



Together, we do good things.

EXHIBIT A SAMPLE PRICE AGREEMENT

OREGON STATE LOTTERY
PRICE AGREEMENT # _____

FOR MEDIA PLANNING AND MEDIA BUYING SERVICES

This **PRICE AGREEMENT** (“**AGREEMENT**”) is between the **STATE OF OREGON** (“**STATE**”), acting by and through its **OREGON STATE LOTTERY COMMISSION** (“**LOTTERY**”), and _____, (“**CONTRACTOR**”). Lottery and Contractor are referred to collectively in this Agreement as the “**PARTIES**.”

This Agreement is a General Procurement as defined in OAR 177-037-0000(2) and anticipated, but not guaranteed, to be a Large Procurement as defined in OAR 177-038-0000(20).

RECITALS

- a. Lottery conducted a solicitation process, via Request for Proposals #11362, for “Media Planning and Media Buying” services (“Media Services” or “**SERVICES**”). Through this process, Lottery identified Contractor as the successful Proposer.
- b. Lottery desires to engage Contractor for, and Contractor desires to provide to Lottery, the Services as may be requested by Lottery from time to time as described in this Agreement.
- c. This Agreement constitutes Contractor’s firm offer to provide the Services described in further detail in Section 7 of this Agreement, at the prices set forth in Exhibit A to this Agreement, all in accordance with the terms and conditions set forth herein.

Therefore, Lottery and Contractor agree as follows:

AGREEMENT

1. **Recitals.** The Recitals set forth above are incorporated by reference as though fully set forth in this Section.
2. **Purpose of Price Agreement.**

The purpose of the Agreement is to establish the terms and conditions applicable to, and the general form of work order contract(s) (“**Work Order Contract(s)**” or “**WOC(s)**”) to be entered into between Lottery and Contractor when Contractor agrees to provide Media Services. This Agreement, by itself, is not a binding contract for Services. Rather, if Lottery requires Contractor’s Services in the future, Lottery and Contractor shall enter into binding and enforceable contracts for particular Services by execution of a WOC substantially in the form attached hereto as Exhibit C. Each WOC so executed shall together with this Agreement, with its terms and conditions incorporated by reference in the WOC, create a separate enforceable contract (each a “**Contract**”) between Lottery and Contractor, independent of other WOCs.

3. Non-Exclusivity; Work Order Contracts.

- a. This is a non-exclusive Agreement. This Agreement is not a guarantee of future work; is not a guarantee of the volume or total value of the Media Services that may be requested; nor does this Agreement constitute a promise that Lottery will enter into one or more WOCs with Contractor. Notwithstanding this Agreement, Lottery reserves the right to contract for the same or similar services through any selection procedure authorized by law or to perform the same or similar services itself.
- b. Prior to execution of a WOC, Contractor and Lottery may negotiate the statement of work (“SOW”) for the WOC, including but not limited to the cost of the Services. Contractor’s pricing under any resulting Contract shall not exceed the pricing set forth in Exhibit A, Pricing Schedule.
- c. Payments to Contractor may be made only for Services performed in accordance with each applicable WOC.

4. Price Agreement Documents.

This Agreement consists of the following documents which shall, in the event of a conflict, be interpreted in the following order of descending precedence: (a) the Agreement less exhibits, (b) Exhibit B, Lottery’s Branding and Style Guidelines, (c) Exhibit C, Sample Work Order Contract, (d) Exhibit A, Pricing Schedule.

5. Term.

- a. **This Agreement is effective on the date last signed by Lottery and Contractor (“Effective Date”).** The initial term of this Agreement commences on the Effective Date and expires three (3) years from the Effective Date unless sooner terminated or extended as provided in this Agreement.
- b. This Agreement may be extended at Lottery’s option for additional periods for a maximum term not to exceed (“NTE”) five (5) years unless deemed in Lottery’s best interest as documented by Lottery. The initial term and all extension terms are collectively referred to as the “Term” of this Agreement.
- c. In the event Lottery desires to extend any Term of the Agreement, Lottery shall provide Contractor written notice of such desire at least 60 Days prior to the expiration of the then-current Term. Such notice shall be made in accordance with Section 36 of this Agreement.
- d. After this Agreement is terminated, Contractor and Lottery shall not enter into any new WOCs.
- e. WOCs may extend beyond the termination of this Agreement but shall not be renewed or amended after termination of the Agreement. In the event any WOC extends beyond the termination of this Agreement, all of the terms and conditions contained in this Agreement shall survive for purposes of such WOCs only.

6. Definitions.

In addition to the terms defined in this Section, elsewhere in the Agreement, or in an applicable WOC, all other capitalized terms used but not defined therein are defined in OAR 177-038-0000 and OAR 177-037-0000.

- a. **“Authorized Representative”** means a person representing a party to this Agreement or a WOC, who is authorized to make commitments and decisions on behalf of the party regarding the performance of this

Agreement or the WOC. The Authorized Representatives of Lottery and Contractor for purposes of this Agreement are identified in Section 36 below. Additional Authorized Representatives and the scope of authority of such additional Authorized Representatives may be identified in a WOC.

- b. **“Business Day(s)”** means Monday through Friday, from 8:00 a.m. to 5:00 p.m., Pacific Time except State of Oregon Holidays, or when the Lottery Headquarters in Salem, Oregon is otherwise closed. State of Oregon holidays and building closures can be found at:
<https://www.oregon.gov/DAS/Pages/buildingclosure.aspx>.
- c. **“Deliverable(s)”** means all items Contractor is required to provide Lottery under this Agreement and each WOC, including any Work Product.

7. **General Description of Services.** Contractor shall perform one or more types of the Services listed below in this Section as specifically agreed to in a WOC. Media Services may include, without limitation, Media Planning and Media Buying for digital, broadcast, print, out-of-home, and any other non-traditional advertising, advertisements, or marketing outreach effort that Lottery selects to support its campaigns (“Advertisement” or together referred to as “Advertisements”).

- a. **Media Planning and Consulting.** “Media Planning and Consulting” Services may include, without limitation, Contractor working with Lottery proactively on an on-going basis to help identify strategic direction in support of Lottery’s communication efforts and in alignment with Lottery’s programs or products. This may include general strategic input and consulting; developing briefing stage for clear understanding of business situation; developing objectives and strategies including target, timing, geography, budget, communication goals, and media vehicles; planning development by preparing clear and distinct options based on the delivery of objectives; planning presentations with a clear review of objectives and strategies, options, audience delivery, budget summary, and flowcharts for the selected media; and the like. In its Media Planning and Consulting capacity, Contractor will make recommendations to Lottery on how to effectively reach diverse and multi-cultural audiences, and promote Lottery in a sustainable manner.
 - i. **Media Plan.** As requested by Lottery, Contractor will prepare and submit a detailed plan that describes the media mix for each integrated campaign to Lottery for its review and approval (“Media Plan”).
 - ii. **Media Estimate.** As requested by Lottery, Contractor will provide an estimate of all costs based on the Lottery-approved Media Plan for Lottery’s review and consideration (“Media Estimate”).
 - iii. **Final Media Authorization.** Once all details and related costs of the Media Estimate are negotiated and agreed to between the Parties, Contractor will prepare and submit its final fixed costs per each selected Advertisement for Lottery’s review and approval (“Final Media Authorization”). The Final Media Authorization is incorporated and made a part of the applicable WOC by reference.

Lottery and Contractor may change the Final Media Authorization by amending the applicable document according to the following process:

If Lottery requests a change in the strategy or execution of the selected Advertisement(s) that impacts the Final Media Authorization, the Parties may negotiate and amend the Final Media Authorization details by means of written acknowledgement and agreement, signed and dated

by both Parties of which the latest version of the Final Media Authorization replaces and supersedes all previously agreed upon documents.

- b. Account Management.** Contractor will also provide, during the term of the Agreement, on-going “Account Management” Services to facilitate the day-to-day management, work flow, and Contract administration necessary to successfully perform its Services under the Agreement.
- c. Media Buying.** “Media Buying” Services may include, without limitation, placement of insertion orders; buy presentations including programming detail, audience delivery detail, and run schedules; stewardship including weekly monitoring of positioning, ratings and “make-goods;” evaluation of on-going media opportunities/marketplace changes; detailed monthly budget tracking and management; invoice reconciliation; and media provider payment. Media Buying may also include obtaining “value-added” media and working with Lottery’s sponsorship properties (such as Portland Trail Blazers, Portland Timbers, etc.,) on the media components of the associated sponsorship. Media Buying Services may also include, without limitation:
 - i. Media Negotiations.** Contractor’s Services may include analysis of audience data; negotiation of rates, positioning; and added value.
 - ii. Traffic.** Contractor’s Services may be required to provide media with traffic instructions, and work with creative agencies and/or Lottery staff to obtain physical and electronic materials and traffic to appropriate media outlets.
 - iii. Media Evaluation and Analysis.** Contractor will be required to provide Lottery with post-buy analysis for every campaign and media buy, including a quarterly analysis of all media which addresses effectiveness of the recommended media buys.
- d. Ownership of Creative Assets.** All content and creative assets, including digital Advertisements provided by or delivered for Lottery are the exclusive property of Lottery.
- e. Meetings and Performance Review.**
 - i.** Upon the issuance of a Work Order Contract, Lottery may provide Contractor with a creative brief. Thereafter, Lottery and Contractor will participate in a kick-off meeting for further discussions relating to the work to be performed under the Work Order Contract and the attendant creative brief. Contractor may be required to attend each kick-off meeting in person at Lottery’s headquarters in Salem, Oregon or, if approved by Lottery in writing, via teleconference or web conference.
 - ii.** Contractor must attend a mandatory in-person meeting at Lottery’s main office in Salem, Oregon, six (6) months following the Effective Date of the Agreement, to receive its written agency report card from Lottery. Contractor will be evaluated across multiple measures that will address budget, timelines, strategic insight, accuracy, and responsiveness. This performance process will be repeated a minimum of once a year under an effective Price Agreement.

8. Pricing.

- a.** Contractor’s pricing established in Exhibit A, Pricing Schedule is firm for the initial three (3) year Term following the Effective Date of this Agreement. If the Agreement is extended beyond the initial three (3)

year Term, the Parties may negotiate a price adjustment. Contractor may submit a request for a price adjustment within sixty (60) Days prior to expiration of the then-current Agreement year.

- b. Lottery may require Contractor to present acceptable documentation that serve to support any requested price increase. Lottery will determine what constitutes acceptable documentation. Parties shall mutually agree to any price adjustment by written amendment to this Agreement.
- c. If Lottery rejects Contractor's proposed price increase, Contractor may either elect to agree to extend the term with no price increase or allow the Agreement to expire.
- d. If Lottery proposes a lesser amount of increase, Contractor may either elect to agree to extend the term extension with Lottery's proposed price increase or allow the Agreement to expire

9. Invoicing and Payment.

- a. **Submission.** Contractor shall submit invoices according to the payment schedule set forth in the applicable WOC. All invoices shall be submitted to:

Oregon State Lottery,
Attn.: Accounts Payable Dept.
PO Box 12649, Salem, OR, 97309

or

Lottery's electronic mail to: lottery.ap@state.or.us.

- b. **Content of Invoices.** All invoices must include and comply with all of the following:
 - i. Include the Lottery Agreement number _____ and the applicable WOC number;
 - ii. Describe all Services performed with particularity and by whom it was performed;
 - iii. Identify all Deliverables Accepted by Lottery and the date on which Acceptance was made;
 - iv. Itemize, provide copies of receipts, and explain all expenses for which Contractor claims reimbursement, and for which Lottery has pre-approved in writing for the applicable WOC (such approval may be made via email);
 - v. Include the total amount invoiced to date under the applicable WOC prior to the current invoice, if there is more than one invoice for the applicable WOC.
 - vi. If an invoice includes a credit, Contractor shall include the credit amount and applicable WOC number to which the credit applies.
- c. **Payment Terms.** Lottery's standard payment terms are NET 30 Days from receipt of a correct invoice, unless otherwise specified in the WOC.
- d. **Late Charges.** Contractor may assess late payment charges to the extent permitted by ORS 293.462.
- e. **Invoice Review / Dispute Process.** Lottery will review each invoice within ten (10) Business Days of receipt, and will either approve payment of the amount invoiced or notify Contractor of any errors or disputed charges.

If an error or dispute arises concerning charge(s) on an invoice, Lottery will notify Contractor of the disputed charge. Upon notification of dispute, Contractor shall submit to Lottery documentation to support the amount charged. Lottery will have seven (7) Business Days to consider the validity of the supporting documentation, however, Lottery's failure to respond to Contractor by the end of the seven (7) Business Day period shall not be deemed Lottery's acceptance of the documentation and shall not obligate Lottery to pay the disputed amount in full.

Lottery, in its sole and absolute discretion, will determine if the supporting documentation provides sufficient justification for the charges set forth in the disputed invoice. If Lottery determines that the supporting documentation is sufficient, Lottery will notify Contractor and pay Contractor the amount claimed due in the invoice. If Lottery determines the supporting documentation supports payment in an amount less than originally invoiced, Lottery will notify Contractor of the amount Lottery believes is due under the invoice. Contractor may resubmit an invoice for the lesser undisputed amount following Lottery's review, and Lottery will pay the invoice as set forth in Section 3.b.

10. Key Person(s).

Contractor acknowledges and agrees that a significant reason Lottery Awarded this Agreement to Contractor and is entering into this Agreement is because of Contractor's special qualifications, expertise, experience, judgment and personal attention of Contractor and Contractor's Key Persons. Neither Contractor nor any of its Key Persons shall delegate performance of their powers and responsibilities each such Key Person is required to provide under this Agreement or a WOC to any other employee or agent of Contractor unless Lottery provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide Lottery with such Key Person's services unless Lottery provides prior written consent to such reassignment or transfer or such transfer is required based on such Key Person's termination of employment, illness, death, disability, or other similar cause.

In the event Contractor requests Lottery to consent to a delegation, reassignment, transfer, or other replacement of a Key Person, Lottery may meet with the Key Person and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Contractor shall not charge Lottery and Lottery will not pay for any proposed replacement personnel while such replacement acquires the necessary skills and project knowledge to proceed with the Services required hereunder. Any replacement personnel approved by Lottery shall thereafter be deemed a Key Person for purposes of this Price Agreement and all WOCs.

All of Contractor's Key Persons shall be agreed to, notwithstanding Section 29 below, by the Parties in an email prior to Contractor commencing Services under this Agreement. Any changes to the Key Persons so identified and any approval for delegation of authority of such Key Persons as permitted above, may also be agreed to, notwithstanding Section 29 below, in an email. In order for any email notice permitted under this Section to be effective, such email must clearly evidence the consent of both Parties; email notification by one party to the other without a response and express consent by the receiving party shall not be effective.

11. Security Investigation; Security Policies.

This Agreement has been classified by Lottery as a General Procurement as defined in OAR 177-037-0000(2).

A General Procurement does not, pursuant to OAR 177-037-0050(2), require a security background investigation, unless deemed necessary by the Director or the Commission. Should the Director or the Commission determine, at any time during the Term of this Contract, that a background investigation is necessary, Contractor shall promptly comply with any and all such determinations and cause its employees, agents and other personnel performing Services under this Agreement or a WOC to comply with any and all such determinations. Lottery will provide all necessary forms and fingerprint cards, as required, to Contractor. Contractor may request copies of these forms at any time by contacting the Lottery Procurement Analyst identified in Section 36.

Lottery may terminate this Agreement, a WOC, or prohibit Contractor's use of any Contractor Personnel if Lottery determines, in its sole discretion, that results of a required security background investigation are unsatisfactory.

12. Confidentiality / Non-Disclosure.

- a. Confidential Information.** Contractor acknowledges that Contractor and Contractor's employees or agents may, in the course of performing Contractor's responsibilities under this Agreement or a WOC (or both), be exposed to or acquire information that is confidential to Lottery. Any and all information of any form obtained by Contractor or Contractor's employees or agents in the performance of this Agreement or a WOC, including any reports or other documents or items created by Contractor that embody such information shall be deemed to be confidential information of Lottery ("Confidential Information"). Confidential Information shall be deemed not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (ii) is furnished by Lottery to others without restrictions similar to those imposed by this Agreement or a WOC; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement ; or (iv) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure.** Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, but in no event less than reasonable care, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Lottery under this Agreement or WOC, and to advise all Contractor Personnel of their obligations to keep Confidential Information confidential.
- c. Unauthorized Use.** Contractor shall use its best efforts to assist Lottery in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise Lottery immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement or a WOC and Contractor will at its expense cooperate with Lottery in seeking injunctive or other equitable relief in the name of Lottery or Contractor against any such person.
- d. Return of Confidential Information.** Contractor agrees that, except as directed by Lottery, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that, subject to Section 27 Records Maintenance; Access,

of this Agreement, upon termination of this Agreement or at Lottery's request, Contractor will turn over to Lottery all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

- e. **Injunctive Relief.** Contractor acknowledges that breach of this Section 12, including disclosure of any Confidential Information, will give rise to irreparable injury to Lottery that is inadequately compensable in damages. Accordingly, Lottery may seek and obtain injunctive relief against any breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Lottery and are reasonable in scope and content.
- f. **Ensuring Confidentiality.** Contractor agrees to comply with all reasonable requests by Lottery to ensure the confidentiality and nondisclosure of the Confidential Information, including without limitation, obtaining nondisclosure agreements, in a form approved by Lottery, from each of Contractor's Personnel who will provide Services to Lottery or have access to any Lottery Confidential Information, and providing copies of such agreements to Lottery.

13. Independent Contractor; Responsibility for Taxes and Withholding.

- a. Contractor shall perform all required Services as an independent contractor. Although Lottery reserves the right (i) to determine the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Lottery cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.
- b. If Contractor is currently performing services for the State of Oregon or the federal government, Contractor by signature to this Agreement declares and certifies that: Contractor's Services to be performed pursuant to this Agreement and under a WOC creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Services under this WOC. Contractor is not an "officer," "employee," or "agent" of Lottery, as those terms are used in ORS 30.265(1) and (4). Contractor shall have no right or authority to incur or create any obligation for or legally bind Lottery in any way.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments to Contractor under this WOC and, unless Contractor is subject to backup withholding, Lottery will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers' compensation benefits from compensation or payments to Contractor under a WOC, except as a self-employed individual.

14. Subcontracts and Assignment; Successors and Assigns.

- a. Contractor shall not enter into any subcontracts for any of the Services agreed to in a WOC, unless the Parties expressly agree otherwise and such subcontractors are identified in any such WOC. In no event, however, shall Contractor assign or transfer any of its interest in this Agreement or a WOC without Lottery's prior written consent. In addition to any other provisions Lottery may require, Contractor shall include in any permitted subcontracts under a WOC a requirement that the subcontractor be bound by Sections 11-14, 17-21, 27, 31, 32, 40, and 41 of this Agreement as if the subcontractor were the Contractor.

Lottery's consent to any subcontractor shall not relieve Contractor of any of its duties or obligations under this WOC.

- b. The provisions of this Agreement and all WOCs are binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.

15. No Third Party Beneficiaries.

Lottery and Contractor are the only Parties to this Agreement and all WOCs and are the only Parties entitled to enforce their terms. Nothing in this Agreement or any WOC gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in a WOC and expressly described as intended beneficiaries of the terms of the applicable WOC.

16. Funds Available and Authorized; Payments.

- a. Lottery believes it has sufficient funds currently available and authorized for expenditure to finance the costs of any Services agreed to in a WOC. Contractor understands and agrees that Lottery's payment of amounts under a WOC for Services performed after the last day of Lottery's current financial plan is contingent on the Lottery Commission's approval of expenditure authority to continue to make payments under such WOC.
- b. Article XV, Section 4 of the Oregon Constitution and ORS 461.500(2) provide that Lottery shall operate as a self-supporting, revenue-raising agency and that no appropriations, loans, or other transfers of state funds shall be made to it. Consequently, only revenues from Lottery sales or other miscellaneous revenues generated by Lottery shall be used to satisfy liabilities of Lottery. Contractor shall not be compensated for Services performed under this WOC by any other agency or department of the State of Oregon.

17. Representations and Warranties.

In addition to all other Contractor representations and warranties in this Agreement and a WOC, Contractor makes the additional representations and warranties set forth in Subsections a. and b. of this Section below.

- a. **Contractor's General Representations and Warranties.** Contractor represents and warrants to Lottery that:
 - i. Contractor is qualified to do business in the State of Oregon and it will take such action as may be necessary to remain so qualified during the term of this Agreement and all WOCs;
 - ii. Contractor is not in arrears with respect to the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and it shall not become so during the term of this Agreement or any WOC that survives termination of this Agreement;
 - iii. Contractor shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Agreement and each WOC;

- iv. Contractor shall procure, at its own expense, all required licenses, certifications, permits, and governmental approvals necessary to perform its obligations under this Agreement and each WOC;
 - v. The Contractor Data and Tax Certification made in Section 42 of this Agreement is true and accurate as of the Effective Date, and Contractor will notify Lottery in writing if any such data or certifications change during the term of this Agreement or any WOC such that such Data or Certification is no longer true and accurate;
 - vi. Contractor has the power and authority to enter into and perform this Agreement and each WOC;
 - vii. This Agreement and each WOC, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - viii. The Services described in this Agreement and agreed to be performed under each WOC shall be performed in a good and workmanlike manner in accordance with the highest professional standards prevalent in Contractor's industry; and
 - ix. Contractor shall, at all times during the term of this Agreement and each WOC, be qualified, professionally competent, and duly licensed to perform the Services.
- b. Contractor's Representations and Warranties for Contractor Intellectual Property.** If the Work Product as defined in Section 18 is Contractor Intellectual Property as defined in Section 18 of this Agreement, Contractor represents and warrants to Lottery that:
- i. Contractor is the sole and exclusive legal owner of all Intellectual Property rights in and to the Contractor Intellectual Property;
 - ii. Contractor was and still is fully entitled to grant Lottery all rights to market, sell, sublicense and distribute, in the United States of America, the Contractor Intellectual Property, without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Contractor;
 - iii. Contractor was and still is, fully entitled to grant Lottery the exclusive right and license to market, promote and distribute the Contractor Intellectual Property throughout the term of this Agreement and each WOC ; and
 - iv. Contractor is fully aware of Lottery's business requirements and intended use for the Contractor Intellectual Property and the Contractor Intellectual Property shall satisfy such requirements in all material respects and is fit for such intended use.

c. Warranties Cumulative.

The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

18. Ownership of Work Product.

a. Definitions. As used in this Section 18, and elsewhere in this Agreement and each WOC, the following

terms have the meanings set forth below:

- i. "Intellectual Property" means any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right.
 - ii. "Contractor Intellectual Property" means any Intellectual Property owned by Contractor and developed independently from the Services.
 - iii. "Third Party Intellectual Property" means any Intellectual Property, owned by parties other than Lottery or Contractor.
 - iv. "Work Product" means every invention, discovery, work of authorship, trade secret, or other tangible or intangible item and all Intellectual Property rights therein that Contractor is required to deliver to Lottery pursuant to the Services.
- b. Original Work Product.** All Work Product created by Contractor pursuant to the Services in whatever form, shall be the exclusive property of Lottery. Lottery and Contractor agree that such original works of authorship are "work made for hire" of which Lottery is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Services is not "work made for hire," Contractor hereby irrevocably assigns to Lottery any and all of its rights, title, and interest in all original Work Product created pursuant to the Services, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Lottery's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Lottery. Contractor agrees that Contractor shall not, and is estopped to, assert against Lottery and the State of Oregon, or any of their assignees, any and all rights relating to original Work Product created pursuant to the Services, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under a WOC is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on Lottery's behalf, and in the name of Lottery, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Lottery's behalf.

- c. Contractor Intellectual Property.** In the event that Work Product is Contractor Intellectual Property, Contractor hereby grants to Lottery an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property for Lottery's business purposes, and to authorize others to do the same on Lottery's behalf.
- d. Unlimited Use License.** In the event that Work Product is Third Party Intellectual Property, unless otherwise agreed, Contractor shall secure on Lottery's behalf and in the name of Lottery, an irrevocable, non-exclusive, perpetual, royalty-free, unlimited license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property as agreed to in each WOC and to authorize others to do the same on Lottery's behalf ("Third Party License Agreement"). Contractor shall ensure that pursuant to the Third Party License Agreement the Third Party licensor shall

not use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and shall not permit another to do the same, except for those already permitted to do so as of the effective date of the Third Party License Agreement.

- e. **Clearance of Distribution Rights.** Contractor shall ensure that upon delivery and throughout the term of this Agreement and each WOC, that each Advertisement is fully cleared for reproduction, distribution, broadcast exhibition, public performance, and that all publicity releases are acquired, throughout the "Territory," in all broadcast radio and television media (including without limitation all forms of terrestrial, satellite, cellular networks, mobile networks, and cable television and the Internet), whether now or hereafter known, without any limitation or restriction whatsoever, and without any additional payments of any sort required to be made by Lottery. Internet rights and compensation will be negotiated separately upon Lottery's request. "Territory" means and includes the State of Oregon ("Primary Territory"), as well as any other territories in which broadcasts or transmissions substantially intended for the Primary Territory may be received.
- f. **Rights to Prepare and Exploit Derivative Works.** Without in any way limiting the generality of Subsections a. b. c. and d. of this Section 18 Lottery shall own, solely and exclusively, throughout the term of this Agreement and any resulting WOC, the right to prepare and exploit derivative works based on or derived from the Advertisement, and Contractor shall ensure that all such derivative works will be fully cleared for exploitation in the same manner as the Advertisement is cleared pursuant to Section 18. e. above.

19. Disposition of Property and Materials.

Contractor understands and agrees that Lottery shall own all property and materials developed under each and every WOC, as set forth in Section 18, Ownership of Work Product. Contractor shall return all property and materials to Lottery upon final completion of the Services or as otherwise agreed to in the applicable WOC.

20. Indemnity.

- a. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY LOTTERY AND THE STATE AND THEIR RESPECTIVE AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, SETTLEMENTS, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS' FEES, (COLLECTIVELY, "LOSSES") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT AND EACH WOC.
- b. IN ADDITION, CONTRACTOR, AT ITS OWN EXPENSE, SHALL DEFEND, SAVE HOLD HARMLESS, AND INDMENIFYLOTTERY AND THE STATE, AND THEIR RESPECTIVE AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL LOSSES (INCLUDING ATTORNEYS' FEES) TO THE EXTENT THAT SUCH LOSS OR LOSSES (i) ARISE OUT OF OR ARE RELATED TO THE FURNISHING OR PERFORMANCE OF THE CONTRACTOR INTELLECTUAL PROPERTY OR THIRD PARTY INTELLECTUAL PROPERTY, OR BOTH; OR (ii) BASED UPON A CLAIM THAT EITHER THE CONTRACTOR INTELLECTUAL PROPERTY OR THIRD PARTY INTELLECTUAL PROPERTY, OR BOTH, USED HEREUNDER INFRINGES OR VIOLATES ANY PATENTS, COPYRIGHTS, TRADE SECRETS, LICENSES, OR OTHER PROPERTY RIGHTS OF ANY THIRD PARTY.

- c. PROVIDED, HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE PRIOR WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTEREST OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT (i) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (ii) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES AND AGENTS; (iii) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (iv) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (i) AND (ii) IN THE FOREGOING SENTENCE.

21. Insurance Requirements.

Without limiting any liabilities or any other obligations of the Contractor, the Contractor shall provide and maintain, at its own expense during the term of this Agreement and each WOC, the minimum insurance listed below in this Section with insurers that are acceptable to Lottery. In the event Lottery determines, in its reasonable discretion, additional types or coverage limits, or both, are required to be obtained, Lottery shall notify Contractor, in accordance with Section 36 below, of such requirement and Contractor shall obtain such insurance within the period of time identified in Lottery's notice.

- a. **Workers' Compensation.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.
- b. **Commercial / General Liability.** Contractor's Commercial General Liability insurance shall cover Bodily Injury, Death and Property Damage and shall include contractual liability coverage for Contractor's indemnity obligations. Contractor's Commercial General Liability insurance shall provide for amounts of coverage not less than the following:

Bodily Injury/Death:

Per occurrence limit for any single claimant: \$1,000,000.

Per occurrence limit for multiple claimants: \$3,000,000.

Property Damage:

Per occurrence limit for any single claimant: \$100,000.

Per occurrence limit for multiple claimants: \$500,000.

- c. **Professional Liability.** Contractor's Professional Liability insurance shall cover damages caused by errors, omissions or negligent acts related to the professional services to be provided under this Agreement and each WOC, including, without limitation, errors and omissions that result in liability imposed by law or assumed under contract for libel, slander, defamation, infringement of copyright, piracy, or invasion of privacy committed by the Advertisement, publication, broadcast or telecast of Advertisements, collateral materials, outdoor advertising displays, print Advertisements, media Services or merchandising items

produced by Contractor under this Agreement and each WOC . Contractor's Professional Liability insurance shall provide for amounts of coverage not less than the following:

Per occurrence limit for any single claimant: \$1,000,000.

Per occurrence limit for multiple claimants: \$3,000,000.

- d. Automobile Liability.** Contractor's Automobile Liability insurance shall provide for amounts of coverage for a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Additional Insureds.** Each of the insurance policies that Contractor obtains pursuant to this Section shall provide that the State of Oregon, Lottery and their divisions, officers and employees are additional insureds under the policy, but only with respect to the Services that Contractor will provide under this Agreement and each WOC.
- f. Certificates of Insurance.** As evidence of the insurance coverage required under this Agreement, Contractor shall promptly furnish acceptable insurance certificates to Lottery after execution of this Agreement, prior to commencing any Services under a WOC, and within seven (7) Business Days of Lottery's request, which may be made from time to time. The certificates must specify all of the parties who are additional insureds and shall indicate all deductible amounts or retention's for all self-insurance. Insuring companies shall be authorized to sell insurance in the State of Oregon. Contractor shall be financially responsible for all pertinent deductibles, self-insured retention, and self-insurance.
- g. Cancellation / Change.** Contractor shall not, and shall cause its insurers to not cancel, materially change, reduce limits, or evidence intent not to renew the insurance coverage(s) without 30 Days prior written notice from the Contractor or its insurer(s) to the Oregon State Lottery Commission. Failure on the part of the Contractor to procure or maintain required insurance shall constitute a material breach of this WOC.

22. Events of Default by Contractor. Contractor shall be in default under this Agreement or a WOC, or both, if Contractor:

- a.** Institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 Calendar Days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- b.** No longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within 15 Business Days after Contractor's receipt of Lottery's notice to cure or such shorter period as Lottery may specify in such notice;
- c.** Commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement, and such breach or default is not cured, within 15 Business Days after Contractor's receipt of Lottery's notice to cure, or such shorter or longer period of time as Lottery may specify in such notice;
- d.** Clearly manifests an intent not to perform future obligations under this Agreement or a WOC, or both, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance, within 15 Business Days after receipt of Lottery's notice to cure, or such shorter or longer period of time as Lottery may specify in such notice

- e. Fails to perform the Services under this Agreement or a WOC in conformance with the specifications and warranties provided in the Agreement or WOC, or both, and such breach or default is not cured within 15 Business Days after receipt of Lottery's notice to cure, or such shorter or longer period as Lottery may specify in such notice;
- f. Any other event or circumstance occurs that is described in the Agreement or a WOC, or both, as a Contractor default under this Agreement or a WOC, or both and such breach or default is not cured within 15 Business Days after receipt of Lottery's notice to cure, or such shorter or longer period as Lottery
- g. If any control person, as defined in ORS 461.410, of Contractor is convicted of any crime; or may specify in such notice;
- h. All notices to cure delivered under this Section shall be deemed received in accordance with Section 36 below.

23. Events of Default by Lottery. Lottery shall be in default under this Agreement or a WOC, or both, if Lottery:

- a. Commits any material breach or default of any covenant, warranty, or obligation under this Agreement or a WOC and Lottery fails to cure such failure within 30 Business Days after Lottery's receipt of Contractor's notice to cure or such longer period as Contractor may specify in such notice;
- b. Fails to perform its commitments hereunder within the time specified or any extension thereof, and Lottery fails to cure such failure within 30 Business Days after Lottery's receipt of Contractor's notice to cure or such longer period as Contractor may specify in such notice; or
- c. Fails to pay Contractor any amount pursuant to the terms of this Agreement or a WOC, or both, and such failure is not cured within 15 Business Days after Lottery's receipt of Contractor's notice to cure or such longer period as Contractor may specify in such notice.
- d. All notices to cure delivered under this Section shall be deemed received in accordance with Section 36 below.

24. Lottery's Remedies for Contractor Default. In the event Contractor is in default under this Agreement or under a WOC, Lottery shall have the right, at its option, to pursue any or all of the remedies available to it under this Agreement or a WOC, or both, as well as at law or in equity, which include, without limitation:

- a. Termination of this Agreement or one or more WOCs, or both in accordance with Sections 22 and 26 of this Agreement;
- b. Withholding all monies due for Services that Contractor is obligated but has failed to perform, notwithstanding Contractor's receipt of Lottery's notice to cure 15 Business Days prior to Lottery exercising its right to withhold such monies;
- c. Exercise its rights of setoff of any amounts invoiced and due to Contractor under this Agreement or any WOC, against any amounts Contractor may owe Lottery or the State;
- d. Lottery's return to Contractor of Deliverables for which Lottery has paid before acceptance in exchange for Contractor's return to Lottery of all moneys previously paid for such Deliverables and the Services

related thereto; and

- e. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief.
- f. All Lottery remedies are cumulative to the extent the remedies are not inconsistent, and Lottery may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default, the rights and obligations of Lottery and Contractor shall be the same as if the Agreement or WOC, or both, as applicable, was terminated pursuant to Section 26.b. Lottery's Right to Terminate for Convenience.

25. Contractor's Remedies for Lottery Default.

In the event Lottery is in default under this Agreement under Section 23 above, Contractor's sole and exclusive remedy shall be termination of this Agreement. In the event Contractor terminates a WOC as set forth therein or as set forth in Section 23 above, and regardless of whether Contractor elects to exercise its right to terminate such WOC, Contractor's sole monetary remedy shall be a claim for submitted, unpaid invoices as well as for authorized expenses incurred, Services performed, and any Deliverables delivered and accepted but not yet invoiced. For Services performed and Deliverables delivered, Contractor may claim the percentage of Services completed up to the NTE amount for the Services, or applicable Deliverable, and the amounts owing for each delivered and accepted Deliverable but not yet invoiced as agreed to in the applicable WOC. All such amounts claimed by Contractor shall be less: (i) previous amounts paid by Lottery and (ii) amounts claimed by Lottery against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Lottery within 5 Business Days of Contractor's receipt of Lottery's written demand.

26. Termination.

- a. **Parties' Right to Terminate for Mutual Consent.** This Agreement or a WOC, or both, may be terminated at any time by mutual written consent of the Parties.
- b. **Lottery's Right to Terminate for Convenience.** Lottery may, at its sole discretion, terminate this Agreement or any WOC, or both, in whole or in part, upon 30 Days written notice to Contractor.
- c. **Lottery's Right to Terminate for Cause.** Lottery may terminate this Agreement or any WOC, or both, as applicable, and as follows:
 - i. Immediately or at such later date as may be established in such notice, if:
 - A. Lottery funding from sales sources is not obtained and continued at levels sufficient to allow for compensation for the Services, in Lottery's sole administrative discretion, the Agreement may be modified to accommodate a reduction in funds;
 - B. Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Agreement;
 - C. The State enacts a statute, a court decision is issued, or an initiative passes that removes the authority or ability of Lottery to conduct lottery games; or

- D. If Contractor is in default under Section 22.a. (bankruptcy) of this Agreement; or
 - E. If Contractor is in default under Section 22.g. (conviction of a control person) of this Agreement.
- ii. Within the time period identified in a notice to cure delivered to Contractor under Section 22.b.-f.

d. Contractor's Right to Terminate for Cause.

Contractor may terminate this Agreement or a WOC, as applicable, in the time period identified in the applicable notice to cure delivered by Contractor to Lottery under Sections 23 and 25 of this Agreement.

e. Contractor's Tender Upon Termination.

Upon receiving a notice of termination of this Agreement or a WOC, Contractor shall immediately cease all activities under the Agreement or applicable WOC, or both, unless Lottery expressly directs otherwise in such notice of termination. Contractor shall, in accordance with the instructions in such notice of termination, deliver to Lottery all documents, information, works-in-progress, and other property that are or would be Deliverables had Contractor completed all Services agreed to under this Agreement or the applicable WOC. Contractor shall also, in accordance with any request made by Lottery, surrender to anyone Lottery designates, all documents, research or objects or other tangible things required to complete the Services.

27. Records Maintenance; Access.

Contractor shall maintain all fiscal records relating to the subject matter of this Agreement and all WOCs and Contractor's performance related to the Agreement and all WOCs, in accordance with Generally Accepted Accounting Principles. In addition, Contractor shall maintain any other records pertinent to this Agreement and all WOCs in such a manner as to clearly document Contractor's performance of its duties under this Agreement and each WOC. Contractor acknowledges and agrees that Lottery and the Oregon Secretary of State's Office, the Oregon Department of Revenue, the Oregon Department of Justice and their duly authorized representatives shall have access to such fiscal and other records as well as all other books, documents, papers, plans and writings of Contractor that are pertinent to this Agreement and all WOCs (collectively, "Records") and have the right to perform examinations and audits and make excerpts and transcripts of all or any part of such Records. Contractor shall retain and keep accessible all such Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination or expiration of both this Agreement and all WOCs entered into under this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to both this Agreement and all WOCs, whichever date (expiration/termination or audit/controversy/litigation) is later.

28. Acceptance Process for Deliverables.

Contractor shall provide written notice by email to Lottery upon completion of each Deliverable delivered under a WOC. In accordance with the delivery schedule listed in the Statement of Work of a WOC, Lottery shall perform necessary reviews to determine whether the Deliverables meet the specifications and performance standards set forth in this Agreement, and if applicable, those identified in a WOC.

If, after review, Lottery determines that the Deliverables meet the specifications and performance standards, then Lottery shall notify Contractor via email of Lottery's acceptance.

If after review, Lottery determines that the Deliverables do not meet the specifications or performance standards set forth in this Agreement, and if applicable, those identified in a WOC, then Lottery shall notify Contractor via email of Lottery's non-acceptance. Upon receipt of notice of non-acceptance, Contractor shall, within ten (10) Business Days, modify or improve the Deliverables at Contractor's sole expense in a manner that meets such specifications or performance standards. Lottery shall thereafter review the revised Deliverables within a ten (10) Business Day period. This process may be an iterative process. Failure of the Deliverables to meet the applicable specifications and performance standards after the second review may constitute a default by Contractor. Upon such default, Lottery may either (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverable or Service in accordance with this Agreement and the applicable WOC, or (ii) notify Contractor of such default and either (A) identify the method and means by which Contractor shall cure such default, or (B) identify another means of remedy as identified in this Agreement or the applicable WOC. In such case, Contractor shall comply with Lottery's notice. Any and all notices of Default shall be delivered to Contractor in accordance with Section 36 of this Agreement.

29. Amendments; Waiver.

- a. Except as expressly provided otherwise in this Agreement, this Agreement may be amended, modified, or supplemented only by a written amendment signed by the Authorized Representatives of Lottery and Contractor and, if required by applicable law, has been approved by the Oregon Department of Justice. Any amendment that provides for additional Services may only provide for Services directly related to the scope of Services described in the Agreement, and no amendment shall be effective until all requisite approvals are obtained in writing and any other requisite signatures have been obtained.
- b. A WOC may be amended, modified, or supplemented only by a written amendment signed by the Authorized Representatives of Lottery and Contractor and, if required by applicable law, has been approved by the Oregon Department of Justice.
- c. The failure of a Party to enforce any provision of this Agreement or a WOC or the waiver of any violation or nonperformance of this Agreement or a WOC in one instance shall not constitute a waiver by the Party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement or a WOC shall bind a Party unless agreed to in an Amendment made in accordance with Section 29.a. or 29.b, as applicable. Any such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given in any such Amendment.

30. Working with other Lottery Contractors.

Contractor understands and agrees that, as part of this Agreement and all WOCs, Contractor may be required to work with other Lottery contractors who may be working on similar or other projects. Lottery and Contractor acknowledge and agree that this cooperation is essential to each Party meeting its respective obligations under this Agreement and each WOC. In the event of a conflict between contractors who must cooperate, Contractor shall notify the Lottery's Contract Administrator and abide by the Lottery's direction(s).

31. Compliance with Applicable Law.

Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to its performance under this Agreement and each WOC. Contractor expressly agrees to at all times

during the Term of this Agreement and each WOC to comply with Title VI of the Civil Rights Act of 1964, with section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations with the Americans with Disabilities Act of 1990 (Pub L. No. 101-336), including Title II of that Act, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor shall also comply with the Oregon Lottery Act, ORS Chapter 461, as it may be amended from time to time, and Lottery's Administrative Rules, OAR Chapter 177, as they may be amended from time to time.

32. Foreign Contractor.

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to a WOC.

33. Force Majeure.

Neither Lottery nor Contractor shall be held responsible for delay or default caused by riot, acts of God, terrorism, war, fire, earthquake, flood or any other similar natural disaster which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement and a WOC. Lottery may terminate this Agreement or a WOC, or both, upon written notice to Contractor after it determines that such delay or default will likely prevent successful performance under this Agreement or a WOC, or both.

34. Survival.

All rights and obligations under a WOC or this Agreement shall cease upon termination or expiration of, respectively, the WOC or this Agreement, except for the rights and obligations and declarations set forth in Sections 1-9, 12, 13.c., 15, 17- 20, 22-27, 29, 34, 36-38, 40, 41 of this Agreement. Expiration or Termination of a WOC or this Agreement shall not extinguish or prejudice Lottery's right to enforce a WOC or this Agreement with respect to any default by Contractor that has not been cured.

35. Time is of the Essence.

Contractor agrees that time is of the essence in its performance under each WOC.

36. Notice; Authorized Representatives.

a. Except as otherwise expressly provided in this Agreement or a WOC, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, U.S. mail, or commercial carrier, to Contractor or Lottery at the address or number set forth below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent shall be deemed to be received as follows: (a) via U.S. Mail - on the fifth Business Day after the day such notice has been placed in the mailbox, (b) via commercial carrier –on the second Business Day after the day such notice has been placed with the commercial carrier, and (c) via personal delivery – upon actual receipt by the Authorized Representative of the receiving party.

b. For purposes of this Agreement, the Authorized Representatives are set forth below in this Subsection

36.b. Notwithstanding the foregoing, additional or substitute Authorized Representatives and the scope of authority of such additional or substitute Authorized Representatives may be identified in a WOC.

Contractor Authorized Representative:

Lottery Authorized Representative:

Oregon State Lottery
500 Airport Road SE
Salem, Oregon 97301
Attention: Julie Schmoyer
Phone: 503-540-1284

- c. For notices that are expressly permitted to be delivered via email under this Agreement or in a WOC, such notices shall be delivered to the email addresses listed below unless another email address is expressly agreed to otherwise in a WOC. In no event shall any notice of default or breach be delivered via email.

For Contractor: _____

For Lottery: julie.schmoyer@state.or.us

37. Severability.

The Parties agree that if any term or provision of this Agreement or a WOC is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement or the applicable WOC did not contain the particular term or provision held to be invalid.

38. Counterparts.

This Agreement may be executed in several counterparts, all of which when so executed and taken together shall constitute one original agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

All WOCs may be executed in several counterparts, which when so executed and taken together shall constitute one original WOC, notwithstanding that all parties are not signatories to the same WOC counterpart. Each such WOC, taken together with this Agreement, shall constitute one, original binding Contract.

39. Disclosure of Social Security Number.

Contractor must provide Contractor's Social Security Number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security Numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

40. Governing Law; Venue; Consent to Jurisdiction.

This Agreement and each and every WOC shall be governed by and construed in accordance with the laws of the State without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Contractor and Lottery, and any other agency or department of the State, that arises from or relates to this Agreement and any WOC shall be brought and conducted solely and exclusively within the

Circuit Court of Marion County for the State of Oregon; provided, however, that if a Claim must be brought in a federal forum, then it shall be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. **CONTRACTOR, BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S).** In no event shall this Section be construed as a waiver by Lottery or the State of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

41. Compliance with Tax Laws.

By signature on this Agreement for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and any local taxes administered by the Department of Revenue under ORS 305.620.

42. Contractor Data. As a condition precedent to the effectiveness of this Agreement, Contractor shall provide all information requested below. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to thirty-one percent (31%) backup withholding.

Name (tax filing): _____

Address: _____

Citizenship, if applicable: Non-resident alien Yes:____ No:____

Business Designation (check one):

Corporation:_____ Partnership:_____ Limited Liability Company:_____

Limited Liability Partnership:_____ Sole Proprietorship:_____ Limited Partnership:_____

Federal Tax ID#:_____ **or SSN:** _____

Contractor's Remittance Address: _____

IN WITNESS WHEREOF, this Agreement has been executed by a duly Authorized Representative of _____ and the Oregon State Lottery.

FOR CONTRACTOR

By: _____

Title: _____ Date: _____

FOR LOTTERY

The State of Oregon acting by and through its Oregon State Lottery Commission

By: _____

Authorized Signatory

Title: _____ Date: _____

**EXHIBIT A
To
SAMPLE PRICE AGREEMENT**

PRICING SCHEDULE FOR WORK ORDER CONTRACTS

Lottery shall pay for Services performed by Contractor as set forth in each resulting Work Order Contract according to the pricing specified below under the term of the Agreement.

Final Pricing Schedule to be negotiated between Lottery & Successful Proposer

**EXHIBIT B
To
SAMPLE PRICE AGREEMENT**

Lottery's Branding and Style Guidelines

(See RFP 11362 - Exhibit B)

**EXHIBIT C
To
SAMPLE PRICE AGREEMENT**

**Sample WORK ORDER CONTRACT FORM
(Lottery Media Services Price Agreement)**

Work Order Contract # _____

This Work Order Contract # _____ (“WOC”) is entered into by the State of Oregon (“State”), acting by and through its **Oregon State Lottery Commission** (“Lottery”), and _____, (“Contractor”) and is effective on the date last signed by Lottery and Contractor (“Effective Date”).

RECITALS

- A.** This WOC is entered into pursuant to Price Agreement # _____ (“Agreement”), is subject to the terms and conditions set forth therein, and upon the WOC Effective Date creates a binding contract between Contractor and Lottery (the Agreement together with this WOC, is the “Contract”). The terms and conditions of the Agreement are incorporated by reference as though fully set forth in this WOC. Notwithstanding the foregoing, Lottery and Contractor may amend one or more term or condition, or both, of the Agreement for this WOC only if expressly agreed to in this WOC.
- B.** Except as expressly agreed to in this WOC, all capitalized terms in this WOC shall have the meanings assigned to them in the Agreement.

Therefore, for the purposes of this WOC, the Parties agree as follows:

WOC AGREEMENT

- 1. RECITALS.** The Recitals set forth above are incorporated by reference as though fully set forth in this Section.
- 2. AUTHORIZED REPRESENTATIVES; KEY PERSONNEL.**

| Contractor’s Authorized Representative <small>(Notices under Section 36 of Price Agreement)</small> | Contractor’s Key Personnel | Contractor’s Key Personnel |
|---|-----------------------------------|-----------------------------------|
| [name] | [name] | [name] |
| [title] | [title] | [title] |
| [address] | [address] | [address] |
| [City, state zip] | [City, state zip] | [city, state zip] |
| [phone] | [phone] | [phone] |
| [email] | [email] | [email] |

| Lottery’s Authorized Representative <small>(Notices under Section 36 of Price Agreement)</small> | Lottery’s Project Manager | Lottery’s _____ |
|--|----------------------------------|------------------------|
| Julie Schmoyer | [name] | [name] |

| | | |
|--|-------------------|-------------------|
| Procurement Analyst | [title] | [title] |
| 500 Airport Road SE | [address] | [address] |
| Salem, OR 97301 | [City, state zip] | [city, state zip] |
| 503-540-1284 | [phone] | [phone] |
| Julie.schmoyer@state.or.us | [email] | [email] |

3. EFFECTIVE DATE & DURATION. Unless terminated or extended in accordance with the terms of the Agreement, this WOC ___ will expire on ___ or upon Lottery’s receipt and acceptance of all Services and Deliverables, whichever occurs last.

4. DESCRIPTION OF SERVICES. (general description of project/services required)

- 4.1 Contractor shall deliver _____ (Media Planning and Consulting, Account Management, and Media Buying Services) for Advertisements to promote Lottery’s _____ (“Campaign”) as more fully set forth in Exhibit A, the Statement of Work and the Final Media Authorization.
- 4.2 Contractor shall perform the Services and Deliver the Deliverables in accordance with the schedule set forth in the SOW.
- 4.3 The SOW is incorporated by reference in this WOC as though fully set forth herein.

5. COMPENSATION; PAYMENT SCHEDULE; INVOICING; PAYMENT.

- 5.1 Lottery shall pay Contractor for Services and Deliverables described in this WOC an amount NTE \$ _____ for Media Services, including media expenses by Advertisement and the Lottery-approved Final Media Authorization (which includes Contractor’s fixed commission fee of ___ percent (___%), as more particularly described in this WOC
- 5.2 Contractor may invoice Lottery not more than once each month in accordance with Section 9 of the Agreement following Contractor’s completion and Lottery’s acceptance of each of the Services and Deliverables as such acceptance is made in accordance with Section 28 of the Agreement.
- 5.3 Lottery shall pay Contractor for all Services and Deliverables in accordance with the payment schedule below. Contractor shall provide Services at the prices listed in Exhibit A to the Agreement. Payment for these Services may be divided into Deliverable or milestone payments or for a period of delivery of certain Services as stated below. All invoices and payments shall be made in accordance with this WOC Section B.5 and Section 9 of the Agreement.

Payment Schedule:

- 5.3.1 Net xx (xx) for the initial Lottery approved Final Media Authorization NTE amount; (an amount NTE \$_____).
- 5.3.2 Net thirty (30) Days for the remaining balance of the Lottery approved Final Media Authorization NTE amount; (an amount NTE \$_____).

5.3.3 Upon conclusion of the media run as indicated in the Final Media Authorization, if the total amount paid by Lottery under this WOC is greater than the Final Media Authorization NTE amount, Lottery will submit to Contractor an invoice and Contractor shall reimburse Lottery for the difference between the amount Lottery paid and the Final Media Authorization NTE amount.

6. AMENDMENT: No amendment, waiver, consent, modification, or change to the terms of this WOC shall bind either party unless made in accordance with Section 29 of the Agreement. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given in this WOC.

7. WORK ORDER CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: The following documents are incorporated into this WOC by reference and, in the event of a conflict or inconsistency, will be interpreted in the following order of descending precedence:

- A. This WOC _____, less all exhibits thereto.
- B. Price Agreement # _____, less all exhibits thereto.
- C. Exhibit A, Statement of Work to this WOC.
- D. Exhibit B, Lottery’s Branding and Style Guidelines.
- D. Exhibit A, Pricing Schedule to Price Agreement # _____.

8. CERTIFICATION. By signature on this WOC for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and re-certifies, represents, and warrants all certifications, representations, and warranties made in the Price Agreement as if such certifications, representations, and warranties were originally made as of the date of signature below.

IN WITNESS WHEREOF, this WOC has been executed, as of the date last provided below, by a duly Authorized Representative of _____, and the Oregon State Lottery Commission.

FOR CONTRACTOR: _____

By: _____

Date: _____

Print Name: _____

Title: _____

FOR LOTTERY: The State of Oregon acting by and through its Oregon State Lottery Commission

By: _____

Date: _____

Authorized Signatory

Print Name: _____

Title: _____

(SAMPLE) PRICE AGREEMENT

EXHIBIT A to SAMPLE WORK ORDER CONTRACT FORM

EXHIBIT A
STATEMENT OF WORK to WOC # _____

I. **Services Description.** Contractor shall deliver all Services according to Exhibit XX, Oregon Lottery Branding Guidelines.

Insert specific services and deliverable descriptions here.

II. **Services and Deliverable Schedule.**

| Deliverable No. (if applicable) | Service or Deliverable Description | Service Delivery Dates / Deliverable Due Date |
|------------------------------------|------------------------------------|---|
| | [Kickoff Meeting] | [insert date] |
| | [insert item] | [insert date] |
| | [project closeout] | [insert date] |