



Retailer Number: _____

RETAILER CONTRACT

DRAFT DATE: June 4, 2009

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”). The Retailer and the Lottery also may be ~~are also~~ referred to individually or jointly as “Party” or individually, and as the “Parties,” jointly respectively.

PURPOSE: This Contract is for the provision of Traditional and Video LotterySM Games sold through a Lottery’s Alturas terminal, a Lottery To GoTM terminal, or a Lottery Video LotterySM Terminal located in the Retailer’s establishment located at the address shown on the signature page of this Contract. Pursuant to this Contract, the Retailer agrees to act as a Traditional Retailer, a Video LotterySM Retailer, or any combination thereof, as indicated in Exhibit A.

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

EFFECTIVE DATE: This Contract is effective on either June 27, 2010, or on the date by which both the Retailer and the Lottery Director (“Director”), or the Director’s designee, have signed it, whichever is later.

TERMINATION DATE: The Contract remains in effect until June 25, 2016, unless terminated earlier by either the Lottery or the Retailer (hereinafter referred to as the “**Term**” of this Contract).

APPLICATION OF PROVISIONS: Except as specifically set forth in this Section, all sections of this Contract apply to all Retailers:

Sections 11.2, ~~11.3~~, 11.5, 11.6, and 12.4 apply only to Traditional Retailers.

Sections 5.2, 10.3, 11.7, 11.8, and 15.2(e) apply only to Video LotterySM Retailers.

GENERAL TERMS AND CONDITIONS

1.0 Incorporated Documents and Definitions

1.1 Complete Contract: This Contract consists not only of this document, but includes and incorporates by reference the items listed below. It is the Retailer’s responsibility to familiarize itself with these items. The Retailer agrees to comply with the provisions of each of the items listed below.

The Parties acknowledge that Constitutional provisions, laws, and administrative rules applicable and incorporated into this Contract may be adopted, revised, modified, amended, or repealed from time to time. The Parties shall be bound by and shall comply with the most current

Constitutional provisions, laws, and administrative rules in effect at any time during the Term of this Contract.

Where applicable, these items, as they now exist, or as they may be adopted, revised, modified, amended, or repealed hereafter from time to time, control the application and operation of this Contract in the following order:

- 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).
- d) Exhibits A, B, ~~and C~~, and D attached hereto.
- e) Any writing delivered to the Retailer from the Lottery that is based on authority provided by constitution, statute, contract, or administrative rule.

In the event of any inconsistency between the provisions of this Contract and items (a) through (e) above, the provisions of items (a) through (e) will control.

~~f) Any **“Agreement to Pay”** or **“Personal Guaranty”** if the Retailer signed such agreement or guaranty as a requirement of applying for, or entering into, a temporary contract with the Lottery to ensure payment of funds due the Lottery, or, if the Retailer is a corporation or other legal entity (except a sole proprietorship or a private club as defined in ORS 471.175), then guaranteed and signed by at least one natural person who is a principal of that entity.~~

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

1.3 **Definitions:** For purposes of this Contract, ~~the following capitalized~~ terms have the meanings set forth in OAR Chapter 177, as in effect during the Term of this Contract. The following terms have the meanings set forth below:

- ~~a) **“Business”** has the meaning set forth in OAR 177-040-0000(4).~~
- ~~b) **“Business Day”** means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.~~
- ~~c) **“Business Week”** means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.~~
- ~~d) **“Business Year”** means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the Business Day of the last Saturday of the following June.~~
- ea) **“Cause”** or **“Termination for Cause”** has the meaning set forth in Section 15.2(hi) of this Contract.
- b) **“Director”** or **“Lottery Director”** has the meaning set forth in ORS 461.010(3).

- ~~) “Equipment” means all equipment placed by the Lottery or a Lottery vendor on the Retailer’s Premises including, but not limited to: Video LotterySM game terminals and all equipment necessary to their operation; Instant ticket vending machines; Validation terminals; On-Line sales terminals; Display equipment; Interior and exterior signage; Check-a-ticket devices; and all related materials and supplies.~~
- c) **“Game” or “Lottery Game”** has the meaning set forth in ORS 461.010(5).
- ~~) “Key Person” has the meaning set forth in OAR 177-040-0000(7).~~
- j) ~~“On-Line Game” has the meaning set forth in OAR 177-070-0005(2).~~
- k) ~~“Premises” has the meaning set forth in OAR 177-040-0000(6).~~
- l) ~~“Prize” has the meaning set forth in OAR 177-010-0003(13).~~
- m) ~~“Scratch-itSM” Ticket has the meaning set forth in OAR 177-050-0002(6).~~
- n) ~~“Share” has the meaning set forth in OAR 177-010-0003(15).~~
- d) “Supplies” includes, but is not limited to, ticket stock and printer ribbon.
- ~~) “Ticket” has the meaning set forth in OAR 177-010-0003(16).~~
- ~~) “Traditional Lottery Games” includes all Lottery Games offered by the Lottery other than Video LotterySM Games and includes Scratch-itSM Tickets and On-Line Games.~~
- e) **“Traditional Retailer”** means a Retailer with whom Lottery has contracted for the purpose of providing Traditional Lottery Games to players.
- ~~) “Video LotterySM” or “Video LotterySM Game” has the meaning set forth in OAR 177-100-0010(6).~~
- f) **“Video LotterySM Retailer”** has the meaning set forth in ORS 461.217(1).~~means a Retailer with whom the Lottery has contracted for the purpose of providing Video LotterySM Games to players.~~

2.0	General
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- 2.1 A Contract, Not a License:** This document is a contract and is not a license. The 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). The Retailer waives any claim or right to an administrative hearing before the 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 both the Director, or the Director’s designee, and the Retailer have signed it.
- 2.2 No Third-Party Beneficiary:** This Contract is exclusively between the Lottery and the Retailer. This Contract does not and shall not be construed as creating any third-party beneficiaries. No one other than a Party to this Contract has any rights under this Contract or any ability to assert or enforce any rights under it hereunder.

2.3 Non-Assignability: Pursuant to ~~ORS 461.300(3) OAR 177-040-0110,~~ and the terms of this Contract, the Retailer cannot assign, delegate, subcontract, or in any way transfer, in whole or in part, the authority to act as a Lottery Retailer. ~~any rights, obligations, claims, or interests of any kind in, under, or arising out of this Contract.~~ Any attempt by the Retailer to do so is ineffective. ~~assign, subcontract, or transfer in whole or in part any rights, obligations, claims, or interests in, under, or arising out of this Contract is void.~~

The Retailer cannot assign, delegate, subcontract, or in any way transfer, in whole or in part, any other rights, obligations, claims, or interest of any kind in, under, or arising out of this Contract without the prior written approval of the Director or the Director's designee.

If the Retailer advertises the sale of its Business, the advertisement shall not imply or state that the sale of the Business transfers the right to sell Lottery Tickets or Shares. The Retailer shall not state or imply during any sale negotiations that its rights under this Contract transfer to any new owner.

2.4 Responsibility: The Retailer agrees to perform all of the duties and obligations described in this Contract and all of the duties set forth in the Oregon Administrative Rules, Chapter 177, including, but not limited to, OAR 177-040-0050 "Retailer Duties." The Retailer is responsible for any act or omission of its employees, agents, or representatives in violation of any law, rule, or provision of this Contract.

2.5 Access to Premises: The 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 the Retailer's Premises and to those records of the Retailer's Business that are pertinent to this Contract during the Retailer's normal business hours.

2.6 Severability: The provisions of this Contract are severable. 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 is not affected. The rights and obligations of the parties to this Contract shall be construed and enforced as if the Contract did not contain the ~~particular~~ provision held to be illegal, invalid, or in conflict with any law.

2.7 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 the Retailer and the Lottery (including 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. In no way shall this Section be construed as a waiver by the 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, the Retailer consents to the personal jurisdiction of such courts.** This Section 2.7 survives any termination or expiration of this Contract.

2.8 Waiver of Default: The waiver by the Lottery of any default or breach of this Contract by the Retailer does not excuse any subsequent default or breach by the Retailer and is not a change to the terms of this Contract.

2.9 Notice: Except as otherwise expressly provided in this Contract, any communications between the Parties, or any notices to be delivered under it, hereunder, shall be delivered in writing by United States Postal Service, facsimile, personal delivery, or express courier, postage prepaid, to the Retailer or the Lottery at the address or number set forth on the signature page of this Contract, of it applicable, at the address set forth on Exhibit D, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 2.9.

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 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.

Any communication or notice delivered by personal delivery or express courier to the Retailer by the Lottery shall be deemed to be delivered immediately upon such delivery, provided such delivery is made to the Retailer, a Key Person, or an employee of the Retailer.

For purposes of this Section 2.9, “**Working Day**” means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when the Lottery Headquarters in Salem is open for business. To be effective against the Lottery, any notice transmitted by facsimile must be confirmed by telephone notice to the Lottery’s Retail Contract Administrator.

3.0 Retailer is not an Employee, Officer, or Agent of the Lottery or the State of Oregon

3.1 Status as an Independent Contractor: At all times, the Retailer is shall act at all times as an independent contractor and is not as an agent or employee of the Lottery. The Retailer agrees that neither the Retailer nor its employees are employees, officers, or agents of the Lottery or the State of Oregon, and can make no claim of right, privilege, or benefit that would accrue to an employee, officer, or agent of the Lottery or the State of Oregon.

3.2 Workers’ Compensation Subject Employer: If the All-Retailers who employs subject workers who work under the Contract in the State of Oregon, the Retailer must shall comply with ORS 656.017 and provide the required workers’ compensation coverage, unless the Retailer such employers are is exempt under ORS 656.126(2).

3.3 Ineligibility for Benefits/Self-Employed: Under this Contract, the work that the Retailer performs and the Contract payments that the Retailer receives from the Lottery do not qualify the Retailer for any benefits from federal social security, unemployment insurance, workers’ compensation, or the Public Employees’ Retirement System, except as a self-employed individual or entity.

DUTIES OF THE PARTIES

4.0 Sales

4.1 Lottery Ticket and Share Sales: The Retailer agrees to perform its duties in accordance with the Oregon Administrative Rules specified for the types of Lottery Tickets and Shares that the Retailer sells at its location.

The Retailer agrees to sell Lottery Tickets or Shares, as applicable, and maintain an effective selling environment, which ~~shall may~~ include, but is not limited to:

- a) Maintaining Retailer's financial responsibility, integrity, and reputation;
- b) Accessibility of the Premises to the public;
- c) Public convenience;
- d) Security of the Premises; and
- e) Achieving the minimum sales requirements set forth in OAR 177-040-0040 "Traditional Retailer Minimum Sales Requirements" and 177-045-0030 "Video LotterySM Game Terminals".

4.2 Pay Prizes: The Retailer agrees to make payment for Prizes to Lottery Game winners according to the requirements of each Lottery Game.

4.3 Training: The Retailer agrees:

- a) To be knowledgeable about Game play, Game Equipment operations, ~~and~~ maintenance, and problem gambling treatment.
- b) That ongoing training is essential to the performance of this Contract.
- c) To ensure that all employees performing duties related to the performance of this Contract are adequately trained.

The Lottery will give the Retailer reasonable advance notice of any required training programs and will provide such training to the Retailer. Such training may occur on or off of the Retailer's Premises. Failure of a Retailer or a Retailer's employees to attend required training may result in the disabling or removing of Lottery equipment under Section 15.5. Continued failure to attend required training may result in termination of this Contract under Section 15.2.

4.4 Promotional Materials: The Lottery will provide the Retailer with promotional materials for Lottery Games and other informational materials. The Retailer agrees to make available to the public the informational and promotional materials provided by the Lottery.

4.5 Administrative Rules: The Retailer agrees to comply with all administrative rules applicable to the sale of Lottery Tickets and Shares sold by the Retailer.

5.0 Sales to Minors and Visibly Intoxicated Persons

5.1 Sales to Minors: ~~The Retailer agrees to make a good faith effort to ensure that Lottery Tickets and Shares are sold only to those who qualify by age.~~ The Retailer agrees that it to use due diligence to will not knowingly:

- a) Sell Lottery Tickets for Traditional Lottery Games to a person under the age of 18 years;
- b) Sell Shares for Video LotterySM Games to a person under the age of 21 years; or

c) Allow an underage person to play Lottery Games.

~~For purposes of Section 5.1, a “good faith effort” means that the Retailer will not knowingly sell or authorize the sale of Lottery Shares or Tickets to persons who do not qualify by age.~~

5.2 Age Control: If the Retailer is a Video LotterySM Retailer, then the Retailer agrees to maintain the Video LotterySM game terminals in an age-controlled area posted by the OLCC (or Lottery, if so authorized by law) as prohibited to minors.

5.3 Sales to Visibly Intoxicated Persons: The Retailer agrees to make a good faith effort to prevent a visibly intoxicated person from playing Lottery Games. For purposes of this Section 5.3, a “good faith effort” means that the Retailer will make an oral ~~verbal~~ 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.

5.4 Relation to Sales Requirements: The Retailer’s obligations to achieve the minimum sales requirements set forth in OAR 177-040-0040 and OAR 177-045-0030(1)(c) do not supersede the Retailer’s obligations set forth in Sections 5.1, 5.2, and 5.3. Failure to comply with the obligations set forth in Sections 5.1, 5.2, and 5.3, is Cause for termination as set forth in Section 15.2(hi) of this Contract.

6.0 Lottery Staff

6.1 Treatment of Lottery Staff: At all times, the Retailer ~~will agree to take all reasonable measures to provide~~ cooperate, ~~ion, and 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 ~~will agree to~~ require all of its employees to do the same.

At all times, the Retailer ~~will agree to~~ take all reasonable measures to protect Lottery staff who perform work at the Premises from interference by any persons on the Premises and ~~will agree to~~ require all of its employees to do the same.

7.0 Record Keeping and Audits

7.1 Record Keeping: The 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 establishment.

If the Retailer owns or shares in ownership of more than one retail site pursuant to one or more regular or temporary retailer contracts, the Retailer agrees to keep records for gross non-Lottery sales separately for each site.

Upon request of the Lottery, the Retailer agrees to provide to the Lottery any and all requested records and accounting information, at the Retailer’s expense, in any reasonable form or format requested by the Lottery.

8.0 Reporting Requirements

8.1 Notice of Changes in Ownership or Form of Business: The Retailer shall notify the Lottery in writing of any of the following changes at least 14 days before the change takes place, 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 the Retailer's Business (for example, the addition of a new co-owner);
- b) Changes in ownership interests in the Retailer's business entity (for example, the addition of a new ~~stock~~shareholder), except for those ~~stock~~shareholders in a ~~publicly traded~~ corporation who hold less than ~~10%~~ 5% of the ~~outstanding stock, shares; directors in a corporation who hold 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 the Retailer's business ownership (for example, the conversion from a sole proprietorship to a corporation); or
- d) Changes in the Retailer's federal tax identification number.

8.2 Notice of Change in Key Person: If any change takes place with regard to the number or identity of Key Persons (who are not owners) associated with the Retailer's Business or in the Retailer's employment, the Retailer agrees to notify the Lottery in writing, in accordance with Section 2.9, no more than 14 days after the change.

8.3 Notice of Conviction of Certain Crimes and Gambling-Related Offenses: If, at any time during the Term of this Contract, the Retailer is convicted of any gambling-related offense, or of any felony or Class A misdemeanor, including felony or Class A ~~traffie~~-misdemeanors traffic crimes, the Retailer shall notify Lottery of the conviction no more than 14 days after the conviction.

If, at any time during the Term of this Contract, the 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, including felony or Class A ~~traffie~~-misdemeanors traffic crimes, the Retailer shall notify the Lottery of the conviction no more than 14 days after acquiring such knowledge.

8.4 Notice of OLCC License Suspension or Cancellation: If the Retailer has an Oregon Liquor Control Commission (OLCC) license, and it is suspended, cancelled, or not renewed during the Term of this Contract, the Retailer shall report such suspension, cancellation, or non-renewal immediately to the Lottery upon receipt of the notice of suspension, cancellation, or non-renewal.

8.5 Notice of Unusual Closure of Premises: ~~Whenever possible, t~~The Retailer agrees to notify the Lottery 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. ~~Failure to give notice under Section 8.5 is not a basis for termination of this Contract pursuant to Section 15.2.~~

9.0 Treatment of Equipment, Materials, and Supplies

9.1 Ownership of Tickets, Supplies, and Equipment: Under this Contract, the Lottery will provide the Retailer with Equipment and Supplies. Except for activated Scratch-itSM Tickets, the Equipment and Supplies provided to the Retailer remain the property of the Lottery, or the Lottery's vendor, and are in the Retailer's possession not as a lessee, but as an independent

contractor of the Lottery. Ownership of Scratch-itSM Tickets passes to the Retailer upon activation. receipt. ~~“Supplies” include, but are not limited to, ticket stock and printer ribbon.~~

- 9.2 Duties:** The Retailer agrees to use the Equipment and Supplies supplied by the Lottery only in the performance of this Contract. At all times, the Retailer ~~shall agree to~~ exercise reasonable care ~~at all times in to~~ safeguarding the Equipment and Supplies while ~~they are it is~~ in the Retailer’s possession. At all times, the Retailer shall take reasonable measures, precautions, and actions to maintain the security and protection of the Equipment and Supplies from theft, damage, and tampering.
- 9.3 Costs and Fees:** The Retailer agrees to pay the Lottery for the installation or relocation costs and the ongoing costs of dedicated electrical power lines, which are required to install or operate the Lottery’s Equipment. The Retailer agrees to pay the fees identified in Exhibit B ~~for the installation, relocation, and related ongoing costs of telephone lines, and for any replacement or repair costs or taxes for the items listed in Exhibit B.~~
- 9.4 Moving the Equipment:** The Retailer agrees to not move any of the Lottery’s Equipment unless the Lottery gives the Retailer prior written approval.
- 9.5 Removal of the Equipment:** When the Lottery removes its Equipment from the Premises, for any reason, the Lottery is not responsible for returning the Retailer’s Premises to the condition the Premises were in before the Equipment was installed.
- 9.6 Liability for Loss of or Damage or Destruction to Equipment:** The Retailer is liable for loss of, ~~or damage to, or destruction of~~ ~~to~~ all Equipment in its possession pursuant to this Contract. In the event of loss, damage, or destruction of Equipment, the Retailer is liable for replacing or paying for such items under ~~the terms of~~ OAR 177-045-0060 “Equipment Loss or Damage.”
- 9.7 Determination of Liability:** In accordance with OAR 177-045-0060 and OAR 177-045-0080 “Finality of Decisions”, the Lottery (in the case of damages resulting in a loss under \$2,500) or the Oregon Department of Administrative Services Risk Management Division (“Risk Management”) (in the case of damages resulting in a loss of \$2,500 or more) will determine whether the Retailer is responsible for replacement or repair of Lottery Equipment. If the Lottery or Risk Management determines that the damage to the Equipment necessitating replacement or repair is the Retailer’s responsibility, the Retailer assumes such responsibility and agrees to pay for the reasonable costs of repair or replacement of the damaged Equipment. Furthermore, the Retailer agrees to pay for the replacement of any keys, locks, or remote control units that are lost or damaged. The requirements of this Section survive the termination of this Contract until such time that all Equipment has been returned in good operating condition to the Lottery, all money due has been paid, and all other obligations due to the Lottery and Risk Management have been fulfilled.
- 9.8 Placement, Inspection, or Removal of Equipment:** The 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 pursuant to Exhibit D, or as otherwise agreed upon by the Parties.
- 9.9 After-Acquired Property:** The provisions of Sections 9.1 through 9.9 apply to all Equipment provided to the Retailer by the Lottery at the start of this Contract and to any Equipment subsequently provided.

10.0 Compliance with Applicable Laws and Payment of Taxes
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10.1 Compliance with Laws: The Retailer agrees to comply with all federal, state, and local laws, ordinances, regulations, and administrative rules applicable to its performance of this Contract and to the operation and maintenance of the Retailer’s Business.

10.2 Non-Discrimination: The 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.

10.3 Amusement Device Taxes: If the Retailer is a Video LotterySM Retailer, the Retailer is liable for all amusement device taxes due under Oregon Revised Statutes, Chapter 320. Under this chapter, the Lottery shall collect any amusement device taxes due before July 1 of the tax year and any amusement device taxes that may come due during the tax year. Upon receiving notice from the Lottery of any amusement device taxes that the Retailer may owe, the Retailer shall provide payment through the electronic fund transfer (EFT) billing process described in Section 12 of this Contract.

10.4 Certification of Tax Compliance: ORS 305.385(6) provides:

“No contract or other agreement for the purpose of providing goods, services or real estate space to any agency shall be entered into, renewed or extended with any person, unless the person certifies in writing, under penalty of perjury, that the person is, to the best of the person’s knowledge, not in violation of any tax laws described in ORS 305.380(4).”

The Retailer’s signature on this Contract provides the certification required by ORS 305.385(6). Furthermore, the signature provides certification that to the best of the Retailer’s knowledge the Retailer is in compliance with all federal, state, or local tax laws.

10.5 Continuing Consent: During the Term of this Contract, the Retailer agrees to provide any tax information or form requested by the Lottery regarding the Retailer’s federal, state, or local taxes. This includes, but is not limited to, a new, signed authorization form authorizing the release of the Retailer’s tax information to the Lottery, and copies of the Retailer’s tax returns as filed with the proper taxing authorities, if so requested by the Lottery.

COMPENSATION

11.0 Retailer Compensation

11.1 Lottery Tickets or Shares: The Lottery shall pay the Retailer compensation in accordance with OAR 177-040-0025 “Retailer Compensation – Traditional Lottery Games” and OAR 177-040-0026 “Retailer Compensation – Video LotterySM Games”. For the Parties’ convenience, the

general compensation provisions of OAR 177-040-0025 and OAR 177-040-0026 are set forth in Section 11.

In the event of any inconsistency between Section 11 and the provisions of OAR 177-040-0025 or OAR 177-040-0026, the provisions of OAR 177-040-0025 and OAR 177-040-0026 shall govern the Parties' duties and obligations under this Contract.

If OAR 177-040-0025 or OAR 177-040-0026 is amended, replaced, or repealed, the provisions of the new rule shall govern the Parties' duties and obligations under this Contract.

11.2 Compensation for Traditional Lottery Game Tickets or Shares: The compensation that the Lottery shall pay to the Retailer for the sale of Traditional Lottery Game Tickets or Shares, as applicable, depends on the volume of Lottery-related sales made from a Draw Game Terminal on the Retailer's Premises or Scratch-itSM Tickets activated by the Retailer during the Business Week.

For purposes of calculating compensation, a Retailer's weekly sales of Traditional Lottery Game Tickets ~~and Shares~~ shall be the sum of actual Draw Game On-Line sales, Scratch-itSM Tickets activated by the Retailer, less Scratch-itSM Ticket returns recorded by the Lottery, and other sales-related adjustments made during the Business Week.

For the purpose of calculating compensation, Scratch-itSM Tickets are sold when they are activated by the Retailer; and Draw Game On-Line Tickets ~~and Shares~~ are sold when the request for the Draw Game On-Line Ticket ~~or Share~~ is electronically received and verified by the Lottery's central computer system.

The Lottery shall pay to the Retailer the following compensation rates for the weekly sales of Traditional Lottery Game Tickets or Shares (non-Video LotterySM) offered by the Lottery and sold by the Retailer pursuant to this Contract:

<u>Amount Sold per Week</u>	<u>Compensation - Percent of Gross Sales</u>
Below \$1,000	5.00%
\$1,000 to \$1,999.99	7.00%
\$2,000 to \$2,999.99	7.50%
\$3,000 to \$3,999.99	8.00%
\$4,000 to \$4,999.99	8.50%
\$5,000 to \$5,999.99	9.00%
\$6,000 to \$6,999.99	9.50%
\$7,000 and up	10.00%

11.3 Reserved:

11.4 Incentives: From time to time, the Lottery may, in its sole discretion, conduct retailer incentive programs for which the Retailer may be eligible to participate. ~~The Lottery will notify the Retailer of any incentive programs, including applicable eligibility criteria and rules, during the Term of this Contract.~~ The Lottery has sole discretion for offering incentive programs and establishing eligibility criteria for participation. For purposes of Sections 11.1 through 11.9, incentives are not considered part of the compensation rate, and they may be introduced, modified, or terminated ~~from time to time~~ as the Lottery, in its sole discretion, shall determine.

11.5 One Percent Prize Payment Bonus: For paying a winning and validated Scratch-itSM or ~~Draw Game On-Line-Ticket or Share~~ with a Prize of \$600 or less, the Lottery shall pay to the Retailer an amount equal to one percent of the Prize won by the player, pursuant to OAR 177-040-0025(4).

11.6 One Percent Selling Bonus: For selling any winning and validated Scratch-itSM or ~~Draw Game On-Line-Ticket or Share~~ with a Prize of \$10,000 or more, the Lottery shall pay to the Retailer an amount equal to one percent of the Prize offered or advertised prize won by the player up to a maximum bonus amount of \$100,000 rounded to the nearest dollar. For a non-monetary Prize or a Prize with a value that is variable or in some other way ambiguous, the Retailer shall receive an amount equal to one percent of the value of the Prize as assigned by the Director pursuant to OAR 177-040-0025(3)(b). For selling a winning and validated Win for Life top prize of \$1,000 per week for life, the Lottery shall pay to the Retailer a bonus of \$13,000 pursuant to OAR 177-094-0085.

11.7 Video LotterySM Compensation Rates: The compensation ~~amount~~ that the Lottery shall pay to the Retailer for the sale of Video LotterySM Game Shares is calculated on a percentage of ~~Net~~ Receipts during a Business Year.

~~For purposes of this Contract, "net receipts" means the amount of money that is received at the Retailer's Premises from the sale of Video LotterySM Game Shares after payment of Prizes.~~

The Lottery shall compensate the Retailer pursuant to the Retailer's chosen compensation rates as indicated in Exhibit C to the Contract. If Exhibit C is not completed by the Retailer, the Lottery shall compensate the Retailer at the rates listed in Option A of Exhibit C.

For each subsequent Business Year the Contract is in effect, no less than 60 days before the beginning of the upcoming Business Year, the Retailer may submit a written notice to the Lottery that the Retailer chooses to be compensated under the alternative compensation method for the upcoming Business Year.

If the Retailer does not submit, or fails to timely submit a written notice, the Retailer's current compensation method will apply for the next Business Year.

[Insert new rates here if no Exhibit C.]

11.8 Compensation When Net Receipts Exceed Tier Threshold: During the course of a Business Year, when during a Business Week a Video LotterySM Retailer's weekly Net Receipts exceed the threshold of a tier applicable to the Retailer under OAR 177-040-0026, the Video LotterySM compensation rate shall remain unchanged for the remainder of the Business Day in which the threshold is exceeded. The compensation rate for that tier, as set forth in OAR 177-040-0026, shall apply at the start of the next Business Day.

For example, if a Video LotterySM Retailer has chosen option (a) under OAR 177-040-0026(2)(a) and on a Wednesday the Net Receipts reach \$ _____, the Retailer is compensated at _____ % of the Net Receipts for the remainder of the Business Day. At 5:00 a.m. on the start of the next Business Day, the compensation rate is reduced to _____ % of Net Receipts.

11.9 Compensation Changes: Except to the extent otherwise provided by administrative rule, during the Term of this Contract, the Lottery shall not decrease the compensation rates paid for the sale of Lottery Tickets and Shares without the Retailer's consent, unless Lottery Games or their sales

are at any time prohibited, limited, or restricted by law, or if the Lottery's administrative expenses exceed 16% for all Games.

In such cases, the Lottery will have the right, at any time, and in any manner, to revise the compensation rates paid pursuant to this Contract for Traditional Lottery Games, Video LotterySM Games, or both.

No charge, change, or imposition of any fee shall be considered a reduction in compensation rates for purposes of this Section.

PAYMENT

12.0 Electronic Fund Transfers (EFT)

12.1 Establishment of EFT Account: The Retailer shall establish an account for the deposit of money from the sales of Lottery Tickets and Shares with a financial institution that has the capability of making EFTs. State law prohibits payment by cash of any money that the Retailer may owe to the Lottery under this Contract. In extraordinary circumstances, and only with prior written approval from authorized Lottery staff, the Retailer may pay money it owes to the Lottery in another manner as prescribed by the Lottery, no later than 5 p.m. on the day of the scheduled EFT draw.

12.2 Payment: The Retailer agrees to pay the amount due to the Lottery for the sale of Lottery Tickets and Shares by a weekly EFT. On the EFT draw date, the Retailer shall ensure that sufficient funds are in its EFT account to cover the draw.

The Lottery shall calculate and total the Retailer's activity for the Business Week and will post the weekly invoice on the Retailer's terminal. The invoice will include a summary of the Retailer's sales, payouts, commissions, and other adjustments including fees, as detailed in Exhibit B, or any payments due from the Retailer to the Lottery for Scratch-itSM Tickets. The invoice shall inform the Retailer how much money is due to the Lottery.

If the Retailer is a Traditional Retailer, then the Lottery shall make invoices for Traditional Lottery Games available to the Retailer on Sunday afternoon.

If the Retailer is a Video LotterySM Retailer, then the Lottery shall make invoices for Video LotterySM Games available to the Retailer by 1:00 p.m. on Mondays.

The Lottery shall take payment from the Retailer's EFT account every Wednesday.

If the Retailer does not receive an invoice as described in this Section, the Retailer shall contact the Lottery prior to the scheduled transfer date to determine the required transfer amount necessary for the EFT.

12.3 Payment Cycle: Except for Scratch-itSM Tickets, the payment cycle upon which the Lottery shall pay the Retailer is based on a Business Week.

Unless otherwise determined by the Lottery, ~~and except for some Retailers who sell only Traditional Lottery Game Tickets and Shares at multiple locations for which the Lottery has issued a chain identification number,~~ the EFT draw for the sales made during a Business Week shall be made on the Wednesday that falls four days after the end of the Business Week.

For some Retailers who sell only Traditional Lottery Game Tickets ~~and Shares~~ at multiple locations for which the Lottery has issued a chain identification number, the EFT draw for the sales made during a Business Week shall be made on the Wednesday that falls eleven days after the end of the Business Week.

If the specified date of the EFT draw falls on a state holiday, the EFT draw shall be made on the next Business Day.

The Lottery, in its sole discretion, may assign another EFT draw date or payment cycle. The Lottery will issue written notice to the Retailer at least one week before any new EFT draw date becomes effective.

For the purpose of determining when the Lottery will make an EFT draw for Scratch-itSM Tickets, sales of Scratch-itSM Tickets shall be deemed by the Lottery to have occurred during the Business Week that falls 21 days after the Scratch-itSM Tickets were activated by the Retailer.

12.4 Unsold Scratch-itSM Tickets: If the Retailer returns to the Lottery unsold, activated Scratch-itSM Tickets within the timeframe specified in OAR 177-050-0100(4), one year after the official ending date of the Game, the Lottery will credit the Retailer's account based upon the purchase price of the Scratch-itSM Tickets in accordance with OAR Chapter 177, Division 46, and in accordance with the EFT accounting and payment method described in Section 12.2. Except as authorized by OAR 177-050-0100(4), the Retailer may not return unsold and activated Scratch-itSM Tickets to Lottery for credit, more than one year after the official ending date of the Game.

12.5 Other Fees: The 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 B. The Retailer agrees that the Lottery may adjust the fees that the Retailer owes based upon the charges incurred either by the Lottery or its vendors in providing the goods or services covered by the fees. The Lottery shall give the Retailer reasonable notice of any change in the amount of fees that the Retailer may owe pursuant to its performance under this Contract.

13.0 Non-Sufficient Fund (NSF) Procedures; Payment

13.1 NSF: If the Retailer's EFT payment is rejected for NSF reasons, the provisions of OAR 177-040-0052 "Non-Sufficient Funds" govern the Parties' rights, duties, and obligations under this Contract.

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

WAIVER

14.0 Waiver and Indemnification

14.1 Waiver: The 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 the Lottery's Games, Equipment, products, and systems.

This waiver made by the Retailer 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 the Lottery's interruption of operations to protect Lottery security or to conduct repairs, replacements, or substitutions of Equipment, products, or systems or for any other reason.

14.2 Indemnification: The 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 the Retailer, its Business, its officers, employees, subcontractors, or agents under this Contract.

The 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.

TERMINATION

15.0 Termination of Contract

15.1 Termination Upon 14 Days Notice by Either Party: Either Party has the right to terminate this Contract at any time by giving 14 days advance written notice to the other Party.

15.2 Right to Immediate Termination: The Lottery may terminate this Contract, effective immediately upon delivery of written notice to the Retailer, pursuant to the provisions of Section 2.9, or at such later date as may be established by Lottery, under any of the following conditions:

- a) **Default:** Unless otherwise specified, if the Retailer is in default under any of the terms of this Contract and has failed to correct such default within the time frame specified by the Lottery or the terms of this Contract, if any correction is allowed.
- b) **False Information:** If the Retailer or a Key Person in the Retailer's Business furnished any statement, representation, warranty, or certification in connection with this Contract or any other Lottery application or contract which is materially false, ~~or~~ misleading, or is deceptive.
- c) **Integrity:** If the Lottery, acting in good faith and fair dealing, reasonably believes that the Retailer may pose a threat to the actual or apparent fairness, integrity, security, or honesty of the Lottery, its Games, or its players.
- d) **Law Changes:** If federal or state laws, rules, regulations, or administrative rules are modified, changed, or interpreted in such a way that the Tickets or Shares are no longer available for purchase under this Contract or are no longer eligible for the compensation authorized by this Contract.
- e) **OLCC License:** If the Retailer is a Video LotterySM Retailer and Retailer's OLCC license is suspended, cancelled, or not renewed.
- f) **Convictions and Unlawful Gambling:** If the Retailer, or any Key Person in the Retailer's Business, is convicted of any crime classified as a felony or Class A misdemeanor, or if the Retailer is found possessing any gray machines or other illegal gambling devices (as defined

in ORS 167.117), is found conducting illegal social games, or is found to be engaged in other unlawful gambling (as defined in ORS Chapter 167).

g) **Renting Space for Unlawful Gambling Purposes:** If the Retailer, or any Key Person in the Retailer's Business, violates ORS 91.240, which prohibits renting or letting rooms, space, or premises for unlawful gambling purposes.

~~h) **Revocation of Guaranty:** If an Agreement to Pay or a Personal Guaranty is incorporated into this Contract and is revoked, invalidated, or terminated.~~

h) **For Cause:** If the Retailer fails to perform the obligations set forth in this Contract or materially breaches this Contract, such action shall be deemed **"Cause"** for Lottery to immediately terminate this Contract. Without limitation, failure to comply with any of the obligations set forth in Sections 2.3, 5.1, 5.2, 5.3, 8.1, 8.2, 8.3, 8.4, 10.1, 12.2, or 13.1 is also **"Cause"** for the Lottery to immediately terminate this Contract.

15.3 Termination upon Sale or Other Transfer of Business: Except as set forth in Section 15.4, this Contract automatically terminates upon any of the following:

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

15.4 Exception to Termination upon Sale or Other Transfer of Business: If the 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, the Lottery may, in its sole discretion, not terminate the Contract if:

- a) The Lottery determines that the actual or apparent fairness, integrity, security, or honesty of the Lottery is not jeopardized by the transfer; and
- b) The Retailer submits an application for approval of the new owner or owners holding 100% of the ownership interests no more than 14 days after the effective date of the transfer of interest. This includes, but is not limited to, a transfer of interest into an estate or a trust. The Lottery may require that the personal representative, trustee, or other similar party be approved as a Key Person.

15.5 Disabling or Removing Lottery Equipment: Without limiting the Lottery's right to seek equitable remedies, other remedies provided by law, or any remedy provided pursuant to the terms of this Contract, if the Retailer fails to perform one or more of the duties or requirements of this Contract, and unless otherwise specified in the Oregon Administrative Rules, then the Lottery may disable or remove any or all of its Equipment that has been placed in the Retailer's possession for any period of time as determined by the Lottery in its sole discretion.

15.6 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 by law or rule. Any termination of this Contract is without prejudice to any obligations or liabilities of either Party accrued prior to termination.

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

SURVIVAL

16.0 Survival

- | |
|---|
| <p>16.1 All rights and obligations of this Contract shall 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: <u>2.5, 2.6, 2.7, 2.9, 6.1, 7.2, 9.1, 9.4, 9.7, 9.8, 12.1, 12.2, 12.3, 12.4, 12.5, 13.1, 13.2, 14.1, 14.2, and 15.6.</u></p> |
|---|

SIGNATURE PAGE FOLLOWS

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RETAILER CONTRACT SIGNATURE PAGE

Contract Number _____ **Retailer Number** _____

Retailer's Business Name (D.B.A.): _____

Address where Games will be provided: _____

Street Address

City State Zip Code

For sole proprietorships, list owner's name:

Owner's Address: _____

Street City State Zip Code

For partnerships, list name of partners: (For limited partnerships, list general partners and limited partners.)

Partnership Address: _____

Street City State Zip Code

Date of Partnership Agreement: _____

For corporations and limited liability companies (LLC), list name of corporation or LLC:

Corporate or LLC Address: _____

Street City State Zip Code

Date of Incorporation or Organization of LLC: _____

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 documents, constitutes the entire and fully integrated contract 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 ~~that~~ he/she has reading this contract, understandings it, and agreeings 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: _____
Dale W. Penn, Director

Print Name: _____

Title: _____

Date: _____

Date: _____

Exhibit B
FEE SCHEDULE

Insert New Schedule

**EXHIBIT C
FOR VIDEO LOTTERYSM RETAILERS**

Retailer must choose to receive compensation either under Option A or Option B by completing this Exhibit C. **(NOTE: These are the existing rate schedules and options and will be subject to change through the rulemaking process before finalization of the new contract.)**

OPTION A

On behalf of the Retailer, for the Business Year beginning in _____, (fill in year) I, the undersigned owner, partner, officer, or authorized representative, hereby indicate that the Retailer shall be compensated under this Option A:

Net Receipts per Year	Compensation – Percent of Net Receipts
Up to \$175,000	27.5%
\$175,000.01 to \$475,000	23%
\$475,000 to \$800,000	14%
\$800,000.01 and up	11%

Name: _____

Signature: _____

Title: _____ Date: _____

OPTION B

On behalf of the Retailer, for the Business Year beginning in _____, (fill in year) I, the undersigned owner, partner, officer or authorized representative, hereby indicate that the Retailer shall be compensated as set forth in this Option B:

Net Receipts per Year	Compensation – Percent of Net Receipts
Up to \$600,000	22%
\$600,000.01 to \$1,800,000	17.5%
\$1,800,000.01 and up	11%

Name: _____

Signature: _____

Title: _____ Date: _____

