



Oregon State Lottery
Procurement Department
500 Airport Road SE
PO Box 12649
Salem, OR 97309-0649

Request for Proposal

RFP Number: 10-1079

Date of Issue: February 22, 2010

Closing Date and Time: March 10, 2010 3:00 PM (PT)

Title and Purpose of RFP:

CULTURAL COMPETENCY TRAINING SERVICES

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Senior Procurement and Contract Analyst
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**OREGON STATE LOTTERY COMMISSION
REQUEST FOR PROPOSAL
CULTURAL COMPETENCY TRAINING SERVICES**

Background: The Oregon State Lottery Commission (“Lottery”) is requesting Proposals for Cultural Competency Training (“Services”) as described in this Request for Proposal (“RFP”).

The issuance of this RFP, and the award and administration of any contract resulting thereof, are governed by the Oregon State Lottery Contracting Rules found in Oregon Administrative Rules Chapter 177, Division 36.

RFP documents may be downloaded from the State of Oregon’s ORPIN system located at <http://orpin.oregon.gov>, obtained from Lottery at the address above, or obtained by contacting Randy White, 503-540-1342.

**SECTION ONE
Instructions to Proposers**

1.1 Purpose of the RFP

The purpose of this RFP is to obtain competitive proposals from qualified providers of cultural diversity and inclusion (“Cultural Competency”) training who can provide training services in accordance with Lottery’s Cultural Competency training goals and objectives described in Sections 4 and 5 of this RFP.

This RFP is intended to provide prospective Proposers with sufficient information to enable them to prepare and submit Proposals for consideration by Lottery. Lottery intends to execute a contract with Proposer(s) deemed most qualified and best suited among those submitting Proposals, based upon the evaluation criteria listed in Section 6, and the requirements and deliverables listed in Section 5.

Lottery will only accept proposals from Contractors who’s primary or core business is providing Cultural Competency training services.

Disclaimer of Representations: The information provided in this RFP is provided exclusively for informational purposes and to assist Proposers in developing their Proposals. Lottery makes no representation or warranty whatsoever concerning the accuracy or completeness of any such information, and expressly cautions Proposers that past historical Lottery information will not necessarily reflect Lottery’s circumstances in the future. By submitting a Proposal, each Proposer expressly waives any claim of any nature against Lottery relating to or arising out of the accuracy, completeness or continued validity of any information published in connection with this RFP.

1.2 Submission Mailing Address, Contact Person, Telephone, Fax Number and Deadline for Receipt of Proposals

Proposers must submit one (1) original and three (3) copies of their Proposal, in typewritten form, to the Lottery Analyst identified below. The original and three copies of its Proposal must be placed in a sealed carton(s) or package(s) and delivered to Lottery. Lottery is not responsible for actions resulting from Proposers' failure to seal Proposals. The Proposals must be addressed as follows:

OREGON STATE LOTTERY
Attention: Randy White, CPPB
Request for Proposal (RFP) Number: **10-1079**
Project name: Cultural Competency Training Services
500 Airport Road SE, Salem, OR 97301-5075
PO Box 12649, Salem, OR 97309-0649

The Proposal sections must be arranged to correspond with the sections of the RFP. The Proposal must be arranged so that the responses by the Proposer are easily separable and can stand alone for review and evaluation. The word "Original" must be clearly marked on the outside cover of the original Proposal.

The Proposer's Pricing Proposal must be submitted in a separate, sealed envelope, labeled accordingly and placed in sealed carton(s) or package(s) as described in this Section 1.2.

Proposals must be received no later than 3:00 PM Pacific Time on the closing date. Lottery will not accept Proposals submitted after this date and time. Faxed, e-mailed and oral Proposals are not acceptable.

A Proposer's failure to submit its Proposal prior to the deadline will cause the Proposal(s) to be rejected. Late Proposals or amendments will not be opened or accepted for evaluation.

The Lottery Procurement Analyst identified below is the sole point of contact during the entire solicitation process for clarification or protest of specifications, Contract terms, the evaluation and award process, and other questions regarding the RFP process.

**Lottery Procurement Analyst: Randy White - Ph. 503-540-1342 Fax 503-540-1344
email - randy.white@state.or.us**

1.3 Definitions

In addition to any definitions found in Exhibit B, the following definitions apply to this RFP:

"Contractor" means the individual or entity who enters into a services contract with Lottery as a result of this RFP.

"Lottery" means the Oregon State Lottery Commission.

“Proposal” means a response submitted to Lottery for this Request for Proposal.

“Proposer” means an individual or entity submitting a proposal in response to this Request for Proposal.

“OAR” means Oregon Administrative Rule.

“ORS” means Oregon Revised Statute.

“Respondent” and “Participant” may be used interchangeably, and mean any person participating in or responding to the research studies covered by this RFP.

1.4 Schedule of Events

The following Schedule of Events is the schedule that will be followed. Unless notice is otherwise given to Proposers, if a component of this schedule, such as the closing date, is delayed, the rest of the schedule will be adjusted by the same number of days. This is a tentative schedule and is provided as a courtesy to potential Proposers. The actual schedule may vary without notice to potential Proposers. However, any changes made to the inquiry deadline, or the closing date of the RFP will be made in the form of an addendum to this RFP as outlined under Section 1.6.

Schedule of Events

Request for Proposal Released	February 21, 2010
Prospective Proposers’ Inquiry Deadline for Protest of Specification/Request for Change or Clarification	March 1, 2010
Responses to Inquiries	March 3, 2010
Closing Date (last day to submit Proposals to Lottery)	March 10, 2010
Intent to Award Announcement	March 17, 2010
Agreement Execution	March 31, 2010

Note: Lottery, in its sole discretion, may revise these dates.

1.5 Protest of Specification/Request for Change or Clarification

A Proposer who seeks clarification, or who believes procurement, technical or contractual requirements are unnecessarily restrictive or limit competition, may submit a request for clarification or protest, in writing, to Lottery Analyst listed in **Section One, Item 1.2**. To be considered, the clarification or protest must be received no later than the date specified in **Section One, Item 1.4**, Schedule of Events. Protests of procurement, technical or contractual requirements must include the reason for protest, any and all documented, factual information that supports Proposer's protest, and any proposed changes to the requirements.

Lottery’s Procurement Section shall promptly respond in writing to each written protest,

and where appropriate, issue all revisions, substitutions, or clarifications by addenda.

Protests/requests for change or clarification may be submitted by US Mail, delivery service, fax or email. Faxed inquiries must be clearly labeled “Inquiries regarding Cultural Competency Training Services, RFP Number **10-1079**, Attn: Randy White, 503-540-1344.”

1.6 Addenda

Lottery reserves the right to make changes to the RFP and the sample Contract by written addenda, prior to the closing date and time. Addenda shall only be issued by Lottery and, upon issuance, are incorporated into the RFP.

This RFP and any Addenda will only be released through the ORPIN system. Proposers are encouraged to consult ORPIN regularly through the closing date to obtain and to avoid missing any issued addenda. **LOTTERY IS NOT RESPONSIBLE FOR PROVIDING ADDENDA DIRECTLY TO PROPOSERS.**

If required by the addendum, Proposers shall sign and return the addendum, either prior the closing date and time or with Proposer’s proposal response.

1.7 Preparation Costs

By submitting a Proposal, each Proposer agrees that Lottery will, under no circumstances, be responsible for any costs or expenses incurred in preparing or submitting a Proposal. Additionally, each Proposer agrees that Lottery is not obligated to enter into a Contract with any Proposer and, further, that Lottery has absolutely no financial obligation to any Proposer.

1.8 Proprietary Information/Public Disclosure

Materials submitted in response to this RFP shall become the property of Lottery, and are, therefore, subject to public records laws. Proposals will not be returned to the Proposer.

In the event that a Proposer asserts that portions of its Proposal are exempt from public disclosure under the provisions of the Oregon Public Records Law (ORS 192.410-192.505) it is incumbent upon the Proposer to identify the applicable exemptions in a transmittal letter with the Proposal. The transmittal letter must identify the page(s) and the particular exemption(s) from disclosure upon which the claim is made. Further, each page claimed to be exempt from disclosure would need to be clearly identified, on the page. For example: “This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192.”

If Lottery receives a request for public records disclosure of the information so designated as “confidential” by Proposer, Lottery will make a reasonable attempt to notify Proposer of the request so Proposer may, at Proposer’s expense, assert any exemption Proposer is entitled to under applicable laws.

The Oregon Public Records Law exempts from disclosure trade secrets, and the exemption from disclosure applies “unless the public interest requires disclosure in the particular instance,” ORS 192.501(2). Therefore, nondisclosure of documents or any portion of a document submitted as part of this solicitation may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

1.9 Collusion

By submitting a Proposal, Proposer certifies that no officer, agent, or employee of Lottery has a pecuniary interest in this Proposal; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer; and that the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

1.10 Publicity

Until an Agreement resulting from this RFP is signed, no employee, agent, or representative of any Proposer shall make available or discuss its Proposal with any elected or appointed official or officer of the State of Oregon, any member of Lottery Commission, or any employee, agent, or representative of Lottery, unless specifically authorized or required to do so by law.

Proposers shall not issue any news releases or make any statement to the news media pertaining to the RFP, the Proposal, the proposed Price Agreement or the work to be performed without the prior written approval of Lottery.

1.11 Disputes

In case of any doubt or differences of opinions as to the items or Services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of Lottery shall be final and binding upon the Proposers.

1.12 Proposal Acceptance

Lottery may reject as non-responsive any Proposal providing a deadline for acceptance by Lottery. Proposals that are incomplete may be deemed non-responsive and may be omitted from award consideration.

1.13 Withdrawal of or Amendments to Proposals

Amendments to or requests to withdraw Proposals will only be allowed if received prior to the closing date and time defined in this RFP. No amendments to or withdrawals of Proposals shall be permitted without the consent of Proposer’s authorized agent.

1.14 Opening of Proposal

Due to security of the Lottery building, LOTTERY DOES NOT HOLD PUBLIC

OPENINGS FOR ANY OF ITS SOLICITATIONS.

1.15 Acceptance of Solicitation Requirements

By submitting a signed Proposal, Proposer is bound by and will comply with all requirements, specifications, and terms and conditions contained in the RFP and Proposal (including all listed Attachments and issued Addenda, if any). Proposer will provide the designated Services in accordance with specifications and requirements, and will comply in all respects with the terms of the resulting Services Contract upon award. By submitting a Proposal, each Proposer covenants and agrees that it fully understands and will abide by the terms and conditions of this RFP and it will not make any claims for or have any rights to cancellation or withdrawal of its Proposal or other relief due to any misunderstanding or lack of information. The signature of the Proposer or any officer of the Proposer legally authorized to execute contractual obligations on the Proposal Form indicates acknowledgment of this condition.

SECTION TWO PROPOSAL REQUIREMENTS

2.1 Required Contents of Proposal

This Section of the RFP describes the required format and contents for the Proposer's Proposal. This standardization will facilitate evaluation of the comparative merits of all Proposals submitted and the selection of finalists. Proposals that are substantially incomplete or lack key information may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

Proposals should be organized in the order in which the requirements are presented in this RFP. It is helpful to repeat the text of the requirement as it appears in the RFP prior to the response to that requirement. Proposals that are not organized in this manner risk elimination from consideration if the evaluators cannot determine where the answer to a particular question is located within the Proposal.

Proposals must include the following information:

- a. Response to Evaluation Criteria:** Proposals must include a complete response to all Evaluation Criteria listed in Section Six.
- b. Proposal Form (Section 8):** At least one (1) Proposal submitted by Proposer must bear an original signature. (Lottery requests Proposer use blue or a color ink other than black.)

2.2 Insurance Requirements

The Apparent Successful Proposer(s) must furnish evidence of required insurance coverage(s) within 10 business days from notification of intent to award and keep such coverage in effect during the term of the Services Contract. The coverage shall be in the types and amounts specified in **Exhibit B, Attachment Two**, and shall be in a form that is satisfactory to Lottery and with an insurance company that is authorized to provide insurance coverage in Oregon.

SECTION THREE CONTRACT INFORMATION

3.1 The Contract

A sample copy of the proposed Services contract (“Contract”) can be found in **Exhibit B**.

3.2 Supplemental Terms and Conditions

Proposed Contract terms and conditions together with any other forms or documents that Proposer desires to be included, as part of the resulting Contract or both, must be submitted as part of the Proposal. By accepting the Proposal, Lottery is not bound to include them as part of the resulting Contract and Lottery may, in its sole discretion, reject any and all supplemental forms, documents, materials or other items submitted by Proposer. In its sole discretion Lottery may institute negotiations of any term, condition, form, document or portion of a document proposed in a Proposal and not already covered by the requirements of the solicitation. Provided, however, Lottery shall not accept terms and conditions that contradict the terms and conditions found in this solicitation document. **Proposer may request additions or changes to the Contract terms and conditions through the process that is described in Section One, Item 1.5, Protest of Specification/Request for Change or Clarification.** Lottery may reject the Proposal of any Proposer who refuses to accept Lottery’s decision with regard to these supplemental terms and conditions. Lottery is not responsible for identifying conflicting supplemental terms and conditions before issuing award of an Agreement.

3.3 Purchases and Method of Ordering

Lottery’s and the Contractor’s obligations shall commence after the Contract has been executed by both parties. Lottery shall not be responsible for any Services performed by the Contractor, even Services performed in good faith, if the Services occur prior to the execution of the Contract.

Lottery reserves the right to procure Cultural Competency training services outside of the Contract, if it is in Lottery’s best interest to do so.

3.4 Contract Duration

The Contract shall be effective upon the date of execution and shall continue through June 30, 2010. Lottery reserves the right to renew for additional periods of time, as determined to be in the best interest of Lottery.

SECTION FOUR GENERAL INFORMATION

4.1 Lottery Diversity & Inclusion Vision Statement

The Oregon Lottery® values, appreciates and embraces the differences each employee brings to the organization. The Lottery is committed to:

- Promoting an inclusive culture, free of discrimination, through fairness, opportunity and respect;
- Enhancing the multicultural competence of all employees through diversity education programs; and
- Increasing workforce diversity at all levels to develop and retain a multicultural environment.

Objectives:

- Improving Teamwork
- Improving Employee Satisfaction
- Managing High Performance
- Sustaining Innovation

SECTION FIVE SCOPE OF WORK

5.1 Scope of Work

Contractor shall perform the following training and related services:

- a. Develop Cultural Competency training for Lottery management employees.
- b. Consult with Lottery Human Resources and Executive Team to integrate Lottery Core Values with the Cultural Competency training curriculum.
- c. Develop train-the-trainer curriculum for Lottery's Cultural Competency training team.
- d. Contractor will consult with Lottery to assist in Lottery's development of the criteria Lottery will use to select Lottery trainers.
- e. Determine the optimum class size and schedule up to a maximum four (4) training sessions for up to 80 Lottery management employees and one (1) train-the-trainer training session for up to 15 Lottery train-the-trainer employees. All classes shall be scheduled between April 1, 2010 and June 30, 2010.
- f. Deliver the training to up to 80 Lottery management and 15 train-the-trainer employees.

5.2 Training Materials

All training materials created by contractor will become the property of the Oregon Lottery to be used in future training sessions presented by the training team, as specified herein. Course materials must include the course outline subject areas, objectives, and training scripts for Cultural Competency topics which should include, but are not limited to:

- a. What is Cultural Competency?
- b. What is Diversity?
- c. Valuing and Implementing
- d. Self Awareness
- e. Self Assessment
- f. Skills and practices
- g. Inclusive and respectful communication
- h. Sustaining continuous learning about diversity and cultural competency

5.3 Requirements:

- a. Contractor's curriculum shall be supplemented with Lottery's associated policies and core values.
- b. Training must be interactive and utilize a variety of instructional techniques in order to address different learning styles (i.e. lecture, small group discussion, games).
- c. Training must provide techniques and strategies to enable employees to become culturally competent in their day to day work life.

- d. All training modules developed must be formatted in a clear and consistent manner.
- e. Training to be held in Salem, Oregon.

**SECTION SIX
PROPOSAL RESPONSE
AND
EVALUATION CRITERIA**

6.1 General

Each Proposer must provide all requested information in their Proposal including the answers to the questions contained in this Section Six. An evaluation committee (“Evaluation Committee”) will evaluate Proposals to determine the qualified Proposer(s) on the basis of each criterion in accordance with its relative importance.

Each of the technical (non-price) factors will be scored by the Evaluation Committee based on its best professional judgment, considering all Proposal text, clarifications, reference checks, and staff proposed. The maximum score that can be achieved during the evaluation process is 100 points. **Only one (1) Contract will be awarded to the Proposer with the highest cumulative score.**

6.2 Phase One (Non-scored Mandatory – Pass/Fail). The first phase items are non-scored mandatory responses and will be evaluated on a pass/fail basis. Proposals that fail to meet the mandatory requirements during this phase may be rejected as non-responsive. Lottery reserves the right to waive minor informalities if waiver is in the best interest of Lottery. Proposers that pass this phase may enter the phase two evaluation.

a. Proposer Management Information. (Non-scored Mandatory – Pass/Fail)

Proposer shall provide a response to this Section, which includes, at a minimum, the following:

- i. Name, address, principal place of business and telephone number of legal entity with whom any resulting contract is to be written.
- ii. Documentation or corporate business mission or statement substantiating evidence that Proposer’s primary or core business purpose is the provision of Cultural Competency training services.

b. Compliance (Non-scored Mandatory – Pass/Fail)

Proposer shall provide a statement accepting all terms and conditions as defined in this solicitation document (including all exhibits and attachments).

Proposer shall provide a statement accepting all Statement of Work requirements and deliverables as defined in **Section Five, Scope of Work**.

Proposal checklist/signature page, found in **Section Eight**, shall be signed by an individual authorized to make contractual commitments on behalf of the

Proposer.

c. Executive Summary (Non-scored Mandatory – Pass/Fail)

Proposer shall provide an executive summary to summarize the contents of the proposed Cultural Competency training services. This summary shall be written to provide the Evaluation Team with a broad understanding of the Proposer's technical response. Proposer must present its understanding of Lottery's **Statement of Work (Section Five)**, objectives and Cultural Competency training needs. Proposer shall summarize how its Proposal meets the requirements of the RFP, and why it is most qualified to perform the Services.

6.3 Phase Two (Scored Mandatory – Maximum 100 Points).

	<u>Total Points Possible</u>
a. Company Experience:	20
i. Provide a brief historical overview of your company. ii. List training services your company has performed in the last five (5) years that are substantially similar to the services contemplated in this RFP. iii. Provide a brief description, dollar value and completion date of the training services. iv. Provide biographies of key staff and their expected involvement with the services contemplated in this RFP.	
b. Training Approach	25
i. Describe proposed approach and methodology: Provide description of recommended subject areas, objectives, and training scripts for Cultural Competency topics for each of the following Lottery staff types: 1. Lottery Managers 2. Lottery Trainers (train-the-trainer format)	
c. Training Samples.	25
i. Provide samples of modules or curriculum from past projects that are similar to the proposed training curriculum as described in section 6.3(b).	
d. References.	20
i. Provide at least three references of clients where Cultural Competency training was provided and where the same key personnel that were identified in section 6.3(a), performed the training services. Provide the following for each reference:	

1. Client name, address, and telephone number
2. Description of services performed
3. Length of the engagement

e. Pricing. Provide pricing in separate sealed envelope. 10

- i. **Provide proposed total price including any reimbursable** expenses, to perform the Cultural Competency training services as described in Section Five, Scope or Work.
- ii. Provide unit or hourly rate for services to be used in the event Lottery seeks additional Cultural Competency Training services in addition to those contemplated in Section Five, Scope of Work.

The Proposer with the lowest total price for the Services described in Section Five will be given the maximum number of points available. Total points for all other proposers will be determined according to the following formula:

A = Total Possible points = 10

L = Lowest cost proposed

X = Cost being scored

B = Awarded Score

Formula: "L" divided by "X" times "A" = "B"

(Example: Lowest cost is \$7,000, cost being scored is \$8,200. Points awarded is 8.54)

SECTION SEVEN PROPOSAL SUBMISSION

7.1 Proposal Submission and Delivery Address

By submitting a Proposal and signing the Section Eight, Proposer Checklist/Signature Page, Proposer acknowledges, understands, and agrees to be bound by the requirements, terms and conditions of this RFP, and its obligations if awarded a Contract.

7.2 Delivery of Responses

Proposer shall deliver one (1) original and four (4) copies of its Proposal by 4:00 p.m. on the closing date to:

By Mail:

Randy White, RFP Coordinator
Oregon State Lottery
Cultural Competency Training
RFP #10-1079
PO Box 12649
Salem, OR 97309-0649

Hand Delivered:

Randy White, RFP Coordinator
Oregon State Lottery
Cultural Competency Training
RFP #10-1079
500 Airport Road SE
Salem, OR 97301

NOTE: Facsimile and electronically mailed proposals shall not be accepted

Proposals received after this date and time are late and will be rejected. All Proposals **must** be signed by an authorized representative of the Proposer. Proposals shall remain firm for 90 days following the date on which Proposals are due, unless that period is extended by the Lottery and written notice of the extension is provided to the affected Proposer or Proposers.

7.3 Proposal Format.

To speed up and simplify the evaluation of Proposals, Proposers must follow the format described in this section for Proposal organization. Proposal sections must follow the outline presented below.

- a. Response Proposal Requirements (Section Six). Proposers shall provide a written response to each the criteria outlined in Section Six. **The preferred method of response is for the Proposer to restate the requirement and then follow each requirement with a response.**
- b. Pricing/Fee Structure: Submit one (1) original copy of the Pricing Proposal, in a separate, sealed envelope, with the words “Pricing Proposal, **Cultural Competency Training** RFP #10-1079” on the front.
- c. Proposal Checklist/Signature Page (Section Eight): Submit one (1) original and four (4) copies of the signed Proposer Checklist/Signature Page.

7.4 Proposal Submission Deadline

Lottery must receive the Proposal and Pricing Proposal no later than 3:00 p.m., Pacific Time (PT), on **March 10, 2010**.

7.5 Proposal Checklist/Signature Page

The Proposal Checklist/Signature Page, Section Eight, shall be submitted with Proposer's original Proposal. The Proposal Checklist shall clearly indicate the Proposer's name, title, address, and telephone number of the person in the Proposer's organization to be contacted concerning the Proposal.

7.6 Waiver of Deficiencies and Rejection for Non-Compliance

Lottery reserves the right to waive minor deficiencies in the Proposals. The decision as to whether a deficiency will be waived or will require the rejection of a Proposal will rest solely within the discretion of the Lottery's Procurement Manager. **Failure to comply with or respond to any part of this RFP may result in rejection of a Proposal as non-responsive.**

7.7 Right of Rejection

Proposers shall comply with all of the terms of the RFP, Lottery Contracting Rules (OAR Chapter 177, Division 35), and all applicable local, state, and federal laws, administrative rules, and regulations. Lottery may reject any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP.

Proposers may not qualify the Proposal nor restrict the rights of Lottery. If a Proposer does so, Lottery may determine the Proposal to be non-responsive and the Proposal may be rejected.

Minor informalities that may be waived by Lottery include, but may not be limited, to those informalities that:

- a. do not affect responsiveness;
- b. are merely a matter of form or format;
- c. do not change the relative standing or otherwise prejudice other offers;
- d. do not change the meaning or scope of the RFP;
- e. are trivial, negligible, or immaterial in nature;
- f. do not reflect a material change in the work; or,
- g. do not constitute a substantial reservation against a requirement or provision.

Lottery may cancel this RFP or reject any or all offers in whole or in part, when the cancellation or rejection is in the best interest of Lottery as determined by Lottery. Lottery is not liable to any Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a Proposal.

Lottery will reject all Proposals from a suspended or debarred Proposer.

7.8 References

Lottery may obtain, from sources other than the Proposer, information concerning a Proposer, the Proposers offerings, capabilities, and past performance, that the Lottery deems pertinent to this RFP and may consider such information in evaluating the Proposal. This may include, but is not limited to, the Chairperson of the Evaluation Committee investigating any and all references, and the past performance information provided in the Proposal with respect to Proposer's successful performance of similar contracts, compliance with applicable specifications and contractual obligations, completion or delivery of Services on schedule, and lawful payment to employees and workers.

Additionally, Lottery reserves the right to check any and all sources for information, and include sources other than the references provided in the Proposer's Proposal. Lottery may consider information available from any such source including government bodies and regulatory authorities in evaluating Proposers.

7.9 Responsibility

Lottery reserves the right to investigate and evaluate, at any time prior to award and execution of the Agreement, the Apparent Successful Proposer's responsibility for performing the Agreement and any resulting Work Order Contracts. Submission of a signed Proposal shall constitute approval for Lottery to obtain any information Lottery deems necessary to conduct the evaluation. Lottery shall notify the Apparent Successful Proposer, in writing, of any other required documentation that may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information shall result in rejection of the Proposal.

Lottery may postpone the award of the Agreement after announcement of the Apparent Successful Proposer in order to complete its investigation and evaluation. Failure of the Apparent Successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the Proposal.

7.10 Clarification of Proposal

Lottery reserves the right to request clarification of any item in any Proposal, or to request additional information necessary to properly evaluate a particular Proposal. All requests for clarification or additional information shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Team within 24 hours of request (Monday through Friday). Inability of the Evaluation Team to reach a Proposer for clarification or failure of a Proposer to respond within the time stated may result in rejection of that Proposer's Proposal.

7.11 Notice of Intent to Award/Proposer Notification of Selection

After the completion of the evaluation, Lottery will issue a written Notice of Intent to Award and send copies to all Proposers. The notice will include the names of all Proposers and identify the Proposal(s) selected for award.

7.12 Negotiations with Highest Ranked Proposer(s)

Prior to Price Agreement award, Lottery may conduct negotiations with all Proposer(s) who meet the minimum point requirements.

Unless Lottery determines that additional negotiations are in its best interests, the matters subject to negotiation during the course of this RFP and prior to award of Agreement(s) shall be limited to the following:

- a. Price. However, Lottery shall not negotiate an Agreement price less favorable to Lottery than the minimum acceptable Proposal as stated in this RFP and addenda issued prior to the solicitation closing date.
- b. The manner in which the Services are to be performed.
- c. The personnel to be committed to the Agreement.
- d. Agreement and Work Order Contract terms and provisions, including, at Lottery's sole discretion, supplemental terms, conditions, forms and documents submitted by the Proposer.

If an Agreement cannot be negotiated with a particular Proposer, Lottery will discontinue negotiations with that Proposer and no longer consider that Proposer for Price Agreement award. Nothing in this RFP restricts or prohibits Lottery from canceling the solicitation at any time.

7.13 Protest of Award

Proposer(s) may protest Lottery's notice of intent to award only in accordance with OAR 177-036-0170.

SECTION EIGHT
PROPOSAL CHECKLIST/SIGNATURE PAGE

Each Proposer shall complete the following PROPOSER CHECKLIST and submit it with the Proposal.

1. PROPOSAL

Section 1.2 - Proposal

One (1) Original and Three (3) Copies _____ (check here)

2. PROPOSAL CONTENTS

Section 6.2 Phase One, Non-scored

Mandatory Pass/Fail Response _____ (check here)

Section 6.3 Phase Two Scored Mandatory Response _____ (check here)

3. PRICING PROPOSAL

Section 6.3 Phase Two Pricing Proposal

One (1) Pricing Proposal (**Placed in
Separate Sealed Envelope**) _____ (check here)

4. PROPOSAL CHECKLIST/SIGNATURE PAGE

Section 8 Completed and Signed Proposer Checklist/Signature Page

_____ (check here)

A representative of the Proposer authorized to contractually bind the Proposer shall sign this Proposal Checklist/Signature Page in ink. The undersigned authorized representative shall initial any alterations or erasures to the RFP in ink.

The undersigned acknowledges, agrees and certifies that he/she:

1. Has read and understands all RFP instructions, specifications, and terms and conditions contained herein (including the attachments listed in this solicitation);
2. Is the authorized representative of the Proposer, has provided a Proposal that is true and accurate, and understands that providing incorrect or incomplete information may be cause for Proposal rejection or Agreement termination;
3. Is bound by, and will comply with, all requirements, specifications, and terms and conditions contained herein;
4. Will furnish the designated item(s) or service(s) or both in accordance with the solicitation, the Agreement(s) and resulting Work Order Contract(s); and
5. Certifies that the information was arrived at independently, without consultation, communication, or agreement as to any matter relating to this information that would in any way interfere with fair competition, except as

otherwise stipulated by Oregon Law.

6. By signing and submitting a Proposal in response to this RFP, Proposer grants Lottery a non-exclusive, perpetual, irrevocable license for the rights to copy, distribute, display, prepare derivative works of, and transmit the Proposal for the purpose of conducting this procurement and to fulfill its obligations under Oregon Public Records Law."

I hereby acknowledge having received and duly considered the following addenda to the specification and the following revision or additions to the plans, where required:

Addenda No. _____ to No. _____ inclusive.

Proposer (COMPANY) Name

FEIN ID# or SSN (REQUIRED)

Company Address

Authorized Signature

Date

Title of Authorized Representative

Contact Person

Phone

Fax

Email

EXHIBIT B
SERVICES CONTRACT
BETWEEN
THE OREGON STATE LOTTERY COMMISSION AND

CONTRACT NO. _____

THIS CONTRACT ("Contract") is between the State of Oregon, acting by and through its Oregon State Lottery, ("Lottery"), and _____, ("Contractor.")

1. RESERVED.

2. Effective Date and Duration. This Contract shall become effective on the date this Contract has been signed by every party hereto unless terminated or extended, this Contract shall expire 12 months from the effective date. Neither expiration nor termination shall extinguish or prejudice Lottery's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor's performance that has not been cured. Lottery shall notify Contractor of any proposed amendment to extend the Contract term prior to the expiration of this Contract.

3. Statement of Work. The Statement of Work (the "Services"), including the delivery schedule for such Services, if applicable, is contained in Attachment One, and is attached and incorporated by reference into this Contract. Contractor agrees to perform the Services in accordance with the terms and conditions of this Contract.

4. Consideration.

- a. The maximum, not to exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$_____.
- b. Progress payments, if any, to Contractor shall be made only in accordance with the schedule and requirements in Attachment One.

5. Contract Documents. This Contract consists of the following components which, if a conflict or inconsistency exists between them, are to be interpreted in the following order of precedence:

- a. Section 1 through 29;
- b. Attachment One, Statement of Work;
- c. Attachment Two, Insurance;
- d. Attachment Three, W-9 Form;
- e. Attachment Four, Key Persons;
- f. RFP #10-1079;
- g. Contractor's Proposal.

6. Independent Contractor; Responsibility for Taxes and Withholding.

- a.** Contractor shall perform all required Services as an independent contractor. Although the 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 Contract declares and certifies that: Contractor's Services to be performed under this 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 Contract. If applicable, Contractor meets the specific independent contractor standards of ORS 670.600. Contractor is not an "officer," "employee," or "agent" of the 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 the Lottery in any way.
- c.** Contractor shall be responsible for all federal or state taxes applicable to compensation or payments to Contractor under this 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 Contract, except as a self-employed individual.
- d.** Contractor shall complete the attached W-9 Form, Attachment C, as a condition of Lottery's obligation to make any payments under this Contract. If Contractor fails to complete and return the W-9 Form to the Lottery, payment to Contractor may be delayed, or the Lottery may, in its discretion, terminate the Contract.

7. Subcontracts and Assignment; Successors and Assigns.

- a.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract, or assign or transfer any of its interest in this Contract, without the Lottery's prior written consent. In addition to any other provisions the Lottery may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 7, 11, 13, 17 and 18, of this Contract as if the subcontractor were the Contractor. Lottery's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

8. No Third Party Beneficiaries. Lottery and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this 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 Contract.

9. Funds Available and Authorized; Payments.

- a. Lottery certifies at the time the Contract is signed that sufficient funds are available and authorized for expenditure to finance costs of this Contract within the Lottery's current financial plan. Contractor understands and agrees that the Lottery's payment of amounts under this Contract attributable to work performed after the last day of the Lottery's current financial plan is contingent on Lottery Commission approval of expenditure authority to continue to make payments under this Contract. Article XV, Section 4 of the Oregon Constitution provides that the 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 shall be used to satisfy liabilities of the Lottery.
- b. Contractor shall not be compensated for Services performed under this Contract by any other agency or department of the State of Oregon.

10. Representations and Warranties.

- a. **Contractor's General Representations and Warranties.** Contractor represents and warrants to Lottery that:
 - (i) Contractor has the power and authority to enter into and perform this Contract;
 - (ii) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
 - (iii) The Services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
 - (iv) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the

Services.

b. Contractor's Representations and Warranties for Contractor Intellectual

Property. In the event that Work Product as defined in Section 10 is Contractor Intellectual Property as defined in Section 10, 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 the Lottery the exclusive right and license to market, promote and distribute the Contractor Intellectual Property throughout the term of this Contract;
- (iv) Contractor is fully aware of Lottery's business requirements and intended uses for the Contractor Intellectual Property and the Contractor Intellectual Property shall satisfy such requirements in all material respects and is fit for such intended uses; and
- (v) For the term of this Agreement, the Contractor Intellectual Property shall (A) be free from defects in material and workmanship under normal use and remain in good working order, and (B) function properly and in conformity with the warranties herein and in accordance with the requirements of this Contract.

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

11. Ownership of Work Product.

a. Definitions. As used in this Section, and elsewhere in this Contract, the following terms have the meanings set forth below:

- (i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Lottery or Contractor.
- (iii) "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, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, 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 it 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 this 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 the Lottery’s behalf, and in the name of the 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, and to authorize others to do the same on Lottery’s behalf.
- d. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the Lottery’s behalf and in the name of the Lottery, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize

others to do the same on Lottery's behalf.

- 12. Key Person(s).** Contractor acknowledges and agrees that Lottery is entering into this Contract because of the special qualifications of Contractor and Contractor's key personnel ("Key Person(s)") identified in Attachment D, attached hereto and incorporated herein by this reference. Contractor and Lottery acknowledge and agree that Lottery is engaging the expertise, experience, judgment, and personal attention of both Contractor and such Key Person(s) under the Contract. Neither Contractor nor the Key Person(s) shall delegate to any other employee, agent or subcontractor of Contractor the performance or responsibilities that such Key Person(s) is required to provide under the Contract 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 Key Person's services unless Lottery provides prior written consent to such reassignment or transfer. In the event the Key Person leaves the employ of Contractor, Contractor shall immediately notify Lottery and propose a replacement or alternate solution, which shall be subject to Lottery approval. Contractor represents that any such qualified replacement shall not materially adversely impact the services or delivery schedule.

In the event Contractor requests Lottery to consent to a delegation, reassignment, transfer or other replacement of a Key Person, Lottery may review the qualifications of the proposed substitute personnel before providing its written 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 shall not pay, for any proposed replacement. The replacement(s) must be approved by Lottery and, following the necessary approvals, Exhibit D shall be deemed amended to include such replacement personnel or subcontractors and they shall be deemed a Key Person for purposes of the Contract. In the event that a Key Person or other subcontractor of Contractor shall be subsequently found to be unacceptable to Lottery, Lottery shall notify Contractor of such fact and Contractor shall immediately remove such Key Person from all responsibilities hereunder. Contractor shall provide a replacement acceptable to Lottery, in accordance with the standards described above, within ten (10) calendar days of receipt of Lottery's notice. At Lottery's sole discretion, Lottery may elect to terminate this Contract, without penalty, if Contractor is unable to provide an acceptable replacement.

13. Indemnity.

- a. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY THE STATE OF OREGON AND LOTTERY AND ITS OFFICERS, EMPLOYEES AND AGENTS 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 CONTRACT.

- b. IN ADDITION, CONTRACTOR, AT ITS OWN EXPENSE, SHALL SAVE INDEMNIFY, AND HOLD HARMLESS THE LOTTERY, THE STATE OF OREGON AND ITS AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES AND DEFEND ANY ACTION BROUGHT AGAINST SAME WITH RESPECT TO ANY CLAIM, DEMAND, CAUSE OF ACTION, DEBT OR LIABILITY, INCLUDING ATTORNEYS' FEES, TO THE EXTENT THAT IT IS 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. CONTRACTOR AGREES TO INDEMNIFY THE LOTTERY, THE STATE OF OREGON AND ITS AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR ANY LIABILITY OR EXPENSE DUE TO CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE (i) ARISING OUT OF THE FURNISHING OR PERFORMANCE OF THE CONTRACTOR INTELLECTUAL PROPERTY OR THIRD PARTY INTELLECTUAL PROPERTY, OR BOTH, OR (ii) ARISING OUT OF THE FAULT OR NEGLIGENCE OF CONTRACTOR.
- 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.

14. Security Investigation. All Contractor's employees performing the Services

required under this Contract may be subject to a security background investigation performed by the Lottery's Security Section. The investigation may include, but may not be limited to, the completion of forms that shall be provided by the Security Section, and a fingerprint check. The Lottery, in its sole discretion, reserves the right to determine the level of security background investigation required for the Services performed under this Contract.

15. Insurance. Contractor shall have in effect, and maintain throughout the term of this Contract, the insurance indicated on Attachment Two.

16. Termination.

- a. Parties' Right to Terminate for Convenience.** This 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 Contract, in whole or in part, upon 30 calendar days written notice to Contractor.
- c. Lottery's Right to Terminate for Cause.** Lottery may terminate this 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 the funds authorized or allocated by Lottery for purposes of this Contract are not available at levels sufficient to allow for purchase of the indicated quantity of Services. In the alternative, Lottery and Contractor may agree to amend the Contract to accommodate the reduction in funds;
 - (ii) If federal or state laws, regulations or guidelines are modified, or interpreted in such a way that the Services are prohibited, or Lottery is prohibited from paying for such Services from the planned funding source;
 - (iii) Contractor no longer holds a license or certificate that is required by Contractor to provide the Services required by this Contract, and Contractor has not obtained such license or certificate within ten (10) business days after the date of Lottery's notice of default to Contractor or such longer period as Lottery may specify in such notice. For purposes of this Contract, "Business Days" means "Monday through Friday, from 8:00 a.m. to 5:00 p.m., when the Lottery Headquarters in Salem, Oregon is open for business";
 - (iv) If any control person, as defined in ORS 461.410, of Contractor is convicted of any crime;
 - (v) If the State of Oregon enacts a statute, or referendum is passed in the State

of Oregon that removes the authority or ability of Lottery to conduct its activities as described in ORS Chapter 461 or OAR Chapter 177, or a court of competent jurisdiction finds that Lottery lacks the authority to conduct the activities described in ORS Chapter 461 or OAR Chapter 177;

- (vi) If the Lottery discovers that Contractor institutes or has instituted against its' insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis of the type made subject of the Contract, or is in default for failure to pay 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 certification under this Contract, fails to perform the Services under this 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 Contract in accordance with its terms, and such breach, default or failure is not cured within ten (10) Business Days after the date of Lottery's notice of default, or such longer period as Lottery may specify in such notice.

d. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon thirty (30) calendar days written notice of intent to terminate to Lottery if Lottery fails to pay Contractor pursuant to the terms of this 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 Contract termination pursuant to Section 16(a), (b), (c)(i), (c)(ii) 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 Contract termination pursuant to Section 16(c)(iii), (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 Section 16(c)(iii), (c)(iv), (c)(v), (c)(vi) or (c)(vii)), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 16(b)).

f. Contractor's Tender Upon Termination. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless Lottery expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to Lottery all documents, information, works-in-progress, and other property that are or would be deliverables had the 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.

- 17. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to the subject matter of this Contract and Contractor's performance hereunder, in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance of its duties under the Contract. Contractor acknowledges and agrees that the 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 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 18. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this 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 the Lottery's Administrative Rules, OAR Chapter 177, as they may be amended from time to time.
- 19. 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 Contract.
- 20. 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 Contract. Lottery may terminate this Contract upon written notice to Contractor after it determines that such delay or default will likely prevent successful performance of the Contract.

21. **Survival.** Any terms of this Contract which by their nature are intended to survive Contract termination or expiration and Sections 2, 10, 11, 13, 16, 17, 21; and 27 shall survive Contract termination expiration.
22. **Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.
23. **Notice.** Except as otherwise expressly provided in this 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 on the signature page of this Contract, 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:

Attention: _____
Phone: _____
Fax: _____

For Lottery:

Oregon State Lottery
500 Airport Road SE
P.O. Box 12649
Salem, Oregon 97309-0649
Attention: _____
Phone: _____
Fax: _____

24. **Severability.** The parties agree that if any term or provision of this 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 the Contract did not contain the particular term or provision held to be invalid.
25. **Counterparts.** This 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 the Contract so executed shall constitute an original.
26. **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.

- 27. Governing Law; Venue; Consent to Jurisdiction.** This 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 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. 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. **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S).**
- 28. 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 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber And Forestland Tax), 323 (Cigarettes And Tobacco Products Tax), 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.
- 29. Merger Clause; Waiver, Amendment.** This Contract and attached Attachments 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 Contract. No waiver, consent, modification or change to the terms of this 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 Contract shall not constitute a waiver by Lottery of that or any other provision.

LOTTERY WILL NOT PAY CONTRACTORS FOR SERVICES PROVIDED UNDER THE CONTRACT, PRIOR TO NECESSARY STATE APPROVALS OF THE CONTRACT, INCLUDING AMENDMENTS.

CONTRACTOR

By: _____ Title: _____ Date: ____

LOTTERY

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

By: _____ Title: _____ Date: ____

CONTRACTOR DATA

Name (tax filing): _____

Address: _____

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

Business Designation (check one):

☐ Corporation

☐ Partnership

Federal Tax ID#: _____

☐ Limited Liability Company ☐ Limited Liability Partnership **Federal Tax ID#:** _____

☐ Sole Proprietorship

☐ Limited Partnership **Federal Tax ID#:** _____

or SSN: _____

Contractor's Remittance Address:

As a condition precedent to the effectiveness of this Contract, Contractor shall provide the Contractor Data information requested above. 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.

ATTACHMENT ONE
STATEMENT OF WORK

A. Description of Work to be Performed. TBD

B. Payment Methodology and Basis for Payment. (i.e. fixed amount, not to exceed, progress payments, and etc.) **TBD**

EXCEED AMOUNT

TOTAL NOT TO
\$ TBD

C. Invoices and Payments. Contractor shall submit invoices requesting payment to the following address: Oregon State Lottery, Attn.: Accounts Payable, P.O. Box 12649, Salem, OR 97309-0649.

D. Corrective Work. Contractor shall complete all Services, including deliverables to Lottery's satisfaction. If Lottery, in its sole discretion, determines that any or all of the Services, or deliverables, or both are unacceptable, Contractor shall correct any such deficiencies in the Services to Lottery's satisfaction without further compensation. Lottery may withhold any payments due Contractor until any or all deficiencies have been corrected to Lottery's satisfaction

E. Travel. Lottery *shall/shall not* reimburse Contractor [*Optional: up to \$_____*] for travel expenses incurred and claimed in accordance with travel and expense reimbursement policy, which Lottery shall provide to Contractor upon request. Travel expenses, if reimbursed, are included in the indicated not to exceed amount indicated in Section 3(a) of this Contract.

ATTACHMENT TWO INSURANCE

Throughout the term of this Contract Contractor shall have in effect and maintain at its own expense, the insurance indicated below:

(Lottery must check boxes for #2, #3, & #4 as to whether insurance is required or not.)

1. ☒ **Required by Lottery of contractors with one or more workers, as defined by ORS 656.027.**

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.

2. ☐ **Required by Lottery.** ☒ **Not required by Lottery.**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than

☐ \$200,000, ☐ \$500,000, ☐ \$1,000,000, or ☐ \$2,000,000 each claim, incident or occurrence this is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. ☒ **Required by Lottery.** ☐ **Not required by Lottery.**

General Liability insurance with a combined single limit, or the equivalent, of not less than

☐ \$200,000, ☐ \$500,000, ☒ \$1,000,000, or ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. The policy shall be endorsed to name State of Oregon, the Oregon State Lottery Commission and its members, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

4. ☒ **Required by Lottery.** ☐ **Not required by Lottery.**

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than

☐ Oregon Financial Responsibility Law (ORS 806.060), ☐ \$200,000, ☐ \$500,000, or ☒ \$1,000,000, each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. The policy shall be endorsed to name the State of Oregon, the Oregon State Lottery Commission and its members, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

5. **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.
6. **Certificates of insurance.** Prior to the commencement of the Services, the Contractor shall furnish acceptable insurance certificate(s) to the Oregon State Lottery Commission that specify the State of Oregon, the Oregon State Lottery Commission and its members, its officers and employees are Additional Insureds, evidenced by the proper Additional Insureds endorsement, for General Liability and, Automobile insurance. The certificate(s) need not reference a specific Contract name or number. Insuring companies or entities are subject to Lottery's acceptance. If requested, Contractor shall provide to Lottery complete copies of insurance policies, trust agreements, etc. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and self insurance.

ATTACHMENT THREE

W-9 FORM
(attached behind this page)

ATTACHMENT FOUR

KEY PERSON(S)

Name

Title

1.

2.

3.

4.