All production estimates approved by the NCEL will be billed on a progressive basis at the actual invoice amount as costs are incurred. If third party production vendors require prepayment, the NCEL agrees to pay VENDOR prior to VENDOR disbursing payment to the third party production vendor. To the extent that the Agency provides in-house studio and editorial production services directly for the Client, such services will be

quoted as part of production estimates and billed at prevailing Agency in-house production rates. Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested VENDOR invoices, unless as otherwise agreed upon by both parties.

(12) VENDOR shall make payment to its vendors and Subcontractors that are working on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to VENDOR. In the event that the NCEL becomes aware of VENDOR's default of these terms, the NCEL will notify VENDOR immediately.

(13) VENDOR agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.

(b) Monthly Activity Report – VENDOR shall provide the NCEL a detailed written monthly activity report and media review with a brief summary and recommendations. The monthly activity report should list all open jobs as of the end of the month and provide at least the following information: (i) job number; (ii) brief description of job; (iii) original estimate amount; (iv) an estimate of the costs incurred to date that have not yet been billed; and (v) billings rendered to date on each job.

(c) Approved Expenditure Report – VENDOR shall provide to the NCEL, as requested and within one (1) week, a report summarizing all NCEL approved expenditures to date for the current Fiscal Year. The summary must indicate the total amount available for the year and the total amount currently committed, the current amount billed to the NCEL during the year, the amount billed that has not yet been paid and the amounts committed that have not been billed.

(d) Agency Fee Reconciliation Reports – VENDOR will be responsible for providing all back-up documentation on staffing hours on a monthly basis to enable NCEL to track labor costs against Annual Fee.

15. Annual Agency Review – Once a year, VENDOR shall participate in an Annual Agency Review of overall account performance to inform account decisions in next Fiscal Year, including determining if any staffing changes are required. This opportunity will also allow the NCEL to review the prior year's activity to ensure proper contract compliance by VENDOR. The Annual Agency Review will consist of the following three (3) components:

(a) Performance Evaluation – Based on written qualitative evaluation by the NCEL, VENDOR's performance across all disciplines will be evaluated based on VENDOR's ability to meet established client expectations.

(b) Agency Metrics – As the second component of the Annual Agency Review process, VENDOR will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing. At the Annual Agency Review, the NCEL will determine if the specific pre-determined brand metrics/KPI's were met for each project initiative completed by VENDOR during the Fiscal Year.

(c) Business Metrics – The final component of the Annual Agency Review measures the VENDOR's ability to help the NCEL deliver against pre-established sales goals.

MEDIA PLANNING AND BUYING SERVICES

16. Business Development – VENDOR shall become a partner in the development and evolution of the NCEL business, brand and product portfolio to further the NCEL's mission of maximizing net revenues for education. The NCEL expects that the entire VENDOR team will be committed to the same goals as the NCEL and will create and execute programs that will deliver on those objectives.

(a) VENDOR personnel assigned to the account are expected to build and maintain an industry knowledge base that will support business decisions and recommendations.

(b) Each year, two (2) individuals from VENDOR team must attend industry conferences, such as PGRI, NASPL and WLA, and share learnings and industry best practice with the broader team and NCEL Brand Management and Communications team.

(c) On-site meetings at NCEL offices will be held as required at a minimum of twice monthly to discuss the state of the business and plans for upcoming initiatives.

17. Dedicated Account Management – VENDOR shall provide a seasoned, dedicated media account team that will work collaboratively with the NCEL's Advertising team to manage the daily activities of the account. This VENDOR Account team will be assigned to the NCEL business. The VENDOR Account Team will be responsible for establishing regular communications between the VENDOR Media Team and the VENDOR Creative Team to ensure seamless integration of the advertising program. The VENDOR Account team will also be responsible for preparation of the following report:

(a) Media Status Report – Weekly status reports will be issued detailing all current projects and initiatives. Status reports shall include timelines and deadlines for all activity, allowing no fewer than five (5) business days for NCEL approval, unless authorized by the NCEL. The NCEL will not be responsible for any additional costs incurred as a result of the VENDOR'S not adhering to set timelines.

(b) Meeting Materials, Notes and Follow-Ups – Prior to conference calls between the VENDOR and the NCEL, all required materials must be sent via email no later than one (1) hour before the call unless otherwise approved by the NCEL. Meeting notes will be captured by the VENDOR for every meeting and/or conference call that include the meeting purpose, key discussion points and follow-up items listing key deliverables, due dates and the responsible parties for each. Meeting notes and follow-ups should be distributed to the respective NCEL and VENDOR teams by the following business day after the meeting and/or conference call.

(c) Current Flowcharts – The VENDOR Account group is responsible for maintaining current flowcharts for all Fiscal Year media activity. Detailed flowcharts must specify media type, market tiers, GRP levels, creative rotation, and costs for each campaign. Costs are to be summarized by campaign, by month, by quarter, and year. Any time there is a change in media plans or activity, flowcharts must be updated and provided to the NCEL within 48 hours.

18. Media Research & Strategy Development – VENDOR will utilize a wide range of syndicated and proprietary research tools to obtain key consumer insights and keep on top of media trends and emerging technologies to inform media strategies and tactics that will ensure an effective communications plan for the NCEL. A quarterly update should be presented to the NCEL of these findings, highlighting implications and/or opportunities relating to the NCEL business objectives.

19. Strategic Media Planning, Buying and Placement – VENDOR shall deliver innovative and effective solutions for the NCEL's statewide, multi-channel advertising program utilizing the most inventive and effective media for the individual campaign goals and objectives, as determined by the NCEL. Media for the NCEL typically includes, but is not limited to, television, radio, print, out-of-home and digital.

(a) Strategic Media Planning – VENDOR shall use all the research, analytical tools and sales data required to develop the most creative and effective media plans to achieve stated objectives and drive business outcomes for the NCEL.

(b) Negotiation and Placement – VENDOR shall be responsible for the placement and purchase of all media. VENDOR's experience and buying power in the local North Carolina advertising markets shall lead to cost savings for the NCEL for up front as well as last minute jackpot buys. In negotiating media purchases, VENDOR shall make the NCEL aware of any savings that might be achieved through long-term commitments or other specialized programs. VENDOR shall be responsible for adhering to current and potential future NCEL Drawing Station commitments which include a minimum percentage spend and/or minimum dollar spend with various TV stations throughout the state in return for the time required to air NCEL drawings.

(c) Media Audits – VENDOR will be responsible for auditing and verifying all media outlets. If VENDOR proposes a more viable and cost effective method, VENDOR will make the report available for inspection and approval by the NCEL.

(d) Placement and Verification – VENDOR shall provide for the management and traffic of creative. VENDOR shall ensure that all media was broadcast or published according to any contracts or placement instructions. VENDOR shall provide, at no cost to the NCEL, affidavits, tear sheets or any other placement verification documentation to the NCEL in connection therewith, and all media invoices must include a signed warranty statement or a statement of attestation which has been notarized. VENDOR must notify the NCEL Director of Advertising before approving make goods for ads that did not run as scheduled as requested. Placement verification documents shall indicate the run dates and/or times and the circulation or ratings achieved. All such materials shall be maintained by VENDOR and must be available for inspection by the NCEL or its authorized representatives. Affidavits and/or tear sheets must accompany any final billings submitted to the NCEL.

(e) Winning Numbers – As needed, VENDOR shall request and audit the airing and/or publishing of NCEL winning numbers from all radio stations, TV stations, digital sites and newspapers included in a NCEL buy.

(f) Bonus Spots and Added Value – VENDOR shall negotiate and track delivery of bonus spots and/or added value at no additional charge from all radio and TV stations included in a NCEL buy. Any bonus spots provided by participating stations must be assigned a value and reported quarterly at the time of the post to the NCEL.

(g) Annual Media Plans - Based on the NCEL's Fiscal Year (July – June), VENDOR is expected to prepare annual media plans which must include at a minimum:

(1) Definition of Audience(s) for each initiative with detailed rationale.

(2) Allocation of dollars by media type and market with detailed rationale.

(3) Gross Rating Point (GRP) objectives with reach/frequency and efficiency analysis.

(4) Media Mix, Daypart Mix and Unit Mix recommendations and rationale for each initiative.

(5) Quarterly reviews with the NCEL Advertising team and to evaluate if any re-planning spend allocation is required to meet the NCEL Fiscal Business Objectives and maximize spend efficiencies based on ROI analysis.

After the Annual Media Plan is approved, it is possible that new initiatives are added to the NCEL's business plan. VENDOR is expected to develop and implement specific media plans to address the needs of the new initiative(s). Additionally, the current strategy for supporting high level Jackpot games includes purchasing media leading up to the day of the draw. However, because these jackpot amounts cannot be predicted in advance, the media must be purchased in a timely and dynamic fashion in the event that a jackpot reaches a certain pre-determined threshold. This requires VENDOR to remain constantly vigilant with the jackpots, and they must also be nimble, diligent and responsive in preparing, negotiating and implementing such last minute incremental media plans to maximize the NCEL's media investment. Analysis of the fiscal effectiveness of high jackpot media spending is required.

20. Multi-cultural Marketing – VENDOR shall develop effective strategies for reaching the diverse North Carolina population and integrate such marketing efforts into general market advertising to achieve stated goals, as defined by the NCEL. If a distinct communications initiative would better serve the NCEL's diversity business objectives, VENDOR shall provide a recommendation and rationale for the effort to the NCEL for approval.

21. Public Relations – VENDOR shall assist the NCEL with public relations activities as needed, including:

(a) Scheduling on-air interviews with advertising partners.

(b) Solicit/evaluate promotional opportunities from media partners.

(c) Assist with planning public relations media events.

22. Media Plan Return-on-Investment Performance Analysis – VENDOR shall put in place appropriate tools and processes to monitor and maintain and improve the ROI effectiveness of all media buys by providing specific and detailed media purchase information, data analytics, print audits, and post-buy and ROI analyses and sales data. VENDOR shall also utilize analytical tools and modeling to further analyze the effectiveness of the advertising plans and to

inform future media recommendations. It is expected that the modeling is kept up to date with the latest sales data, to be provided by the NCEL, and the outputs reviewed and presented to the NCEL on a quarterly basis. Initiatives will be evaluated against KPI's determined in advance by the NCEL. VENDOR shall optimize all plans on an on-going basis to maximize the budget. At a minimum, the following specific reports shall be generated by VENDOR on a regular basis as defined below:

(a) Post Buy Report – No more than 120 days beyond the end of the broadcast quarter after the flight ends, VENDOR shall issue a post-buy report indicating whether the GRP goals of each buy were achieved within budget, or if a gross rating point shortfall were to occur, provide the NCEL with analysis as to how VENDOR plans to rectify underachieved results with specific media during the next media purchase of that type. The acceptable range for post-buy percentage is 95-105% for each market. If the goals were not achieved, the report shall contain a make good report where bonus spots were issued. In addition, post buy analyses shall be provided for media buys that utilize new rating information for the buy period, when available.

23. State & Local Marketing Programs – VENDOR, as needed, will partner with the NCEL Marketing Department for development and analysis of sports marketing, experiential marketing, local events and promotions. VENDOR shall bring forward new and viable opportunities to build brand awareness and promote NCEL products.

24. Budget / Billing Management – Due to the size of the NCEL's advertising budget, a dedicated budget/billing staff is required to work directly with the NCEL Advertising Department on a daily basis. They must be (become) familiar with competitive bidding requirements and have the capability to track production costs of advertising and retail materials on a per unit basis. The NCEL has formal, highly detailed procedures for budget management and expenditure requirements. Poor budget management and failure to comply with these procedures may result in delayed authorizations to proceed with media and/or production projects as well as substantially delayed payment of bills and invoices based upon inadequate billing documentation. VENDOR shall provide at least one, full-time person for NCEL budget management support.

VENDOR shall not incur any liability on the NCEL's behalf for any item of space or time in an advertising medium or for the purchase of materials and services, or incur any other expense without first securing the written authorization of the NCEL Executive Director or his/her Designee. In connection with such authorization, the Successful Contractor is subject to the following guidelines:

(a) VENDOR must prepare and evaluate media plans, prepare and submit estimates and invoices to the NCEL for all work performed under the Agreement, and reconcile the media budget with the NCEL on a monthly and quarterly basis.

(b) Bids shall be secured from North Carolina-based vendors whenever possible.

(c) Cost estimates shall be presented by VENDOR to the NCEL in a timely manner, no less than two (2) business days prior to commencement of work in order to allow for adequate processing time by the NCEL.

(d) The estimate number used to track each project will be issued by VENDOR and invoices shall be numbered consistent with estimate number.

(e) All cost estimates/authorizations must be approved and signed by the NCEL Executive Director or his/her Designee and VENDOR may not begin work until VENDOR has received a signed estimate/authorization from the NCEL.

(f) A revised estimate reflecting all services or charges amounting to more than ten percent (10%) of the original estimate must be approved by the NCEL prior to additional performance and must be accompanied by a written justification stating why the increase in cost is necessary. Revised estimates should also include previous approved amounts and/or history of amounts.

(g) Media invoices must include a signed warranty statement or a statement of attestation which has been notarized that lists all spots being billed, bonus spots received, station, date, number of spots aired and cost. Invoices, including credits, should be submitted to the NCEL within ninety (90) to one hundred twenty (120) days of the media spot run.

(h) Any canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation. Once an estimate is closed, no further billing can be submitted. VENDOR is required to mark "Closed" on the last invoice to be submitted to the NCEL for payment for each job.

(i) The NCEL's Fiscal Year ends June 30th. All invoices for that Fiscal Year must be submitted by September 30th of the new Fiscal Year. The NCEL reserves the right not to pay any invoices received after September 30th.

(j) Payment by the NCEL is due within thirty (30) days of receipt of properly prepared and uncontested VENDOR invoices, unless as otherwise agreed upon by both parties.

(k) VENDOR on NCEL projects or advertising within fifteen (15) days of receipt of such payment from the NCEL to VENDOR. In the event that the NCEL becomes aware of VENDOR's default of these terms, the NCEL will notify VENDOR immediately.

(l) VENDOR agrees to retain all financial and accounting records pertaining to the NCEL for five (5) years to comply with the NCEL's accounting procedures for all submissions of work order, estimates and invoices.

25. Annual Agency Review – Once a year, VENDOR shall participate in an Annual Agency Review of overall account performance to inform account decisions in next fiscal year, including determining if any staffing changes are required. This opportunity will also allow the NCEL to review the prior year's activity to ensure proper contract compliance by VENDOR. The Annual Agency Review will consist of the following three components:

(a) Performance Evaluation – Based on written qualitative evaluation by the NCEL, VENDOR's performance across all disciplines will be evaluated based on VENDOR's ability to meet established client expectations.

(b) Agency Metrics – As the second component of the Annual Agency Review process, VENDOR will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing. At

the Annual Agency Review, the NCEL will determine if the specific pre-determined brand metrics/KPI's were met for each project initiative completed by VENDOR during the fiscal year.

(c) Business Metrics – The final component of the Annual Agency Review measures VENDOR's ability to help the NCEL deliver against pre-established sales goals.

3. **SUBCONTRACTORS**

A. Neither VENDOR nor any Subcontractors will subcontract or otherwise assign any or all of its rights, duties or obligations under this Agreement to any individual or entity without the prior written consent of the NCEL in each instance, which consent may be withheld in the NCEL's sole discretion. The NCEL shall have the right to approve or disapprove of any subcontractor. VENDOR will provide the NCEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. All approved subcontractors, sub-vendors, employees, joint 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 or as the NCEL may require. VENDOR agrees that it will obtain the prior consent of the Director or his designee(s) prior to having any Subcontractor perform any activities for the NCEL under this Agreement.

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

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

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

4. **INDEPENDENT CONTRACTOR**

A. Both the NCEL and VENDOR, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint 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 9.9987% of the total annual fiscal year NCEL advertising budget handled by VENDOR throughout the term of this Agreement; provided, however, that notwithstanding anything herein to the contrary, advertising expenditures of the NCEL, including VENDOR's total compensation, shall not exceed one percent (1%) of the NCEL's total annual fiscal year revenues.

(b) VENDOR shall be responsible for all charges incidental to the routine conduct of business including, but not limited to mileage, meals, telephone calls, facsimile, copying, color copies, postage and delivery charges from VENDOR to the NCEL. In addition, VENDOR shall be responsible for the cost of all travel-related expenses incurred by VENDOR's staff including airline tickets, rental car, mileage, meals, hotel accommodations and conference attendance fees for up to one out-of-state NASPL conference yearly; and any expenses associated with attending any NCEL related activities including, but not limited to conferences, sales meetings and retailer visits.

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

(d) VENDOR shall, at its own expense, conduct trademark and service mark searches with respect to trademarks, service marks, logos or trade names used by VENDOR 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.

(e) 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 nondisputed amounts due under this Agreement on (i) in the case of media invoices, the fifteenth (15th) day of every month; and (ii) in the case of production invoices, the thirtieth (30th) day of every month, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by the NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

(f) VENDOR shall coordinate and submit entries for award recognition designated by the NCEL. The NCEL shall be responsible for the associated entry fees for award recognition and shall retain any awards, trophies, plaques, etc. that may be awarded for creative work that was created and produced by the VENDOR for the NCEL.

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, 2018 (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 the NCEL sends VENDOR at least thirty (30) days prior to the end of the then-current Initial Term or Renewal Term, as the case may be, written notice that it intends to terminate this Agreement at the end of the then-current Initial Term or Renewal Term, as the case may be. If the NCEL and 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 and this Agreement shall be terminated by the NCEL at any time during such Renewal Term.

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 and all requirements of the Act and Governing Laws and Regulations. VENDOR further agrees that it and its Subcontractors shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards applicable to the VENDOR's industry.

B. VENDOR hereby agrees that it and its Subcontractors will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. VENDOR further agrees that none of it, its Subcontractors, 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.

E. 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.

F. VENDOR hereby designates Megan Marshall, 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 by prompt written confirmation) by the Director or his 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. The NCEL assumes liability for all third party contracts and commitments VENDOR is unable to cancel, including any cancellation penalties, to which the NCEL was made aware prior to VENDOR commitment.

9. BOOKS AND RECORDS

Upon request by the NCEL, VENDOR and each Subcontractor shall provide, as soon as it is available, to the NCEL a copy of its latest audited financial statements; provided, however, if a Subcontractor does not obtain audited financial statements, then its financial statements must be certified by its chief financial officer. VENDOR and all Subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Services to be performed under this Agreement in accordance with the Act, Governing Laws and Regulations, generally accepted accounting principles and any other applicable procedures established by the NCEL from time to time. VENDOR and all Subcontractors shall make all such materials available at its offices at all reasonable times during the term of this Agreement and for five (5) years after the date of final payment under this Agreement, for inspection by the NCEL, by any authorized representative of the NCEL and/or the State of North Carolina Auditor of State's Office ("**State Auditor**"), and copies thereof shall be furnished to the NCEL and/or the State Auditor by the appropriate entity, at no cost to the NCEL or the State Auditor, if requested by the NCEL or the State Auditor. The NCEL and/or the State Auditor shall have the right to audit the records and operations of VENDOR and each Subcontractor with respect to the Services to be performed pursuant to this

Agreement. In no event shall documents revealing individual salaries of employees, components of overhead or other proprietary information of VENDOR be made available to NCEL. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

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

A. For purposes of this Agreement:

(i) **"Confidential Information"** means any and all items or information of a party which are: (A) marked "Confidential" or some such similar designation; or are (B) valuable, proprietary and confidential information belonging to or pertaining to such party that does not constitute a "Trade Secret" (as hereafter defined) and that is not generally known but is generally known only to said party and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding said party's customers, suppliers, manufacturers and distributors. For purposes of this Agreement, the financial statements provided pursuant to Section 9 of this Agreement and the rates negotiated by VENDOR on behalf of NCEL 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 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. The NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite the NCEL's reasonable efforts, VENDOR Confidential Information or Vendor Trade Secrets are disclosed in breach of the foregoing. Notwithstanding anything hereto the contrary, the 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 will regard and treat all such items as strictly confidential and wholly owned by the NCEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such NCEL Confidential Information or NCEL Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the NCEL. In addition, to the extent the Act or any other Governing Laws and Regulations law imposes any greater restrictions or prohibitions with respect to any NCEL Confidential Information, NCEL Trade Secrets or other information or property of the NCEL, VENDOR covenants and agrees that it and all Subcontractors shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all Subcontractors with the provisions of this Section 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 NCEL to independently enforce the requirements set forth in such agreements.

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

E. Neither the VENDOR nor any of its approved Subcontractor shall have any proprietary rights or interests in any intellectual properties (including, without limitation, patents, copyrights, equipment, firmware, mask works, trademarks (and the goodwill associated therewith) and service marks (and the goodwill associated therewith)) (all of the foregoing being collectively defined as the "**Intellectual Property Rights**") products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts, ideas or other content or items of any kind or nature developed, produced or provided in connection with the Services provided for the NCEL under this Agreement (collectively, the "**NCEL Intellectual Properties**"). All deliverables, written materials, 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.

Notwithstanding the foregoing, VENDOR retains all of its rights, title and interest in and to (including, without limitation, the unlimited right to use) (i) all materials owned by or licensed to VENDOR prior to, or independent from, the performance of services under this Agreement, and all modifications thereof, and (ii) all generic or proprietary information, and all ideas, methodologies, software, applications, processes or procedures used, created or developed by VENDOR in the general conduct of its business.

F. 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.

11. NONDISCRIMINATION; AFFIRMATIVE ACTION

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

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

12. LIMITATION OF LIABILITY

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

13. COMPLIANCE WITH LAWS

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

14. ANTITRUST ACTIONS

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

15. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

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

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

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

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

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

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

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

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

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

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

16. OBLIGATIONS OF VENDOR

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

E. VENDOR 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 five hundred thousand dollars (\$500,000), 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 the following types and amounts of insurance during the term of this Agreement:

- (i) Commercial General liability insurance in the amount of 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) A Professional Liability/Errors and Omissions insurance policy which shall insure against claims against the NCEL based on libel, slander, piracy,

plagiarism, invasion of privacy or Intellectual Property Rights infringement, but excluding patent infringement and trade secrets arising out of any Work Product, other product or service prepared by, or services performed by, VENDOR or its employees, notwithstanding the fact that any such material may have been approved by the NCEL, in the amount of five hundred thousand dollars (\$500,000) each claim and one million dollars (\$1,000,000) in the aggregate.

Such insurance policies, except workers compensation, shall name the NCEL as an additional insured. VENDOR shall be required to provide proof of insurance coverage in the form of a certificate of insurance 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 following 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.M. Best or a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

17. OBLIGATIONS OF NCEL

It will be NCEL's responsibility to review all marketing communication materials prepared under this Agreement in order to ascertain that all claims or representations made therein, whether direct or implied, are true and accurate and are not deceptive or misleading, and to confirm the accuracy and legality of the descriptions and depictions of its Products or services.

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 ten (10) business days of the earlier of: (a) VENDOR's having knowledge of such breach; or (b) VENDOR's receiving oral or written notice of such breach from the NCEL; or

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

C. The NCEL may cancel and terminate this Agreement for convenience with ninety (90) calendar day's prior written notice ("Notice Period") to VENDOR with no early termination fees. VENDOR may cancel and terminate this Agreement for convenience with one hundred fifty (150) calendar day's prior written notice to NCEL. During the Notice Period, the Agreement will remain in full force and effect, and VENDOR'S and NCEL's rights, duties and responsibilities shall continue in full force and effect during the Notice Period, including the payment by NCEL of any fees or other compensation due VENDOR hereunder.

D. In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure, or other events of force

majeure not the fault of the affected party, the affected party shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of an event described in this Section, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

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

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 any other act or omission of VENDOR, the Subcontractors, or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise; or (b) the development, possession, license, modifications or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or item, trade secret, article or appliance furnished to the NCEL, or used in the performance of the Services or this Agreement, by VENDOR, its employees or any Subcontractor.

The parties agree that any and all claims and/or liabilities arising from the NCEL's actions, or that of its employees, officers or other authorized agents in performance of this Agreement shall not give rise to liability against VENDOR, its employees, officers or contractors.

If, at any time during or after the term of this Agreement, the NCEL causes any materials created in whole or in part by the VENDOR to be published or broadcast other than through the VENDOR, the NCEL assumes all responsibility for such publication or broadcast, including negotiation of additional usage rights as necessary and all payments to actors, models, musicians and their unions, and photographers, stock photography, footage and music suppliers, and any other person who has interest in the use of such materials.

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, as amended from time to time (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
2100 Yonkers Road
Raleigh, NC 27604
Attn: Alice Garland, Executive Director

If to VENDOR:

Mullen Communications, Inc.
101 North Cherry Street
Winston-Salem, NC 27101
Attn: Taylor Bryant, President

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

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

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

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

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

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

23. ADDITIONAL SERVICES

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

24. 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: Alice Garland
Alice Garland
Its: Executive Director

"VENDOR"
MULLEN COMMUNICATIONS, INC.

By: T. Taylor Bryant
Taylor Bryant
Its: President

EXHIBIT A
[Proposal]

EXHIBIT B
[RFP]

EXHIBIT C

[QUESTIONS AND ANSWERS]