LOTTERY GAMING SYSTEMS AGREEMENT

THIS LOTTERY GAMING SYSTEMS AGREEMENT (the "**Agreement**") is made and entered into this 30th day of January, 2006 (the "**Effective Date**"), by and between THE NORTH CAROLINA EDUCATION LOTTERY ("**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**"), and GTECH CORPORATION, a corporation organized under the laws of the State of Delaware ("**VENDOR**").

W I T N E S S E T H:

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

WHEREAS, VENDOR, on behalf of itself and certain of its "Subcontractors" (as defined in Section 3(a) hereof) with which it will enter into contracts, submitted the proposal, dated January 13, 2006 attached hereto as Exhibit A and incorporated herein by this reference (the "**Proposal**") to NCEL in response to NCEL's Request For Proposals for Lottery Gaming Systems, dated December 20, 2005, attached hereto as Exhibit B and incorporated herein by this reference (the "**RFP**"), as interpreted by NCEL's Answers to Questions concerning the RFP, which were distributed by NCEL on January 4, 2006, attached hereto as Exhibit C and incorporated herein by this reference (the "**Answers**"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, NCEL desires to retain VENDOR to provide lottery gaming systems and services as defined in the RFP and this Agreement as the "**System**" (as supplemented by this Agreement, the Answers and the Proposal) to NCEL, and VENDOR desires to provide such Systems and perform such services for 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. SYSTEM AND SERVICES

Subject to the terms and conditions set forth in this Agreement, NCEL retains VENDOR to provide lottery gaming Systems and services to NCEL as contemplated by the RFP and Answers, and VENDOR agrees to provide such Systems and render such services to NCEL.

2. DUTIES AND RESPONSIBILITIES OF VENDOR AND SUBCONTRACTORS

(a) VENDOR and its Subcontractors will work in conjunction with the Director of NCEL (the **"Director"**), the NCEL staff, the NCEL Commission (the **"Commission"**) and the other vendors, Subcontractors, employees, agents, retailers and consultants of NCEL. VENDOR and its Subcontractors will provide lottery gaming Systems, equipment and services to NCEL as detailed in the RFP, the Answers and the Proposal and will perform such specific services and provide such deliverables, Systems and equipment as requested, from time to time, orally or in writing, by the Director, his designee(s) or the Commission, provided such services, Systems, deliverables and equipment are within the scope set forth in any of this Agreement, the RFP, the Answers or the Proposal. Except as otherwise set forth herein, VENDOR agrees that all Systems, deliverables, equipment and services to be provided to NCEL under this Agreement shall be capable of the full level of capacity and capability required by the RFP and Answers.

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

(c) VENDOR hereby agrees to use its best efforts to make available to 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 to 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.

3. SUBCONTRACTORS

(a) None of VENDOR or any Subcontractors will subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any

individual or entity without the prior written consent of NCEL in each instance, which consent may be withheld in NCEL's sole discretion. VENDOR will provide 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 subcontractors which are approved by NCEL for work pursuant hereto 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 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 NCEL under this Agreement.

(b) Upon the request of NCEL, VENDOR will promptly provide 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) 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 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 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 NCEL may establish from time to time.

4. **INDEPENDENT CONTRACTOR**.

(a) Both 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 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, and no Subcontractor is authorized to bind 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

Assuming this Agreement is in effect, VENDOR shall be entitled to be paid, in accordance with the terms hereof, either the consideration under Section 5(a) or under Section 5(b) hereunder, but VENDOR shall never be entitled to receive the consideration under both Sections 5(a) and 5(b):

(a) For so long as both this Agreement and that certain Instant Ticket Lottery Games Services Agreement of even date herewith between VENDOR and NCEL (the "**Instant Ticket System Agreement**") are both binding and in effect and VENDOR is providing all goods and services required by both this Agreement and the Instant Ticket System Agreement, as full and complete compensation for all goods, services, Systems, deliverables and other items provided by VENDOR pursuant to both this Agreement and the Instant Ticket System Agreement, NCEL will pay VENDOR, and VENDOR will accept, an amount equal to 1.5999% of:

(i) NCEL's gross on-line ticket sales revenue less cancelled transactions during the term of this Agreement; plus

(ii) the total number of instant tickets activated during the week, less instant tickets: (A) returned; (B) given as "free ticket" prizes; (C) returned as defective; (D) reported stolen by a retailer; or (E) issued by NCEL as a promotion during the term of this Agreement; multiplied by the "face value" (i.e., non-promotion retail sales price) of instant tickets for the applicable game.

For purposes of this Section 5, a "week" shall mean the period beginning 12:01 a.m. Sunday and ending at midnight Saturday.

(b) At any time during which this Agreement is binding and in effect and VENDOR is providing all goods, services, Systems and other items required under this Agreement but the Instant Ticket System Agreement is no longer binding and in

effect, as full and complete compensation for all goods, services, Systems and other items provided by VENDOR pursuant to this Agreement, NCEL will pay VENDOR, and VENDOR will accept, an amount equal to 1.0399% of:

(i) NCEL's gross on-line ticket sales revenue less cancelled transactions during the term of this Agreement; plus

(ii) the total number of instant tickets activated during the week, less instant tickets: (A) returned; (B) given as "free ticket" prizes; (C) returned as defective; (D) reported stolen by a retailer; or (E) issued by NCEL as a promotion during the term of this Agreement; multiplied by the "face value" (i.e., non-promotion retail sales price) of instant tickets for the applicable game.

(c) Subject to the availability of funds and any other restrictions imposed by the Act, the "Governing Laws and Regulations" (as defined in Section 15) or this Agreement, NCEL will pay to VENDOR all uncontested amounts due under this Agreement on a weekly basis, unless the parties otherwise agree upon a less frequent payment schedule, in accordance with the policies and procedures established by NCEL from time to time and subject to setoff or offset for all sums owed by VENDOR or its Subcontractors.

(d) Within thirty (30) days after the expiration of the term of this Agreement, the parties shall in good faith mutually agree upon the reimbursement amount due NCEL with respect to instant tickets activated during the term of this Agreement and: (i) returned; (ii) given as "free ticket" prizes; (iii) returned as defective; (iv) reported stolen by a retailer; or (v) issued by NCEL as a promotion after the term of this Agreement. The parties hereby agree that the historical percentages based on the twenty-six (26) week period immediately prior to the termination of this Agreement for each of the categories set forth in the subparagraphs of this Section 5(d) shall be used as the guidelines for such negotiations. VENDOR shall pay such reimbursable amount to NCEL within thirty (30) days after the conclusion of such negotiations.

6. TERM

(a) Unless sooner terminated in accordance with the provisions of Section 19 or other provisions of this Agreement, the RFP or the Answers, and subject to the provisions of Section 26 hereof, the term of this Agreement shall commence as of the Effective Date and shall continue for a period of seven (7) years after the date on which NCEL commences instant ticket sales (the "**Instant Ticket Start-Up Date**"). NCEL and VENDOR agree that the Instant Ticket Start-Up Date will be March 30, 2006 (the "**Early Start Goal**") provided that on or before February 13, 2006 (the "**Sign Off Date**") both: (i) the initial Working Papers for the first four (4) instant games (the "**Initial Working Papers**") presented to NCEL by VENDOR on or before February 2, 2006 (the

"**Specifications Delivery Date**") are agreed-upon and signed by NCEL; and (ii) NCEL has approved the specifications for the software components necessary for the instant ticket start-up and related portions of the system (the "**Initial Specifications**") presented to NCEL by VENDOR on or before the Specifications Delivery Date (both of which foregoing conditions constitute the "**Early Start Conditions**"). Assuming that VENDOR has delivered the Initial Working Papers and Initial Specifications to NCEL by the Specifications Delivery Date, for every full day the satisfaction by NCEL of the Early Start Conditions is delayed after the Sign Off Date, a day shall be added to the Early Start Goal to determine the actual Instant Ticket Start-Up Date; provided that the Instant Ticket Start-Up Date must be no later than April 5, 2006.

(b) VENDOR acknowledges and agrees that, prior to the expiration of the term of this Agreement, NCEL will award a new contract for replacement of the lottery gaming Systems, equipment and services 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 NCEL may use the final one hundred eighty (180) days of the term of this Agreement to convert to the use of such replacement systems; provided that VENDOR shall continue to be compensated in accordance with Section 5 hereof during such one hundred eighty (180) day period. VENDOR shall cooperate fully and in good faith and shall assist NCEL and the new contractor, to the extent reasonable and practical, to accomplish such conversion in a timely and efficient manner, at no additional cost to NCEL or such new contractor. VENDOR shall have the right to take all reasonable precautionary measures, consistent with this Agreement and past practices, to protect its confidential and proprietary information in connection with such cooperation.

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 written policies and procedures of 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.

(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 or Subcontractor in connection with the performance of its obligations under this Agreement.

(c) If NCEL becomes dissatisfied with the work product of or the working relationship with any of the individuals assigned to perform services under this Agreement by VENDOR or any Subcontractors, NCEL may require the prompt replacement of any or all of such individuals. Personnel identified in the Proposal as performing services under this Agreement will continue to perform such services in their designated capacities until such services are completed unless they cease to be employed by VENDOR or a Subcontractor or unless NCEL requests their removal, in which case a person or persons of suitable competency and acceptable to NCEL, in its discretion, will be substituted forthwith.

(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 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. 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. If NCEL desires to add an item provided by an entity other than VENDOR or a Subcontractor to VENDOR's hardware or software Systems provided pursuant hereto, then VENDOR and NCEL agree to negotiate in good faith an amendment to this Agreement (if necessary) or a separate agreement which contains all of the mutually agreed-upon terms and conditions, including, without limitation, any price, liquidated damages and other terms. To the extent VENDOR is capable of providing any such comparable item, NCEL will consider any offer tendered by VENDOR with respect thereto. VENDOR shall have the right to take all reasonable precautionary measures, consistent with this Agreement and past practices, to protect its confidential and proprietary information in connection with such cooperation.

(f) VENDOR hereby designates Craig Fitzgerald, or such other person or persons as it may from time to time notify NCEL, as its primary contact with NCEL for purposes of this Agreement.

8. PROGRESS REPORT AND ON-LINE TERMINAL INSTALLATION

(a) To assure NCEL that its work under this Agreement is progressing and is being performed in a manner consistent with NCEL's policies until the start of instant and on-line lottery system ticket sales, VENDOR will submit written progress

reports to NCEL, no less frequently than weekly, covering all work performed by VENDOR and all Subcontractors in form and substance satisfactory to the Director.

(b) VENDOR hereby agrees that it shall have installed and have caused to be fully operational at least: (i) five thousand (5,000) full service on-line retailer terminals no later than the Instant Ticket Start-Up Date (subject to a possible reduction in the number of installed retailers in the discretion of NCEL if NCEL has certified a fewer number of retailers as of said date); (ii) an incremental number of full service on-line retailer terminals to continue to be installed within fourteen (14) days of the notification to the VENDOR of the approval of a new retailer by NCEL and the completion of the training of such retailer at the next scheduled training class; (iii) two thousand (2,000) color monitors as of a mutually agreed-upon date; and (iv) two thousand (2,000) player activated ticket checkers whereby players can scan a ticket to determine if it is a winner as of a mutually agreed-upon date.

9. CHANGES IN WORK

By written request by the Director or his designee(s) to VENDOR, NCEL may from time to time make changes in the services, deliverables or equipment to be provided by VENDOR or any Subcontractor, or the place of delivery or performance of such services or any requested deliverables or equipment; provided, however, to the extent any such changes in services, deliverables or equipment are outside the scope of any of this Agreement, the RFP, the Answers or the Proposal, NCEL and VENDOR shall in good faith negotiate mutually acceptable terms and compensation. VENDOR and all applicable Subcontractors shall promptly comply with such requests and take all necessary or appropriate actions to effect such change.

10. BOOKS AND RECORDS

VENDOR and each Subcontractor shall provide, as soon as it is available, to NCEL on an annual basis a copy of its audited financial statements for such year; 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 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 NCEL, or by any authorized representative of NCEL, and copies thereof shall be furnished to NCEL by the appropriate entity, at no cost to NCEL, if requested by NCEL. NCEL shall have the right to audit the records and operations of VENDOR and each Subcontractor

with respect to the goods to be provided and services to be performed pursuant to this Agreement. VENDOR and Subcontractor shall also comply with all other requirements of the Act and Governing Laws and Regulations.

11. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT

(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; 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, 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, 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 written instructions from a duly authorized representative of VENDOR. To the extent disclosure of VENDOR's Confidential Information or Trade Secrets is reasonably necessary to fulfill the purposes of this Agreement or conduct the North Carolina Lottery VENDOR and NCEL will work together in good faith with the objective of minimizing the amount of Confidential Information or Trade Secrets involved. However, to the extent the Act or any other applicable law imposes any greater or lesser restrictions, requirements or prohibitions with respect to any VENDOR Confidential Information, VENDOR Trade Secrets or other

information or property of VENDOR, NCEL agrees that it shall comply with such greater or lesser restrictions, requirements or prohibitions. NCEL shall not be liable, however, to VENDOR or to any other person or entity, if despite NCEL's reasonable best efforts, VENDOR Confidential Information is 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 Open Records Law G.S. §132-1 et. seq. (collectively, the "**Superseding Provisions and Statutes**") shall supersede and control any provision of this Agreement, and NCEL's confidentiality and nondisclosure obligations and liabilities set forth herein, or in the RFP, Answers 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 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 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 written instructions from a duly authorized representative of 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 NCEL, VENDOR covenants and agrees that it shall comply and will require its Subcontractors to comply with such greater restrictions or prohibitions. To better ensure the compliance by it and all Subcontractors with the provisions of this Section 11(c), VENDOR shall be obligated to obtain 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) All work product, property, data, documentation or information or materials first conceived, discovered, developed or created by VENDOR or any Subcontractor pursuant to this Agreement exclusively and specifically for NCEL and solely for NCEL's use (collectively, the "**Work Product**") shall be owned exclusively by NCEL. Consistent with the foregoing, nothing contained herein shall limit or be deemed to limit VENDOR's intellectual property ownership rights and interests with respect to any and all property, data, documentation, information, materials, modifications, adaptations and intellectual property which was in its respective possession and/or in which VENDOR and/or its Subcontractors held an interest prior to this Agreement, as

well as that which will be developed by VENDOR and/or its Subcontractors independent of this Agreement and not exclusively for the benefit of NCEL whether or not it constitutes basic, unmodified proprietary software systems that are generally provided to their respective customers. The Work Product owned by NCEL accordingly consists of new items or modifications and adaptations to VENDOR-owned property, data, documentation, information and materials that were made by VENDOR and its Subcontractors exclusively and specifically for NCEL's own use. To the greatest extent possible, any Work Product shall be deemed to be a "**work made for hire**" (as defined in the Copyright Act, 17 U.S.C.A. § 101 et seq., as amended) and owned exclusively by NCEL. VENDOR hereby unconditionally and irrevocably transfers and assigns to NCEL, and VENDOR shall cause all Subcontractors and others it retains to irrevocably transfer and assign to NCEL, all right, title and interest in or to any Work Product, including, without limitation, all patents, copyrights, Trade Secrets, trademarks, service marks and other intellectual property rights therein. VENDOR agrees to execute and deliver to NCEL, and to cause its Subcontractors and others it retains to execute and deliver, any transfers, assignments, documents or other instruments which NCEL may deem necessary or appropriate, from time to time, to vest complete title and ownership of any Work Product, and all associated intellectual property and other rights, exclusively in NCEL. During the performance of the services and provisions of the goods specified herein, VENDOR shall be responsible for any loss or damage to any Work Product while in the possession of VENDOR or any Subcontractor, and any loss or damage thereto shall be restored at VENDOR's expense. NCEL shall have full, immediate and unrestricted access to all Work Product during the term of this Agreement.

(e) NCEL hereby grants to VENDOR a fully paid-up, non-exclusive, personal and non-transferable (with no right to assign or sublicense) license, for the benefit of NCEL, to use, sublicense, modify and create derivative works of software, hardware, equipment, firmware and mask works which are owned by NCEL as well as Work Product created by VENDOR or any of its Subcontractors. While NCEL has the free rights to use, modify and create derivative works of its Work Product for its own use, it agrees not to license any of the rights licensed to VENDOR to any other entity unless VENDOR: (i) ceases to function as a going concern; (ii) files, or has filed against it, any bankruptcy or insolvency proceeding of any kind; (iii) dissolves, liquidates or otherwise ceases its corporate existence; (iv) makes an assignment for the benefit of its creditors; or (v) VENDOR announces it will cease, or actually ceases, to perform continuing maintenance, support or enhancement services with regard to Work Product (any of the foregoing events being defined as "**Material Event**"). Upon the occurrence of any Material Event, the license granted by this Section 11(e) to VENDOR with respect to the Work Product, and any restrictions of NCEL's rights with respect to such Work Product set forth in this Section 11(e) shall immediately terminate and cease, and NCEL shall have the right, without limitation, to grant to another entity a license to use, modify and create derivative works of Work Product for the use or benefit of NCEL or

otherwise.

(f) VENDOR hereby grants to NCEL a fully paid-up, non-exclusive, personal and non-transferable (with no right to assign or sublicense) license during the term of this Agreement and for the "Post-Termination Term" (as hereinafter defined) to use the System and all VENDOR-owned software which is provided by VENDOR or Subcontractors for the use by or benefit of NCEL pursuant to this Agreement, whether such System or software is currently set forth in the Proposal or subsequently provided (collectively, the "**VENDOR Software**"). The foregoing license will survive any expiration or termination of this Agreement for a period (the "**Post-Termination Term**") beginning with the termination or expiration of this Agreement until the earlier to occur of: (i) twenty-four (24) months after any expiration or termination of this Agreement; or (ii) the successful completion of the implementation by NCEL of a replacement lottery gaming System and software for NCEL. It is acknowledged and agreed that the permitted use by NCEL of VENDOR's System and VENDOR Software is intended to be limited to NCEL's own internal use, and not for any use by a third party, or that could benefit a third party, financially or otherwise, provided that during the Post-Termination Term NCEL may engage the services of a third party to help operate the System and VENDOR Software solely for the benefit of NCEL. Upon the occurrence of a Material Event, in addition to any rights or licenses which NCEL may acquire pursuant to any source code escrow agreement required by Section 3.9 of the RFP or otherwise entered into for the benefit of NCEL, NCEL's license to the System and VENDOR Software shall automatically be expanded to include the license and right for NCEL, or others on behalf of NCEL, to use, modify and create derivative works of the System and VENDOR Software for NCEL's use or benefit.

(g) VENDOR hereby agrees to develop, test and provide to NCEL for testing, within one hundred twenty (120) days (or as otherwise mutually agreed in writing) of when specifications are mutually agreed upon in good faith, any modifications or additional functionality to VENDOR's back-office, on-line and instant ticket gaming software system which NCEL requests.

(h) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(b) shall not apply to VENDOR information that is: (A) generally known to the public other than due to a disclosure by NCEL; (B) already known to NCEL at the time it is disclosed by VENDOR to NCEL; (C) independently developed by NCEL; (D) received by NCEL from a party that NCEL believed in good faith had the right to make such disclosure; or (E) subject to disclosure by NCEL under the Governing Laws and Regulations.

(i) Notwithstanding the foregoing, the nondisclosure restrictions of Section 11(c) shall not apply to NCEL information that is: (A) generally known to the public other than due to a disclosure by VENDOR or a Subcontractor; (B) already known to VENDOR at the time it is disclosed by NCEL to VENDOR; (C) independently developed

by VENDOR; (D) received by VENDOR from a third party that VENDOR believed in good faith had the right to make such disclosure; or (E) subject to disclosure by VENDOR under the Governing Laws and Regulations.

12. NONDISCRIMINATION; AFFIRMATIVE ACTION

(a) None of VENDOR or 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 minority businesses in the performance of its services pursuant hereto. Specifically, and without limitation, any human resources services performed for 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 NCEL from time to time.

13. LIMITATION OF LIABILITY

THE PAYMENT OBLIGATIONS UNDERTAKEN BY NCEL UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO NCEL. THERE SHALL BE NO LIABILITY ON THE PART OF NCEL EXCEPT TO THE EXTENT OF AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS AND OTHER FUNDS AVAILABLE TO 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.

14. ANTITRUST ACTIONS

VENDOR hereby conveys, sells, assigns and transfers to 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 Systems, equipment and services acquired by NCEL under this Agreement.

15. COMPLIANCE WITH LAWS

VENDOR agrees to comply with all applicable rules, procedures and regulations adopted from time to time by 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**").

16. 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 NCEL all matters required to be disclosed under the Governing Laws and Regulations. In addition, VENDOR recognizes and acknowledges that there are certain limitations on its activities, and the activities of its Subcontractors, now and in the future, including, but not limited to, limitations on certain political contributions, limitations on the ability to submit proposals in response to subsequent requests for proposals issued by NCEL, limitations on the ability to enter into or perform contracts or other arrangements with certain third parties, and limitations on the ability to purchase lottery tickets, all of which shall be honored. Some of these restrictions also apply to the employees of VENDOR and the members of such employees' households, and VENDOR will enforce such restrictions upon its employees and Subcontractors.

(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.

(d) Neither VENDOR, the Subcontractors nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any entity that has supplied consultation services under contract to NCEL with respect to the RFP.

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

(f) 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.

(g) 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 copyrights, trademarks, service marks, trade names, patents, 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.

(h) None of VENDOR or 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, NCEL or the Lottery without the prior written consent of the Director or his designee(s) in each instance.

(i) None of VENDOR or 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.

(j) VENDOR's and all Subcontractors' computer Systems, and all of its or their respective equipment and components, used in connection with this Agreement shall in all respects meet the requirements, performance standards and specifications

of the RFP, the Answers, the Proposal and this Agreement, and design of and software used in connection with VENDOR's and all Subcontractors' computer Systems shall be suitable and fit for the purposes of an on-line, player-selection lottery, instant ticket gaming system and retailer activated bar code reader data collection system.

(k) All equipment and components of VENDOR's and all Subcontractors' computer Systems, other than as permitted by the RFP, shall be new equipment and shall conform to the manufacturer's current official published specifications. Unless NCEL is otherwise notified by VENDOR, all such equipment and components not manufactured by VENDOR or a Subcontractor shall carry manufacturer warranties of merchantability and warranties against defects in materials and workmanship. All adjustments, repairs and replacement parts necessary to maintain such equipment and components in good working order shall be promptly provided and performed by VENDOR. Any such equipment or components not meeting the requirements set forth herein shall be replaced by VENDOR as soon as feasible and without cost to NCEL.

(l) VENDOR and all Subcontractors shall keep all of their hardware and equipment used in connection with the Lottery in good condition and repair and shall make all reasonable efforts to prevent anything that may materially impair the operations thereof. Such hardware and equipment shall not be used in violation of this Agreement, the RFP, the Act or any of the Governing Laws and Regulations, and neither VENDOR nor any Subcontractor shall pledge, grant a security interest or lien on, hypothecate or otherwise encumber such hardware or equipment or otherwise dedicate the use of such hardware or equipment in such a way as to compromise the ability of NCEL to use same for the proper functioning of the Lottery or the ability of VENDOR or any Subcontractor to perform its or their obligations under this Agreement.

(m) All systems analysis, systems design and programming prepared or done by VENDOR or any Subcontractor in connection with this Agreement, the RFP or the Proposal have been and shall be prepared or done in a workmanlike manner consistent with the highest professional and technical guidelines and standards of the industry in which VENDOR is engaged.

(n) All computer programs and equipment implemented by VENDOR or any Subcontractor for performance under this Agreement shall meet their stated performance standards and shall correctly and accurately perform their intended functions in all material respects on all hardware and other equipment supplied by NCEL, VENDOR or any Subcontractor, provided that any hardware or other equipment supplied by NCEL shall conform with mutually agreed-upon requirement specifications for such hardware or other equipment.

(o) All Lottery games provided by VENDOR pursuant to this Agreement shall in all respects conform to, and function in accordance with, their specifications and designs, as approved by NCEL. Without limiting the generality of the foregoing, VENDOR's computer system: (i) shall issue Lottery tickets only from

authorized terminals; (ii) shall only authorize payment on legitimate winning tickets; and (iii) if the game design so provides, shall limit purchases on any given number or numbers.

(p) VENDOR herby also covenants and agrees that at no additional cost or expense to NCEL:

(i) VENDOR shall provide both the Pick & Pack and Check Writer systems described in its Proposal at both the Back-Up Data Center ("**BDC**") operated by the VENDOR and NCEL Customer Acceptance Testing ("**CAT**") location as approved by NCEL;

(ii) NCEL can test the equipment and systems at the BDC in conjunction with VENDOR;

(iii) VENDOR and NCEL will work together cooperatively and in good faith to schedule, perform and validate any Phase I customer acceptance testing, Online Requirements and Specifications and Phase II customer acceptance testing;

(iv) VENDOR's one (1) full-time on-site gaming system programmer and one (1) full-time lottery back-office management system programmer required pursuant to Section 5.1.4 of the RFP will both work on-site in the VENDOR's offices in North Carolina serving NCEL during the duration of the Agreement;

(v) VENDOR shall provide defect reports and reports from VENDOR's tracking tool software as described in its Proposal to NCEL from time to time based on a mutually agreed-upon schedule;

(vi) VENDOR's hotline service and call center serving NCEL shall be required to be based in North Carolina by the earlier to occur of: (A) the opening of VENDOR's North Carolina primary data center; or (B) six (6) months after the Instant Ticket Start-Up Date;

(vii) NCEL shall be able to mix and match the installation of the ten thousand (10,000) play stations contained in the Proposal from among the three (3) different types of play stations proposed by VENDOR to NCEL, based upon a reasonable mutually-agreed-upon number of each of the three (3) types of play stations;

(viii) On a reasonable schedule to be mutually agreed-upon between NCEL and VENDOR, NCEL can obtain from VENDOR the set-up, implementation and training for up to one thousand (1,000) licenses and companion printers for VENDOR's "Lottery Inside" product; and

(ix) VENDOR's lottery gaming System and services shall be completely implemented and fully operational, in accordance with this Agreement and the RFP, so

that instant ticket sales shall begin by the Instant Ticket Start-Up Date and on-line ticket sales shall begin by May 30, 2006.

17. OBLIGATIONS OF VENDOR

(a) VENDOR shall provide to NCEL on an annual basis an updated certificate of existence showing that it and each Subcontractor are qualified to transact business in the State of North Carolina.

(b) VENDOR agrees to fully disclose to NCEL all matters materially affecting NCEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform background and security investigations with respect to VENDOR, the Subcontractors, their respective officers, directors, partners, major shareholders and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of NCEL or the Lottery. In addition, VENDOR acknowledges that some or all of its employees, officers, directors, partners and major shareholders, and its Subcontractors and their respective employees, officers, directors, partners and major shareholders, may be required to submit to background and other investigations, and 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 and continuously update all information disclosed to NCEL pursuant to this Agreement or the RFP, including, without limitation, any breaches of all representations, warranties and additional covenants set forth in Section 16 hereof, no less often than every six (6) months; provided, however, VENDOR shall as soon as possible notify 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 NCEL under this Agreement or the RFP and which materially affect 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 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 affect on VENDOR or a Subcontractor or their ability to perform pursuant to this Agreement, then such notice must be delivered to NCEL no more than five (5) days after VENDOR learns of such proceeding.

(c) VENDOR must, contemporaneously with the execution of this Agreement, post and maintain at least throughout the term of this Agreement a performance bond (the "**Bond**") or letter of credit with NCEL in an amount equal to Fifteen Million Dollars ($15,000,000), unless such bond or letter of credit is replaced by alternate acceptable security if approved by the Commission in its sole discretion. The security provided by VENDOR pursuant to this Section 17(c) shall provide funds to

NCEL in the event 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 pay any liquidated damages due hereunder or to indemnify NCEL pursuant hereto. The Bond may be renewable annually, provided that: (i) it provides that, in the event the Bond will not be renewed for an additional year, NCEL will be provided written notice thereof at least thirty (30) days prior to the expiration thereof; and (ii) if any 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 17(c) to maintain a performance bond at least throughout the term of this Agreement.

(d) VENDOR shall maintain the following types and amounts of insurance during the term of this Agreement:

(i) General liability insurance in the amount of $5,000,000.00;

(ii) Property insurance in the amount of replacement cost;

(iii) Errors and omissions insurance in the amount of $15,000,000.00;

(iv) Automobile liability insurance in the amount of $5,000,000.00;

(v) Crime insurance in the amount of $5,000,000.00;

(vi) Self insurance with respect to equipment in the field;

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

(viii) Workman's Compensation Insurance at or above the levels required by the State of North Carolina.

(e) VENDOR shall provide NCEL with certificates of insurance within ten (10) days after the date hereof and evidence of any renewed bonds or insurance policies within five (5) days prior to the expiration of the then existing bonds or insurance policies. All bonds and insurance required of VENDOR by this Agreement must be issued by companies or financial institutions which are financially rated A or better (or a comparable rating) by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of North Carolina.

(f) VENDOR agrees to escrow the source codes to all applicable VENDOR Software and other similar proprietary materials developed or provided by VENDOR or any Subcontractor in connection with its performance under this Agreement, in accordance with a standard Source Code Escrow Agreement in form and substance acceptable to NCEL, in its sole but reasonable discretion. In the event the

escrowed source code is released from escrow pursuant to the Source Code Escrow Agreement, NCEL shall have a non-exclusive, non-transferable, non-sublicenseable license to use such source code during the term of this Agreement and the Post-Termination Term, solely to operate, enhance, repair and maintain the VENDOR Software to which such source code relates and solely in connection with the operation of the North Carolina Lottery.

(g) VENDOR shall, at its own expense, conduct trademark and service mark searches with respect to the names of all on-line games provided by VENDOR for use in connection with the Lottery.

(h) VENDOR and its Subcontractors shall allow any authorized representatives of NCEL to inspect, at reasonable times with notice upon arrival, the plants, places of business and job sites of VENDOR or any Subcontractors which are being used in connection with the performance of this Agreement. VENDOR shall not change the location of its computer system, offices or service facilities used in connection with this Agreement without the prior written approval of NCEL.

(i) VENDOR shall establish and maintain a physical and software security program that is acceptable to NCEL and shall adhere to all written security requirements established from time to time by NCEL.

18. **TAXES**

NCEL will not be responsible for any taxes levied on VENDOR or any Subcontractor as a result of the execution, delivery or performance of 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, NCEL may cancel and terminate this Agreement: (i) if VENDOR fails to correct or cure any breach of any of Sections 7(b), 16(c), 16(d), 16(e), 16(h), 17(b), 17(h) or 17(i) of this Agreement (collectively, the "**Major Sections**") within seventy-two (72) hours of the earlier of: (A) VENDOR's having knowledge of such breach; or (B) VENDOR's receiving written notice of such breach from NCEL; or (ii) if VENDOR fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after thirty (30) calendar days' prior written notice from NCEL.

(b) If NCEL, after thirty (30) calendar days prior written notice from VENDOR, fails to correct or cure any breach of this Agreement, then VENDOR may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) 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, an act of God, war, terrorism, riot, strike, 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 use best efforts 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 19(c), the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice thereof to the other party.

(d) If, for any reason other than a breach of this Agreement by NCEL, VENDOR is unable to perform its obligations hereunder, NCEL shall acquire a usufruct in all property 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.

(e) If VENDOR is unable to install the appropriate number of on-line lottery terminals by any of the corresponding dates as set forth in any subsection of Section 8(b) hereof due to NCEL's failure to timely identify for VENDOR the appropriate number of corresponding locations therefore, then, in any such event, VENDOR shall be able to extend the installation deadline set forth in solely the affected subsection of Section 8(b) by the number of days equal to the number of days NCEL is late (the "**Number of Late Days**") in getting such necessary information to VENDOR, and no otherwise applicable liquidated damages or default provisions of this Agreement shall be applicable in solely such instance until the new deadline for such affected subsection of Section 8(b), which shall be amended to be the Number of Late Days after the original deadline set forth herein.

20. LIQUIDATED DAMAGES

(a) Definitions

(i) "**Contract Year**" shall be defined as a twelve (12)-month period beginning on the Instant Ticket Start-Up Date (and each anniversary thereof) and ending twelve (12) months later at the end of the day before the next anniversary of the Instant Ticket Start-Up Date. "**First Contract Year**" shall be defined as the first twelve (12) months of the term of this Agreement.

(ii) "**Average Daily Sales**" shall be defined as the annual on-line sales for the previous Contract Year divided by 365.

(iii) "**Average Number of Terminals**" shall be defined as the average number of terminals selling on-line tickets per day during the previous Contract Year.

(iv) "**Net Revenue**" shall be defined as the Average Daily Sales multiplied by forty percent (40%).

(v) "**Business Minute**" shall be defined as a minute that on-line lottery tickets are available for sale.

(vi) "**Business Minutes per Day**" shall be defined as the number of hours that on-line lottery sales are available per day multiplied by sixty (60).

(vii) "**Net Revenue per Business Minute**" shall be defined as the Net Revenue divided by Business Minutes per Day.

(viii) "**Net Revenue per Business Minute per Terminal**" shall be defined as the Net Revenue per Business Minute divided by the Average Number of Terminals.

(ix) "**Response Time**" shall be defined as the time an issue is reported to VENDOR until the time a field service technician arrives on site at the retailer location to resolve the issue.

(x) "**Metropolitan Areas**" shall be collectively defined as the North Carolina metropolitan areas of: Asheville, Charlotte, Greensboro/Hickory/Triad, Greenville, Raleigh/Durham, Wilmington, and Winston Salem.

For the First Contract Year, the parties agree to use the NCEL proposed sales estimates and actual terminal population at on-line start-up for performing calculations until such time that an efficient amount of actual sales data is available. VENDOR and NCEL may mutually agree to modify these figures as needed.

(b) If any of the below-described events occurs, NCEL shall have the right to assess VENDOR for liquidated damages subject to the maximum liquidated damage amounts set forth below corresponding to each such event.

(i) Delay in the start of the Lottery and Instant Tickets sales. In the event that VENDOR is responsible for the delay in the start of NCEL instant ticket sales as a result of the failure to successfully design, develop, test, install, download or deploy the appropriate System, software and supporting equipment in accordance herewith, or VENDOR's System is incapable of processing instant ticket transactions, VENDOR will be assessed liquidated damages in the amount of: (A) up to One Hundred Thousand Dollars ($100,000) per day (or portion thereof) from the Instant Ticket Start-Up Date (assuming it is prior to April 5, 2006) until April 5, 2006; and (B) up to Four Hundred Thousand Dollars ($400,000) per day (or portion thereof) from April 5, 2006 until the full day on which instant ticket sales commence and the System is fully operational.

(ii) Delay in response to Retailer service calls. If VENDOR fails to

respond to a non-down terminal service call within twenty-four (24) hours, VENDOR will be assessed liquidated damages in the amount of up to Twenty-Five Dollars ($25.00) per incident.

(iii) Delay in on-line System operations. In the event that VENDOR is responsible for the delay in the start of NCEL on-line ticket sales as a result of the failure to successfully design, develop, test, install, download or deploy the appropriate System, software and supporting equipment in accordance herewith, or VENDOR's System is incapable of processing online ticket transactions, VENDOR will be assessed liquidated damages in the amount of: (A) up to One Hundred Thousand Dollars ($100,000) per day (or portion thereof) from May 30, 2006 until June 14, 2006; and (B) up to Four Hundred Thousand Dollars ($400,000) per day (or portion thereof) from June 14, 2006 until the full day on which online ticket sales commence and the System is fully operational.

(iv) Delay in the start of a new game. VENDOR will be assessed liquidated damages in the amount of up to Fifty Thousand Dollars ($50,000) per delay if a delay in the start of a new game is caused by VENDOR's failure to successfully design, develop, test, install, download or verify the software required to begin such new game in accordance with a mutually agreed upon start date.

(v) System downtime. In the event that VENDOR's central computer System experiences downtime of more than ten (10) minutes in the aggregate in any sales day, VENDOR will be assessed liquidated damages for each minute of downtime thereafter in the amount of the product of: (A) the number of down Business Minutes in excess of ten (10) down minutes; and (B) the Net Revenue per Business Minute.

During the First Contract Year, VENDOR and NCEL shall determine, on a quarterly basis, at the beginning of each quarter of the First Contract Year, or mutually agreed-upon more frequent interval, the average on-line sales, business minutes and other metrics to be used for the next quarter. For start-up, the sales per business minute will be calculated using estimated annual on-line sales and actual terminal population. During the full year after the First Contract Year (the "**Second Contract Year**"), VENDOR and NCEL shall determine, on semi-annual basis, at the beginning of each six (6) months of the Second Contract Year, or mutually agreed-upon more frequent interval, the average on-line sales, business minutes and other metrics to be used for the next six (6) months. After the Second Contract Year, VENDOR and NCEL shall determine, on an annual basis at the beginning of each contract year thereafter, or mutually agreed-upon more frequent interval, the previous contract year's average on-line sales, business minutes and other metrics to be used for the next contract year.

(vi) Terminal downtime. VENDOR will be assessed liquidated damages for lost Net Revenue for each minute beyond the "Response Times" set forth in Section 5.2.3. Equipment Maintenance and Supplies of the RFP that a Field Service Technician (FST) does not respond to the issue. Those response times are two (2) hours in the Metropolitan Areas and four (4) hours in all other non-Metropolitan Areas.

For the purpose of assessing liquidated damages for terminal downtime, a terminal that is installed in a conforming location compliant with all dedicated circuitry for the terminal and supporting communications equipment is deemed to be down from the time VENDOR is notified of the terminals inability to sell on-line tickets. Liquidated Damages are calculated as the product of: (A) the number of down minutes per terminal in excess of the grace period; and (B) the Net Revenue per Business Minute per Terminal.

(vii) Delayed monitor repair. VENDOR will be assessed liquidated damages in the amount of up to Fifty Dollars ($50) per day for delayed monitor repair after a thirty-six (36)-hour grace period from the time VENDOR received notice of a monitor failure, if VENDOR has not repaired or replaced the monitor.

(viii) Insufficient VENDOR resources. VENDOR and NCEL shall mutually agree to a set of criteria for hotline staffing based on busy signals, time on hold and abandoned calls. NCEL shall notify VENDOR of VENDOR's failures to meet such staffing criteria. In the event of such a failure, VENDOR will have thirty (30) calendar days to cure the failure from the time it is notified by the NCEL. VENDOR will be assessed liquidated damages in the amount of up to Two Hundred Dollars ($200) per day after that cure period until this failure is cured.

(ix) Failure to provide enhancements. If VENDOR fails to make available for NCEL on-line sales (after any required modifications and testing) any traditional on-line lottery games or other games VENDOR has available that the NCEL desires to offer for sale (a "**Failure to Sell**"), for each day for which there is a Failure to Sell beyond one hundred twenty (120) days after the date VENDOR and NCEL mutually agree on the specifications therefor, VENDOR will be assessed liquidated damages in the amount of up to Two Thousand Dollars ($2,000) per day.

(x) Shortage of on-line ticket stock. Should VENDOR not supply sufficient quantities of online ticket stock to retailers which results in a retailer's inability to sell tickets, VENDOR will be assessed liquidated damages for lost Net Revenue for each minute beyond the "Response Times" set forth in Section 5.2.3 Equipment Maintenance and Supplies of the RFP that a Field Service Technician (FST) does not respond to the request for online ticket stock. Those response times are two (2) hours in the Metropolitan Areas and four (4) hours in non-Metropolitan Areas. For the purpose of assessing liquidated damages for terminal downtime, a terminal that is installed in a conforming location compliant with all dedicated circuitry for the terminal and supporting communications equipment, is deemed to be down from the time VENDOR is notified of the terminals inability to sell on-line tickets. Liquidated Damages are calculated as the product of: (A) the number of down minutes per terminal in excess of the grace period; and (B) the Net Revenue per Business Minute per Terminal.

(xi) Security violations. VENDOR and NCEL shall mutually agree upon a list of classified individuals who have authorized access to the primary data center control room. In the event of any unauthorized access by any other person, VENDOR will be assessed liquidated damages in the amount of up to One Thousand ($1,000) per

occurrence.

(xii) Failure to deliver log files. Prior to each drawing, VENDOR shall make available to NCEL the draw close log tapes or files. If VENDOR fails to do so, VENDOR will be assessed liquidated damages in an amount up to Fifteen Thousand Dollars ($15,000) per incident. At the end of each online day's processing, VENDOR shall make available to the NCEL the current day's transaction log tapes or files. If VENDOR fails to do so, VENDOR will be assessed liquidated damages in an amount of up to Ten Thousand ($10,000) per incident.

(xiii) Untimely software additions or modifications. If VENDOR fails to install, download or implement any software modification or new addition pursuant to a mutually agreed upon schedule and scope, VENDOR will be assessed liquidated damages in the amount of up to One Thousand Dollars ($1,000) per day.

(xiv) Untimely reports. VENDOR and NCEL will mutually agree as to the type and format of reports to be provided and time for delivery of such reports to the NCEL. If VENDOR fails to deliver any such reports to the NCEL by the agreed upon time, VENDOR will be assessed liquidated damages in an amount up to One Hundred Dollars ($100) per day.

(xv) Claimed prize ticket not approved by NCEL. Should VENDOR's on-line gaming System produce and validate a ticket not determined to be a valid winning game ticket by the NCEL according to its game rules and prizes claiming procedures, VENDOR will be held liable for the amount of the prize paid out for said ticket as liquidated damages.

(xvi) Defective or nonconforming tickets. Should VENDOR's on-line gaming System produce defective or non-conforming tickets due to a terminal equipment or printer malfunction or other failure, which causes loss of revenue or the inability to pay appropriate prizes, VENDOR will be assessed liquidated damages in an amount of up to Five Thousand ($5,000) per incident. In the event an NCEL ticket appears on its face to be a winning ticket, but has not been validated as such, and is presented for payment, VENDOR will be assessed liquidated damages in an amount equal to the prize paid on such ticket, unless such apparent winning ticket is a counterfeit ticket, or the caption does not match the prize symbol, or it has been tampered with in any manner; and in any event, any such instant ticket shall be presented to VENDOR for examination and analysis and determination through reconstruction as to whether the symbols printed on such instant ticket are consistent with the working papers, prize structure and symbols approved for the game.

(xvii) Unavailability of the telemarketing and inventory control system. In the event that the computer System malfunctions or otherwise is unable to accept orders or assign packs during normal business hours of operation as specified by the NCEL, the VENDOR will make every effort to correct the malfunction in the shortest period of time possible. Should the malfunction result in the inability to pack and ship

all current day orders, the VENDOR will be assessed liquidated damages in the amount of up to Five Thousand Dollars ($5,000) per day.

(xviii) Untimely or unauthorized software modifications. VENDOR shall not make any additions or modifications to the System software without the approval of NCEL. If VENDOR makes any additions or modifications to the System software without the approval of NCEL, VENDOR will be assessed liquidated damages in the amount of up to Fifty Thousand ($50,000). In addition, if System software is not restored to its original condition within twenty-four (24) hours of VENDOR learning of any such unauthorized addition or modification, VENDOR will be assessed liquidated damages in the amount of up to Five Thousand Dollars ($5,000) per day for each day after such twenty-four (24)-hour grace period until the System software is restored to its original condition.

(xix) Incomplete or incorrect game validation files. In the event VENDOR creates an Incomplete or Invalid game validation file on the System after having received valid and complete game validation files from the Instant Ticket vendor, VENDOR will be assessed liquidated damages in the amount of up to Five Thousand ($5,000) per occurrence.

(c) VENDOR and NCEL hereby acknowledge and agree that:

(i) NCEL's damages following the occurrence of any event set forth in Section 20(b) hereof are difficult or impossible to accurately estimate or calculate;

(ii) the liquidated damages amounts set forth in Section 20(b) hereof are reasonable pre-estimates of what NCEL's damages would be in the event of the occurrence of any such events and, if assessed, shall be NCEL's sole remedy with respect to such events;

(iii) it is their mutual intention that Section 20(b) hereof provide for liquidated damages to compensate NCEL upon the occurrence of such an event, rather than penalties to deter VENDOR from breaching this Agreement and/or to punish VENDOR upon the occurrence of such an event;

(iv) to the extent an event occurs for which liquidated damages are assessable under more than one subsection of Section 20(b), NCEL shall recover under only such subsection that provides for the highest amount of liquidated damages; and

(v) NCEL shall have the right, in its sole discretion, to waive (in whole or in part) payment by VENDOR of liquidated damages due hereunder. A waiver in any one instance shall be strictly limited to that specific instance and shall not in any way constitute or be construed to be a waiver of the payment of any other liquidated damages that are due or may become due hereunder.

(vi) NCEL shall notify VENDOR of the assessment of any liquidated damages pursuant hereto, and if VENDOR requests, NCEL will provide VENDOR a reasonable opportunity to explain what occurred and any mitigating information VENDOR believes is relevant in determining that assessment of liquidated damages and the proper amount thereof. The decision of NCEL shall be final. NCEL must assess liquidated damages: (A) within six (6) months of learning of the incident for any of the circumstances described in Sections 20(b)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvii) or (xix); (B) at any time within one (1) year of learning of the incident for any of the circumstances described in Sections 20(b) (xv), (xvi) or (xviii). There is no time limit on when NCEL may assess liquidated damages under Section 20(b)(xi).

21. INDEMNIFICATION

(a) VENDOR agrees to indemnify, defend and hold harmless NCEL, the Commission, its directors and officers, the State of North Carolina and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement or any other act or omission of 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.

(b) In addition, VENDOR agrees to indemnify, defend and hold harmless NCEL, the Commission, its 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, arising out of, in connection with or resulting from 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 NCEL, or used in the performance of this Agreement, by VENDOR or any Subcontractor, excluding claims for personal injury. Subject to all applicable laws, limitations and immunities available to NCEL, as between NCEL and VENDOR, NCEL, and not VENDOR, would be responsible for any intellectual property infringement based on modifications to Work Product or VENDOR Software made solely by NCEL. VENDOR will not be responsible for intellectual property infringement due to modifications to the Work Product or VENDOR Software made by a third party acting under the sole control and direction of NCEL and not under the control or direction of VENDOR.

22. 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 NCEL, as amended from time to time (collectively, the **"Dispute Resolution Procedures"**).

23. **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 111 Corning Road Suite 250 Cary, North Carolina 27511 Attn: Thomas N. Shaheen, Director
with a copy to:	William B. Marianes, Esq. McGuire Woods LLP Bank of America Corporate Center 100 North Tryon Street Suite 2900 Charlotte, NC 28202-4011
If to VENDOR:	GTECH CORPORATION 55 Technology Way West Greenwich, Rhode Island 02817 Attn: General Counsel

(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.

24. **MISCELLANEOUS**

(a) This Agreement, together with the Proposals, 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, the Answers 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 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, which consent shall not be unreasonably withheld, 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 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 24(c), any sale or transfer of a controlling equity interest in, or substantially all of the assets of, VENDOR (any such transaction being defined as a "**Change of Control**") will be deemed an assignment for which NCEL's prior written consent is required. In addition to any applicable provisions of the Act and Governing Laws and Regulations which must be complied with, prior to any Change of Control being closed, all parties acquiring such equity interests or assets of VENDOR (an "**Acquirer**"), and all individuals or entities associated with such Acquirer that are generally described in G.S. §18C-152(b) (the "**Acquirer Affiliates**"), must comply with and pass all background and other investigations and checks ordered by NCEL in its sole discretion, including, without limitation all such background and other investigations and checks described in G.S. §§ 18C-151(c) and 18C-152 (all of the foregoing being defined as the "**Required Investigations**"). VENDOR must also provide to NCEL the fee to cover the cost of these additional criminal record and background checks as required by G.S. § 18C-151(a)(3). Notwithstanding anything in this Agreement to the contrary, should any Acquirer or Acquirer Affiliates not comply with or completely pass all Required Investigations, NCEL shall have the right to immediately terminate this Agreement, without any recourse against NCEL, upon prior written notice to VENDOR. Nothing herein shall be deemed to in any way limit or reduce the requirement of compliance with any and all Investigations required by the Act or any Governing Laws and Regulations.

(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.

(i) VENDOR agrees to act in accordance with any policy which shall be adopted by NCEL which shall prescribe minimum sales volumes for on-line Lottery gaming retailers.

25. ADDITIONAL SERVICES

In the event 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 therefor shall not exceed the rates identified in this Agreement unless agreed to in writing by 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 NCEL.

26. APPROVAL OF COMMISSION AND REQUIRED INVESTIGATIONS

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 completion of all criminal and other background investigations required by the Act, Governing Laws and Regulations or NCEL. This Agreement will not be binding upon 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: _____
Its: _____

"VENDOR"

GTECH CORPORATION

By: _____
Its: _____

EXHIBIT A

[Proposal]

EXHIBIT B

[RFP]

EXHIBIT C

[Questions and Answers]