



OREGON STATE LOTTERY  
PRICE AGREEMENT #2408

FOR MEDIA PLANNING AND BUYING SERVICES

**It does good things™**

This Price Agreement #2408 ("Agreement") is between the State of Oregon, acting by and through its Oregon State Lottery Commission ("Lottery") and Borders, Perrin & Norrande, Inc., ("Contractor") for Media planning, buying and other related services ("Media Services" or "Services").

The parties hereby agree as follows:

**1. Purpose of Agreement.**

The purpose of the Agreement is to establish the terms and conditions applicable to, and the general form of work order to be used for, contracts entered into between Lottery and Contractor under which Contractor agrees to provide Media Services. This Agreement, by itself, is not a binding contract. Rather, Lottery and Contractor may in the future enter into binding and enforceable contracts for Media Services by execution of a work order document substantially in the form attached hereto as Exhibit B (the "Work Order Contract"), that specifies the particular Media Services to be provided and makes the terms and conditions set forth in Exhibit A of this Agreement applicable to the Work Order Contract. Each executed Work Order Contract creates a separate agreement between Lottery and Contractor, enforceable according to its terms and independent of other Work Order Contracts.

**2. Effective Date and Duration.**

- a. This Agreement is effective on the date this Agreement has been signed by every party hereto ("Effective Date"). Unless terminated or extended, this Agreement expires on June 30, 2015 ("Initial Term"). Expiration shall not extinguish or prejudice Lottery's right to enforce this Agreement with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.
- b. This Agreement may be renewed for additional periods as agreed to by the parties. The maximum term for this Agreement shall not exceed six (6) years from the Effective Date unless deemed in Lottery's best interest as documented by Lottery.

**3. Pricing.**

- a. Contractor's pricing established in Exhibit C is firm for the Initial Term. If the Agreement is extended beyond the Initial Term, the parties may negotiate a price adjustment. Contractor may submit a request for a price adjustment within 60 calendar days prior to expiration of the then-current Agreement year.

- b. Lottery may require Contractor to present acceptable documentation verifying the affected increase. Lottery will determine what constitutes acceptable documentation. The 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.

**4. Definitions.**

In addition to the terms defined in this Agreement, all other capitalized terms used but not defined in this Agreement are defined in OAR 177-036-0000.

**5. Agreement Documents.**

This Agreement consists of the following documents which shall be interpreted in the following order of precedence: (1) the Agreement less exhibits; (2) Exhibit A, Terms and Conditions, (3) Exhibit B, Work Order Contract, (4) Exhibit C, Pricing.

**6. Work Order Contracts.**

- a. This is a non-exclusive Agreement. This Agreement is not a guarantee of future work nor does this Agreement constitute a promise that Lottery will enter into one or more Work Order Contracts with Contractor. Notwithstanding this Agreement, Lottery may contract for Services through any selection procedure authorized by law or to perform the Services itself.
- b. Prior to execution of a Work Order Contract, Contractor and Lottery may negotiate the statement of work for the Work Order Contract, including but not limited to the cost of the Services. Contractor's pricing under any resulting Work Order Contract shall not exceed the pricing set forth in Exhibit C of this Agreement.
- c. Payments to Contractor may be made only for Services performed in accordance with each applicable Work Order Contract.

**7. General Description of Media Services.**

Contractor shall deliver Media Services that support Lottery's integrated campaigns. Contractor's Media Services specified in a Work Order Contract may include, but may not be limited to advertisements for television, radio, print, out-of-home, web marketing and social media, and any other non-traditional advertising, advertisements or marketing outreach effort that Lottery selects to support its campaign.

As requested by Lottery, Contractor shall prepare and deliver to Lottery a detailed plan that describes the media mix for each integrated campaign. Once Lottery delivers its approval, the document becomes the "Media Plan."

Media Services tasks and deliverables may include:

**a. MEDIA PLANNING**

Contractor shall provide Media Planning that promotes Lottery programs or Product(s). Contractor's services with respect to Media Planning may include 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 delivering the objectives; planning presentation including clear review of objectives and strategies; options; audience delivery; budget summary; and flowcharts for the selected Media. Contractor shall be responsible for effectively reaching diverse, multi-cultural audiences.

As part of the Media Planning, Contractor shall provide an estimate of all costs for Lottery's review and consideration ("Media Estimate").

Once all details of the Media Estimates are negotiated and agreed upon by Lottery, Contractor shall prepare and forward as its final fixed costs by selected advertisement(s) (the "Final Media Authorization") to Lottery for its review and final written approval.

The parties 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), and that requested change impacts the Final Media Authorization, Lottery and Contractor may renegotiate the Final Media Authorization and amend the Final Media Authorization 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.

Contractor shall deliver the Final Media Authorization to Lottery. The Final Media Authorization is incorporated by reference into the Work Order Contract.

**b. MEDIA NEGOTIATIONS**

Contractor shall provide media buy negotiations including analysis of audience data; negotiation of rates, positioning; and added value.

**c. MEDIA BUYING**

Contractor's Services with respect to buy execution includes placement of insertion orders; buy presentations including programming detail, audience delivery detail, and run schedules; and 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. This will 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.

**d. TRAFFIC**

Contractor shall provide media with traffic instructions. Contractor will work with creative agencies and/or Lottery staff to obtain physical/electronic materials and traffic to appropriate media outlets.

**e. MEDIA EVALUATIONS/ANALYSIS**

Contractor shall provide the Lottery with post-buy analysis for every campaign. Additionally Contractor shall provide quarterly analysis of all media which addresses effectiveness of the recommended buys.

**f. PERFORMANCE**

Contractor shall attend a mandatory in-person meeting at Lottery's main office in Salem, Oregon, as requested or required by Lottery in any Work Order Contract, to receive its written agency report card from Lottery. Contractor will be evaluated across multiple measures that will address Contractor's budget, timelines, strategic insight, accuracy, and responsiveness during the past six months. This performance review process may be repeated on a regular basis as specified in a Work Order Contract.

**8. Insurance.**

Contractor shall provide insurance coverage throughout the term of this Price Agreement and all Work Order Contracts. The coverage shall be in the types and amounts specified in Exhibit A, Work Order Contract Terms and Conditions, Section 18, Insurance Requirements, in a form and with a surety satisfactory to Lottery.

**9. Termination.**

**a. Parties' Right to Terminate for Mutual Consent**

This Agreement 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, in whole or in part, upon 30 Calendar Days written notice to Contractor.

IN WITNESS WHEREOF, this Agreement has been executed, as of the date provided below, by a duly authorized representative of Borders, Perrin & Norrande, Inc., and the Oregon State Lottery Commission.

**FOR CONTRACTOR**

By: *Lori Gappay*

Title: President

Date: 5.21.13

**FOR LOTTERY**

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

By: *[Signature]*  
Authorized Signatory

Title: DIRECTOR

Date: 6/10/13

**EXHIBIT A**  
**WORK ORDER CONTRACT TERMS AND CONDITIONS**

**1. Non-Exclusive Contract**

Contractor acknowledges its understanding that by executing this Work Order Contract, Lottery is not granting to Contractor the exclusive right to perform the Services, or any other services, for Lottery. Lottery may (i) contract with other entities to provide Lottery with services that are the same or similar to those provided to Contractor under this Work Order Contract; and (ii) perform any or all of the media advertising services itself.

**2. Consideration**

Upon Contractor's satisfactory completion, and Lottery's acceptance of, the deliverable and Services, Lottery agrees to pay Contractor for the deliverables and Services as specified in this Work Order Contract, based on the Pricing established in Exhibit C, Pricing, of the Price Agreement.

**3. Invoicing and Payment**

**a. Submission**

Contractor shall submit invoices according to the payment schedule as set forth in this Work Order Contract. Invoices shall be submitted to: Oregon State Lottery, Attn.: Accounts Payable Dept., PO Box 12649, Salem, OR, 97309; or to Lottery's electronic mail to: [lottery.ap@state.or.us](mailto:lottery.ap@state.or.us).

**b. Payment Terms**

Lottery's standard payment terms are NET 30 days from receipt of an accurate invoice, unless otherwise specified in the Work Order Contract.

**c. Late Charges**

Contractor may assess late payment charges to the extent permitted by ORS 293.462.

**d. Conditions Precedent to Payment.**

As a condition precedent to Lottery's obligation to pay Contractor, Contractor shall, upon execution of this Work Order Contract, deliver to Lottery the applicable Internal Revenue Service form, whether a W-9 form, W-8 form, 8233 form or other similar form, based upon Contractor's status as a United States person, resident alien or nonresident alien, as those terms are defined in 26 USC §7701. These forms are currently available at <http://www.irs.gov>. Lottery may withhold payments to Contractor pending Lottery's receipt from Contractor of the applicable, completed and signed form.

**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).

#### **4. Key Person(s)**

Contractor acknowledges and agrees that a significant reason Lottery selected Contractor and is entering into this Work Order Contract is because of the special qualifications of each certain Key Person. Under this Work Order Contract, Lottery is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Work Order Contract 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 the 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 Work Order Contract and this Work Order Contract shall be deemed amended to include such Key Person.

#### **5. Security Investigation(s); Changes to Approved Persons**

This Work Order Contract has been classified by Lottery as a Sensitive Procurement. Therefore, Contractor shall complete, and shall cause its Control Persons, sub-contractors and employees performing Services to complete, a security background investigation performed by Lottery's Security Section and continually report, during the term of this Work Order Contract, to Lottery's Security Section, pursuant to OAR 177-037. This investigation may include, but may not be limited to, the completion of forms that will be provided by Lottery and a finger-print background investigation.

Additionally, Contractor shall comply, and shall cause the aforementioned individuals who have successfully completed the initial security background investigation performed by Lottery's Security Section to comply, with all continuing disclosure obligations pursuant to OAR 177-037.

Within ten (10) Business Days following a change in duties, reassignment or other disengagement from Services, Contractor shall notify Lottery of such changes, reassignments and other disengagements for Key Persons, sub-contractors and employees who have previously completed security background investigation requirements and have been approved by Lottery to perform Services. Changes, reassignments and other disengagements included, but are not limited to: removal of an approved individual from performing Services; termination of employment with Contractor; proposed assignment to Services of Contractor or sub-Contractor personnel who have not yet successfully completed an initial security background investigation performed by Lottery's Security Section and been approved by Lottery to perform Services.

## **6. 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 Work Order Contract, 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 Work Order Contract shall be deemed to be confidential information of Lottery ("Confidential Information"). Any reports or other documents or items which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is furnished by Lottery to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Work Order Contract; or (d) 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, 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 hereunder, and to advise each of its employees and agents 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 Work Order Contract 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 Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Work Order Contract 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 6, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to Lottery inadequately compensable in damages. Accordingly, Lottery may seek and obtain injunctive relief against the 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 employees and agents who are performing Work, and providing copies of such agreements to Lottery.

**7. 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 Work Order Contract declares and certifies that: Contractor's Services to be performed under this Work Order Contract 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 Work Order Contract. If applicable, Contractor meets the specific independent contractor standards of ORS 670.600. 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 Work Order Contract 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 this Work Order Contract, except as a self-employed individual.



**8. Subcontracts and Assignment; Successors and Assigns.**

- a. Contractor may enter into any subcontracts for any of the Services required by this Work Order Contract; however, Contractor shall not assign or transfer any of its interest in this Work Order Contract without Lottery's prior written consent. In addition to any other provisions Lottery may require, Contractor shall include in any permitted subcontracts under this Work Order Contract a requirement that the subcontractor be bound by Sections 5, 6, 8, 9, 11, 12, 14, 17, 20, 29, and 30 of this Work Order Contract 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 Work Order Contract.
- b. The provisions of this Work Order Contract are binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

**9. Intended Beneficiaries**

Lottery and Contractor are the only parties to this Work Order Contract and are the only parties entitled to enforce its terms. Nothing in this Work Order Contract 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 herein and expressly described as intended beneficiaries of the terms of this Work Order Contract.

**10. Lottery's Funding Limitation**

Article XV, section 4(4)(d) of the Oregon Constitution provides that Lottery is a self-supporting, revenue-raising agency and that no appropriations, loans, or other transfers of state funds shall be made to it. Accordingly, all amounts payable by Lottery under this Work Order Contract are the sole responsibility of Lottery, and not the State, and are payable only from: (1) Revenues received by Lottery from lottery games; and (2) other miscellaneous revenues generated by Lottery. Lottery certifies that, as of the effective date of this Work Order Contract, sufficient funds are available and authorized for expenditure to finance the costs of this Work Order Contract within Lottery's current financial plan. Notwithstanding this certification, Lottery's payments under this Work Order Contract, together with all of Lottery's other obligations incurred under ORS 461.510(4), are limited by Article XV, section 4(4)(d) of the Oregon Constitution and ORS 461.500(2). If Lottery's authority or ability to conduct lottery games is removed or diminished, or if Lottery reasonably determines that expending the amounts payable by Lottery under this Work Order Contract would be in violation of the 16% (sixteen percent) limitation under ORS 461.500(2), Lottery may terminate this Work Order Contract.

**11. Representations and Warranties.**

- a. Contractor's General Representations and Warranties. Contractor represents and warrants to Lottery that:
  - i. Contractor fully understands and shall perform its obligations under this Work Order Contract and shall not make any claims for, or have any rights to relief based on its claim that it misunderstood the terms of this Work Order Contract, or lacked information related to its required performance under this Work Order Contract;
  - ii. 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;

- iii. 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 Work Order Contract;
- iv. Contractor shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Work Order Contract;
- v. Contractor shall procure, at its own expense, all required licenses, certifications, permits, and governmental approvals necessary to perform its obligations under this Work Order Contract.
- vi. Contractor has the power and authority to enter into and perform this Work Order Contract;
- vii. This Work Order Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- viii. The Services under this Work Order Contract must be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
- ix. Contractor shall, at all times during the term of this Work Order Contract, 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 12 includes Contractor Intellectual Property as defined in Section 12, 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 authorized 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 authorized to grant Lottery the exclusive right and license to market, promote and distribute the Contractor Intellectual Property throughout the term of this Work Order Contract; 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.

## 12. Ownership of Work Product

### a. Definitions

As used in this Section 12, and elsewhere in this Work Order Contract, 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 Works

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.

### c. Contractor Intellectual Property

In the event that Work Product contains 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, and to authorize others to do the same on Lottery's behalf.

### d. Third Party Intellectual Property

In the event that Work Product created by Contractor under this Work Order Contract 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 Third Party Intellectual Property, and to authorize others to do the same on Lottery's behalf.

e. **Clearance of Distribution Rights**

Contractor shall ensure that upon delivery and throughout the term of this Work Order Contract, each selected advertisement is fully cleared for reproduction, distribution, broadcast exhibition, or public performance, and that all publicity releases are acquired, throughout the "Territory," in all broadcast television media (including without limitation all forms of terrestrial, satellite 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. **Limitations on Use of Intellectual Property**

Lottery and Contractor each acknowledge that:

- i. the Intellectual Property of the other party and of any Third Parties and all the rights therein, including Lottery's rights in the Work Product, have great value; and
  - ii. each party is the sole and exclusive owner of its Intellectual Property; and no party shall acquire any rights in the other Party's Intellectual Property or any Third Party Intellectual Property, other than as expressly set forth in this Work Order Contract; and
  - iii. no party shall directly or indirectly during the term of the Agreement or this Work Order Contract or thereafter contest the validity of the other party's rights in its Intellectual Property or apply any registration of any copyright, patent or trademark or other designation, or take any action which would adversely affect the Intellectual Property owner's use of, or right in and to its Intellectual Property, or aid or abet anyone else in doing so; and
  - iv. no party will use or authorize the use of any trademark, trade name or other designation identical with or confusingly similar to the Intellectual Property, or manufacture, distribute, offer for sale, advertise or promote any article, using in connection therewith any words or symbols or combinations thereof which are identical with or confusingly similar to any element of any other party's Intellectual Property, whether or not such element has been protected by the patent, copyright, or trademark laws; and
  - v. each party shall notify the other if it learns of any unauthorized use; and
  - vi. Subject to the provisions of this Work Order Contract, each party shall cooperate with the other party in the prosecution and defense of the Party's Intellectual Property, to prevent or stop the use thereof by any unauthorized person, firm or corporation, if related to this Agreement or any Work Order Contract, provided, however, that nothing in the foregoing obligates Lottery to become a party to any associated process or litigation.
- g. **Contractor's Limited License Rights.** Lottery grants to Contractor the right to create derivative works of the Work Product created under this Contract solely for use as non-commercial, not for sale, representative examples in Contractor's artistic portfolio, unless otherwise stated in the Work Order Contract.

### **13. Talent Usage and Renewal.**

In the event that the Work Product for this Work Order Contract includes Talent, Contractor shall prepare and submit to Lottery, an advance 30-day notification, that includes a detailed written list of the person(s) or thing(s) ("Talent") for each selected advertisement that may require renewal ("Talent Renewal"). The Talent Renewal notification must, at a minimum, include the following information:

- a. Talent Name or Description;
- b. Campaign Title;
- c. Length of renewal period(s) and associated cost; and
- d. Any other relevant information Lottery may request to make an informed decision associated with the Talent Usage Renewals.

Contractor shall deliver the Talent Renewal notification, by email, to Lottery's Marketing Communication Manager for review.

From the Talent Renewal list, Lottery shall provide written notification to Contractor of the approved Talent Renewals, the renewal period, and the associated cost for each Product Advertising advertisement. Lottery's written approval shall be final notice to Contractor to proceed with the Talent Renewals.

Contractor shall enter and administer all third party agreements for such Talent Renewals, which also are subject to the same terms and conditions as specified in the Agreement.

### **14. Disposition of Property and Materials**

Contractor understands and agrees that Lottery shall own all property and materials developed under this Work Order Contract, as set forth in Section 12, Ownership of Work Product. Contractor shall return all property and materials to Lottery upon final completion of the Services or as otherwise defined in the Work Order Contract.

### **15. Acceptance of Deliverables**

Contractor shall provide written notice by email, or through delivery of written deliverable to Lottery upon completion of the deliverables and associated Work Product. In accordance with the Delivery Schedule in the Work Order Contract, Lottery shall perform necessary reviews to determine whether the deliverables and associated Work Product meet the specifications and performance standards set forth in this Work Order Contract.

If the reviews determine that the deliverables and associated Work Product meet the specifications and performance standards, then Lottery shall notify Contractor of Lottery's acceptance.

If the reviews determine that the deliverables and associated Work Product do not meet the specifications or performance standards, then Lottery shall notify Contractor of Lottery's non-acceptance. Upon receipt of notice of non-acceptance, Contractor shall, within ten (10) Business Days, modify or improve the deliverables and associated Work Product at Contractor's sole expense to ensure that the deliverables and associated Work Product meet such specifications or performance standards. Lottery shall thereafter review of the revised deliverables and associated Work Product within a ten (10) Business Day period. This process may be an iterative process. Failure of the deliverables and associated Work Product to meet the specifications and performance standards after the second review may constitute a default by Contractor, if Lottery

chooses not to allow Contractor any further attempts to correct. Upon such default, Contractor shall refund to Lottery all amounts paid by Lottery for Services related to such deliverables and associated Work Product, if any. Such refund shall be in addition to, and not in lieu of, any other remedies Lottery may have for Contractor's default.

#### 16. Working with other Lottery Contractors

Contractor understands and agrees that, as part of this Work Order Contract, Contractor may be required to work with other Lottery contractors who may be working on similar projects. Lottery and Contractor acknowledge and agree that this cooperation is essential to the mutual goal of both parties for accurate and valuable use by Lottery.

In the event of a conflict between contractors who must cooperate, Contractors shall notify the Lottery's Contract Administrator and abide by Lottery's direction(s).

#### 17. Indemnity

- a. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY THE LOTTERY AND THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THE WORK ORDER CONTRACT.
- b. IN ADDITION, CONTRACTOR, AT ITS OWN EXPENSE, SHALL SAVE, INDEMNIFY, AND HOLD HARMLESS THE LOTTERY AND THE STATE OF OREGON, AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES AND DEFEND ANY ACTION BROUGHT AGAINST SAME WITH RESPECT TO ANY CLAIM, DEMAND, CAUSE OF ACTION, DEBT, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE EXTENT THAT IT IS (i) ARISING OUT OF 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 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) ABOVE.

## 18. Insurance Requirements

Contractor shall have in effect, and maintain throughout the term of this Work Order Contract, the following insurance:

### 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 shall obtain and maintain, at its own expense, for the duration of this Work Order Contract, Commercial General Liability insurance covering Bodily Injury, Death and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Work Order Contract. Contractor shall provide proof of insurance of not less than the following amounts:

\$1,000,000 each occurrence for bodily injury and property damage  
\$5,000,000 general aggregate

### c. Professional Liability Insurance

Contractor shall obtain and maintain, at its own expense, for the duration of this Work Order Contract, Professional Liability insurance covering damages caused by errors, omissions or negligent acts related to the professional services to be provided under this Work Order Contract. Contractor shall provide proof of insurance of not less than \$2,000,000.

### d. Automobile Liability Insurance

Automobile Liability insurance with a minimum of \$500,000 combined single limit for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

### e. Additional Insureds

The liability insurance policies that Contractor obtains pursuant to this section, except for Professional Liability insurance, 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 Work Order Contract.

### f. Certificates of Insurance.

As evidence of the insurance coverage required under this Work Order Contract, Contractor shall furnish acceptable insurance certificates to Lottery, as requested. 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. Notice of cancellation or 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 calendar days prior written notice from the Contractor or its insurer(s) to the Oregon State Lottery Commission.

**19. Termination.**

**a. Parties' Right to Terminate for Mutual Consent**

This Work Order Contract 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 Work Order Contract, in whole or in part, upon 30 Days written notice to Contractor.

**c. Lottery's Right to Terminate for Cause**

Lottery may terminate this Work Order Contract, immediately upon notice to Contractor, or at such later date as Lottery may establish in such notice, upon the occurrence of any of the following events:

- i. If 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;
- ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services is no longer allowable or appropriate for purchase under this Agreement;
- iii. If the State of Oregon enacts a statute, a court decision is issued, or an initiative passes that removes the authority or ability of Lottery to conduct lottery games;
- iv. If any license or certificate required by law or regulations to be held by the Contractor to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed;
- v. If any control person, as defined in ORS 461.410, of Contractor is convicted of any crime;
- vi. If the Lottery discovers that Contractor is in default for the payment of taxes or any other amount owed to a government entity; or
- vii. Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Work Order Contract, fails to perform the Services under this Work Order Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within ten (10) Business Days after delivery of Lottery's notice, or such longer period as Lottery may specify in such notice.



**d. Contractor's Right to Terminate for Cause**

Contractor may terminate this Work Order Contract upon thirty (30) Days written notice of intent to terminate to Lottery if Lottery fails to pay Contractor pursuant to the terms of this Work Order Contract and Lottery fails to cure within ten (10) Business Days after receipt of Contractor's written notice, or such longer period of cure as Contractor may specify in such notice.

**e. Remedies.**

- i. In the event of Work Order Contract termination pursuant to Section 19(a), (b), (c)(i), (c)(ii), (c)(iii) or (d), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Lottery, less previous amounts paid and any claim(s) which Lottery has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Subsection, Contractor shall immediately pay any excess to Lottery upon demand.
- ii. In the event of termination pursuant to Section 19(c)(iv), (c)(v), (c)(vi) or (c)(vii), Lottery shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under 19(c)(iv), (c)(v), (c)(vi), or (c)(vii), the rights and obligations of the parties shall be the same as if the Agreement was terminated pursuant to Section 19(b).

**f. Contractor's Tender Upon Termination**

Upon receiving a notice of termination of this Work Order Contract, Contractor shall immediately cease all activities under this Work Order Contract unless Lottery expressly directs otherwise in such notice of termination. Upon termination of this Work Order Contract, Contractor shall deliver to Lottery all documents, information, works-in-progress, and other property that are or would be deliverables had this Work Order Contract been completed. Upon Lottery's request, Contractor shall surrender to anyone Lottery designates, all documents, research or objects or other tangible things required to complete the Services.

**20. Records Maintenance; Access**

Contractor shall maintain all fiscal records relating to the subject matter of this Work Order Contract and Contractor's performance hereunder, in accordance with Generally Accepted Accounting Principles. In addition, Contractor shall maintain any other records pertinent to this Work Order Contract in such a manner as to clearly document Contractor's performance of its duties under this and any resulting Work Order Contract. 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 records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Work Order Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination or expiration of this Work Order Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Work Order Contract, whichever date is later.

**21. Compliance with Applicable Law**

Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Work Order Contract and the Services provided hereunder. Contractor expressly agrees 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.

**22. 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 this Work Order Contract.

**23. Force Majeure**

Neither Lottery nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorism, war or any other like cause 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 Work Order Contract. Lottery may terminate this Work Order Contract upon written notice to Contractor after it determines that such delay or default will likely prevent successful performance of this Work Order Contract.

**24. Survival**

Any terms of this Work Order Contract which by their nature are intended to survive termination or expiration, and Sections 5, 6, 8, 9, 11, 12, 17, 20, 21, 30, and 31 of this Exhibit A, shall survive Work Order Contract termination or expiration.

**25. Time is of the Essence**

Contractor agrees that time is of the essence in its performance under this Work Order Contract.

**26. Notice**

Except as otherwise expressly provided in this Work Order Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, 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 mailed shall be deemed to be received on the fifth (5th) Business Day after the date of post mark. Any communication or notice delivered by facsimile shall be deemed to be received when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered to the recipient's current address.

**For Contractor:**

Borders, Perrin & Norrande, Inc.  
118 SW First Avenue  
Portland, Oregon 97204  
Attn: Lorelee Stapleton  
Phone: 503-417-8205  
Email: [lstapleton@bpninc.com](mailto:lstapleton@bpninc.com)

**For Lottery:**

Oregon State Lottery  
500 Airport Road SE  
Salem, Oregon 97309  
Attention: Barbara Hall  
Phone: 503-540-1337  
Email: [Barbara.hall@state.or.us](mailto:Barbara.hall@state.or.us)

**27. Severability**

The parties agree that if any term or provision of this Work Order Contract 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 Work Order Contract did not contain the particular term or provision held to be invalid.

**28. Counterparts**

This Work Order Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Work Order Contract so executed shall constitute an original.

**29. 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.

**30. Governing Law; Venue; Consent to Jurisdiction**

This Work Order Contract shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Lottery (and any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Work Order Contract 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 WORK ORDER CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S).** In no event shall this Section be construed as a waiver by the State of Oregon 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.

**31. Compliance with Tax Laws**

The individual signing on behalf of Contractor hereby certifies under penalty of perjury that s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is 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 the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

**32. Merger Clause; Waiver, Amendment**

This Work Order Contract, and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Work Order Contract. No waiver, consent, modification or change to the terms of this Work Order Contract shall bind either party unless in writing and signed by all parties and all approvals required by law have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Lottery to enforce any provision of this Work Order Contract shall not constitute a waiver by Lottery of that or any other provision.

EXHIBIT B  
OREGON LOTTERY  
WORK ORDER CONTRACT  
FOR MEDIA SERVICES

("CAMPAIGN NAME OR OTHER")

WORK ORDER CONTRACT # \_\_\_\_\_

This Work Order Contract ("WOC") # \_\_\_\_\_ is issued pursuant to Price Agreement # \_\_\_\_\_ for \_\_\_\_\_ Services ("Agreement") entered into between the State of Oregon, acting through its Oregon State Lottery Commission ("Lottery"), and \_\_\_\_\_, ("Contractor").

**I. DESCRIPTION OF SERVICES: (General description of Project/Services required)**

**II. EFFECTIVE DATE & DURATION:**

This WOC is effective on the date this WOC has been signed by every party hereto, and when required, approval by the Department of Justice ("Effective Date"). Unless terminated or extended, this WOC will expire upon receipt and acceptance of all Services and Deliverables or on \_\_\_\_\_, 201\_, whichever is later.

Expiration shall not extinguish or prejudice Lottery's right to enforce this WOC with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

**III. COMPENSATION:**

Lottery shall pay for the Services performed by Contractor and as set forth in this WOC # \_\_\_\_\_ as follows:

- a. The maximum compensation for the Services performed under this WOC # \_\_\_\_\_, is \$ \_\_\_\_\_.

**IV. PAYMENT SCHEDULE**

**V. STATEMENT OF WORK:  
(including Tasks & Deliverables)**

**VI. SCHEDULE:**

**VII. AMENDMENT:**

No waiver, consent, modification or change to the terms of this WOC # \_\_\_\_\_ shall bind either party unless in writing and signed by both parties and all approvals by law have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

**VIII. 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 precedence:

- a. This WOC
- b. Agreement # \_\_\_\_\_, Exhibit A, Terms & Conditions

- c. Agreement # \_\_\_\_\_, Exhibit C, Pricing
- d. Agreement # \_\_\_\_\_.

IN WITNESS WHEREOF, this WOC # \_\_\_\_\_ has been executed, as of the date provided below, by a duly authorized representative of \_\_\_\_\_, and the Oregon State Lottery Commission.

**FOR CONTRACTOR**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR LOTTERY**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_

**AGREEMENT  
EXHIBIT C  
WORK ORDER CONTRACT PRICING**

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:

- I. Media Services. Lottery shall pay Contractor for Services according to the following payment methodology.

For the Effective Date through the Initial Term, unless otherwise specified.

- A. Strategic Planning/Account Management Services. Lottery shall pay Contractor monthly for Contractor's on-going Strategic Planning and monthly account management Services specified under a Work Order Contract paid in accordance with Lottery's standard payment terms of Net 30 calendar days following receipt of Contractor's accurate invoice, in accordance with Exhibit C, Section I.C.2 .
- B. For Media Planning, Media Buying, or Combined Media Services under a Work Order Contract, the commission percentages are as follows:
1. If Lottery's proposed annual Media budget up to \$3,000,000 but more than \$5,000,000 the commission fee is 8%.
  2. If Lottery's proposed annual Media budget is over \$5,000,000 and up to \$7,999,999, the commission fee is 7%.
  3. If Lottery's proposed annual Media budget is over \$8,000,000, the commission fee is 5%.
  4. For the commission fees specified in Section I.B1 and Section I.B.2, if the starting proposed Media Budget reaches or exceeds the next budget milestone, Contractor's fee shall be adjusted to the next-lower commission fee.
- C. For Services under a Work Order Contract that involve negotiated pricing pursuant to Section VI.b., of the Agreement, Lottery shall pay Contractor according to one of the following payment methodologies:
1. By Contractor's Blended Hourly Rate, \$140 per hour.
  2. For Services based upon fixed costs that the parties mutually agree upon the payment methodology in accordance with either C.1 or C.2, or a combination of both ("Fixed Costs").
- D. Travel Expenses and Reimbursement: Lottery shall reimburse Contractor for its pre-approved mileage associated for any Lottery-related travel to perform Services for Lottery. Contractor's travel reimbursement will be according t the current GSA POV Mileage Reimbursement Rates in effect at the time of Contractor's travel. GSA rates can be found at: [www.GSA.gov](http://www.GSA.gov)

- E. Miscellaneous Services and Purchase of Goods. Lottery shall reimburse Contractor for its actual costs for all pre-approved miscellaneous Services or purchase of goods required under a specific Work Order Contract.

Contractor shall retain all receipts pursuant to Section 20, Records Maintenance; Access, of the Agreement and shall deliver any of those receipts as specifically requested by Lottery to verify the actual costs associated with the Services or goods.