



Retailer Number: _____

2020 RETAILER CONTRACT

Video and Traditional Lottery

PARTIES: This Contract (“**Contract**”) is made by and between the State of Oregon, acting by and through the Oregon State Lottery Commission (“**Lottery**”), and the Retailer listed on the signature page of this Contract (“**Retailer**”). Retailer and Lottery also may be referred to individually or jointly as “**Party**” or “**Parties**,” respectively.

PURPOSE: This Contract sets forth the terms and conditions under which Retailer will provide Video Lottery and Traditional Lottery Games to Retailer’s customers at the Premises indicated on the signature page of this Contract.

PRIOR AGREEMENTS: Except as provided herein, this Contract supersedes any prior agreements, representations, or understandings that Retailer may have had with Lottery regarding the subject matter of this Contract.

EFFECTIVE DATE: This Contract is effective on the later of June 28, 2020, or the date by which both Retailer and Lottery Director (“**Director**”), or the Director’s designee, have signed it, and any required approvals by the Oregon Department of Justice have been obtained.

TERMINATION DATE: This Contract remains in effect from its Effective Date until 4:59 a.m. on June 29, 2025, unless terminated earlier by either Lottery or Retailer (the “**Contract Term**”).

AGREEMENT

1.0 Incorporated Documents and Definitions

1.1 Governing Laws: The constitutional, statutory and rule provisions listed below are the laws applicable to this Contract (the “**Laws**”) and will govern the terms and conditions and interpretation of this Contract. It is Retailer’s responsibility to familiarize itself with these Laws. Retailer agrees to comply with the Laws and acknowledges that the constitutional, statutory, and rule provisions that constitute the Laws may be newly adopted, revised, modified, amended, or repealed from time to time. The Parties shall be bound by and shall comply with the then current Laws in effect at any time during the Contract Term. In the event of a conflict, the Laws govern this Contract in the following order of precedence:

- a) Article XV, Section 4, of the Oregon Constitution.
- b) The Oregon State Lottery Act (Oregon Revised Statutes “**ORS**” Chapter 461).
- c) The Lottery’s Administrative Rules (Oregon Administrative Rules “**OAR**” Chapter 177).

1.2 Contract Document and Order. This Contract consists of the following documents which are listed in descending order of precedence:

- a) This agreement less the exhibit
- b) Exhibit A.

1.3 Captions: Where captions and headings are provided in this Contract, they are for the convenience of the reader only and have no substantive effect.

1.4 Definitions: Unless otherwise defined in this Contract, capitalized terms have the meanings set forth below or as defined in the Laws.

- a) **“Default”** or **“Event of Default”** means the occurrence of one of the events set forth in Section 14 of this Contract.
- b) **“Game”** or **“Lottery Game”** means any game authorized by the Commission under ORS 461.010(6).
- c) **“Supplies”** includes, but is not limited to, paper stock.
- d) **“Rule(s)”** means Oregon Administrative Rules chapter 177.
- e) **“Traditional Retailer”** means a Retailer with whom Lottery has contracted for the purpose of providing Traditional Lottery Games to players.
- f) **“Video Lottery Game Retailer”** has the meaning set forth in ORS 461.217(1).

2.0 Retailer Status

2.1 A Contract, not a License: This Contract constitutes an agreement between the Parties and is not a license issued by Lottery as a regulatory body. Retailer acknowledges and agrees that it does not have the same legal rights, such as the right to a contested case hearing, that it would have under a license with a licensing body such as the Oregon Liquor Control Commission (OLCC). Retailer waives any claim or right to an administrative hearing before Lottery with regard to any issues related to or arising under this Contract. Neither Party is obligated to sign this Contract, and it has no force or effect unless and until the Director or the Director’s designee, and Retailer have signed it.

2.2 Status as an Independent Contractor: At all times, the Retailer is an independent contractor and is not an agent or employee of the Lottery. Retailer agrees that Retailer, together with its officers and employees, are NOT officers, employees or agents of the Lottery or the State of Oregon, and have no claim of right, privilege, or benefit that would accrue to an employee, officer, or agent of the Lottery or the State of Oregon. This Contract does not entitle Retailer to any benefits from federal social security, unemployment insurance, workers’ compensation, or the Public Employees’ Retirement System, except as a self-employed individual or entity

2.3 Workers’ Compensation Subject Employer: If Retailer employs subject workers, Retailer must comply with ORS 656.017 and provide the required workers’ compensation coverage.

2.4 Responsibility: Retailer agrees to perform all the duties and obligations described in this Contract and set forth in the Rules, including, but not limited to, OAR 177-040-0050 “Retailer Duties.” Retailer is responsible and liable for any act or omission of its employees, agents, or representatives that violate the Laws or any provision of this Contract.

2.5 Access to Premises: Lottery, the Oregon State Police, the Oregon Secretary of State’s Office, and their duly authorized employees, officers, and agents, including, but not limited to, auditors, shall have access to Retailer’s Premises and to those records of Retailer’s Business that are pertinent to this Contract during Retailer’s normal business hours.

2.6 Background Check. Retailer agrees that, to the extent allowed by the Laws and in response to a request from Lottery, Retailer shall resubmit or cause Key Persons to resubmit fingerprints or other information necessary to perform an updated background check.

3.0 Retailer Sales

- 3.1 Lottery Ticket and Share Sales:** Retailer agrees to perform its duties in accordance with the Rules specified for the types of Lottery Tickets and Shares that Retailer sells at its Premises. Retailer agrees to sell Lottery Tickets or Shares, as applicable, and maintain an effective selling environment, which shall include, but is not limited to:
- a) Retailer maintains substantially the same level of financial responsibility, integrity, and reputation throughout the Contract Term;
 - b) Easy accessibility of the Premises to the public;
 - c) Hours of operation and location that are convenient to the public;
 - d) Security of the Premises that safeguards Lottery Tickets, Shares and players; and
 - e) If applicable, achieving the minimum sales requirements set forth in OAR 177-045-0030 "Video Lottery Game Terminals."
- 3.2 Pay Prizes:** Retailer agrees to pay Prizes to Lottery Game winners according to the requirements of each Lottery Game.
- 3.3 Training:** Retailer agrees:
- a) To be knowledgeable about Game play, Game Equipment operations, Equipment maintenance, and problem gambling treatment;
 - b) That ongoing training in the items set forth above is essential to the performance of this Contract; and
 - c) To ensure that all employees performing duties related to the performance of this Contract are adequately trained in such matters.
- Lottery will give Retailer reasonable advance notice of any required training programs and will provide training to Retailer. Such training may occur on or off the Retailer's Premises. Failure of Retailer or Retailer's employees to attend required training may constitute an Event of Default and result in the disabling or removing of Lottery Equipment.
- 3.4 Responsible Gambling:** Lottery recognizes and promotes a shared responsibility with its retailers for the promotion of responsible gambling practices and awareness of problem gambling resources. Retailer agrees to prominently display Lottery-supplied problem gambling resource materials including posters, pamphlets, and stickers. Retailer agrees to provide customers with Lottery-supplied materials regarding the nature of Lottery Games, Game Rules, odds, and return to players. Lottery will provide ongoing responsible gambling training for the Retailer's employees who provide Lottery Games to customers. Lottery requires the Retailer's all Key Persons, and any employees who actively sell or help facilitate play of Traditional & Video Lottery to receive training in Lottery supplied responsible gambling gaming training.
- 3.6 Best Practices - Physical Environment:** Except as otherwise provided by law, minors are prohibited from designated gambling areas in the Retailer's Premises. Retailer agrees to comply with the Lottery's Restricted Visibility and other Rules related to Equipment placement. Retailer agrees to make a good faith attempt to provide food or entertainment or other hospitality services besides Lottery Games and make players aware of the passage of time to encourage breaks in play. Retailer agrees not to provide credit or lend money to a Lottery player.

4.0 Sales to Minors and Visibly Intoxicated Persons Prohibited

- 4.1 Sales to Minors:** Retailer agrees to use due diligence, (including without limitation requesting to view valid identification for persons appearing under the ages specified below), to not knowingly:
- a) Sell Lottery Tickets for Traditional Lottery Games to a person under the age of 18 years; or
 - b) Sell Shares for Video Lottery Games to a person under the age of 21 years.
- 4.2 Age Control:** If Retailer is a Video Lottery Game Retailer, then Retailer agrees to place the Video Lottery Game terminals only in an Age-controlled Area as set forth in the Rules.
- 4.3 Sales to Visibly Intoxicated Persons:** Retailer agrees to make a good faith effort to prevent a visibly intoxicated person from playing Lottery Games. For purposes of this Subsection 4.3, a “**good faith effort**” means that Retailer will make an oral request to a player to stop playing if the player is observed to be visibly intoxicated and shall refuse to sell Tickets or Shares to a person who is visibly intoxicated.
- 4.4 Relation to Sales Requirements:** Retailer’s obligations to achieve any minimum sales requirements set forth in the Rules or otherwise do not supersede Retailer’s obligations set forth in this Section 4. Any failure by Retailer or its employees to comply with the obligations set forth in this Section 4 constitute an Event of Default under this Contract.

5.0 Lottery Staff

Treatment of Lottery Staff: Retailer agrees that all times, it will cooperate, be courteous, and provide business-like treatment to Lottery employees, officers, agents, vendors, and the Oregon State Police, while they are performing duties related to this Contract and Retailer will require all of its employees to do the same. Retailer will take all reasonable measures to protect Lottery staff who perform work at the Premises from interference by any persons on the Premises and will require all its employees to do the same.

6.0 Record Keeping and Audits

Record Keeping: Retailer agrees to keep and maintain complete and accurate Business records and accounting information including, but not limited to, accurate and detailed records of the gross non-Lottery sales for the Retailer’s Premises. If Retailer owns or shares in ownership of more than one Premises pursuant to one or more regular or temporary retailer contracts, Retailer agrees to keep records for gross non-Lottery sales separately for each Premises. Upon request of Lottery, Retailer agrees to provide to Lottery any and all requested records and accounting information, at Retailer’s expense, in any reasonable form or format requested by Lottery.

7.0 Reporting Requirements

- 7.1 Notice of Changes in Ownership or Form of Business:** Retailer shall notify the Lottery in writing of any of the following changes at least 14 days before the effective date of the change, unless such change occurs because of the death of the owner whose interest is being transferred, in which case notice shall occur no more than 14 days after the change:
- a) Changes in the owners of Retailer’s Business (for example, the addition of a new co-owner);
 - b) Changes in ownership interests in Retailer’s Business entity (for example, the addition of a new stockholder), except for those stockholders in a corporation who own less than 10% of the outstanding stock, directors in a corporation who own or control less than 3% of the voting stock, and members of a limited liability company whose investment commitment or membership interest is less than 10%;

- c) Changes in the form of Retailer's Business ownership (for example, the conversion from a sole proprietorship to a corporation); or
- d) Changes in Retailer's federal tax identification number.

- 7.2 Notice of Change in Key Person:** If any change takes place regarding the number or identity of Key Persons (who are not owners) associated with Retailer's Business, Retailer agrees to notify Lottery, in accord with Subsection 17.6, no more than 14 days after the change.
- 7.3 Notice of Conviction of Certain Crimes and Gambling-Related Offenses:** If, at any time during the Contract Term, Retailer is convicted of any gambling-related offense, or of any felony or Class A misdemeanor, Retailer shall notify Lottery of the conviction, in accord with Subsection 17.6, no more than 14 days after the conviction. If, at any time during the Contract Term, Retailer has or acquires knowledge that a Key Person is or has been convicted of any gambling-related offense, or of any felony or Class A misdemeanor, that was not disclosed to Lottery, Retailer shall notify Lottery, in accord with Subsection 17.6, of the conviction no more than 14 days after acquiring such knowledge.
- 7.4 Notice of OLCC License Suspension or Cancellation:** If Retailer has an Oregon Liquor Control Commission (OLCC) license, and it is suspended, cancelled, or not renewed during the Contract Term, Retailer shall immediately notify Lottery, in accord with Subsection 17.6, of such suspension, cancellation, or non-renewal to the Lottery.
- 7.5 Notice of Unusual Closure of Premises:** Retailer agrees to notify Lottery, accord with Subsection 17.6, at least 14 days in advance of any unusual closure of the Premises which will continue for five or more days. Unusual circumstances may include, but are not limited to, closures for vacation, remodeling, repairs, or emergencies.

8.0 Equipment, Materials, and Supplies

- 8.1 Ownership of Tickets, Supplies, and Equipment:** Lottery will provide Retailer with Equipment, Supplies and promotional materials for Lottery Games and other informational materials. Retailer agrees to make available to the public the informational and promotional materials provided by Lottery. Except for activated Scratch-it Tickets, the Equipment and Supplies provided to Retailer remain the property of Lottery, or Lottery's vendor. Ownership of Scratch-it Tickets passes to Retailer upon activation of the ticket.
- 8.2 Duties:** Retailer agrees to use the Equipment and Supplies provided by Lottery only in the performance of this Contract. At all times, Retailer shall exercise reasonable care to safeguard the Equipment and Supplies while they are in Retailer's possession. At all times, Retailer shall take reasonable measures, precautions, and actions to maintain the security and protection of the Equipment and Supplies from theft, damage, and tampering.
- 8.3 Costs and Fees:** Retailer agrees to pay Lottery for any installation, relocation or ongoing costs of any dedicated network services lines necessary to operate Lottery's Equipment. Retailer also agrees to provide, maintain and pay for any dedicated electrical power lines requested by Lottery to operate Lottery Games. In addition, Retailer agrees to pay the fees identified in Exhibit A.
- 8.4 Moving the Equipment:** Retailer agrees to not move any of Lottery's Equipment unless Lottery gives Retailer prior written approval.
- 8.5 Removal of the Equipment:** When Lottery removes its Equipment from the Premises, for any reason, Lottery is not responsible for returning Retailer's Premises to the condition the Premises were in before the Equipment was installed.

- 8.6 Liability for Loss of or Damage or Destruction to Equipment:** Retailer is liable for loss of, damage to, or destruction of all Equipment in its possession. In the event of loss, damage, or destruction of any Equipment, Retailer is liable for replacing or paying for such items as provided in the Rules related to Equipment loss or damage.
- 8.7 Placement, Inspection, or Removal of Equipment:** Lottery may inspect, furnish, repair, place, replace, add, or remove Lottery Equipment at a Retailer's Premises at any time during regular business hours or as otherwise agreed upon by the Parties.
- 8.8 After-Acquired Property:** The provisions of this Section 8 apply to all Equipment and Supplies provided to Retailer by Lottery at the start of this Contract and to any Equipment subsequently provided.

9.0 Compliance with Applicable Laws and Payment of Taxes

- 9.1 Compliance with Laws:** Retailer agrees to comply with all federal, state, and local laws, ordinances, regulations, including without limitation the Laws, applicable to its performance under this Contract and to the operation and maintenance of the Retailer's Business; provided, however, if there is a conflict between federal law and the Oregon Constitution or Revised Statutes ("Oregon Law"), Retailer shall not be in Default under this Contract solely due to Retailer's failure to comply with conflicting federal law, if Retailer complies with Oregon Law.
- 9.2 Non-Discrimination:** Retailer agrees to comply with:
- a) Title VI of the Civil Rights Act of 1964;
 - b) Section V of the Rehabilitation Act of 1973;
 - c) The Americans with Disabilities Act of 1990 (Pub. L. No. 101-336);
 - d) All regulations and administrative rules established pursuant to the above-named laws; and
 - e) All applicable requirements of any other federal and state civil rights and rehabilitation statutes, rules, and regulations, including, but not limited to, ORS 659A.142 and Lottery's "Retailer Wheelchair Accessibility Program" in OAR 177-040-0070.
- 9.3 Amusement Device Taxes:** If Retailer is a Video Lottery Game Retailer, Retailer is responsible for compliance with, and is liable for all amusement device taxes due under, Oregon Revised Statutes, Chapter 320 (the "Tax"). Lottery, however, shall estimate the amount of Tax owed by Retailer on a quarterly and annual basis, as applicable, based on the number of Video Lottery Terminals located on Retailer's Premises and the sales attributable to such terminals. Lottery shall invoice Retailer for the amount of such Tax. After receipt of an invoice from Lottery for any Taxes that Retailer may owe, Retailer shall pay the Tax through the electronic fund transfer (EFT) process described in Section 10 of this Contract along with the payment of other amounts owed to Lottery. Lottery shall forward the amount of Tax collected from Retailer to the Oregon Department of Revenue.
- 9.4 Tax Compliance:** Retailer represents that it has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state. Retailer shall, throughout the Contract Term, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Subsection, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Retailer, to Retailer's property, operations, receipts, or income, or to Retailer's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Retailer, or to goods, services, or property, whether tangible or intangible, provided by Retailer; and (iv) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this Subsection 9.4 constitutes a material breach of this Contract.

9.5 Continuing Consent: During the Contract Term, Retailer agrees to provide any tax information or form requested by the Lottery regarding Retailer's federal, state, or local taxes. This includes, but is not limited to, if requested by Lottery, signing a new form to authorize the release of Retailer's tax information and copies of Retailer's tax returns to Lottery.

10.0 Retailer Compensation

10.1 General Compensation: Lottery shall pay Retailer compensation in accordance with the Rules governing Retailer compensation.

10.2 One Percent Prize Payment Bonus: Retailer shall be entitled to bonus payments for paying a winning and validated Ticket as provided in the Rules.

10.3 One Percent Selling Bonus: Retailer shall be entitled to bonus payments for selling certain winning and validated Tickets as provided in the Rules.

10.4 New Product Testing: Lottery may test new Games, Equipment or other products. If Retailer agrees to participate in a testing program, Retailer may receive additional or different compensation at the rate set by Lottery for Retailer's participation in the test.

10.5 Incentives: Lottery may conduct retailer incentive programs in which Retailer may be eligible to participate. Lottery may offer such incentive programs, or not, and establish any eligibility criteria for participation. For purposes of this Section 10, such incentives are not considered part of Retailer's compensation rate and may be introduced, modified, or terminated as Lottery determines in its sole discretion.

10.6 Compensation Changes: During the Contract Term Lottery shall not decrease the compensation rates paid for the sale of Lottery Tickets and Shares without Retailer's consent, unless (i) the Rules are amended to provide for a decrease, (ii) Lottery Games or their sales are at any time prohibited, limited, or restricted by law, or (iii) Lottery's administrative expenses exceed 16% for all Games in violation of the Oregon Constitution. In such cases, Lottery will have the right, at any time, and in any manner, to revise the compensation rates paid pursuant to this Contract. No charge, change, or imposition of any fee shall be considered a reduction in compensation rates for purposes of this Subsection.

11.0 Payment to Lottery

11.1 Establishment of EFT Account: Retailer shall establish a separate account for the deposit of money from sales of Lottery Tickets and Shares with a financial institution that has the capability of making electronic funds transfers ("EFT(s)"). In extraordinary circumstances, and only with prior written approval from authorized Lottery staff, Retailer may pay money it owes to Lottery in another manner as prescribed by Lottery, no later than 5 p.m. on the day of the scheduled EFT draw.

11.2 Payment: Retailer agrees to pay the amount due to Lottery for the sale of Lottery Tickets and Shares by a weekly EFT initiated by Lottery that withdraws the amount owed to Lottery from the Retailer's designated EFT account. On the EFT draw date, Retailer shall ensure that sufficient funds are in its EFT account to cover the draw. Lottery shall calculate and total Retailer's activity for the Business Week and will post an invoice on Retailer's terminal setting forth the amount owed to Lottery on the draw date. The invoice will include a summary of Retailer's sales, payouts such as prizes or refunds, commissions, and other adjustments including fees, as detailed in Exhibit A, or any payments due from Retailer to Lottery for activated Scratch-it Tickets. If Retailer is a Traditional Retailer, Lottery shall post its invoice for Traditional Lottery Games each Sunday afternoon after the close of the immediately preceding Business Week. If Retailer is a Video Lottery Game Retailer, then Lottery shall post its invoice for Video Lottery

Games by 1:00 p.m. each Monday following the close of the immediately preceding Business Week. Lottery shall withdraw the amount owed to Lottery from Retailer's EFT account on or before the close of the banking day on each Wednesday following the posting of an invoice to Retailer. If Retailer does not receive an invoice as described in this Subsection, Retailer shall contact Lottery prior to the scheduled Wednesday transfer to determine the amount owed by Retailer to Lottery on the transfer date.

11.3 Unpaid Cash Slips at Start of Contract Term: All cash slips produced prior to 5:00 am on June 28, 2020 that have not previously been validated by the retailer, and are allowed to be validated by the retailer, will be charged to the retailer. The cash slip charges will occur within the first three invoice cycles following June 28, 2020.

11.4 Unsold Scratch-it Tickets: If Retailer returns to Lottery unsold, activated Scratch-it Tickets within any timeframe permitted by the Rules, Lottery will credit Retailer's EFT account based upon the purchase price of the returned Scratch-it Tickets. Except as authorized by the Rules or paragraph 16.5(c) of this contract, Retailer may not return unsold and activated Scratch-it Tickets to Lottery for credit.

11.65 Other Fees: Retailer agrees to pay, through its EFT account, any fees, assessments, or charges that it may owe pursuant to the terms of this Contract, including, but not limited to, the fees listed in Exhibit **BA**. Retailer agrees that Lottery may adjust the fees that Retailer owes based upon the charges incurred either by Lottery or its vendors in providing the goods or services covered by the fees. Lottery shall give Retailer reasonable advance notice of any change in the fees. Retailer will be deemed to have accepted a fee change if it continues to sell Lottery Games under this Contract after the effective date of a fee change.

~~**11.7 Security Interest.** Retailer hereby pledges and grants a lien and security interest to Lottery in the EFT account established pursuant to Subsection 11.1, and in all moneys deposited in that account, whether now owned or hereafter acquired by Retailer, and whether now or hereafter existing or arising. Retailer shall give, execute, deliver, file, record, re-record, authenticate, and authorize any documentation as may be necessary to perfect and maintain the security interest granted under this Contract, including without limitation any agreement required by Retailer's financial institution and the Oregon Uniform Commercial Code to perfect Lottery's security interest in the EFT account. Lottery's security interest in the EFT account shall be superior and prior to the rights of all third persons now existing or hereafter arising whether by way of lien, security interest, encumbrance, assignment or otherwise. Retailer shall take or cause to be taken all action necessary or desirable to create, maintain and preserve Lottery's first priority lien in the EFT account and in all monies deposited in that account. In the event Retailer fails to comply with the provisions of this Agreement, Lottery shall be entitled to exercise all of the rights provided to a secured lien holder under Oregon law, including without limitation, the ability to take control or possession of the EFT account and all moneys deposited in that account.~~

12.0 Non-Sufficient Funds (NSF)

12.1 NSF: If Retailer's EFT payment is rejected for NSF reasons, the Rules applicable to "Non-Sufficient Funds" shall govern the Parties' rights, duties, and obligations under this Contract.

12.2 Collection Action: If Lottery initiates collection action on behalf of the State to collect any money due by Retailer under this Contract, Retailer agrees to reimburse the Lottery Fund through payment to Lottery of all Lottery court costs, statutory interest, attorney fees, collection agency fees, and any other disbursements incurred in the collection process.

13.0 Waiver and Indemnification

- 13.1 Waiver:** Retailer waives any claims that it may have against the State of Oregon, the Oregon State Lottery Commission, the Oregon State Lottery, the Oregon State Police, their agents, officers, employees, and representatives that may arise out of any interruption, suspension, failure of, or defects in the operation of Lottery's Games, Equipment, Supplies, products, and systems. This waiver includes, but is not limited to, any and all claims for lost profits or revenue from the sale of Lottery Tickets or Shares, regardless of the reason for the failure, interruption, or defect, and also includes any claims based on Lottery's interruption of operations to protect Lottery security or to conduct repairs, replacements, or substitutions of Equipment, Supplies, products, or systems or for any other reason.
- 13.2 Indemnification:** Retailer agrees to indemnify, defend, and hold harmless the State of Oregon, the Oregon State Lottery Commission, the Oregon State Lottery, the Oregon State Police, their agents, officers, employees, and representatives from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses arising out of, or relating to, the acts or omissions of Retailer, its Business, its officers, employees, subcontractors, or agents under this Contract. Retailer's obligations hereunder include, but are not limited to, any and all losses, damages, liabilities, settlements, judgments, fines, costs, fees, and expenses of any nature whatsoever, including, but not limited to, fees of attorneys and other professionals at trial and on appeal.

14.0 Default

- 14.1 By Retailer:** Retailer shall be in default under this Contract upon the occurrence of the following events:
- a. Retailer fails to perform any of its obligations under this Contract and, after notice of such failure by Lottery, does not correct such failure within the time frame, if any, specified by Lottery for such correction, including, without limitation those obligations set forth in Sections 3, 4, and 5 and Subsections 7.1 through 7.4, 9.1, 9.2, 9.4, 11.2, 12.1, and 17.2.
 - b. Any representation, warranty, statement or certification made by Retailer or a Key Person in this Contract, Retailer's Application, any documents or reports relied upon by Lottery to enter into this Contract or any other document or report submitted pursuant to this Contract is untrue, misleading or deceptive in any material respect when made;
 - c. A petition, proceeding or case is filed by or against Retailer under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Retailer, Retailer acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Retailer becomes insolvent or admits its inability to pay its debts as they become due, or Retailer makes an assignment for the benefit of its creditors.
- 14.2 By Lottery:** Lottery will be in default under this Contract if, after 30 days written notice specifying the nature of its failure, Lottery fails to perform any of its obligations under this Contract; provided, however, Lottery will not be in default if Lottery fails to perform an obligation due to a change in federal or state laws or rules, or the interpretation or enforcement of such laws or rules, that prevents or prohibits Lottery from performing one or more of its obligations under this Contract.

15.0 Remedies

- 15.1 Lottery Remedies:** In the event Retailer is in default under Subsection 14.1, Lottery may at its option pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:
- a. Termination of this Contract under Section 16;
 - b. Limiting the Games that Retailer may sell under this Contract or disabling or removing any or all of the Equipment or Supplies that have been placed in Retailer's possession for any period of time as determined by Lottery in its sole discretion.
 - c. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief.
- 15.2 Retailer Remedies:** In the event Lottery is in default under Subsection 14.2, Retailer's sole remedy will be termination of this Contract. In no event will Lottery be liable to Retailer for any expenses related to termination of this Contract or for any lost or anticipated profits.

16.0 Termination of Contract

- 16.1 Termination Upon 14 Days' Notice by Either Party:** Either Party may terminate this Contract at any time for convenience or any other reason by giving 14 days advance written notice to the other Party.
- 16.2 Immediate Termination by Lottery:** Lottery may terminate this Contract, effective immediately upon delivery of written notice to Retailer or at such later date as may be specified in the notice, upon the occurrence of any of the following events:
- a) **Default:** The occurrence of an Event of Default by Retailer under Subsection 14.1 of this Contract.
 - b) **Integrity:** If Lottery, acting in good faith and fair dealing, reasonably believes that Retailer may pose a threat to the actual or apparent fairness, integrity, security, or honesty of Lottery, its Games, or its players.
 - c) **Law Changes:** If federal or state laws, rules, regulations, or administrative rules are modified, changed, or interpreted in such a way that Lottery Tickets or Shares are no longer available for purchase under this Contract or are no longer eligible for the compensation authorized by this Contract.
 - d) **OLCC License:** If Retailer is a Video Lottery Game Retailer and Retailer's OLCC license is suspended, cancelled, or not renewed.
 - e) **Convictions:** If Retailer, or any Key Person in the Retailer's Business, is convicted of any crime classified as a felony or Class A misdemeanor during the Contract Term or if Lottery becomes aware of such a conviction that occurred prior to the Effective Date.
 - f) **Unlawful Gambling:** If the Retailer is found possessing any gray machines or other illegal gambling devices (as defined in ORS 167.117) or is found to be engaged in other unlawful gambling (as defined in ORS Chapter 167), including but not limited to poker tournaments or other card games that do not meet the definition of "social games" under ORS chapter 167.
 - g) **Renting Space for Unlawful Gambling Purposes:** If Retailer, or any Key Person in Retailer's Business, violates ORS 91.240, which prohibits renting or letting rooms, space, or premises for unlawful gambling purposes.

- h) **Use of Premise for Any Unlawful Purposes:** If through an investigation, the Premises are found to be used for any unlawful activity, as defined in state or federal law, except as provided in Subsection 9.1 with respect to a conflict between federal and Oregon Law.

16.3 Termination upon Sale or Other Transfer of Business: Except as set forth in Section 16.4, this Contract automatically terminates upon any of the following:

- a) The sale, lease, or other disposition of all the assets of Retailer's Business; or
- b) The transfer of 100% of the ownership interests in Retailer's Business to another person by operation of law, stock purchase, consolidation, merger, or other reorganization of Retailer's Business.

16.4 Exception to Termination upon Sale or Other Transfer of Business: If Retailer is an entity that has a legal identity apart from its owner, and a transfer of 100% of its ownership interests occurs by operation of law because of the death of the owner or owners, Lottery may, in its sole discretion, not terminate the Contract if:

- a) Lottery determines that the actual or apparent fairness, integrity, security, or honesty of the Lottery is not jeopardized by the transfer; and
- b) Retailer submits an Application for approval of the new owner or owners holding 100% of the ownership interests within the timeline set by the Lottery. This includes, but is not limited to, a transfer of interest into an estate or a trust. Lottery may require that the personal representative, trustee, or other similar party be approved as a Key Person.

16.5 Action upon Termination of Retailer's Contract: The rights and remedies provided in this Contract are in addition to any other rights and remedies provided to the Parties by Laws or Rules. Any termination of this Contract is without prejudice to any obligations or liabilities of either Party accrued prior to termination. Upon receipt of a notice of termination from Lottery, or on another date, if any, specified in such notice, Retailer shall:

- a) **Stop Work:** Stop selling Lottery Tickets and Shares on the date and to the extent specified in the notice.
- b) **Preserve Property:** Take such actions as may be necessary, or as Lottery may specify, to protect and preserve Lottery's property and the property of Lottery's vendors, including, but not limited to, Equipment or Supplies, if any that are in Retailer's possession.
- c) **Return of Tickets:** Return any valid, unactivated or activated and unsold Scratch-it Tickets to Lottery.
- d) **Return of Equipment:** Upon demand by Lottery, immediately surrender to Lottery all Equipment, Supplies and other property in Retailer's possession, title to which is held by Lottery or its vendors. Retailer agrees that upon termination of this Contract, Lottery has the authority to seize, without warrant, all such Equipment, Supplies and other property. Retailer agrees that Lottery or its agents may seize the Equipment, Supplies and other property during normal business hours on or after the date that the termination is effective.
- e) **Pay Monies Owed:** Pay to Lottery any amount due and owing within seven days of the termination date. If Retailer fails to pay all sums due and owing within seven days, then Lottery may take any collection action to recover such amounts it determines necessary without further notice to Retailer.

17.0 Miscellaneous Terms

17.1 No Third-Party Beneficiary: This Contract is exclusively between Lottery and Retailer. Nothing in this Contract provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to any third person(s) unless such third person is individually identified by name herein and expressly

described as an intended third-party beneficiary. Only the Parties have any rights under this Contract or any ability to assert or enforce any rights under it.

- 17.2 No Assignment or Transfer:** Retailer may not assign, delegate, subcontract, or in any way transfer this Contract, in whole or in part, including, without limitation, the authority to act as a Lottery Retailer and to sell Lottery Tickets or Shares in exchange for the receipt of payment of the retail price of such Tickets or Shares. Except for a security interest granted to Lottery, Retailer may not grant a security interest or lien in, or otherwise encumber, any payments received from the sale of Lottery Tickets or Shares. If Retailer advertises the sale of its Business, the advertisement shall not imply or state that the sale of the Business transfers any right to sell Lottery Tickets or Shares. Retailer shall not state or imply during any sale negotiations that its rights under this Contract transfer to any new owner.
- 17.3 Severability:** The provisions of this Contract are severable. The Parties agree that if any provision of this Contract is declared by a court of competent jurisdiction to be illegal, invalid, or in conflict with any law, the validity of the remaining provisions will not be affected. The rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the provision held to be illegal, invalid, or in conflict with any law.
- 17.4 Applicable Law; Choice of Forum:** The laws of the State of Oregon govern all matters arising out of, or in connection with, this Contract without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between Retailer and Lottery, or any other agency or department of the State of Oregon, that arises from or relates to this Contract (a **“Claim”**) shall be brought and conducted solely and exclusively within the Circuit Court of Marion County, Oregon. Provided, however, that if a Claim must be brought in a federal forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Subsection shall not be construed as a waiver by Lottery or 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. **By execution of this Contract, Retailer consents to the personal jurisdiction of such courts.** This Subsection shall survive any termination or expiration of this Contract.
- 17.5 Waiver of Default:** The waiver by Lottery of any default or breach of this Contract by Retailer does not excuse any subsequent default or breach by Retailer and is not a change to the terms of this Contract.
- 17.6 Notice:** Except as otherwise expressly provided in this Contract, any communications between the Parties, or any notices to be delivered under it, must be in writing and may be delivered by United States Postal Service, facsimile, electronic mail, personal delivery, or express courier, postage prepaid, to Retailer 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 Subsection 17.6. Any communication or notice so addressed and mailed shall be deemed to be delivered five days after mailing. Any communication or notice delivered by facsimile or electronic mail shall be deemed to be delivered on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was made on a Working Day, defined below, or on the next Working Day, if transmission was not made during a Working Day; provided, however, to be effective against Lottery, any facsimile or electronic mail notice must be confirmed by telephone to Lottery’s Retail Contract Administrator. Any communication or notice delivered by personal delivery or express courier to Retailer by Lottery shall be deemed to be delivered immediately upon such delivery, provided such delivery is made to Retailer, a Key Person, or an employee of Retailer. For purposes of this Subsection, **“Working Day”** means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when Lottery Headquarters in Salem is open for business.

(a) Retailer agrees to provide to Lottery a valid electronic mail (email) address. Retailer also agrees to monitor this email address on a regular basis and respond appropriately to emails from Lottery.

17.7 Survival. All rights and obligations of this Contract cease upon termination or expiration of this Contract, except for terms of the Contract which, by their nature, are intended to survive termination or expiration of the Contract including, but not limited to, the following: Sections 12, 13 and 14; and Subsections 8.4 through 8.6, 16.5, 17.1, 17.3, ~~17.4, 17.6~~ and 17.6.

SIGNATURE PAGE FOLLOWS

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

DRAFT

Retailer Contract Signature Page

		Retailer Number:
		Entity Number:
		Application Number:
Retailer's Business Name (DBA)		
Address where Games will be provided:		
City, State, Zip:		
Type of Entity:		
<input type="checkbox"/>	Sole Proprietorship	Owner Name:
<input type="checkbox"/>	Partnership: For limited partnerships, list general partners and limited partners.)	List Names of Partners:
<input type="checkbox"/>	Corporations:	Corporation Name:
<input type="checkbox"/>	Limited Liability Company (LLC)	LLC Name:
<input type="checkbox"/>	<u>Other: (DNP, Private Clubs, etc)</u>	<u>Other:</u>
Date of Incorporation, Organization of LLC or Partnership Date:		
Entity Mailing Address:		
City, State, Zip:		

Federal Taxpayer Identification Number: _____

-OR-

Social Security Number (only sole proprietors with no employees): _____

TAX CERTIFICATION - PLEASE CHECK ONE OF THE FOLLOWING BOXES:

Sole Proprietor Partnership Corporation L.L.C. Other

By signature on this Contract, I, _____, the undersigned owner, partner, officer, or authorized representative, hereby swear/affirm, under penalty of perjury as provided in ORS 305.385(6), that to the best of my knowledge, Retailer is not in violation of any of the tax laws described in ORS 305.380(4).

This Contract, consisting of this document and the incorporated exhibits, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Retailer, by the signature below of its authorized representative, hereby acknowledges reading this Contract, understanding it, and agreeing to be bound by its terms and conditions. Furthermore, the person signing this Contract warrants and represents that he or she is an owner, partner, officer, or authorized representative, and has the full right, power, and authority to execute this Contract on behalf of Retailer.

RETAILER

OREGON STATE LOTTERY COMMISSION

Name: _____
(Print Retailer's corporate, LLC, partnership, or fraternal legal name. Sole proprietor use owner's name.)

500 Airport Road SE
P.O. Box 12649
Salem, OR 97309-0649

Signature: _____

By: _____
Barry Pack, Director

Print Name: _____

Title: _____

Date: _____

Date: _____

Electronic Mail Address: _____

Telephone Number: _____

Faxesimile Number: _____

Exhibit A

Required Fees and Monthly Charges

Lottery network service installation	\$634.00 ¹
Relocate network service internal wiring for i-Link, VSC, Lottery To Go™	
Oregon's Imagine Terminal	\$145.00 ²
Traditional product only monthly network charge	\$73.00
Video product monthly network charge	\$211.00
Annual Department of Revenue amusement device tax (per VLT)	\$135.00 ³

Replacement/Repair Charges:

• Keno Monitor	\$400.00
• Keno Monitor wall mount	\$100.00
• Keno monitor remote control	\$40.00
• Lottery To Go lock set	\$54.25
• Lottery To Go key	\$5.00
• Lottery To Go T-Bar	\$6.80
• Lottery To Go FOB (Remote Control)	\$26.19
• VLT Main door/cash door lock(s)	\$45.00 ⁴
• VLT Main door/cash door Keys (each)	\$8.50
• Play Station	\$218.00
• POP Backlit LED sign	\$195.00 ²
• Exterior Lottery ID sign	\$425.00 ²
• Interior LED Lottery ID sign	\$165.00 ²
• Window Jackpot sign	\$1,500.00
• POS Easel Jackpot	\$900.00
• Prism Sign	\$800.00
• Video Lottery Directional sign	\$195.00 ²
• Video Lottery Lit Menu Board	\$107.76
• Video Lottery LED backlit sign	\$188.00

Notes:

¹ There may be additional network installation charges if the retailer location is in an area where the required network facilities are not available. Facilities are not present in every area of the state and may require that the telephone company install additional hardware and/or perform additional telephone cable work and central office work. Each of these cases is unique and charges will vary. The retailer will pay actual costs.

² Actual costs may vary; fees are calculated on time and materials.

³ Additional Department of Revenue Amusement Device Taxes will be charged when net sales reach the following levels:

\$104,000.00: an additional \$50.00 per VLT.

\$260,000.00: an additional \$75.00 per VLT.

⁴ Additional Locksmith charges are not included.

Exhibit A Revised August 14, 2019

Exhibit B

This Exhibit B shall be completed by the Lottery only.

THE RETAILER SHALL ACT AS A:

<input type="checkbox"/> <u>Traditional Retailer</u>	<input type="checkbox"/> <u>Video Lottery Game Retailer</u>
_____ <u>Initials</u>	_____ <u>Date</u>

OTHER INFORMATION:

<input type="checkbox"/> <u>Organizational or Corporate Change</u>
<input type="checkbox"/> <u>Adding Location</u>

DRAFT