



REQUEST FOR PROPOSAL (RFP) #50180
PROMOTIONS AND RETAIL MARKETING AGENCY
DATE: December 17, 2021

CALIFORNIA STATE LOTTERY
700 NORTH 10TH STREET
SACRAMENTO, CA 95811

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I. GENERAL INFORMATION

A. Purpose

This Request for Proposal (RFP) #50180 (also referred to as “solicitation”) is for the California State Lottery (Lottery) to solicit proposals from qualified vendors to serve as the Promotions and Retail Marketing Agency responsible for the strategic planning, creative development, and implementation of the Lottery’s promotions and retail marketing initiatives to raise awareness, elevate brand perceptions, and maximize product sales to increase Lottery profits and contributions to California schools.

By submitting a proposal, the Proposer (or Agency) agrees to the terms and conditions stated in this RFP.

Read this document and any attachments in their entirety and carefully, as they may contain binding provisions that affect your rights and obligations. You must comply with the instructions contained in this document. Responses to this RFP must be submitted to the Lottery contact listed below.

B. Contact

For questions regarding RFP #50180, please email Crystal Sung at csung@calottery.com.

For all communications, subject line must include RFP #50180 Promotions & Retail Marketing Agency.

California State Lottery
Attention: Crystal Sung
700 North 10th Street
Sacramento, CA 95811

Phone calls shall not be accepted.

No contact or communications regarding this RFP shall be allowed between Proposers or potential Proposers and members of the Lottery Evaluation Team, Lottery Commissioners, or Lottery staff during the RFP process with the exception of the Lottery contact person named above. Any such contact may disqualify a Proposer or potential Proposer from further consideration. Requests for clarification shall be allowed, provided such requests are made through the above contact person.

For additional information on RFP submissions, see Section IV. B.

C. Background

The Lottery's mission is to generate supplemental funding for public education in the State of California. The Lottery has given California public schools nearly \$38 billion since it began in 1985. In Fiscal Year 2020-2021, the Lottery generated over \$8 billion in revenue and contributed more than \$1.5 billion to public schools. Lottery products are sold statewide at approximately 23,000 retail locations ranging from national chain stores to independent neighborhood shops, supermarkets, liquor stores, and more. The Lottery's retail product offerings include Scratchers® games and Draw games, such as Powerball®, Mega Millions®, and SuperLotto Plus®. The Lottery also offers Daily games such as Fantasy 5® and Hot Spot®. Through the alignment of product plans, marketing campaigns, and sales team efforts, the Lottery has grown to be the second largest lottery in North America. The Lottery has contracts with the following marketing agencies:

- David & Goliath as the lead agency for advertising and marketing in partnership with Horizon Media for media planning and buying
- Media.Monks for Hispanic advertising and marketing
- Time Advertising for Asian in-language advertising and marketing
- Quantasy & Associates for African American advertising and marketing
- Alcone Marketing Group for Promotions and Retail Marketing (current agency)

D. Description of Service

The Lottery is seeking a Promotions and Retail Marketing agency partner capable of strategically planning, creating, and implementing programs and initiatives across all channels for the Lottery's promotional and retail marketing endeavors. This agency partner will help address Lottery's business challenges, such as increasing playership, improving brand perceptions, evaluating effectiveness of marketing programs, and communicating to a large and diverse network of retail partners.

The Lottery is seeking an agency that can strategically plan, create, and implement its business-to-business (B2B) and business-to-consumer (B2C) promotions and retail marketing initiatives and programs. This agency should be able to provide the below services, and all services outlined in the Scope of Work (SOW) in Exhibit A.

- Provide business intelligence for promotions and retail marketing initiatives that includes the current landscape, audience insights, emerging trends, potential new and current competitors, cost-effective marketing solutions, and future

opportunities for improvements.

- Consistently produce best-in-class work that is impactful and effective.
- Demonstrate expertise in using data-driven insights to strategically develop objectives for promotions and retail marketing initiatives that can be tracked, measured, and evaluated to determine their effectiveness.
- Possess a deep understanding of the California market, individual DMAs and the California consumer with the ability to develop impactful programs that effectively engage and motivate the diverse California consumer population as well as Lottery retailers.
- Conduct research to gather valuable insights from consumers and retailers. Analyze different types of research from a variety of sources and apply insights to promotions and retail marketing programs.
- Seek out and apply new technologies and solutions as consumer behaviors evolve and change within the promotions and retail marketing environment.
- Leverage their business expertise and established connections within the promotions and retail marketing environment to secure advantageous partnerships that bolster Lottery product messaging, as well as cost-saving solutions on behalf of the Lottery.
- Foster a collaborative working environment with the Lottery's staff and its partner agencies to challenge the status quo and create big ideas within the promotions and retail marketing space to advance the Lottery brand.
- Provide marketing strategies and tactics to grow our playership base, advance our brand perception, promote new product offerings, and engage and education our retail partners.

The selection process for this RFP is to identify the best agency partner and shall focus on the Proposers' strategic planning capabilities, creative ideas and concepts, and production expertise and resources.

E. Minimum Qualifications

1. This RFP is open to all Proposers that, at the time of submittal due date, meet the following minimum qualifications. Joint proposals from more than one qualified agency are acceptable, provided they meet the requirements set forth in this RFP.

- a. Have a minimum of three years' experience as legal business entity/entities performing the required and necessary work to execute promotions and retail marketing initiatives.
- b. At least \$8 million in annual client billings.
- c. Currently have an office located in California and will maintain a California office throughout the duration of this contract agreement.
- d. Are licensed to do business in California.
- e. Meet certification of insurance requirements outlined in Exhibit C, Section 5.2 and 5.3, Draft Contract Terms and Conditions.
- f. No conflicts of interest under Lottery's Conflict of Interest Code, California Code of Regulations, the Political Reform Act, and any other applicable state or federal statutes.

These preliminary eligibility requirements must be certified by the Proposer as further described in Section II, Proposal Submission and Stages.

Each Proposer may submit only one proposal for this RFP. More than one Proposer within the same holding company shall be allowed to compete if there is neither collaboration on the proposals nor any shared day-to-day management, staff, or supervisory relationship between the bidding agencies.

Subcontractors may participate in more than one bidding proposal.

Any costs incurred by those participating at any stage of the RFP process are the sole responsibility of the Proposer and shall not be reimbursed by the Lottery.

F. Contract Term

The initial term of the contract shall be for five (5) years starting November 2022 through October 2027. Contract terms are subject to change. The Lottery has the option, at its sole discretion, to extend the term of the contract under the same terms and conditions, including pricing terms, for up to two (2) one-year extensions.

The contract term may change if the Lottery makes an award earlier than expected or if the Lottery cannot execute the agreement due to unforeseen delays.

The resulting contract shall be of no force or effect until signed by both parties. The Agency shall not commence performance until a valid contract has been executed between the successful Proposer and the Lottery.

G. Anticipated Funding

It is estimated that the initial funding for the contract shall be approximately \$15 million per year. The duration of the contract agreement is for five years with the potential for two one-year extensions. Funding for the annual and total contract expenditures is not guaranteed. Funding is subject to annual marketing budget approval by the Lottery Commission. Depending on the Lottery's goals and objectives, funding within the annual contract expenditures may decrease and/or increase per year. Proposers should not base their proposal on the potential for increased funding in any given year. If full funding does not become available, the Lottery may amend or terminate the agreement to reflect reduced funding and deliverables.

H. Scope of Work

See Exhibit A, titled "Scope of Work," for a detailed description of the services and work to be performed as a result of this procurement.

I. Subcontractors/Joint Proposals

A Proposer may need to subcontract part of the services and/or work if the Proposer does not have the full-service capabilities to effectively accomplish all components of the SOW and/or to offer cost competitive pricing to the Lottery. Proposers are required to identify proposed Subcontractors.

Lottery reserves the right to deny any or all proposed Subcontractors of the selected Agency. Posting the "Notice of Intent to Award" does not imply Lottery's approval of proposed Subcontractors.

If a proposed Subcontractor is denied or if the selected Agency does not, to the satisfaction of Lottery, demonstrate their capabilities to meet the Lottery's needs, the selected Agency may be required to procure a Subcontractor or Consultant through a separate competitive process to address our required needs.

Joint Proposals

The Lottery will accept joint proposals from more than one agency in response to this RFP that, if successful, will result in the award of one indivisible contract. Each agency submitting the joint proposal will be jointly and severally liable for the performance of the entire contract.

Agencies submitting a joint proposal must include a written statement with their Mandatory Submittals that clearly identifies the agencies submitting the joint proposal and that designates a single person who is authorized to represent all agency parties in all matters relating to the RFP. The statement must be signed by a representative

identified in the Certification, as legally authorized to contractually bind the agency. At least one of the agencies must independently meet all of the Minimum Bidder Qualifications listed within this RFP. The agency fact sheet, Attachment 3, must be completed by all parties participating in a joint proposal.

J. Reassignment of Personnel

The selected Agency shall not assign new key personnel or reassign key personnel working on Lottery business during the term of the contract without prior approval from the Lottery. If an Agency employee is unable to perform duties due to illness, resignation, or other factors beyond the Agency’s control, the Agency shall make every reasonable effort to provide suitable personnel.

K. Nonexclusive Rights

The Lottery does not grant the selected Agency the exclusive rights to provide all promotions and retail marketing services during the contract period. The Lottery reserves the right to acquire additional promotions and retail marketing services from other Agencies and/or Subcontractors without infringing upon, or terminating, the awarded contract.

L. Key Action Dates

Proposers are advised of the key dates and times shown below and are expected to adhere to them. All times noted in this document are Pacific Time (PT).

KEY ACTION	DATE
Request for Proposal Release Date	Friday, December 17, 2021
Written Questions Due & Written Intent to Bid (optional)	Friday, January 14, 2022 (by 3:00 P.M.)
Responses to Proposer Questions Posted	Monday, January 31, 2022
Phase I – Eligibility Proposals Due	Friday, February 18, 2022 (by 3:00 P.M.)
Notification to Phase II-Semi Finalists & Schedule Onsite Visits with Semi-Finalists	March 18 - 21, 2022
Phase II – Onsite Visits (optional)	April 6 - May 11, 2022

Notification to Phase III-Finalists (posted)	May 12 - 13, 2022
Phase III – Briefing Day -Lottery presents work assignment -Proposers may ask questions at the Briefing Day and/or email questions to the Lottery	Tuesday, May 24, 2022
Lottery answers Questions from Briefing Day & Post	Friday, June 8, 2022
Phase III Finalist Work Sessions (optional)	June 27 - July 8, 2022
Phase III – Financial Packages Due	Friday, August 5, 2022 (by 3:00 P.M.)
Phase III – Finalist Presentations of the Work Assignment	August 8 - 19, 2022
Notice of Intent to Award Posted	November 2022
Final Contract to Apparent Successful Agency for Signature	November 2022
Proposed Effective Date of Contract	November 2022

The Lottery reserves the right to amend dates at any time during the RFP process.

The Lottery reserves the right to consolidate the solicitation process from three to two phases and shall notify the agencies of the change.

Written questions sent in advance shall only be answered on the scheduled response date. Only questions addressed to the contact person listed in Section IV.B. shall be accepted. Questions from the Proposer must be sufficiently written and include adequate information to enable the Lottery to provide the most accurate responses. When submitting questions, please reference Promotions and Retail Marketing RFP #50180.

At its sole discretion, the Lottery may contact a Proposer to seek clarification or additional information regarding any questions received.

It is the Proposer’s responsibility to check for notices, date changes, and addenda for this RFP on the Lottery website www.calottery.com/vendor-opportunities as well as the California State Contracts Register (CSCR) at <https://caleprocure.ca.gov>.

II. PROPOSAL SUBMISSION & PHASES

A. Overview

There are three phases within this RFP. At the completion of each phase, Proposers shall be notified in writing by the Lottery as to whether they qualify to continue to the next phase. Additional instructions shall be provided by the Lottery to those Proposers advancing to Phases II and III.

Proposals submitted in response to this RFP must comply with the requirements of this section. Failure to complete and submit the information listed in this section in the specified format may result in rejection of the agency's proposal.

Agencies must complete and submit the following, as detailed below.

See Section III, Evaluation Process & Criteria, for scoring details.

B. Nondisclosure Agreement - News Releases and Social Media

Proposers must complete and submit Non-Disclosure Form, Attachment 10, in their proposal package. By submitting a Proposal, Proposers and the selected Agency agree that they shall not share any information, issue news releases, nor make statements to the news media, or through social media channels pertaining to this RFP, their proposals, the contract, or work resulting therefrom, without first obtaining prior approval from the Lottery.

Proposals are Public Record:

The California Public Records Act requires public disclosure, upon request, of documents that pertain to state business. Exceptions to this requirement are limited. The Lottery may, in its discretion, withhold Agency material specifically and conspicuously identified by Agency as confidential if Agency has provided sufficient legal justification for doing so. The Lottery is under no obligation to inform Agency that a request for information has been made or that documents are being released. However, the Lottery may, in its discretion, allow Agency the opportunity to provide the Lottery with further legal justification for withholding specific information. Unless it receives a court order to the contrary, the Lottery retains the right to determine whether an exemption to the Public Records Act applies to Agency information being sought. Under no circumstance will the Lottery be liable to Agency or to any other person or entity for disclosing any Agency material, regardless of its designation by Agency as trade secret or confidential information.

C. Phase I: Submittals

Overall Phase I Instructions:

- Complete forms and attachments as directed below.
- See Section IV, Submission Requirements, for formatting and submission address.

Items 1 through 3 will be scored by the Lottery Evaluation Team using the evaluation criteria set forth. Items 4 through 11, outlined below, shall be used to determine eligibility, and shall be scored on a pass/fail basis.

Items:

1. Proposal Cover Pages:

- Table of Contents
- Introduction Letter

Instructions: Agencies must submit a table of contents and an introduction letter, indicating that they are responding to the RFP and that all the RFP minimum requirements have been met. The table of contents must list all documents and forms included in the proposal and their corresponding page numbers.

The introduction letter must be signed by the representative identified in the Certification, as legally authorized to contractually bind the agency. The introduction letter must confirm the agency's qualifications and interest in participating in this solicitation.

The introduction letter must explain the following:

- a. Basis for the Proposer's interest in the Lottery's business.
- b. Particular strengths and how those strengths will benefit the Lottery.
- c. Positioning and vision: How does the Proposer differ from competing agencies? What is the Proposer's vision for themselves and their partnership with the Lottery? What is the Proposer's overall philosophy?
- d. Describe the Proposer's work process and business practices employed to help produce consistently effective marketing. How does the Proposer collaborate within a larger roster of agencies?

- e. Background of the Proposer's key personnel and who will be assigned to handle the Lottery account.
- f. Contact information, including name, phone number, and email address, for the representative who will be the main contact person between the agency and the Lottery during the evaluation process.
- g. The Proposer must disclose in this introduction letter any potential, actual, or apparent conflicts of interest that may arise between any current client and/ or the Lottery. If no potential, actual, or apparent conflicts exist, then they must make a statement to that effect.
- h. If the Proposer is submitting a joint proposal, the Proposer must disclose this in the introduction letter and submit detailed information for each of the entities submitting the joint proposal arrangement. The Proposer must identify the name of the representative who is legally authorized to contractually bind all entities submitting the joint proposal.

2. Agency Profile:

Instructions: Complete a narrative response to Items 2a, 2b, 2c below:

a. Agency Strengths, Capabilities, and Experience:

Instructions:

Address the following items as they apply to your agency and how each would benefit the Lottery:

- i. Strengths- Describe your agency's strengths including accomplishments, unique services, account leadership, strategic planning, and creative processes.
- ii. Agency Capabilities- Describe your agency's total capabilities as a promotions and retail marketing agency.
- iii. Experience- Describe your agency's experience working within the fast-moving consumer goods category and on accounts of similar size and scope to the Lottery.

b. Marketing Approach:

- i. Strategic Services- Describe your agency's experience in creating annual promotions and retail marketing strategic plans. Include the steps taken to

develop a plan, the level of client collaboration in the process, and how your agency ensured synergy between the client's partner agencies.

- ii. Creative Process- Discuss your agency's process to creatively concept and develop a promotional and/or retail marketing programs. Include the steps taken to ensure the program had maximum impact on the target audience. Also provide the processes used by your agency to produce and implement a promotional and/or retail marketing program and list the methodology used to track and ensure the quality and quantity of deliverables.
- iii. Research and Evaluation- Describe your agency's approach to research, including conducting consumer and/or retailer research and your evaluation tools. Detail how these tools are used to gain insights into the strategic development of future promotional and/or retail marketing programs. List how these tools are used to help determine return on investment, media value, and the effectiveness of promotional or retail programs. Provide how the data collected is communicated to the client. Include in your description whether these evaluation functions are normally performed in-house or by a subcontractor or consultant.
- iv. Project Management- Describe your overall process for project stewardship, including project timelines, deliverables items, quality assurance, budget tracking and billing.

c. Three Case Histories: (Provide Creative Representation)

Proposer must submit three case histories of recent and relevant initiatives that showcase the agency's promotional and retail marketing expertise. These case studies must include at least one consumer promotion and/or experiential activation and at least one retail marketing initiative and/or co-marketing partnership. For each case history, include the following:

- i. Written case overview that includes objectives, strategy, target audience(s), tactics, timing, results, and description of your agency's role in this initiative.
- ii. Describe the steps taken to strategically plan, creatively concept, develop, and implement each case history example.
- iii. Explain how data, research, industry trends and key performance indicators were used to help determine the technical approach, effectiveness, and outcome.
- iv. Provide creative video, audio, digital, and visual representation for each

case history example.

3. Agency Fact Sheet (Attachment 3)

Instructions: Complete and sign the Agency Fact Sheet.

4. Mandatory Submittal Checklist: (Attachment 2)

Instructions: Agencies must submit all items listed on the mandatory submittal checklist by the due date for Phase I – Eligibility Proposals listed in Section I, General Information, L. Key Action Dates.

5. Form STD 204 – Payee Data Record (Attachment 4)

Instructions: Complete and sign “Form STD 204 – Payee Data Record”

6. Proposer Certification Form (Attachment 5)

Instructions: Complete and sign the “Certification” Form

7. Schedule of Subcontractors (Attachment 6) – (only if applicable)

Instructions: Complete and sign if there are any necessary subcontractors that shall assist with fulfilling the scope of work.

8. Small and Micro Business Participation (SMP) Form (Attachment 7) – (if applicable)

Instructions: Complete and sign the “Participation” Form if applying for Small Business or Micro Business incentive (See RFP Section II, D)

9. Disabled Veteran Business Enterprise (DVBE) Participation (Attachment 8) – (if applicable)

Instructions: Complete and sign the “Participation” Form if applying for Disabled Veteran Business Enterprise incentive (See RFP Section II, D)

10. General Contractor Disclosure (Confidential) (Attachment 9)

This document does not have to be completed or returned with the submission. However, the intended awardee may be required to complete this form.

Proposers are required to disclose certain information pursuant to the California Government Code section 8880.57. Any individual or entity in a Proposer’s organizational chain and any of the Proposer’s Subcontractors may also be

required to disclose similar information. The Lottery may refuse to enter a contract based on the results of these disclosures, as provided in California Government Code section 8880.57.

11. Non-Disclosure Agreement (Attachment 10)

Phase I Evaluation Criteria:

The below items are Pass/Fail for Mandatory Submittals Phase:

- Mandatory Checklist
- Form STD 204
- Certification Form
- Certificate of Insurance
- General Contractor Disclosures
- Non-Disclosure Agreement

The below submittal items shall be reviewed and evaluated by the Lottery Evaluation Team using the evaluation criteria stated in Section III Evaluation Process & Criteria, in accordance with the provisions in this RFP:

- Item 1 - Proposal Cover Pages and Introduction Letter
- Item 2 - Agency Profile – includes sections 2a, b, and c
- Item 3 - Agency Fact Sheet (Attachment 3)

Scoring: After review and evaluation of the Phase I submittals, those Proposers receiving a rating of Exceeds or higher (at least 70% or 224 of total possible points) may advance to Phase II. Clarification may be requested from participating Proposer during any phase of the evaluation process.

The Lottery reserves the right to consolidate the solicitation process from three to two phases and shall notify the agencies of the change.

D. Phase II: Semi-Finalist Onsite Visits

Overall Phase II Instructions:

Each Proposer that advances to Phase II Semi-Finalist shall be contacted to schedule

a date and time when the Lottery's Evaluation Team can visit the Proposer's office that would service the account. Also, at the time of scheduling, Semi-Finalists will be provided a letter outlining the information the agency should be prepared to present during the Phase II onsite visit.

The objective of these meetings is to give the Lottery Evaluation Team the opportunity to understand the agency's capabilities beyond the agency profile and credentials that were provided and evaluated in Phase I.

The Lottery Evaluation Team shall meet agency leadership and the team that would lead and service the Lottery's account. These face-to-face meetings allow the Lottery Evaluation Team to assess the breadth and depth of the agency's resources, measure their expertise, business knowledge, and the unique talents of their agency's staff.

Phase II Evaluation Criteria:

Phase II On-Site Visits shall be reviewed and evaluated by the Lottery Evaluation Team using the evaluation criteria stated in Section III Evaluation Process & Criteria in accordance with the provisions stated in this RFP. Clarification may be requested from participating Proposer during any phase of the evaluation process.

Scoring Phase II:

After review and evaluation of the Phase II on-site visits, those Proposers receiving a rating of Superior or Significantly Exceeds (at least 85% or 298 or higher of total possible points) within Phase II evaluation criteria shall advance to Phase III. In the event there are fewer than 2 with ratings of Superior or Significantly Exceeds, the top two highest Proposers with an Exceeds rating (245 points or higher) may advance to Phase III. Clarification may be requested from participating Proposer during any phase of the evaluation process.

E. Phase III: Finalist Submittals

Work Assignment with Final Presentations, and Staff Plan & Compensation Package

1. Overall Phase III Instructions:

Proposers who move to Phase III shall be contacted by the Lottery and provided a detailed work assignment. Proposers advancing to Phase III shall be required to attend a Briefing Day meeting at Lottery headquarters in Sacramento (or virtually) as listed in Section I General Information, L. Key Action Dates. During the Briefing Day, Lottery staff shall provide all Finalists with data and information about the Lottery's business and current marketing approach that can be used to develop a work assignment.

On Briefing Day, the Lottery will provide dates for a work session and final presentation of their work assignments at Lottery Headquarters in Sacramento (or a virtual meeting) specified in Section 1 General Information, L. Key Action Dates.

Once the Briefing Day has concluded, Finalists are given several days to review the data and submit questions via email. The Lottery shall contact by email all finalists to schedule a time and date for each agency where the Lottery will answer questions about the briefing day materials.

2. **Phase III Work Sessions and Finalist Presentations:**

The Lottery shall:

- Provide Finalist Work Assignment and Staff Plan & Compensation Proposal requirements
- Schedule Briefing Day and follow up Q&A session
- Schedule Agency Work Session and Final Presentations

a. **Work Assignment:**

In Phase III, Finalist agencies shall be given a Lottery work assignment to complete and present a strategic, creative, and integrated plan for promotions and/or retail marketing.

b. **Staff Plan and Compensation Proposal:**

In Phase III, each Finalist will receive a packet outlining the proposed sample description of Work (for bidding purposes only) for the Lottery account. The packet will include an Excel spreadsheet and instructions for organizing the proposed staff plan and corresponding cost information. The Lottery prefers an all-inclusive, labor-based annual agency fee arrangement where costs would be billed at net. The agency fee will be paid in 12 equal monthly installments and prorated for partial service months.

3. **Phase III Evaluation Criteria:**

The Lottery shall evaluate proposals received in response to this RFP. Phase III work assignment and staff plan & compensation proposals shall be reviewed and evaluated by the Lottery Evaluation Team using the evaluation criteria stated in Section III Evaluation Process & Criteria in accordance with the provisions stated in this RFP. Finalists' work assignment and staff plan and compensation proposals will be evaluated on both a stand-alone and comparative basis to facilitate an

agency-to-agency evaluation. Clarification may be requested from participating Proposers during any phase of the evaluation process.

III. EVALUATION PROCESS & CRITERIA

The Lottery shall conduct a fair and impartial evaluation of proposals received in response to this RFP. Proposals submitted in response to this RFP may be evaluated in comparison with other submitted proposals. Clarification may be requested via email from participating Proposers during any phase of the evaluation process.

Materials and requirements as outlined within this document for Phase I, Phase II, and Phase III shall be evaluated using the rating chart shown below:

RATING	RATING & DEFINITION CHART
Superior	Exceptionally exceeds performance or capability requirements; proposal demonstrates extraordinary strengths that shall more than significantly benefit the Lottery. Receives 100% of total possible points
Significantly Exceeds	Significantly exceeds performance or capability requirements; proposal demonstrates exceptional strengths that shall significantly benefit the Lottery. Receives 85% of total possible points
Exceeds	Exceeds performance or capability requirements; proposal has one or more strengths that shall benefit the Lottery. Receives 70% of total possible points
Meets	Meets specified performance or requirements necessary for minimum contract performance. Receives 50% of total possible points
Meets with Exceptions	Demonstrates weak performance or capability standards necessary for minimum contract performance; proposal has one or more weaknesses that offset any strengths. Receives 15% of total possible points
Does not Meet	Fails to meet specified minimum performance or capability requirements. Proposals with an unacceptable rating are not awardable. Receives zero points

The complete RFP evaluation process is comprised of three phases:

- Phase I – Submittals: Eligibility and Capabilities Requirements

- Phase II – Semi-Finalist: On-site Visits
- Phase III – Finalist Submittals (Work Assignment and Staff Plan and Compensation Proposal)

A. Phase I – Submittals: Eligibility and Capabilities Requirements

1. The documents listed below will be pass/fail in Phase I and must be completed and submitted by the deadline:
 - a. Mandatory Submittal Checklist
 - b. Form STD 204 – Payee Data Record
 - c. Proposer Certification Form
 - d. Schedule of Subcontractors (if applicable)
 - e. Small and Micro Business Participation (SMP) Form (if applicable)
 - f. Disabled Veteran Business Enterprise (DVBE) Participation (if applicable)
 - g. Non-Disclosure Agreement
2. The documents listed below will be evaluated using evaluation criteria and the rating and definition chart:
 - a. Proposal Cover Pages
 - Table of Content
 - Introduction Letter
 - b. Agency Profile
 - Agency Strengths, Capabilities, and Experience
 - Marketing Approach
 - Three Case Histories
 - c. Agency Fact Sheet

Evaluation Criteria: Phase I – Eligibility and Capabilities
<ol style="list-style-type: none"> 1. Agency’s positioning, vision, and philosophy aligned with the Lottery’s brand, our mission (Total possible points 75) 2. Depth and breadth of agency’s organizational qualifications and experience to deliver the service requirements listed in the Scope of Work (Total possible points 75) 3. Strategic thinking and capabilities (Total possible points 60) 4. Creativity and innovation (Total possible points 60) 5. Relevant experience with gaming, entertainment, and/or fast-moving consumer goods sold at retail and caliber of client(s) (Total possible points 50) <p><u>Total Points Possible – 320</u></p>

3. **Scoring - Phase I:** After review and evaluation of the Phase I submittals, those Proposers receiving a rating of Exceeds or higher (at least 224 of total possible points) shall advance to Phase II. *Note: scores shall be rounded to the nearest whole number.*

B. Phase II – Semi-Finalist: On-Site Visits

1. On-site visits allow the Lottery Evaluation Team to meet agency leadership and the agency team that would service the Lottery account. It is an opportunity for the agency to present their capabilities beyond the agency profile and credentials provided in Phase I.

Evaluation Criteria: Phase II – On-Site Visits
<ol style="list-style-type: none"> 1. Agency team assigned to the Lottery, their philosophy, and culture – (Total possible points 75) 2. Capabilities and resources to meet the requirements outlined in the Scope of Work – (Total possible points 75) 3. Expertise in promotions and retail marketing – (Total possible points 60)

4. Caliber of strategic thinking – (Total possible points 50)

5. Creativity and innovation – (Total possible points 50)

6. Additional services – (Total possible points 40)

Total Possible Points – 350

2. **Scoring- Phase II:** After review and evaluation of the Phase II submittals, those Proposers receiving a rating of Superior or Significantly Exceeds (at least 298 of total possible points) automatically advance to Phase III. In the event there are fewer than two proposers with a rating of Superior or Significantly Exceeds (298 points or higher), the top two proposers with ratings of Exceeds or higher (245 points or higher) shall advance to Phase III.

C. Phase III – Finalist Submittals – Work Assignment

1. Finalist agencies will be asked to complete and present a strategic, creative, and integrated work assignment for promotions and/or retail marketing.

Evaluation Criteria: Phase III – Work Assignment

Understands Lottery business and the application of insights to the work assignment (Total possible points 100)

Promotional and Retail marketing expertise as it applies to the Lottery (Total possible points 100)

Strategic thinking and recommendations (Total possible points 100)

Creative work (Total possible points 100)

Innovativeness mindset and approach (Total possible points 70)

Caliber of the DJHQFWHDF (Total possible points 70)

Responsiveness to Input (Total possible points 45)

Total Possible Points – 585

2. Phase III – Finalist Submittals - Staff Plan & Compensation Proposal Assessment:

Each Finalist will receive a packet outlining a sample description of Work-Deliverables (for bidding purposes only) for the Lottery account. The packet will include an Excel spreadsheet and instructions for organizing the proposed staff plan and corresponding cost information. The objective of this portion of the Finalist Phase is to evaluate Finalists’ anticipated staff proposal and proposed compensation on both the stand-alone and comparative basis to facilitate an agency-to-agency evaluation.

Evaluation Criteria: Phase III – Staff Plan & Compensation Proposal
1. Number of staff assigned to the Lottery account to fulfill the services within the Scope of Work are appropriate (Total possible points 75)
2. Number of staff assigned to the Lottery account at the proper levels of expertise and experience (Total possible points 75)
3. Staff Hours (FTE’s – Full Time Equivalent) allocated adequately between agency departments (Total possible points 60)
4. Blended Hourly Agency Rate (Total possible points 60)
5. Direct Labor Costs aligns with the Deliverables List (Total possible points 60)
6. Operating Overhead Costs (Total possible points 50)
7. Profit Markup (Total possible points 50)
8. Additional Costs (Total possible points 35)
<u>Total Possible Points – 465</u>

3. Scoring- Phase III Best Value Analysis

For the purposes of this RFP, the work assignment and the staff plan and compensation proposal will be evaluated and scored separately and together to determine the best value proposal. The best value shall be the proposal that provides the best overall value to the Lottery and that is most likely to result in a contract that fulfills the Lottery’s mandates to: 1) award a contract to the

responsible agency submitting the best value proposal that maximizes the benefits to the Lottery in relation to the areas of competence, experience, cost effectiveness, and timely performance; 2) act to promote and ensure integrity, honesty, and fairness in the operation and administration of the Lottery; and 3) maximize contributions to schools in fulfillment of the Lottery's mission.

If the Lottery elects to award a contract, such contract will be awarded to the agency that submits the best value proposal. The best value proposal will be the proposal that provides maximum benefits to the Lottery in the areas of security, competence, experience, qualifications, performance, and price. The proposal with the lowest price may not be selected if a higher-priced proposal provides greater overall benefits to the Lottery.

As part of the best value proposal evaluation process, the Lottery may enter into discussions with agencies in the competitive range (i.e., those selected have a reasonable chance of being selected for an award).

- a. If the Lottery elects to enter into discussions with Agencies in the competitive range, it will initiate oral or written discussions with all selected Agencies regarding their proposals with respect to their Phase III submissions (Proposals).
- b. These discussions can include inquiries as to deficiencies, ambiguities, omissions, and weaknesses that would adversely affect the Proposal's rating. The Lottery will ensure that all issues are resolved or are understood by each Agency prior to requesting a best and final proposal.
- c. In addition, the Lottery may conduct discussions with each eligible Agency necessary to further the evaluative process but need not conduct the same amount of discussions with each eligible Agency. The Lottery may terminate discussions with any eligible Agency at any time. However, the Lottery will offer all eligible Proposers the same opportunity to discuss their Proposals with the Lottery before the Lottery notifies eligible Agencies of the date and time pursuant to which best and final Proposals will be due.
- d. The Lottery may adjust the evaluation of a Proposal as a result of a discussion under this process. The conditions, terms, or price of the Proposal may not be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP.
- e. The Lottery will not:
 - i. Provide the Agency with suggested ways to correct its proposal or "right

answers.”

- ii. Disclose information concerning other Agencies’ proposals or the evaluation process.
 - iii. Advise an Agency of its cost standing relative to other Agencies or furnish information about another Agency’s cost.
 - iv. Reveal technical information from another Agency during the course of discussions.
 - v. Coach, through successive rounds of discussion, an Agency with an inferior Proposal to prepare a superior proposal i.e., technical leveling.
 - vi. Withhold pertinent information from any Agencies.
 - vii. Record presentations (audio, video, or other media) as they may reveal confidential information relevant to the evaluation process.
- f. Thereafter, the Lottery will establish a common date and time by which Agencies must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Lottery may make a written determination that it is in the Lottery’s best interest to conduct additional discussions, negotiations, or change the Lottery’s requirements and require another submission of best and final Proposals. The Lottery will evaluate Proposals as modified. Lottery is not required to solicit best and final proposals if, after the preliminary negotiation process, it has concluded that one Agency will provide the best value to the Lottery.

4. **DVBE and SMP Assessment**

Where applicable, the DVBE and SMP preferences will be applied during Phase III within the Staff Plan and Compensation Proposal. If applicable, the Proposer will receive up to 5% bonus in points or a \$50,000 reduction in the annual staff compensation proposal, whichever is less, will be applied for evaluation purposes only.

- Disabled Veteran Business Enterprise Participation Incentive Program (if applicable). A preference of up to 5% bonus in points or a \$50,000 reduction in the annual staff compensation proposal, whichever is less, will be applied for evaluation purposes only based on the level of DVBE participation proposed.
- Small & Micro Business Participation (if applicable). A preference of up to 5% bonus in points or a \$50,000 reduction in the annual staff compensation

proposal, whichever is less, will be applied for evaluation purposes only, based on the level of SMP participation proposed.

D. Sample Scoring

1. Phase I - Sample Scoring:

Each Proposer will be given a rating of Superior, Significantly Exceeds, Exceeds, Meets, Meets with Exceptions, or Does not Meet using the Rating Chart. Corresponding percentages listed in the Rating Chart and the points listed next to each criteria topic will be applied. Ratings and point scores will be totaled to determine if a Proposer advances. The sum of the weighted scores shall be rounded to the nearest whole number.

Sample Phase I - Rating & Scores

Criteria	Agency #1	Score	Agency #2	Score	Agency #3	Score
# 1	Superior	75	Superior	75	Superior	75
# 2	Superior	75	Superior	75	Significantly Exceeds	64
# 3	Superior	60	Significantly Exceeds	51	Significantly Exceeds	51
# 4	Superior	60	Significantly Exceeds	51	Exceeds	42
# 5	Significantly Exceeds	43	Significantly Exceeds	43	Exceeds	35
Scores Total Possible Points 320	Significantly Exceeds Advances to Phase II	313	Significantly Exceeds Advances to Phase II	295	Exceeds Advances to Phase II	267

*.5 or above are rounded up

2. Phase II - Sample Scoring:

Sample Phase II - Rating & Scores

Criteria	Agency #1	Score	Agency #2	Score	Agency #3	Score
# 1	Superior	75	Superior	75	Meets	38
# 2	Superior	75	Superior	75	Meets	38
# 3	Superior	60	Significantly Exceeds	51	Meets	30
# 4	Superior	50	Significantly Exceeds	43	Meets	25
# 5	Significantly Exceeds	43	Significantly Exceeds	43	Meets	25
# 6	Significantly Exceeds	34	Meets	20	Meets	20
Scores Total Possible Points 350	Significantly Exceeds Advances to Phase III	337	Significantly Exceeds Advances to Phase III	307	Meets Does Not Advance	176

Note: .5 or above are rounded up

3. Phase III – Sample Scoring:

Sample Phase III Work Assignment - Rating & Scores

Criteria	Agency #1	Score	Agency #2	Score
# 1	Superior	100	Significantly Exceeds	85
# 2	Superior	100	Significantly Exceeds	85
# 3	Superior	100	Meets	50
# 4	Superior	100	Meets	50
# 5	Significantly Exceeds	60	Meets	35
# 6	Significantly Exceeds	60	Meets	35
# 7	Significantly Exceeds	38	Meets	23
Scores Total Possible Points 585	Significantly Exceeds	558	Meets	363

Note: .5 or above are rounded up

Phase III Staff Plan & Compensation Proposal - Rating & Scores

Criteria	Agency #1	Score	Agency #2	Score
# 1	Superior	75	Meets	38
# 2	Superior	75	Meets	38
# 3	Superior	60	Meets	30
# 4	Superior	60	Meets	30
# 5	Significantly Exceeds	51	Meets	30
# 6	Significantly Exceeds	43	Meets	25
# 7	Significantly Exceeds	43	Meets	25
# 8	Significantly Exceeds	30	Meets	18
Scores Total Possible Points 465	Significantly Exceeds	437	Meets	234

Note: .5 or above are rounded up

IV. SUBMISSION REQUIREMENTS

A. Delivery of Proposal

1. Delivery

All proposals shall be submitted through the Lottery Secure File Transfer site. The Lottery encourages all qualified Proposers to participate in this RFP by submitting Phase I written submittals by the deadline due date of 3pm on February 18, 2022. The written "Intent to Bid" is optional and not required to participate in this RFP process. Proposers not submitting an "Intent to Bid" shall contact Crystal Sung (csung@calottery.com) two (2) calendar days prior to the Phase I submittal due date of February 18, 2022 for written instructions.

Proposers shall submit video files using .MP4 format. Files with the following extensions will not be accepted: exe, vbs, pif, scr, bat, cmd, com, and cpl. **Additionally, Proposers must submit five hard copies of their proposals as labeled binders in accordance with Section IV Submission Requirements, A.2b.** The agency's proposals should be structured in the same format as the RFP, with the same heading, numbering, and bullet format for all sections and subsections. Proposals submitted in response to this RFP must comply with the

requirements listed in Section IV Submission Requirements, A.2 Narrative Format. Failure to complete and submit the information as specified in the narrative format may result in rejection of the agency's proposals.

Proposers are solely responsible for ensuring timely receipt of their bid proposals.

2. Narrative Format

- a. Narrative portions of proposal responses should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be on conformance to the RFP instructions, responsiveness to the RFP requirements, completeness, and clarity of content. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. However, it is requested that responses are bound.
- b. Proposers must follow the format requirements listed below for all narrative portions of the RFP. Failure to do so may result in an entire proposal or affected section not being read or evaluated at the Lottery's sole discretion.
 - i. Use Arial and/or similar font of at least 12-point size throughout. Exception: if a form is required by the State that contains a smaller font.
 - ii. Print pages single-sided on letter size (8.5 by 11 inches) white paper with 1.5 line spacing, unless otherwise noted.
 - iii. Use one-inch margins at the top, bottom, and both sides.
 - iv. Sequentially number the pages in each section and clearly identify each section in the order requested. When a page limit is noted, pages exceeding the limit shall not be scored. It is not necessary to paginate the required forms.
 - v. Place the Proposer's name in a header or footer on every page. If the Proposer's name is not already entered elsewhere on a completed certification or form, add it to a header, footer, or signature block.
 - vi. RFP Attachments and/or forms that require a signature must be signed by a person who is authorized and identified on the Certification, to contractually bind the Agency. A PDF signed copy of those documents shall be accepted, however, the originally signed document may be requested at a later date.

B. Submission of RFP Materials

“RFP materials” means anything submitted by a Proposer to the Lottery in response to this RFP, including, but not limited to, written questions about this RFP, and responses to any phase.

Email	Mail
Email: csung@calottery.com Subject line must include: RFP #50180 Promotions and Retail Marketing Agency	ATTN: Crystal Sung RFP #50180 Promotions and Retail Marketing Agency 700 North 10 th Street Sacramento, CA 95811

Proposals not submitted under sealed cover may be rejected at the sole discretion of the Lottery.

C. Importance of Meeting Deadlines

Proposers are responsible and assume all risks for the delivery and receipt by the Lottery of all submissions prior to the submission deadline. If a Proposer mails or otherwise ships the submission via a generally recognized approved transportation entity such as the U.S. Postal Service, Federal Express, United Parcel Service, etc. and provides the Lottery with the entity’s package tracking information and the tracking information indicates its delivery at the Lottery by the submission deadline, the package shall be considered to have arrived on time. U.S. Postal Service postmarks or other indicia of mailing of shipment, however, shall not be accepted as proof of timely delivery. Electronic submissions without the five hard copies may not be accepted. The stated deadlines for submitting and receipt of all materials to the Lottery shall be strictly enforced. Submissions that are incomplete or received after the stated deadline shall not be accepted.

D. Communication Between the Lottery and Proposers

The Lottery reserves the right to contact Proposers at any phase of the proposal process to collect additional clarifying information, if deemed necessary.

1. Proposer Questions

Proposers must submit any questions regarding this RFP by the due date and time specified in the Key Action Dates table in Section I General Information, L. Key

Action Dates. Only email questions addressed to the contact person listed in Section I General Information, B. Contact shall be accepted. Proposers must provide sufficient specific information to enable the Lottery to identify and respond to their questions. When submitting questions, please reference RFP #50180 Promotional and Retail Marketing Agency.

Responses to questions received during the Proposer Question time period shall be posted on the website at www.calottery.com/vendor-opportunities as well as CSCR at <https://caleprocure.ca.gov>

In its sole discretion, the Lottery may contact a Proposer to seek clarification or additional information regarding any question received.

Proposers who fail to report a known or suspected problem with the RFP or who fail to seek clarification or correction of the RFP do so at their own risk.

2. Errors

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, the Proposer shall immediately notify the Lottery of such error by email to the contact in Section I General Information, B. Contact and request modification or clarification of the RFP. Modifications or clarifications shall be given by written notice posted on the website at www.calottery.com/vendor-opportunities without divulging the source of the request for modification or clarification. The Lottery shall not be responsible for a Proposer's failure to correct errors or any Proposer's failure to regularly and timely check the website for changes.

E. Submission of Final Proposal

1. Deviations and Modifications

All submissions should be complete when received at the Lottery. No changes, modifications, corrections, or additions may be made once they are submitted to the Lottery. A Proposer shall be allowed to withdraw its proposal provided that the written request for such withdrawal is received prior to the deadline for final submission. After withdrawing a proposal, Proposers may resubmit a new proposal according to the proposal submission instructions. Replacement proposals must be received at the stated place of delivery by the proposal due date and time.

The Lottery may, at its sole discretion, waive any immaterial deviation or defect in a submission. However, the waiver of an immaterial deviation or defect in a submission shall in no way modify the document or excuse the Proposer from full compliance with the RFP requirements if awarded the contract. Items may be considered "immaterial" by the Lottery if, for example, they do not affect the

amount of the Staff Plan and Compensation Proposal, or if allowing the deviation does not give a Proposer an advantage or benefit that would not be granted to all other Proposers.

- a. If the Proposer's intent, as determined by the Lottery, is clearly established based on review of the complete Final Proposal submittal, the Lottery may at its sole option correct an error based on that established intent.
- b. The Lottery may at its sole option correct obvious clerical errors.
- c. A Proposer may modify a bid or submit a new bid after submission by withdrawing its original bid and resubmitting a new bid prior to the bid submission deadline. Proposer modifications offered in any other manner, oral or written, shall not be considered.
- d. The Lottery reserves the right to reject any bid that does not satisfy the requirements set forth in this RFP. The Lottery is not required to award a contract. Before submitting a response to this RFP, Proposers should review, correct all errors, and confirm compliance with the RFP requirements.
- e. No oral understanding or contract shall be binding on either party.

F. Property of California State Lottery

Submission materials shall not be returned to the Proposer. All proposed ideas or adaptations of the ideas contained in any submission become the property of the Lottery and the Lottery reserves the right to use them. Acceptance or rejection of the submission shall not affect this right in any way.

G. Cost of Submissions

Costs for developing and submitting proposals are entirely the responsibility of the Proposer and shall not be chargeable to the Lottery.

H. Preference Programs

The Lottery shall determine which Proposers, if any, are eligible to receive a bidding preference (i.e., Small Business and Disabled Veteran Business Enterprise).

SB and DVBE preference incentives shall be offered in this RFP.

1. Small Business (SB)

Agencies who meet the SMP goal are eligible for a SB Preference. Based upon the nature of the goods and services to be utilized under this solicitation (as

outlined in the Scope of Work, Exhibit A), the Lottery has set a Small and Microbusiness Participation (SMP) goal of 25% for utilization of small or microbusinesses as subcontractors. The Lottery encourages small business participation, and participation is voluntary. An agency who qualifies as a small or microbusiness has met this participation goal by virtue of their small business status.

For proposal evaluation purposes, an SB preference is applied to Phase III Finalists by adjusting down the Agency's "Total Agency Fee" in their Staff Plan & Compensation Proposal by \$50,000 or by adding up to 5% bonus points to the Proposer's score, whichever is less.

During the Contract term, the Agency's SB preference compliance shall be calculated based on the Agency's completed work as verified by an audit of Agency's invoices and Agency's payments to designated subcontractors. Small and Microbusiness Participation (Attachment 7), if applicable, must be completed by the Proposer.

2. Disabled Veteran Business Enterprise (DVBE)

The Lottery recognizes disabled veterans for their service by establishing a Disabled Veteran Business Enterprise (DVBE) Participation Program. The program is intended to further veterans' participation in Lottery contracting, promote competition and encourage greater economic opportunity.

The Lottery has established participation goals for DVBEs, as defined in Military and Veterans Code, of at least 3% of overall dollars expended for Lottery contracts annually. The Lottery determines whether to include DVBE participation requirements in specific solicitations based on the availability of contracting or subcontracting opportunities within the scope of work of the particular contract.

DVBE participation in this solicitation is voluntary. While the Lottery has not established a DVBE participation requirement for this solicitation, in order to encourage DVBE participation, the Lottery has applied a DVBE incentive. Disabled Veteran Business Enterprise (DVBE) (Attachment 8), if applicable, must be completed by the Proposer.

Agencies who meet the DVBE goal are eligible for a DVBE Incentive. For proposal evaluation purposes, a DVBE Incentive is applied to Phase III Finalists by adjusting down the Agency's "Total Agency Fee" in their Staff Plan & Compensation Proposal by \$50,000 or by adding up to 5% bonus points to the Proposer's score, whichever is less. The combined SB preferences and DVBE incentives shall not exceed \$100,000.

V. CONTRACT AWARD

A. Notice of Intent to Award

Award of the contract, if awarded, shall be to the most responsive and qualified Proposer, based on scoring criteria and best value evaluations detailed in Section III Evaluation Process & Criteria.

A notice of Intent to Award identifying the selected Agency shall be posted on the Lottery website, www.calottery.com/vendor-opportunities, California State Contracts Register, and at the entrance of the Lottery headquarters for a period of five working days prior to the protest deadline. All finalists that participated in the final phase held shall be notified by email regarding the contract award decision.

B. Confidentiality of Financial Records

Financial records received by the Lottery may be kept confidential and shall be retained per the Lottery procedures. The Public Records Act may prevent the Lottery from keeping submitted information confidential.

C. California State Lottery Rights

1. Assessment of Proposals

All proposals shall be assessed based on determining the “Best Value” in the sole opinion of the Lottery and the selection, if made, shall be made to a single Proposer. The SOW, proposal, and bid may at the Lottery’s sole discretion, be made a part of the resulting Contract.

2. Rejection of Proposals

Deviations may cause a proposal to be deemed non-responsive and not to be considered for award. The Lottery may reject any or all proposals and/or may waive any immaterial deviation or defect in a proposal. The Lottery’s waiver of any immaterial deviation or defect shall in no way modify the RFP documents or requirements and shall not excuse the Proposer from full compliance with the RFP specifications if awarded a contract.

FINAL PROPOSALS NOT RECEIVED BY THE DATE AND TIME SPECIFIED IN SECTION 1 GENERAL INFORMATION, L. KEY ACTION DATES shall remain unopened and the Proposer shall receive notification regarding the late submission.

Issuance of this RFP in no way constitutes a commitment by the Lottery to award

a contract. The Lottery reserves the right to reject any or all proposals or portions of proposals received in response to this RFP, or to amend or cancel this RFP at any time if it is in the best interest of the Lottery to do so. In the event of such cancellation, the Lottery may reissue the RFP at a later date.

Any documentation submitted in response to this RFP which has been marked “Proprietary” or “Trade Secrets” may be rejected.

Proposals received after the expiration of the deadline shall not be considered or submitted to the Evaluation Team for review.

The Lottery reserves the right to reject a proposal based on the Proposer’s failure to comply with a requirement in a prior contract, or cooperative agreement with the State of California. The Lottery reserves the right to consider the Proposer’s past performance with government organizations and/or past clients in its selection pursuant to this RFP.

The Lottery reserves the right to reject any bid that does not satisfy the requirements set forth in the RFP. Before submitting a response to this RFP, Proposers should review, correct all errors, and confirm compliance with all the RFP’s requirements.

3. Verification of Proposer Information

By submitting a proposal, Proposers agree to authorize the Lottery to:

- a. Verify any and all claims made by the Proposer including, but not limited to verification of prior experience and the possession of other required qualifications.
- b. Check any and all references identified by a Proposer or other resources known or identified by the Lottery to confirm the Proposer’s business integrity and history of providing effective, efficient, competent, and timely services.

4. False or Misleading Statements

Proposals which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, may be rejected. If, in the opinion of the Lottery, such information was intended to mislead the Lottery in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, it shall be the basis for rejection of the proposal.

5. Nonresponsive Proposals

A proposal may be deemed nonresponsive and subsequently rejected if any of the following occurs:

- a. Any time a submission is received after the exact time and date set forth in Section I General Information, L. Key Action Dates, for receipt of each submission.
- b. The Proposer fails to meet any of the eligibility requirements as specified in Section II Proposal Submission & Phases, B. Phase 1: Eligibility and Capabilities Requirements.
- c. The Proposer fails to submit or fails to complete, and sign required Attachments as instructed in this RFP.
- d. The submission contains false, inaccurate, or misleading statements or references.
- e. The Proposer is unwilling or unable to fully comply with the proposed contract provisions.
- f. The Proposer supplies conditional cost information, incomplete cost information, or cost information containing unsigned/uninitialed alterations or irregularities.

6. Business in Good Standing

Proposer acknowledges that when agreements are to be performed in the State of California by corporations or vendors, the Lottery shall verify, prior to awarding any State contract, the following information in order to ensure that all obligations due to the State are fulfilled:

Corporation in Good Standing

The Lottery shall verify with the California Secretary of State (SOS) that the Proposer is a corporation currently qualified to do business in California. The bid shall be considered non-responsive if the Proposer is listed with the SOS but is not in good standing.

“Doing business” is defined in California Revenue and Taxation Code section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely shall a corporate agency performing within the State not be subject to the franchise tax.

Both domestic and foreign (those incorporated outside of California) corporations must be in good standing in order to be qualified to do business in California.

State Tax Delinquency

The Lottery shall verify with the California Franchise Tax Board (FTB) and California Department of Tax and Fee Administration (CDTFA) that the Proposer is not on a prohibited list due to tax delinquencies. The bid shall be considered non-responsive if the Proposer is on any of these lists.

The list established by FTB can be found at:

<https://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/corporate-income-tax-list.html>

The list established by CDTFA can be found at:

<https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm>

D. Protests

Bid Protests:

Only an actual Proposer may protest a contract award, and only on the following grounds:

1. The Lottery did not follow its own written procedures in selecting the apparent successful Proposer, and
2. The protestor can demonstrate that had the Lottery followed its procedures, the protesting Proposer would have been the successful Proposer.

A notice of intent to protest must be received by the Lottery within seven business days after the Lottery posts a notice of intent to award on its website. A timely notice of intent to protest is a prerequisite to any protest.

Provided that a timely notice of intent to protest has been filed with the Lottery, a protest must be filed within 12 business days after the Lottery posts its notice of intent to award on its website. A protest must include a complete and detailed explanation of how the facts support the protest.

All protest documents must be received by the Lottery at its Sacramento headquarters no later than 3:00 p.m. Pacific Time on the last day of the applicable protest period. The envelope containing protest documents or the cover page to a protest must be addressed to the attention of the Director and must be clearly labeled: "Protest to the RFP #50180 Promotions & Retail Marketing Agency, DO NOT OPEN IN MAILROOM." Untimely protests shall not be considered.

It is the protestor's responsibility to ensure that the Director has all information and arguments that the protestor deems relevant and necessary to resolve the protest. The Director may request additional information in writing from the protestor or from other sources, including the apparent successful Proposer and Lottery staff, as he/she deems appropriate for resolution of the protest.

The Director shall issue a written decision within 15 days of completion of his/her review of the record.

In his/her sole discretion, the Director may determine that it is in the best interests of the Lottery to proceed with contract award and performance, while a protest is pending, and may direct an Agency to commence work.

E. Contract Execution and Performance

The Lottery shall confirm the contract award to the winning Proposer after the protest deadline, if no protests are filed, or following the resolution of all protests. The selected Proposer shall provide marketing services to the Lottery and shall be required to execute a contract that details the legal and programmatic obligations of each party.

The successful Proposer must enter into a formal contract with the Lottery in order to receive payment for services rendered. The contract may incorporate, as an exhibit

or by reference, portions of this RFP and responses to this RFP that directly identify the work to be performed, performance timelines, methods and approaches, budget or cost details, or other mandatory contract and performance requirements.

If, at any time during negotiation of an agreement with the successful Proposer, the Lottery determines it is not able to reach an agreement with the successful Proposer, the Lottery may, at its sole discretion, terminate the negotiations and engage the next-highest-ranked bid without performing a subsequent solicitation.

All duties, tasks, and deliverables as outlined in the contract shall be completed before the termination date of the contract, unless an earlier date is specified in the contract.

F. Addition or Subtraction of Services

Notwithstanding that bids have been submitted, at the Lottery's sole discretion, the SOW may be modified prior to contract award to add or remove services through an addendum. If the date and time for submission of Final Proposals has passed as of the time the addendum is posted, and bids have been received, the Lottery, at its sole discretion, may restrict responses to the modified SOW so that only entities that submitted timely bids in response to the initial RFP may respond to the addendum.

G. Agency's Roles and Responsibilities

1. The Agency shall designate a person to whom all contract communications may be addressed and who has the authority to act on all aspects of the contract. This person shall be responsible for the overall contract and the contact for all invoicing and Agency staffing issues.
2. The Agency shall perform the duties as outlined within the scope of work.
3. The Agency shall execute the marketing initiatives as outlined within the annual deliverables list.

H. The Lottery's Roles and Responsibilities

1. The Lottery shall designate a Lottery Representative to whom all Agency contract communications may be addressed and who has the authority to act on all aspects of the contract.
2. The Lottery shall provide access to business and technical information as necessary for the Agency to complete the deliverables identified in the SOW.
3. The Lottery shall ensure appropriate resources are available to perform assigned tasks, attend meetings, and answer questions.

4. The Lottery shall ensure that decisions are made in a timely manner.

I. Payment and Invoicing

1. The Agency shall be paid in accordance with its Staff Plan and Compensation Proposal. Billings shall require the submission of an estimate prior to the start of any work. The estimate number to be used to track each project shall be issued by the Lottery Contract Manager.
2. The Agency may invoice the Lottery only after the successful completion and acceptance of the required work, according to the schedule detailed in the Contract.
3. Revised Estimates

A revised estimate reflecting all services or charges which may amount to more than 10 percent of the original estimate must be approved by the Lottery prior to additional performance and must be accompanied by a written justification stating why the increase in cost was necessary. The requirement for a written justification shall apply to multiple revised estimates where each revised estimate is less than 10 percent of the original estimate, but the combined total exceeds 10 percent of the original estimate. Revised estimates should also include previous approved amounts and/or history of amounts. Total fiscal year expenditures cannot exceed the designated total fiscal year budget without prior approval from the Lottery Contract Manager or designee.

J. Contract Amendment

The Lottery may, at its sole discretion, extend the term of the contract for up to two (2) one-year extensions under the same terms and conditions, including pricing terms. If mutually agreed upon by the Lottery and the Agency, this Agreement may be amended to include additional services and funding.

K. Contract Forms and Exhibits

State contract forms and exhibits are available on the California Lottery website at www.calottery.com/vendor-opportunities as well as CSCR at <https://caleprocure.ca.gov>

Proposers should consider the Model Contract provided within the Exhibits section of this solicitation in preparing its response and ensure they shall be able to comply with State contract terms. The contract resulting from this solicitation shall be prepared on a Lottery Standard Agreement.

The Lottery reserves the right to adjust the language within the SOW and contract awarded from this solicitation. Therefore, final contract language may deviate from the provisions provided.

If an inconsistency or conflict arises between the terms and conditions appearing in the final contract and the proposed terms and conditions appearing in this solicitation, any inconsistency or conflict shall be resolved by giving precedence to the final contract.

VI. ATTACHMENTS TABLE OF CONTENTS

To view the following documents, go to the Lottery website www.calottery.com/vendor-opportunities or CSCR <https://caleprocure.ca.gov>, click on the “Details & Downloads” link under RFP #50180 and open the selected Exhibit documents. Attachment must be fully completed as applicable and submitted.

Attachment 1: California Lottery District Offices & Distribution Centers

Attachment 2: Mandatory Submittals Checklist

Attachment 3: Agency Fact Sheet

Attachment 4: Form STD 204 – Payee Data Record

Attachment 5: Certification

Attachment 6: Schedule of Subcontractors

Attachment 7: Small and Micro Business Participation

Attachment 8: Disabled Veteran Business Enterprise Participation

Attachment 9: General Contractor Disclosures

Attachment 10: Non-Disclosure Agreement

Attachment 11: Non-Compliance Procedural Waiver

Required but not attached:

1. Certificate of Liability Insurance demonstrating General Liability coverage equal to or greater than \$2,000,000
2. Proof of Workers’ Compensation Liability Insurance
3. Performance Bond in an amount commensurate with the value of the Contract’s first year

VII. EXHIBITS TABLE OF CONTENTS

To view the following documents, go to the Lottery website www.calottery.com/vendor-opportunities or California State Contracts Register, click on the “Details & Downloads” link under RFP #50180, and open the selected Exhibit documents.

Model Contract:

Exhibit A: Scope of Work

Exhibit B: Budget Detail and Payment Provisions

Exhibit C: General Terms and Conditions

Exhibit D: Supplemental Terms and Conditions - Quality Assurance Plan

EXHIBIT A

SCOPE OF WORK

The California Lottery is dedicated to an inclusive work environment in which everyone, regardless of gender, race, religion, age, or background, can do their best work. The Lottery Team's culture is respectful, courteous, and tolerant. The California Lottery values ideas and collaboration in our agency partners as well as with the Lottery Team.

This agency (Agency) plays a critical role in the statewide marketing of the Lottery and its products and is expected to collaboratively work with Lottery staff, retailers and other partner agencies and contractors to provide best-in-class promotions and retail marketing services.

1. Strategic Planning Services:

The Agency shall:

- a) Participate in and contribute to the development process of the Lottery's long-range strategic and annual business plans by sharing such information as business insights, agency research, and historical performance data.
- b) Provide business intelligence and insights on such topics as the current landscape, consumer behavior, emerging trends, competitive changes, business challenges, and opportunities for future improvements and growth.
- c) Leverage business expertise and established connections to bolster and deliver cost-effective, measurable, and impactful marketing programs.
- d) Attend leading industry conferences and trade shows to gain valuable insights and monitor industry variances that can be shared with the Lottery.
- e) Demonstrate expertise in using data-driven insights to strategically develop objectives for promotions and retail marketing initiatives that can be tracked and measured through key performance indicators to evaluate the outcome.
- f) Conduct research, such as concept testing, trade channel research, retailer research, and shopper research, to gain insights into motivating purchase and developing an understanding of how Lottery products can be most effectively promoted and merchandised.
- g) Foster a collaborative working environment with the Lottery staff and its partner agencies to challenge the status quo and create breakthrough big ideas within the promotions and retail marketing space to advance the Lottery brand.

2. Account and Project Management Services:

The Agency shall:

- a) Possess the skills to effectively lead and manage projects including stewarding timelines, tracking costs, monitoring deliverables, and accurately invoicing the Lottery.
- b) Approach projects in a professional manner providing clear verbal and written communications, project status, and defined staff responsibilities.
- c) Per the Lottery's discretion, the Agency may be delegated to lead and/or support partner agencies on any marketing campaign, initiative, and/or program. The Agency shall be responsible for strategic planning, development of creative assets, production, and implementation across all channels to reach the targeted audience and achieve the set objective(s).

3. Promotions Marketing Services:

The Agency shall:

- a) Strategically plan, creatively concept, and implement Business to Consumer (B2C) and Business to Business (B2B) marketing promotions across all channels and tradestyles for the Lottery. These promotions may include, but are not limited to, consumer promotions, price promotions/coupons, experiential, event marketing, retailer promotions, co-marketing partnerships, social media promotions, digital/mobile app promotions, loyalty promotions, sales support initiatives, sponsorships, and community outreach programs.
- b) Develop clearly defined and measurable objectives, along with key performance indicators, to track results and provide comprehensive program analyses and recaps that include return on investment, earned media, promotional media value, lessons learned and opportunities for improvement.
- c) Plan, develop and provide all elements to support and execute promotional programs which may include promotional Point-of-Sale (POS) displays, advertising materials, premium/branded giveaway items, event equipment, brand ambassadors, and location services permits.
- d) Design conduct and/or utilize market research in partnership with the Lottery to gain insights, develop strategies, track results, and determine future direction for promotional programs in order to meet objectives and advance the Lottery.
- e) Consistently produce best-in-class work that is impactful and effective.

- f) Identify, and apply new technologies and solutions as consumer behaviors evolve and change within the promotions space.

4. Retail Marketing Services:

The Agency shall:

- a) Strategically plan, creatively concept, develop, and implement the retail marketing initiatives across all channels and tradestyles for the Lottery. These programs include, but are not limited to, product displays, POS, product merchandising, retailer sales incentive programs, loyalty programs, and monthly and annual retailer communication plans.
- b) Understand retail and shopper marketing by tradestyle and how it correlates with the merchandising and marketing of Lottery products to advance the brand and product sales.
- c) Possess the resources (in-house or through subcontractors) to design, produce, procure, and deliver collateral POS materials and signage, electronic POS (e-POS), and permanent POS items to the Lottery's approximately 23,000 retail locations statewide. The Lottery's network of approximately 23,000 retail partners includes a variety of tradestyles, ranging from large national chains to gas stations, convenience and drug stores, liquor stores, social venues (e.g. bars, bowling alleys, fraternal organizations, coffee and tea houses, etc.) and grocery stores and supermarkets. Note the Lottery's sales team installs point-of-sale materials and does not generally pay retail placement fees for point-of-sale placements.

POS definitions:

- Collateral POS is generally campaign-focused used for limited period.
 - e-POS is consumer-oriented digital point-of-sale that is displayed on the Lottery's gaming system machines and monitors.
 - Permanent POS items include, but are not limited to, Scratchers ticket displays (on-counter, in counter, menu boards, etc.), draw games/playcenter kiosk, branded interior and exterior signage, and other similar items.
- d) Establish metrics for tracking and measuring the effectiveness of the Lottery's POS program, design tools to monitor how POS items are displayed at retail and provide business solutions to minimize costs and improve efficiencies.

- e) Work collaboratively with the Lottery and its partner agencies to create impactful POS and other materials that integrate with the overall campaign look and feel. Direct and manage the creation of POS in multiple languages, working with the partner agencies. Lottery POS is currently produced in English and Spanish, and may be produced in Chinese, Korean, Vietnamese, or other languages.
- f) Develop and implement an ongoing retailer communication plan that shares important information in a timely manner with the Lottery's sales team and retail partners. The retailer network is complex, culturally diverse, and spans statewide. Lottery Sales Representatives interact with retail owners, clerks, regional and national chain managers, and accounting staff to inform, educate, and engage participation in Lottery retail marketing initiatives that promote product sales. The plan includes multiple communication channels and continually evolves to meet the needs of Lottery retailers and the Lottery sales team.
- g) As part of the retailer communication plan, develop and produce a monthly publication highlighting new products and other key information that is distributed to all Lottery retailers via product shipments and/or sales representatives.
- h) Develop sales enablement materials and other tactics to support Lottery sales team efforts. This may include POS installation instructions, sell sheets, email blasts, retailer extranet content, collateral, retailer recruitment initiatives, etc.

5. Partnership/Sponsorship Marketing Services:

The Agency shall:

- a) Discover, create, and implement promotions and marketing opportunities with the Lottery's retail partners to promote new product offerings, support marketing campaigns, retailer training, and engage product trial at zero or minimal out-of-pocket costs.
- b) Pursue, evaluate, and develop mutually beneficial co-marketing partnerships with likeminded brands to grow playership and strengthen the Lottery's brand image. One of the goals of these cross-marketing partnerships is to garner additional media exposure that increases our consumer impressions and boost our marketing messaging.
- c) In partnership with Lottery team, manage sponsorship program on behalf of the Lottery. This includes researching and evaluating proposals, negotiating contracts and rights, managing agreements, executing program elements, tracking, and measuring results to maximize benefits and achieve marketing goals.

6. Loyalty Programs:

The Agency shall:

- a) Support the development, advancement, and evolution of the Lottery's current promotional loyalty programs, which include 2nd Chance and Jackpot Captains. Identify opportunities, recommend, and support the introduction of new loyalty programs and features for consumers and/or retailers.
- b) Provide promotional digital/social media support services, which includes creative development and production, for the Lottery's player communications efforts, which include but not limited to emails, mobile app, social media channels, mobile app, and retailer portal.
- c) Strategically plan and design the promotional marketing materials for consumer and/or retailer loyalty programs.

7. Other Services:

The Agency shall:

- a) Work with partner agencies and Lottery staff to manage the brand identities for the Lottery brand and multiple products, including designing and updating logos while also monitoring and maintaining the Lottery's brand guide.
- b) Maintain promotional resources, equipment, and materials for possible future use to support the Lottery's promotional and retail marketing programs.
- c) Warehousing of Lottery's promotional equipment, point-of-sale branding and display items, and other promotional merchandise.
- d) Retail Media Buying/Placement (as required)
 - i. Research, strategically plan, and recommend retail media programs, such as in-store advertising, proximity marketing, and similar retail-based media.
 - ii. Negotiate, secure, and implement retail media buys for the various trade channels.
 - iii. Provide post-buy analysis and comprehensive recap reports for all retail media buys.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. Annual Agency Deliverables and Staff Plan and Compensation Proposal

The Lottery will pay agency compensation to the Agency in the form of an all-inclusive, labor based annual agency fee arrangement. The annual agency fee will be determined for each fiscal year based on the agreed-upon key marketing deliverables. Prior to the end of each fiscal year or thereabouts the key marketing deliverables will be provided to the Agency. The deliverables list provides a plan for the Lottery's marketing initiatives and their planned deliverables for the upcoming fiscal year. The Agency bases their staff plan and compensation proposal to the Lottery on the key deliverables list. Both parties agree to discuss in good faith and agree to in writing revisions to the staff plan and compensation proposal for the next year including negotiation of the annual agency fee, based on the Lottery's key marketing deliverables.

The Agency's staff requirements are dependent upon the mutually agreed upon deliverables list or Key Marketing Initiatives (KMI). The deliverables list or KMI may increase and/or decrease annually along with the staff plan and compensation fees. The agencies should submit an updated staff plan based on the mutually agreed upon deliverables list each fiscal year. If the agency's deliverables list or KMI remains the same or decreases each fiscal year, then the agency's staff compensation plan may also remain the same and/or decrease annually. There is no guarantee of an annual agency fee increase. If an annual increase is granted, at the Lottery's discretion, the percentage amount negotiated may vary, but should not exceed 5%.

There may be a circumstance where an annual agency increase of more than 5% is required to meet substantive changes within the deliverables list or KMI. In this instance, both contracted parties will discuss in good faith the necessary staffing requirements and a possible compensation fee increase above 5% to accomplish the additional KMI.

In no event, may the Agency's overhead mark-up and profit mark-up percentages increase during the duration of this contract. It is at the Lottery's sole discretion to increase and/or decrease the Agency's staff plan and compensation each year.

When agreed upon by the parties and formalized in writing, the updated Staff Plan Compensation Proposal Worksheet and Key Marketing Initiative Deliverables Worksheet will be added to the Contract as Attachments 1 and 2 for each successive fiscal year. For each fiscal year, the Staff Plan and Compensation Proposal Worksheet then in effect shall remain in full force and effect until such time as a revised Staff Plan and Compensation Proposal Worksheet is agreed upon by the parties in writing. The

revised annual Plan and Key Marketing Initiative Deliverables Worksheet can be approved in writing by the Lottery Contract Manager or his/her designee.

1.1 The Annual Agency Fee will be set forth annually using the following method of calculation:

- i. Grand Total of Estimated Direct Labor Cost + Overhead Mark-Up (percentage of direct labor cost) = Total Cost
- ii. Total Cost + Profit Mark-Up (percentage of total cost) = Annual Agency Fee
- iii. Annual Agency Fee (including overhead mark-up and profit mark-up) divided by the total annual hours set forth in the Staff Plan and Compensation Proposal = Agency Blended Hourly Rate

1.2 Key Marketing Deliverables

Prior to the end of each fiscal year or thereabouts during the term of this Contract, a Key Marketing Deliverables list will be provided to the Agency. The Key Marketing Deliverables list provides the Agency with a plan of the Lottery's marketing initiatives for the upcoming fiscal year. Specialized programs may be included in the plan. The Agency bases its annual Staff Plan and Compensation Proposal to the Lottery on the agreed upon Key Marketing Deliverables list.

1.3 Specialized Programs

At the Lottery Contract Manager's discretion, the Agency may be required to provide as-needed services in support of Specialized Programs that are within the Agency's Scope of Work but are not addressed in the current Staff Plan and Compensation Proposal. Compensation for Specialized Program services will be in addition to the Annual Agency Fee and will be paid using an agreed-upon billing rate for each proposed Specialized Program service. All Specialized Program services will require submission of an estimate prior to the start of any work and must be approved in writing by the Lottery Contract Manager.

1.4 As-Needed Changes

With respect to any additional yearly deliverables not contemplated in Key Marketing Deliverables list further compensation will be negotiated and agreed upon by the parties on an as-needed basis. Any agreement for additional or replacement of yearly deliverables will be acknowledged in writing signed by the parties. Such writing will identify each revised yearly deliverable and the amount of compensation to be paid. The current fiscal year Staff Plan and Compensation Proposal shall remain in full force and effect until such time as

a revised Staff Plan and Compensation Proposal is agreed upon by the parties in writing.

2. COST AUDIT GUIDELINES

2.1 Estimate Requirements: An approved and signed estimate must be on file at the Lottery for all invoices received. All estimates must include the following information either on the estimate, or on an attachment to the estimate. If the information is provided on an attachment, the attachment must be referenced on the estimate.

- a. Estimate/Job Number
- b. Product/Project Name
- c. Purchase Order Number (provided by Lottery)
- d. Deliverable Description
- e. Estimated Cost of each deliverable including freight and applicable taxes
- f. Deliverable Due Dates
- g. Deliverable Acceptance Criteria/Mandatory Requirements

2.2 Subcontracted Work: All estimates for subcontracted work must be submitted from the Agency, specifying the Agency's job number and product/project. The Agency is solely responsible for processing of all subcontractor estimates. The Agency must retain and make available upon request documentation verifying cost breakdowns. All subcontractor documentation is subject to the same guidelines set for Agency invoicing.

2.3 Production: All production estimates of \$100,000 or more must be submitted with copies of competitive bids obtained and, if not using the lowest bid, a justification of why the lowest bid is not being used must be attached. Line-item descriptions will reflect only those line items included in the job estimate. Line-item documentation that includes line items not on original or revised estimate will not be reimbursed.

Up to 50% advanced payment is permitted for POS production jobs. Documentation must verify that no more than 50% of a POS production estimate will be billed prior to service. Documentation must verify that the remaining balance was invoiced after service was performed and must include backup for the entire job. Production invoices must be submitted within 120 days from date service was completed. After the final invoice is submitted, the

Agency must provide a Closeout Report/Closeout Estimate, signed by both parties, detailing billing history and actual dollars spent. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

- 2.4 Procedural Non-Compliance Waiver: Under specific circumstances, when particular equipment is ordered that is designed solely for the Lottery's retail marketing initiatives then the three-bid process is replaced with the required Procedural Non-Compliance Waiver form, Attachment # 11.

2.5 Media

The Agency must maintain documentation that supports invoices, and which includes an industry standard summary report. The Agency must submit such documentation to the Lottery upon request. Media invoices will only be paid upon completion of broadcast months. All media credits must be submitted to the Lottery as soon as possible. Media invoices must be submitted within 90 days from the last day of the flight. After the final invoice is submitted, the Agency must provide a closeout report, signed by both parties, detailing billing history and actual dollars spent.

Individuals designated by the Lottery must, with reasonable notice, have access to review verification documentation required by the Exhibit, as well as, selected Agency media purchase invoices and other related documents (i.e. station affidavits, video verification) to confirm media purchase costs. These reviews may take place at the Agency's office during regular business hours or may be conducted by submission of written material to the Lottery.

Rebates and Incentive:

- a. Full Disclosure: Agency and Holding Company Members (defined as any company created to buy, possess, and control shares of other companies, and all of its affiliates, as well as any person who has a financial interest or investment in any of the foregoing) must be transparent and fully disclose to the Lottery the flow of the Lottery's funds entrusted to Agency, and any rebates and incentives (defined as any and all third party payments including cash rebates or other incentives) received by Agency and Holding Company Members: Agency volume discounts or compensation from media buys, discounted or unpaid media space or inventory; volume, early payment or other discounts; commissions; compensation; refunds or bonuses; bonus inventory, free or discounted media, sponsorship, or promotional space; consulting or research agreements; service level agreements or any other source of financial or other benefit receivable

directly or indirectly by Agency and Holding Company Members from third parties that are either directly or indirectly related to: the Lottery's media placements (which means all advertising, sponsorships, or promotional media purchased by Agency, either directly or indirectly from third parties or Holding Company Members, in connection with the provision of services under this Contract payments for media placements may take any form, including cash, credits, or the transfer of funds by Digital means).

- b. No Direct or Indirect Benefits: Agency and Holding Company Members must at no time, without disclosure to and written approval by the Lottery, receive or retain any rebates, incentives, or other benefits of any value from three parties, as a direct or indirect result of the Lottery's spending under this Contract.
- c. Reporting: The Agency must provide to the Lottery, upon request throughout the Contract Term and any extension thereof a full and accurate report of:
 - i. Each rate card and terms of payment offered to Agency or Holding Company Members between the Agency or Holding Company Members (before any rebates and/or incentives have been applied) and any third party for any media placements made by Agency or Holding Company Members on behalf of the Lottery.
 - ii. The gross amounts of rebates and/or incentives Agency or any Holding Company Member directly or indirectly receives or is entitled to receive in sufficient detail to permit an accurate assessment by the Lottery of the rebates and incentives due to the Lottery.
 - iii. Any actions by the Lottery, Agency, or Holding Company Members that are required in order for the rebates and/or incentives to accrue.
 - iv. Any early payment discounts received by or eligible to be received by Agency or Holding Company Members from a third party. The Lottery is entitled to receive any early payment discounts received by Agency or Holding Company Members on account of the Lottery's media placement, unless the Lottery expressly chooses not to receive such discounts or Agency notifies the Lottery with reasonable advanced notice of the deadline to qualify for such early payment discounts and the Lottery fails to pay Agency for such media placement within the qualification period to receive such discounts.
- d. Return of Rebates and Incentives to the Lottery

- i. After the Lottery determines that rebates and/or incentives are to be refunded to the Lottery, the Lottery will notify the Agency of the amount that must be refunded to the Lottery (assessment). The Lottery will send the assessment notice to the Agency by certified mail return receipt requested, or by any other method that provides evidence of receipt. At the Lottery's discretion, the assessment notice may direct payment of the assessment by the Agency. If payment is so directed, the Agency must pay the assessment within 30 days from receipt of the assessment notice.

Any assessments may also be collected, at the Lottery's discretion, by withholding the funds from any payment(s) due the Agency after the date the assessment is determined.

- e. Available Discounted Media Placements: Agency must keep the Lottery fully informed of any relevant media placements available to the Lottery on account of Agency's dealings with third parties, together with any dates by which such discounted media space must be used by the Lottery in order to take advantage of the discount.
- 2.6 Shipping/Freight Charges: The agency is expected to utilize lowest cost modes and carriers to safely transport their shipment. Estimates and invoices must include shipping/freight charges. The Agency is expected to utilize lowest cost modes and carriers to safely transport their shipment. All shipping/freight charges over \$25 must have supporting pre-paid freight bills available upon request.
- 2.7 Travel: The Agency must receive prior approval from the Lottery Contract Manager for all travel. Agency staff will be held to the same guidelines and standards for business travel as California State employees. Pre-approved travel and expenses (including air travel and car rental) will be reimbursed at the current Department of Human Resources Approved Travel Rates for Excluded Employees (www.calhr.ca.gov).
- 2.8 Miscellaneous Costs: Must be itemized with backup receipts.
- 2.9 Revised Estimates: A revised estimate reflecting all services or charges which may amount to more than 10% of the original estimate must be approved by the Lottery prior to additional performance and must be accompanied by a written justification stating why the increase in cost was necessary. The requirement for a written justification will apply to multiple revised estimates where each amounts to less than a 10% increase over the original estimate, but the combined total exceeds 10%. Revised estimates should also include

previous approved amounts and/or history of amounts. Total fiscal year expenditures cannot exceed the designated total fiscal year budget without prior approval from Lottery Contract Manager or designee.

All mutually agreed to changes relating to any of the following areas must be followed by a revised estimate reflecting the changes:

- a. Deliverable Description
- b. Estimated Cost of each Deliverable including freight and applicable taxes
- c. Deliverable Due Dates
- d. Deliverable Acceptance Criteria/Mandatory Requirements

All canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation.

All jobs which are closed under the original estimate amount must be followed by a Closeout Report/Closeout Estimate signed by both parties reflecting the actual closing amount. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

The Agency may not change Lottery-assigned purchase order numbers and/or the estimate or invoice numbers after Lottery approval without prior approval by the Lottery Contract Manager.

3. FISCAL PROVISIONS

3.1 Reduction of Funds

The obligations of the parties under this Contract are subject to the availability of funds appropriated by the Commission.

3.2 Frequency of Payment

Agency will be paid upon submission of an invoice, monthly in arrears, upon approval by the Lottery Contract Manager.

3.3 Payment and Invoicing

A. Payment

The Agency will be paid in accordance with Exhibit B, Section 1 under Annual Agency Deliverables and Staff Plan and Compensation Proposal. In accordance with Government Code Section 927.6, payments will be made within 45 calendar days from date the Lottery receives an invoice, unless the invoice is disputed. All invoices will be paid minus any applicable offsets, taxes or withholds.

If the Lottery determines that an invoice was improperly executed, or that additional evidence of the validity of the invoice is required, the Lottery will notify the Agency of a disputed invoice within 15 calendar days from receipt of the invoice. Once the invoice is corrected, payments will be made within 45 days from receipt of the corrected invoice.

Where payment has not been issued within 45 calendar days from the Lottery's receipt of an undisputed invoice, interest penalties will accrue as set forth in the California Prompt Payment Act. If the Agency is a nonprofit organization and the value of the contract is less than \$500,000, or if the Agency is certified with the California Department of General Services as a small business, interest will accrue at a rate of 10% above the U.S. Prime Rate on June 30th of the prior fiscal year. However, if the amount of the penalty is ten dollars or less, the penalty is waived. Nonprofit organizations are ineligible to receive penalty payments if the value of the Contract is \$500,000 or more.

For all other businesses, interest penalties will accrue at a rate of 1% above the daily rate for the Pooled Money Investment Account on June 30th of the prior fiscal year but will not exceed a total rate of 15%. Penalties of \$100.00 or less are waived, as set forth in the California Prompt Payment Act.

B. Invoicing

The Agency will submit invoices for each installment of the fee in triplicate on or about the 1st and 15th day of the month noting the Lottery Contract purchase order number and listing the services rendered. The Agency will submit invoices for the expenses incurred by the Agency on the Lottery's behalf (including, but not limited to, production) in triplicate in arrears on or about the 1st & 15th day of the month, noting the PO number provided by the Lottery and listing the services rendered, goods provided, and reimbursement claimed.

Invoices of 10 pages or less (including supporting documentation) may be emailed as an attachment to AccountingOps@calottery.com. The Agency must include the Agency's name, invoice number, and Contract number in the email subject line.

If the invoice is more than 10 pages, or if Agency elects not to submit eligible invoices by email, invoices must be mailed in triplicate to:

**California State Lottery
Accounting Operations
700 North 10th Street MS: 4-3
Sacramento, CA 95811**

The Lottery Contract Manager will review each invoice for completeness and accuracy. Unless disputed, payment will be made as approved by the Lottery Contract Manager within 45 days of receipt of the invoice. The Agency must maintain documentation that supports invoices. The Agency must submit such documentation to the Lottery upon request. All credits must be submitted to the Lottery as soon as possible. All invoices must be submitted within 120 days from the completed date of service.

The Agency is required to mark "Final Invoice" on the last invoice submitted to the Lottery for payment. After the final invoice is submitted, the Agency must provide a Closeout Report/Closeout Estimate, signed by both parties, detailing billing history and actual dollars spent. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

The Agency waives the right to receive any further payments under the Contract if no final invoice is received by the Lottery within 180 calendar days after the Contract is terminated or expires by its own terms.

3.4 Full Compensation

The compensation to be paid to the Agency, except as otherwise provided herein, is in consideration for all of Agency's services and administrative expenses and all applicable taxes, known or unknown.

3.5 Notice of Monies Due

The Lottery will notify Agency in writing when and if any monies are due the Lottery. Any monies the Agency owes the Lottery must be paid to the Lottery within 30 days after the postmark of the notice of the amount due or the amount

due will be deducted from compensation otherwise due the Agency by the Lottery.

3.6 Tax Reporting

Agency is notified that Internal Revenue Code section 6041 and California Revenue and Taxation Code section 18646 require the Lottery to report certain payments. No claims for payment will be processed by the Lottery without the necessary information specified therein. Agency agrees to abide by these reporting requirements and to provide that information to the Lottery.

3.7 Withholds

- A. The Lottery has the right to withhold or delay payments to Agency, in whole or in part, if Agency fails to perform its material obligations under the Contract.
- B. Should Agency cure the performance failure giving rise to the withheld or delayed payment, the Lottery will review the matter with Agency and determine, within its discretion, whether the Lottery will continue to withhold payment or otherwise offset money due Agency.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. GENERAL PROVISIONS

1.1 Parties and Authorization

The parties to this contract are the California State Lottery (Lottery) and _____ (Agency). Each party acknowledges that it has read the Contract, understands it, and agrees to be bound by its terms. The person signing this Contract on behalf of Agency further warrants that he/she is an agent of Agency and is duly authorized to enter into this Contract on its behalf.

1.2 Initial Term of Contract

The initial Contract term is five years.

1.3 Option to Extend

The Lottery may unilaterally extend the Contract term under the same terms and conditions, including pricing, for up to two one-year terms.

1.4 Emergency Extended Service

At the Lottery's request, the Agency will provide up to 12 months of additional emergency extended services, under the same terms and conditions, including pricing, upon expiration of the Contract term and any extensions.

1.5 Transitional Service for Agency Change

The Lottery may require continuation of the Contract under the same terms and conditions, upon 30 days' notice, for multiple 60 to 90-day periods to facilitate transition to a new agency. Agency agrees to maintain the service in a state of readiness for any such periods after the completion of the Contract.

1.6 Full Force and Effect

This Contract is of no force or effect until it is signed by all parties and all approvals are secured ("execution"). Agency operates at its own risk if it commences performance before execution. Each party's signature hereon constitutes a representation that all necessary approvals have been obtained by that party.

1.7 Amendment

The parties may amend this Contract by mutual written consent. No alteration or variation of the terms of this Contract will be valid or binding unless amended pursuant to this section, and no oral understanding or agreement not incorporated into the Contract is binding on the parties.

1.8 Agency Consideration

As consideration for the compensation paid to Agency under this Contract, Agency agrees to perform all services and to fulfill all responsibilities as duly authorized by the Lottery and as detailed in Exhibit A, Scope of Work.

2. RELATIONSHIP AND AUTHORITY

2.1 Governing Law

This Contract is governed by and will be interpreted in accordance with California law. Agency acknowledges that the California State Lottery Commission (Commission) has the sole authority to exercise all powers necessary to effectuate the Lottery's purpose, and that the Commission retains all such authority under the Contract, but only to the extent such audits and oversight, in the auditor's opinion, do not violate applicable professional standards or undermine the integrity of the audit. Agency understands and agrees that its performance is subject to Lottery audit and oversight. Subject to these limitations, Agency has the power, authority, and discretion to act as may be necessary or desirable to perform the Contract properly, efficiently, fully, and completely.

2.2 Jurisdiction and Venue

The proposal process, the award procedure, and any contract resulting from this solicitation will be governed by and interpreted in accordance with this section. By signing the Contract, the Agency acknowledges and specifically agrees that the jurisdiction for any action hereunder will be the Superior Court, State of California, and the venue for any action hereunder will be Sacramento County. As consideration for entering into the Contract, Agency waives access to any other court that may have concurrent jurisdiction inside or outside of California and also agrees to exhaust all contractual and administrative remedies before instituting litigation relating to the Contract.

3. OBLIGATIONS OF THE PARTIES

3.1 Contract Managers

The parties' Contract Managers are responsible for ensuring compliance with the terms and conditions of the Contract and, unless otherwise specified in the

Contract, will have the authority to act for and bind their respective parties in connection with the Contract. Any change in Agency's Contract Manager is subject to Lottery approval.

3.2 Key Personnel – Agency

- A. The personnel specifically identified in the Agency Staff Plan and Compensation Proposal are considered essential to the work being performed under the Contract. Before removing, replacing, or diverting any identified personnel, the Contractor must, (1) request approval from the Lottery's Contract Manager in writing and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract.
- B. The Agency may not remove, replace, or divert personnel listed in the Agency Staff Plan and Compensation Proposal without the Lottery Contract Manager's prior written consent.

3.3 Prior Lottery Approval

The Lottery has no liability for payment for any work that the Agency commences without prior (written and/or verbal) approval from the Lottery's management.

3.4 Licenses and Permits

Agency must be licensed to do business in California and must obtain, at Agency's expense, all licenses and permits required by law for accomplishing any work required in connection with this Contract. Agency must, upon request, provide the Lottery with copies of all required licenses/permits. In the event any licenses or permits expire at any time during the term of this Contract, Agency agrees to renew and provide the Lottery, upon request, with copies of the renewed licenses or permits.

3.5 Office in California

The Agency must maintain an office in California for the entirety of the Contract Term.

3.6 News Releases/Social Media

Agency must not issue news releases or make any statement to the media pertaining to this Contract without the prior written approval of the Lottery, and then only in cooperation with the Lottery.

3.7 Confidentiality of Parties

- A. Agency must keep confidential all information and materials related to the Contract and/or obtained through the course of work and must not disclose any such information or materials to third parties unless such disclosure is approved in writing by the Lottery, specifically required by court subpoena or order, or applicable professional standards, or otherwise specifically permitted by the Contract.

- B. The California Public Records Act requires public disclosure, upon request, of documents that pertain to state business. Exceptions to this requirement are limited. The Lottery may, in its discretion, withhold Agency material specifically and conspicuously identified by Agency as confidential if Agency has provided sufficient legal justification for doing so. The Lottery is under no obligation to inform Agency that a request for information has been made or that documents are being released. However, the Lottery may, in its discretion, allow Agency the opportunity to provide the Lottery with further legal justification for withholding specific information. Unless it receives a court order to the contrary, the Lottery retains the right to determine whether an exemption to the Public Records Act applies to Agency information being sought. Under no circumstance will the Lottery be liable to Agency or to any other person or entity for disclosing any Agency material, regardless of its designation by Agency as trade secret or confidential information.

3.8 Fiduciary Duty

Unless otherwise expressly agreed in writing, the Agency will always act as a fiduciary and in the best interest of the Lottery.

4. **GENERAL WARRANTIES AND REPRESENTATIONS**

Agency warrants and represents the following:

A. Authority

Agency is authorized and prepared to enter into and fully perform the terms and conditions of the Contract. Agency has secured, or will have secured, at its own expense, and will maintain throughout the Contract term, all necessary rights, clearances, permits, governmental approvals, and licenses with respect to all material and elements embodied in, or used in connection with, the performance of the Contract.

B. Compliance with Law

Agency will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its activities and obligations under the Contract.

C. No Infringement

The goods and services provided do not and will not, to the best of Agency's knowledge, infringe any copyright, trademark, or other third-party owned intellectual property.

D. Performance Standards

All services that Agency provides under the Contract will be performed in a prompt, competent manner by properly trained individuals in accordance with applicable professional standards of Agency's industry.

E. Minimum Staffing Levels

The Agency will maintain the minimum staffing levels set forth in its Staff Plan and Compensation Proposal.

5. LOSS PREVENTION

A. Agency must acquire and maintain insurance policies, bonds, and securities (Coverage) and indemnify the Lottery as set forth herein. The required Coverage must remain in force throughout the term of the Contract and any extensions thereto, and copies certificates of insurance, must be provided to the Lottery upon request. Proof of Coverage, including certificates of insurance for each required policy, must be provided to the Lottery within ten calendar days after execution of the Contract. In addition, proof of Coverage for renewals must be forwarded to the Lottery within ten calendar days of Coverage expiration. Each insurance policy must be issued by companies that are rated A-minus or better by the AM Best Company or meet the approval of the Lottery. If Agency's Coverage provider cancels any required policy or other Coverage, Agency must immediately notify the Lottery and obtain replacement Coverage. Failure to provide and maintain any required Coverage may result in termination of the Contract.

B. Agency may not perform services or incur expenses until proof of Coverage, including certificates of insurance for the required policies, are received by the Lottery.

C. Agency may request adjustment to Coverage requirements by submitting a request in writing to the Lottery Contract Manager. Agency may not adjust Coverage amounts or insurance liability limits below the amounts listed in this Contract without prior written approval of the Lottery.

5.1 Workers' Compensation

Agency must maintain Workers' Compensation insurance for all of its employees who will be engaged in the performance of the Contract pursuant to the requirements of the California Labor Code.

5.2 Commercial General Liability Insurance

Agency must maintain Commercial General Liability insurance with limits of at least \$1,000,000 for any one person and \$2,000,000 for any one occurrence for death or bodily injury, and \$1,000,000 for any one occurrence for property damage. The insurance policy must also include coverage for liabilities for premises, operations, products, advertising injury, and subcontractor operations. The policy must include the Lottery, Commission members, and Lottery officers and employees as additional insured, insofar as operations under the Contract are concerned.

5.3 Professional Liability/Errors & Omissions

The Agency will maintain professional liability or errors & omissions insurance covering any damages caused in connection with the Contract by the Agency's error, omission, or negligent act. Limits of not less than \$1,000,000 must be provided.

5.4 Financial Security for Lottery

The Agency must acquire and maintain financial security in an amount commensurate with the value of the Contract's first year to make the Lottery whole in the event of the Agency's error, breach, violation, or failure to perform. The amount of the security may be reevaluated by the Lottery from time to time upon request. At the Lottery's discretion, the security may include but is not limited to: performance bond, irrevocable letter of credit, assignment of assets to Lottery, or certificate of deposit which secures the Lottery against non-performance by the Agency, its agents, and employees and any subcontractor, its agents, and employees. The Lottery must be able to execute against the acceptable security for any loss of revenue resulting from any material error, breach, violation, or failure to perform under the Contract.

5.5 Indemnification

- A. Agency will defend, indemnify, and hold harmless, at Agency's expense, the State of California, the Lottery, the Commission, and all Lottery officers and employees and their respective successors, heirs, representatives, administrators and assigns, from and against any and all responsibilities, suits, judgments, awards, costs, damages, claims, demands, actions, losses, settlements, costs, expenses (including attorneys' fees and expenses), and/or liabilities of every nature threatened or brought against, sustained or incurred by any of them, whether joint, several, or individual (hereafter referred to as "claims") resulting or arising from or in any way connected with (1) any act or omission of Agency or any of its officers, employees, subcontractors, or agents, whether negligent, unauthorized, intentional, or otherwise; (2) any infringing use of third-party intellectual property; (3) the inaccuracy or breach of any covenants, representations and warranties made by Agency as they occur; and (4) the breach of a term or condition of the Contract by Agency. The provisions of this section will survive the termination or expiration of the Contract.
- B. Agency will provide the Lottery Contract Manager with written notice of any action or suit threatened or filed against Agency that is related in any way to the Contract, within 48 hours of discovery.
- C. The indemnities set forth herein are in addition to, and not in lieu of, any other indemnities provided hereunder or by law.
- D. If the use of any element of advertising or other creative works developed, provided, used, or prepared by the Agency is enjoined as a result of an infringement or other action or proceeding, the Agency must, at its own expense and at the Lottery's option:
1. Procure for the Lottery the right to continue to use said element.
 2. Replace said element with a comparable element that is non-infringing.
 3. Modify said element so it becomes non-infringing; or
 4. Remove said element and compensate the Lottery for any damages incurred as a result of the infringement.

5.6 Clearances, Releases, Waivers, Contracts and Licenses

The Agency is solely responsible at its own expense for securing, during the preparation of advertising and marketing materials and prior to the execution, printing and/or airing of any advertising or marketing materials, any necessary

searches, rights, clearances, releases, waivers, contracts and/or licenses with respect to any and all elements used in the materials, including but not limited to third party intellectual property, names, likenesses, testimonials, scripts, musical compositions, creative and/or similar materials, elements, or rights embodied or to be embodied in materials developed, provided, used, or prepared by the Agency under this Contract. The Agency is solely responsible at its own expense for obtaining trademark, trade name, service mark, house mark, copyright, slogan and/or logo (collectively referred as “mark”) searches on materials which are to be used as an element in a campaign theme, slogan, logo, or other advertising or promotional purpose by the Lottery. These responsibilities continue throughout the Contract term and any extensions. The Agency must provide the Lottery with a written assessment of all searches upon request. The Agency must also deliver to the Lottery, immediately upon request, written documentation evidencing (a) the Agency’s exclusive ownership rights, or (b) its licensed rights as set forth above.

5.7 Media Liability

The Agency must include a provision in its media purchase contracts providing that the Agency is solely responsible for payment of all media invoices.

6. **CONTRACT OVERSIGHT**

6.1 Background Investigations and Approval of Agency Staffing

A. The Lottery may conduct background investigations of Agency, its officers, directors, principals, investors, owners, employees, or other associates, and the officers, directors, principals, investors, owners, employees, and other associates of Agency’s parent entity, affiliates, subsidiaries, and subcontractors at any time during the life of the Contract, at the discretion of the Lottery Director. Agency understands and agrees that, in furtherance of the Lottery’s full disclosure requirements, any person associated with the performance of the Contract may be fingerprinted and may be required to complete a Personal History Statement and an Authorization to Release Personal Background Information form.

B. Agency may be required to reimburse the Lottery for necessary and reasonable costs incurred by the Lottery in conducting background investigations, including travel, lodging, per diem, document procurement, site inspections, and fingerprinting.

C. The Lottery may disapprove any Agency or subcontractor personnel to be assigned to the Lottery Contract for any reason, and all subcontracts must include a provision implementing this right.

- D. Agency or subcontractor personnel must not be assigned to work on the Lottery Contract if they have ever been convicted of a felony, gambling-related offense, or a crime involving dishonesty.
- E. Pursuant to California law, the Lottery may terminate the Contract based on the results of its investigations.

6.2 Agency Evaluation

The parties' Contract Managers may meet as often as necessary, upon the Lottery's request, to review and evaluate progress and performance. Review and evaluation criteria will be established by the Lottery Contract Manager and may include a review of problem areas, future performance, and any other subject relating to completion of tasks under the Contract.

6.3 Disabled Veteran Business Enterprise/Small Business Participation Monitoring

Where applicable, the Lottery will monitor Agency's disabled veteran business enterprise and small business participation. Documentation may be requested from Agency at any time.

6.4 Access to Financial and Accounting Records

The Agency and its subcontractors must maintain and make available for Lottery inspection all Contract-related financial and accounting records and other documentation pertaining to the fulfillment of Contract obligations in accordance with generally accepted accounting principles and other procedures that may be specified by the Lottery. Agency must make these records and documents available to the Lottery upon request during the Contract term and for four years after the Contract expires.

6.5 Audit Provisions

A. Records Audit

During the Contract term and for four years thereafter Agency must provide all duly authorized representatives of the Lottery with full access to all records related to performance of the Contract and will allow authorized representatives to interview Agency employees with knowledge of the Contract and Contract-related records for auditing purposes. All duly authorized representatives of the Lottery may examine and copy all Contract-related records. Prior to any such audit, the Lottery will provide reasonable advance notice to Agency, and all audit activities that occur on Contractor's premises will be conducted during normal business hours.

B. Right to Audit Agency's Operations

The Lottery may audit Agency's records, procedures, and operations as they relate to the Lottery. Audits may include both announced and unannounced inspections and on-site audits. Audits may include the inspection of place(s) where duties under the Contract are being performed, review of physical or logistical security controls, and review of information concerning any software provided under this Contract. The Lottery's auditors or authorized representatives may conduct the audits.

Agency must ensure that any subcontractors providing services under the Contract fully comply with the Lottery's inspections and on-site audits.

6.6 Dispute Resolution

- A. If a dispute arises out of the Contract that remains unresolved after good faith negotiations between the Lottery and Agency, the parties will submit the dispute to binding arbitration unless the parties mutually agree to another form of alternative dispute resolution. Notwithstanding any dispute, Agency will proceed diligently with performance of the Contract.
- B. Arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association. The parties to the arbitration will share equally in the costs of arbitration. Each party will be responsible for its own attorney's fees and costs. The arbitration must be held in Sacramento County before an arbitrator who is acceptable to both parties. In the event that the parties cannot agree on an arbitrator, one will be appointed after either party petitions the court pursuant to California law. The arbitrator's decision will be final and binding and will be provided in the proper form to be entered as a judgment in a court of competent jurisdiction in Sacramento County.
- C. In the event that the parties agree on another form of alternative dispute resolution to address a particular dispute, this section will not be construed to limit the parties' ability to utilize such a process. Any alternative dispute resolution process that is mutually agreed upon by the parties will be considered final and binding on both parties, and no further process will be permitted.

6.7 Notice of Delay

Whenever Agency has knowledge that any actual or potential situation, including but not limited to labor disputes, delays or threatens to delay timely performance

of the work under this Contract, Agency must immediately provide the Lottery Manager written notice including any relevant information.

7. EXPIRATION OR TERMINATION OF CONTRACT

7.1 Expiration of the Contract

Absent early termination of the Contract as provided in this subsection, the Contract will expire at the end of its term and any applicable extension(s).

7.2 Termination for Default

A. The Lottery may, by written notice of default to Agency, terminate the Contract in whole or in part, at the Lottery's sole discretion, if any of the following occur:

1. Agency fails to deliver material products within the time specified in the Contract or any extension.
2. Agency fails to make progress, such that it endangers performance of the Contract.
3. Agency fails to perform any material provision of the Contract.
4. Agency fails to sustain a level of economic viability in its overall operations such that the Lottery can reasonably be assured of Agency's ability to continue to comply with all operational requirements of the Contract, including those provisions relating to loss prevention.
5. A court of competent jurisdiction finds that Agency, its principals, or its assigned personnel has failed to adhere to any law, ordinance, rule, regulation or order, where such failure may call into question the security, integrity or competence of Agency to serve as a Lottery agency;
6. Agency fails to communicate with the Lottery on material matters such that performance of the Contract is endangered.
7. Agency breaches the Contract's standard of confidentiality.
8. Agency engages in conduct that is likely to create a negative public impression or that creates the appearance of impropriety with respect to the Lottery, Agency, or the State of California.
9. Agency has knowingly or with reckless disregard for the truth furnished any material statement, representation, warranty, or certification to the Lottery that is false, deceptive, or incomplete.

- B. The Lottery may exercise its right to terminate the Contract under this subsection if the Lottery Contract Manager notifies Agency of the breach and Agency does not cure it within the timeline stated by the Lottery, which will not be less than 30 days. In that event, the Lottery may obtain a replacement contractor on an emergency or interim basis to provide the services and/or goods which Agency agreed to provide under this Contract. The Lottery will collect from Agency the difference between the compensation stated in this Contract and the actual cost to the Lottery of obtaining and utilizing an interim replacement agency. The Lottery will also collect actual costs, including administrative expenses and re-procurement costs, incurred to process and procure a permanent replacement agency. The Lottery may collect monies it is due by offsetting the amount from any payments due Agency, by perfecting and executing on any security interest provided under the Contract, or by any other available means.

- C. If the Lottery terminates the Contract for default, the Lottery may require the Agency to transfer title and deliver to the Lottery any 1) completed or partially completed goods and materials; and 2) license rights to any intellectual property that the Agency has produced or acquired for the Contract, in addition to any other property in the Agency's control in which the Lottery has an ownership interest. The Agency must protect and preserve property in its possession in which the Lottery has an interest. Where specified, the Lottery will pay the Contract price for any completed goods, materials, and license rights that are delivered and accepted pursuant to this section. Where payment amount is not specified in the Contract, the Agency and the Lottery will agree on a reasonable amount of payment for goods, materials, and license rights delivered to, and accepted by, the Lottery. Failure to agree will be a dispute subject to the section herein entitled Dispute Resolution. The Lottery may withhold from any amounts due the Agency any sum the Lottery determines is necessary to protect the Lottery against loss because of outstanding liens or claims of lien holders.

- D. The rights and remedies of the Lottery set forth in this subsection are in addition to any other rights and remedies provided by law or under the Contract.

7.3 Termination Based on Determination of Illegality

The Lottery may terminate the Contract, in whole or in part, and reduce Agency's future compensation under the Contract immediately upon its determination that an activity or operation supported by the Contract is no longer lawful for reasons including, but not limited to, court decision, legislative action, administrative decision, or advice of counsel. Upon receipt of notice of termination or reduction

based on a finding of illegality, Agency will immediately cease performance of such activity or operation and mitigate its damages. Agency will submit, within 90 calendar days of the receipt of a notice of termination or reduction pursuant to this subsection, a compensation reduction proposal. If Agency and the Lottery fail to agree on the amount of compensation reduction, the Lottery will reduce the compensation as reasonably determined by its calculations.

7.4 Termination for Convenience

The Lottery retains the option to immediately terminate the Contract for the Lottery's convenience upon advance written notice (Notice of Termination) to Contractor of no fewer than 30 days. The Notice of Termination will contain the effective date of termination. On the date of termination set forth in the Notice of Termination, Agency will cease performance and mitigate damages. Agency will be entitled to compensation, upon submission of invoices and proper proof of claim, for the portion of the Contract that was satisfactorily rendered or provided before the effective date of termination. The Lottery may also compensate Agency for expenses incurred as a result of binding commitments made in connection with Agency's performance of the Contract, provided that the commitments were incurred prior to receipt of Notice of Termination and only with the written approval of the Lottery Contract Manager. Compensation for such expenses lies within the sole discretion of the Lottery. Agency must submit proof of such expenses incurred to the Lottery's satisfaction. In the event of termination for convenience, Agency must furnish copies of all materials related to performance hereunder at the time of termination.

7.5 Parties' Responsibilities upon Termination and Transfer to New Agency

Upon termination or other expiration of the Contract, each party will assist the other party in the orderly termination and transfer of all Contract-related assets, tangible and intangible, as may facilitate the orderly, non-disrupted business operations of each party. The Agency will continue to provide goods and services pursuant to the Contract until migration to a replacement contract with a new agency is complete. If it is necessary for the migration effort to continue beyond the term of the Contract, the Agency agrees to extend the Contract as provided herein for the time necessary to complete the migration and orderly transfer.

8. MISCELLANEOUS PROVISIONS

8.1 Force Majeure

Neither Agency nor the Lottery will be liable for any delay in or performance failure under the Contract due to a Force Majeure occurrence, provided that Agency uses

reasonably diligent efforts to avoid or otherwise minimize the impact of an event of Force Majeure on Agency's performance. Any such delay in or performance failure will not constitute default or give rise to any liability for damages. The existence of a delay or failure will extend the period for performance to the extent determined by the Lottery Contract Manager.

For purposes of this Contract, "Force Majeure" means an act of God or public enemy, earthquake, fire, flood, explosion, epidemic, quarantine restriction, strike, freight embargo or closure of all major access roads to geographic area, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, a party is unable to control.

8.2 Waiver of Provisions

No term or provision of this Contract will be deemed waived and no breach excused unless such waiver or consent to the breach is in writing and signed by the signatory to this Contract, or his or her successor, on behalf of the party against whom such waiver or consent is sought to be enforced. No consent by either party to a waiver or a breach by the other, whether express or implied, constitutes consent to, waiver of, or excuse for any other breach or subsequent breach except as expressly provided in the written waiver or consent.

8.3 Order of Precedence

The Contract consists of the following documents. If there are inconsistencies or ambiguities in the Contract, the following documents will be used to interpret the Contract in this order of precedence:

- A. This Contract, with all exhibits, attachments, addenda, and other incorporated documents, and all amendments thereto.
- B. The Lottery's RFP #50180, with all exhibits, attachments, addenda, and other incorporated documents, and all amendments thereto.
- C. Agency's response to RFP #50180 and any clarifications submitted in response to requests made by the Lottery.

8.4 Notices in General

Any notice, request, demand, consent, waiver, or other item required or permitted under the Contract or under applicable law must be in writing and will be deemed duly given or made only if: (a) it is personally served upon the party intended to receive it, in which case it is effective when delivered; (b) it is sent by certified mail,

return receipt requested, postage prepaid, addressed to the receiving party at the address set forth below, in which case it is effective upon receipt at that address by any agent or employee of the receiving party; or (c) it is transmitted by email to the party's Contract Manager, in which case it is effective either (1) as of the date the email is sent, if sent before 5:00 p.m. Pacific Time on a Lottery business day or (2) on the next Lottery business day, if transmitted after 5:00 p.m. Pacific Time or on a non-Lottery business day. A party may change its contact information for purposes of receiving notice only by giving written notice to the other party in the manner set forth herein.

LOTTERY

AGENCY

Name: California State Lottery
Address: 700 North 10th Street
Sacramento, CA 95811
Phone #:
Attention:
Email:

8.5 Invalidity in Whole or in Part/Severability

If any provision of this Contract is found to be illegal, invalid, or unenforceable under any applicable rule or law, such invalidity will not affect other provisions which can be given effect without the invalid provision, and the invalid provision will be deemed severable.

8.6 Execution of Counterparts

The parties agree that an executed copy of this Contract has the same force and effect as the original.

8.7 Sections and Subsection Headings

The section and subsection headings contained herein are for convenience of reference only. They will not be used to interpret or define the scope of any provision of the Contract.

8.8 Assignment

A. Agency may not assign any performance of or payment for the Contract or any portion of the Contract without the prior written consent of the Lottery, which

may be withheld at the Lottery's sole discretion. Any attempt by Agency to make such assignment without the prior written consent of the Lottery will be void and will constitute a material breach of the Contract.

- B. All assignment requests must be submitted in writing to the Lottery Contract Manager.
- C. In addition to obtaining the prior written consent of Lottery, any attempt to assign performance of the Contract, or any portion of the Contract, is void unless all of the following conditions have been met: (1) the terms of the Contract are included in the assignment and agreed to by the assignee; (2) the Lottery has reviewed and approved all pertinent disclosure information; and (3) the Lottery has reviewed and approved the final written assignment.

8.9 Subcontracting

- A. Agency may subcontract part of its work upon Lottery approval. However, nothing contained in this Contract creates any contractual relationship, third party or otherwise, between the Lottery and any subcontractors. Furthermore, Agency agrees to be as fully responsible to the Lottery for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Agency.
- B. Agency must follow the Lottery's requirements for procuring goods and services if the estimated subcontracted amount is over \$100,000. The requirements are set forth in California Lottery Regulations, which can be located at:

<https://static.www.calottery.com/-/media/Project/calottery/PWS/PDFs/Commission-Documents/March-2020/Issue-Memo-4a-Attachment.pdf>
- C. Upon request, the Agency must provide (1) verification that each subcontractor agrees to be bound to the Agency in the same manner and in all respects as the Agency is bound to the Lottery. (2) a detailed description of the work to be subcontracted, and (3) a copy of each proposed written subcontractor. The Lottery Contract Manager may approve or disapprove a subcontractor at any time.
- D. Agency's obligation to pay its subcontractors is independent from the Lottery's obligation to make payment to Agency. The Lottery will not make direct

payment to subcontractors, nor will it be responsible for monies owed by Agency to subcontractors.

8.10 Independent Agency

Agency will be an independent agency of the Lottery. Agency will have sole, absolute, and exclusive control of the manner and means of its performance under the terms of this Contract except as expressly set forth herein.

8.11 Joint ventures and Partnership – Joint and Several Liability

Each participant in a joint venture, proposal, or partnership is jointly and severally liable for the performance of the entire Contract, and each participant shall designate, in writing, one individual having authority to represent the Agency in all matters relating to the Contract. The Lottery assumes no responsibility or obligation for the division or orders, purchases, or payments among participants.

8.12 Travel and Expenses

Reimbursement for travel expenses is subject to pre-approval by the Lottery Contract Manager. If approved, travel and expenses (including air travel and car rental) will be reimbursed at the current California Department of Human Resources, approved travel rates for excluded employees (available at www.calhr.ca.gov). All travel reimbursements incurred by the Agency will count against the maximum amount obligated under the Contract.

8.13 Standards of Conduct

Agency is responsible for maintaining satisfactory standards of employee competency, conduct, appearance, and integrity. Agency is responsible for ensuring that, while on Lottery premises, Agency employees do not disturb papers on desks, open desk drawers or cabinets, or use Lottery equipment except as authorized.

8.14 Audit Requirements for Promotional Media, Sponsorships, and/or Media Purchases

The Lottery Internal Audits Office or its designee may, with reasonable notice, audit selected promotional media, sponsorships, and/or media purchase invoices and other related documents to confirm media purchase costs. The Agency shall upon request, provide copies of documentation to the Lottery Internal Audits Office or its designee.

The Agency must obtain vendor billings log or other documentation to verify invoice/affidavits accuracy and maintain the documentation for four years after Contract expiration and upon 15 days' notice, the Lottery Internal Audits Office or designee may require access to the verification documents/paperwork to verify billing.

8.15 Internal Control Audit

The Agency shall, upon approval of the Lottery Contract Manager, retain an independent certified account firm(s) to conduct an independent Internal Control Audit of the Agency's control systems. The cost of the external certified accounting firm(s) shall be reimbursed by the Lottery provided it results in the type of report specified by the Lottery's Contract Manager and covers the control examined objectives and the time period he or she sets forth. Audits required pursuant to this section shall occur no more frequently than one every two years.

8.16 Samples

Samples of items, work, goods, materials, products, deliverables, services, advertising, and similar products and efforts as outlined within the SOW may be required by the Lottery for inspection and shall be furnished free of expense to the Lottery.

8.17 Nonexclusive Rights

Agency understands and agrees that the Lottery does not grant Agency exclusive rights to provide to Lottery those services listed in the Scope of Work for this Contract. The Lottery reserves the right to acquire any services through another agency at any time. The Lottery's good faith exercise of this right will not constitute a breach of the Contract.

8.18 Nondiscrimination Clause

During the performance of this Contract, the Contractor and its subcontractor(s) must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sexual orientation, or gender. The Contractor and subcontractor(s) must ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Contractor and subcontractors must comply with provisions of federal law and the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. Violation of this provision is grounds for termination for breach, and

any loss of revenue sustained by the Lottery by reason thereof will be borne and paid for by the Contractor.

The Contractor must include the nondiscrimination and compliance provisions of this clause in all subcontracts for work under the Contract. The Contractor and its subcontractor(s) must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract. The Contractor and subcontractor(s) must permit access to their records of employment, employment advertisement application forms, and other pertinent data and records by the Department of Fair Employment and Housing or any agent designated by the Lottery to investigate and ascertain compliance with this provision.

9. OWNERSHIP AND DEVELOPMENT

9.1 Lottery Intellectual Property

- A. Intellectual property owned by the Lottery, including, but not limited to, trademarks, logos, trade secrets, and copyrights, is hereinafter collectively referred to as "Lottery Property."
- B. Lottery Property is and will remain at all times the sole and exclusive property of the Lottery.
- C. Unless approved by the Lottery Contract Manager in writing, Lottery Property may not be revised or altered by Agency in any way and will be displayed as provided and approved by the Lottery.
- D. Lottery Property will be used by Agency in a professional manner and solely in connection with the activities authorized under the Contract. Agency will not permit any third party to use Lottery Property without the express prior written approval of the Lottery. Lottery Property may not be used by Agency in any manner that: diminishes the value of, or otherwise dilutes the Lottery's trademarks; discredits the Lottery or tarnishes the Lottery's reputation or goodwill; is false, misleading or likely to cause confusion; is fake or deceptive; violates the rights of others; violates any federal, state, or local law, regulation, or other public policy; or mischaracterizes the relationship between the parties, including but not limited to the fact that the Lottery is a separate and distinct legal entity from Agency.
- E. The Lottery shall have the right, from time to time, to request complete samples of use of Lottery Property by Agency from which the Lottery may determine compliance with these terms and conditions.

- F. Use of Lottery Property by Agency will create no rights for Agency in or to such Property or for its use beyond the terms and conditions of this Contract. All usage of Lottery Property by Agency will terminate immediately upon the termination or expiration of this Contract. Agency's obligations to protect Lottery property will survive the termination or expiration of this Contract.

9.2 Ownership of Work Product

- A. The Lottery will own and retain all right, title and interest in and to all goods, materials, products, deliverables, services and advertising, including all tangible and intangible objects, things, and concepts, outcomes to be achieved, hardware, software, or design products, concepts, media, social media, or documents and all other results and proceeds of the services hereunder, in all stages of completion, including without limitation any and all graphics, designs, artwork, images, reports, documents, materials, techniques, ideas, concepts, logos, slogans, specifications, user interfaces, data, data templates, database structures and fields, outlines, drafts, derivatives, scripts, know-how, algorithms, software, computer code, routines or subroutines, specifications, plans, notes, drawings, designs, text, audiovisual works, inventions, data, information, and other items, expressions, works of authorship, or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered, or made by Agency in connection with the services or which relate in any manner to the services or the deliverables or which result from any work performed by Agency for Lottery, including without limitation any and all copyrights, database rights, and other intellectual property rights therein (collectively the "Work Product"). To the maximum extent permitted by law, the Lottery will be deemed to be the "author" of all copyrightable Work Product and all such Work Product will constitute "works made for hire" under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.) and any other applicable copyright law. Agency hereby waives any and all moral rights or equivalent rights under the laws of any applicable jurisdiction (including without limitation rights of integrity and attribution) in and to the Work Product. To the extent that any Work Product does not constitute a work made for hire, Agency hereby irrevocably transfers and assigns to Lottery all right, title, and interest in and to the Work Product, including without limitation all copyrights, patent rights and patents, trademarks, and other intellectual property and proprietary rights therein throughout the world.
- B. Agency acknowledges and agrees that without limiting any section herein, the rights vested in and transferred to Lottery in and to the Work Product include without limitation the following:

1. Copyright. The Lottery will be the sole owner of the undivided interest in all copyrights and all similar or equivalent rights throughout the world in the Work Product, whether vested, contingent, or future, including without limitation all economic rights and the exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, market, introduce in circulation, publish, make available, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, perform, enter into computer memory, and use the Work Product, all modified and derivative works thereof, and all portions and copies thereof in any form.
2. Moral Rights. Agency and all employees, persons, agents and subcontractors, and other entities who may have claims of moral rights (or similar or equivalent rights under the laws of any jurisdiction) in any part of the Work Product, have agreed or Agency will obtain their agreement that (a) they will have no objection to publication, use, and exploitation of the Work Product as contemplated by this Contract; (b) they will remain anonymous authors without attribution or credit, acknowledging that the Lottery or its designees may be designated as author; (c) the Lottery or its successors, assigns, or licensees may make future modifications and adaptations to the Work Product, and may make disclosure and disposal of the Work Product, and any modifications thereof, in the manner that the Lottery or its successors, assigns, or licensees see fit, without any right of approval, withdrawal, or public renunciation by such persons; and (d) their remuneration for the Work Product is complete, adequate, and reasonable. For any and all such rights in the nature of moral rights or otherwise that are not capable of vesting in or transfer to the Lottery under applicable law, Agency waives and agrees never to assert such rights against the Lottery or its successors, assigns, or licensees, and to cause its employees and subcontractors to agree to the foregoing covenants.
3. Patent, Design, Trademark Rights. The Lottery will be the sole owner of all rights in and to any inventions, designs, database rights, and marks conceived, created or developed in the course of creation of the Work Product, including without limitation, all utility and design patent rights and equivalent rights in and to such inventions and designs, and all trade and service mark rights, throughout the world.
4. Exclusive Worldwide License. In the event that by operation of law, notwithstanding the provisions of this Contract and/or Agency's execution of any further documents to effectuate the transfer of rights to the Lottery hereunder, Agency is deemed to have retained rights in any portion of the

Work Product, Agency grants to the Lottery, its successors, assigns, and licensees, an exclusive, irrevocable, worldwide, fully-paid, royalty-free license to reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, have manufactured, introduce into circulation, publish, distribute, make available, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, perform, enter into computer memory and use and otherwise exploit the Work Product, all modified and derivative works thereof, all portions and copies thereof in any form, and all inventions, designs and marks embodied therein, throughout the world in all media whether now known or hereafter devised.

5. Rights in Tangible Media. The Lottery will be the sole owner of all tangible and intangible copies, documents, magnetic or optical media, or other materials, chattel, or personal property created by or for Agency in connection with this Contract. Upon written notice from the Lottery, Agency will deliver to the Lottery all embodiments of the Work Product in electronic and tangible formats as specified by the Lottery, and/or destroy and certify destruction of all copies of the Work Product in Agency's possession or control. Agency will maintain the Work Product and other materials of the Lottery in accordance with the Lottery's information security requirements and will certify in writing compliance with such requirements upon request.
6. Applications, Renewals, Further Assignments and Transfers. The rights vested in, assigned to, transferred, and/or licensed to the Lottery hereunder include without limitation: (a) the exclusive right to make and secure applications and registrations of copyright and other intellectual property rights; (b) the exclusive exercise of such intellectual property rights for the unlimited, entire period of such rights throughout the world; (c) the exclusive right to renewals, reversions, and extensions of such intellectual property rights; (d) the exclusive right to authorize, transfer, license, sublicense, deal in, dispose of and assign others to own or exercise such rights, title, and interests; and (e) the exclusive right to initiate, pursue, prosecute, and settle past, present and future claims of infringements relating to such intellectual property rights. Without limitation, Agency acknowledges that all rights of every kind and nature whatsoever in the Work Product may be exploited, assigned, and licensed by the Lottery to such third parties as it sees fit, and the Work Product is expressly acknowledged to be specially ordered and commissioned by the Lottery.

9.3 Acknowledgments

Agency acknowledges and agrees that the Lottery is the exclusive holder of all copyright, trademark, patent, and other intellectual property and proprietary rights in the Work Product worldwide and that Agency has no right to and will not directly or indirectly reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, market, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, perform, display, enter into computer memory, or use or exploit the Work Product, or any portion or copy thereof in any form, or any such rights, or authorize or assign others to do so, or derive any other work from concepts, information, or elements of the Work Product, or permit any third party to do any of the foregoing, except as permitted by this Contract. In the event that the Lottery provides Agency with technology, software, resource files, tools, and other materials with which to prepare the Work Product, Agency will safeguard and use such materials only for the purpose of preparing the Work Product and return such materials and all copies thereof at any time upon request of the Lottery.

9.4 Further Assurances

At the Lottery's expense, but without payment of additional compensation, Agency will execute all documents and take all actions necessary or reasonably requested by the Lottery to document, obtain, maintain, perfect, or assign its rights to the Work Product. Agency will also cause its employees, agents, and subcontractors to execute such documents and take such actions as described above. If Agency fails or refuses to execute any such instruments within 10 business days after the Lottery's request, Agency hereby appoints the Lottery as Agency's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Agency's behalf and to execute such documents. Agency will not contest the validity of the Lottery's rights in the Work Product and will cause its employees, agents, and subcontractors to comply with the foregoing. All such Work Product will be deemed to be the confidential, proprietary, and trade secret information of the Lottery.

9.5 Third-Party Materials

Agency will not disclose to the Lottery or use in its work any trade secrets or confidential information of a third party which Agency is not lawfully entitled to disclose or use in such manner. Agency will not use any equipment, supplies, facilities, computer code, work product, inventions, materials, or intellectual property of any other party (the "Third-Party Materials") in any Work Product or in Agency's performance under this Contract unless: (a) Agency has the full right and authority to do so without violating any rights of any third party; (b) Agency has

obtained all necessary rights to enable Agency to perform its obligations under the Contract and grant the rights granted herein and to permit the Lottery to utilize the Third-Party Materials as contemplated under this Contract at no additional cost to the Lottery; (c) the Lottery's use of such Third-Party Materials will not restrict or impair in any manner its use, in perpetuity, of any deliverables or Work Product or subject the Lottery to any obligation or liability; and (d) such Third-Party Materials are specifically identified to the Lottery in writing in advance of any use and the Lottery has agreed in writing to such use.

9.6 Transfers and Consents

Agency will secure in writing in form satisfactory to the Lottery all transfers of rights and other consents necessary for Agency to make the assignments, licenses and other transfers set forth in this section. Without limitation, Agency will secure written agreements and consents from its employees and subcontractors that all works created pursuant to this Contract (including the Work Product) fall within the scope of their employment duties or engagement, as applicable, and that all economic rights in such works vest in Agency as the employer and are fully transferable, and Agency will secure such written transfers of rights and all other required consents from all other persons or entities whose services were, are or will be rendered in connection with the Work Product. Upon request, Agency will provide the Lottery with copies of all such contractual documentation and will include the Lottery as a third-party beneficiary of such agreements or cause such parties to execute a further acknowledgment and assignment for the benefit of the Lottery if requested.

10. CALIFORNIA LOTTERY INFORMATION SECURITY STANDARDS

10.1 Information Security

The Agency acknowledges and agrees that it may, in its performance of the Contract, collect, generate, and/or have access to information and data pertaining to or provided by the Lottery and/or its customers (collectively, "Lottery Data"). The Agency also acknowledges and agrees that proper information security requires protecting the integrity, availability, and confidentiality of confidential, sensitive, and personal information and the resources used to enter, store, process and communicate such information.

To this end, in performing the Contract, the Agency must establish and maintain adequate security controls, policies, standards, and procedures to prevent unauthorized access to, and protect the confidentiality, integrity, and availability of, Lottery Data, assets and services.

The Agency must operate in accordance with California state and federal laws, and all other applicable laws, regulations, and rules, as well as best industry practices, related to the protection of information assets and the timely and efficient management of security incidents, including corrective action.

10.2 Data Confidentiality, Integrity, Availability and Management

Lottery Data will be collected and retained by the Agency only for legitimate business purposes associated with the Contract. All electronic Lottery Data, whether at rest or in transit, must comply with Lottery's Encryption Policy. The Agency's data handling processes must, throughout the term of the Contract, comply with the Lottery's Information Security policies and Information Security Program Manual and meet or exceed the required level of protection. Copies of the applicable policies will be provided by the Lottery.

Upon Contract expiration or termination, or as directed by the Lottery during the term of the Contract, all Lottery Data in the Agency's possession must be returned to Lottery or destroyed beyond recovery, at the Lottery's option. Such data destruction or return must be completed, at Agency's cost and expense, within a mutually agreed upon timeframe, but in no case later than 90 days after Contract expiration/termination.

10.3 Agency Responsibilities

Information security must be ensured by the Agency, as the Agency may have physical or electronic access to the Lottery's confidential, sensitive, or personal information. This information may be contained in systems that directly support the Lottery's business operations. This includes IT hardware and software, and the services associated with the management, operations, maintenance, programming and system administration of computer systems, networks, telecommunications systems, and social media. This also includes access to printed materials and other paper records.

The Agency and all Agency personnel must not use or redistribute any Lottery Data processed, stored, or transmitted by the Agency, except as specified in the Contract or upon written Lottery approval.

10.4 Information Security Incident

The Agency must disclose to the Lottery any Information Security Incident. An Information Security Incident is an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or

the information the system processes, stores, or transmits associated with the Lottery Contract.

The Agency must notify the Lottery Contract Manager, the Lottery Deputy Director of Security and Law Enforcement (SLED), and the Lottery Information Security Office within two hours after discovery of the incident.

To the extent that the Information Security Incident includes or is reasonably believed to include the acquisition of personal information, as defined in California Civil Code section 1798.29, by an unauthorized person, Agency must notify the Lottery Contract Manager, the Lottery Deputy Director of SLED, and the Lottery Information Security and Privacy Office immediately following discovery.

If the Lottery determines that disclosure of an information security breach is required under section 1798.29, or any other applicable law or regulation, Agency will diligently assist the Lottery in gathering all necessary information for the Lottery to comply with the disclosure requirements set forth therein. In addition, if the information security breach arises from the negligence or willful misconduct of the Agency, or its agents, employees, or subcontractors, Agency will reimburse the Lottery for any costs incurred in connection with the breach; such costs may include, but will not be limited to, the cost of preparing and delivering required notifications and up to 12 months of identity theft prevention and mitigation services for any California residents whose personal information may have been compromised, if the Lottery determines that such notifications and/or services are required by applicable law, consistent with industry standards or otherwise reasonably necessary to safeguard the Lottery's business standing or reputation.

Information Security Incident Contact Information:

Lottery Contract Manager

Name:

Email:

Phone:

Lottery Deputy Director, Security and Law Enforcement Division (SLED)

Name:

Email:

Phone:

Lottery Information Security and Privacy Office

Email:

Phone:

10.5 Information Security Audit

The Agency must keep audit logs of any access or other activities associated with Lottery information. Refer to the Information Security Program Manual, Security Audit Log (Event Log) Section for specific requirements.

The Lottery has the right to audit the Agency's information security controls and associated plans and processes to verify compliance with the Contract.

EXHIBIT D
SUPPLEMENTAL TERMS AND CONDITIONS – QUALITY ASSURANCE PLAN

This section is supplemental to the requirements of Exhibit C, Contract Terms and Conditions.

1. General

Output Deliverable – A tangible or intangible Agency requirement to be produced at award or during the term of the contract. Deliverables may be either an outcome to be achieved or an output to be provided. An output deliverable is described as a tangible item that is to be provided to the Lottery and billed at direct cost, including applicable mark-up, freight, and taxes. An outcome deliverable is defined as an intangible service to be provided to the Lottery and billed at labor cost plus profit and overhead. High Level Deliverables may be comprised of multiple Lower Level Deliverables. High Level Deliverables shall be outlined in an attachment to the contract entitled "Key Marketing Deliverables" which shall be issued each fiscal year. Lower Level Deliverables are outlined on each Estimate per Exhibit B, Budget Detail and Payment Provisions.

The Agency must complete all Deliverables and perform all services in accordance with the terms of this Contract. The Lottery shall accept all Deliverables and services according to the Quality Assurance Plan (QAP) described below. The Lottery shall notify the Agency of any Deliverable deficiencies found during the performance of this Contract, and the Agency shall have the opportunity to cure such deficiency or errors in accordance with the process herein.

2. Deliverable Expectations

Prior to starting work on each Deliverable or service, the parties shall mutually agree on the Deliverable acceptance criteria that shall be used for each Deliverable. The criteria shall be incorporated into the Estimate, which shall be the specification for acceptance of each Deliverable or service. However, if the acceptance criteria cannot be established upon approval of the Estimate, acceptance criteria shall be agreed to by both parties via electronic mail before the completion of the final deliverable or service.

3. Agency's Completed Deliverable or Service

After the Agency has completed (or partially completed) a Deliverable or service under this Contract, the Agency must submit to the Lottery 1) a detailed invoice with a breakdown of all major costs as identified on the Estimate (or revised Estimate), and 2) a signed copy of the Estimate (or revised Estimate). If acceptance criteria/mandatory requirements were agreed to after the Estimate

was approved, a copy of the approving electronic mail must be attached to the invoice.

4. Acceptance and Rejection

The Lottery Contract Manager (or designee) shall verify that the invoiced Deliverable or service is in conformity with the Estimate (or revised Estimate). The Lottery Contract Manager shall determine if the Deliverable or service can be:

A. **Accepted**

B. **Accepted with Deviations**

Accepted with Deviations is defined as a Deliverable or service not meeting the Deliverable Acceptance Criteria (DAC) identified on the Estimate but has been accepted by the Lottery with the acknowledgement that the DAC was not met.

C. **Disputed**

The Lottery Contract Manager (or designee) shall notify the Agency if any portion of the invoiced Deliverable or service is disputed via an Invoice Dispute form and shall state the particularity and specificity of the reason for dispute of the Deliverable.

5. Cure Period

Within five business days (or as otherwise mutually agreed) from the date of the Agency's receipt of notification of dispute of a Deliverable or service, the Agency must correct the deficiency(s) and bring the Deliverable or service into compliance. In all cases, and at no additional cost to the Lottery, the Agency must timely and diligently pursue a cure for any deficiencies, and must take all reasonable steps, including allocating additional resources if necessary, to cure a deficiency as promptly as practicable. Should rejection of the Deliverable or service impact the content or delivery of other non-completed Deliverables or services, the Agency and the Lottery Contract Manager shall determine a mutually agreeable number of days for re-submission that minimizes the overall impact to the campaign or project. However, nothing herein shall affect, alter, or relieve the Agency of its obligations to correct deficiencies or errors in the Lottery campaign or project in accordance with any time response standards set forth in this Contract.

6. Failure to Correct Deficiency

If the Agency fails to correct such deficiency or deficiencies in accordance with the cure period as agreed to by the parties, the Lottery Contract Manager at his/her option may, without prejudice to any other remedy, 1) cure or make good any such

deficiencies, including securing the services of third parties at the Agency's sole expense; and/or 2) require the Agency to suspend services with regard to the Deliverable or service hereunder immediately until the deficiency has been cured. As appropriate, a revised estimate shall be issued deducting from the payments then or thereafter due the Agency for the cost of correcting or finishing such deficiencies, including the cost of additional services and third-party services. Any additional cost in the revised estimate shall be borne by the Agency.

7. Resubmission of Deliverable or Service

A. Once the Agency has corrected a deficiency, the Agency must re-submit the invoice to the Lottery Contract Manager (or designee) for approval. Upon receipt of such Invoice, the Lottery Contract Manager (or designee) shall determine whether the deficiency specified in the rejection notice has been corrected. This subsequent review shall be limited to the original deficiencies and the portions of the Deliverable or service that were dependent on the deficiencies.

B. After the above process is repeated and if the Deliverable or service or any portion thereof is again found to be unacceptable, the process described herein shall be repeated until:

- i. Acceptance by the Lottery Contract Manager (or designee); or
- ii. The Lottery, at its option, terminates the Contract or Estimate for cause as specified within the Contract or estimate; or
- iii. The Lottery Contract Manager (or designee), in writing, grants Agency additional time or waiver; or
- iv. The Lottery and Agency mutually agree to revise an Estimate created under this Contract.

8. Payment for Accepted Deliverables

With the exception of the advance payment for POS production jobs and Annual Agency Fees, no invoice shall be honored by the Lottery unless and until prior acceptance through the Quality Assurance Plan (QAP) is obtained for the Deliverable or service relating to said invoice. This does not preclude the Agency from providing documentation that supports invoices as described in Exhibit B, Section 3.3 Payment and Invoicing.

9. Changes

- A. The Lottery may at any time, by written order, make changes to products or services that are not otherwise specified in this Contract if they are within the general scope of the Contract.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, the Lottery may adjust the Contract price, the delivery schedule, or both, and may amend the Contract. The Lottery will not adjust or amend the Contract for changes customarily provided by the Agencies at no cost.
- C. The Agency must request any adjustment under this provision within 30 calendar days from receiving the written change order.
- D. Failure to agree to any adjustment may be considered a dispute under the Dispute Resolution section herein. However, nothing in this section excuses the Agency from proceeding with performance under the Contract as changed.

**ATTACHMENT 1
CALIFORNIA LOTTERY DISTRICT OFFICES & DISTRIBUTION CENTERS**

DISTRIBUTION CENTER LOCATIONS:

Distribution Center – North

West Sacramento, CA 95691

Distribution Center – South

Rancho Cucamonga, CA 91730

DISTRICT OFFICE LOCATIONS:

Chatsworth Office

9710 Topanga Canyon
Blvd.
Chatsworth, CA 91311

Costa Mesa Office

235 Baker Street East
Costa Mesa, CA 92626

Fresno Office

7620 North Del Mar Avenue
Fresno, CA 93711

Milpitas Office

900 Hanson Court
Milpitas, CA 95035

Rancho Cucamonga Office

11138 Elm Avenue
Rancho Cucamonga,
CA 91730

Richmond Office

618 South 8th Street, Suite
300A
Richmond, CA 94804

Sacramento Office

4106 East Commerce Way
Sacramento, CA 95834

San Diego Office

5656 Ruffin Road
San Diego, CA 92123

Santa Fe Springs Office

9807 Bell Ranch Drive
Santa Fe Springs, CA 90670

**ATTACHMENT 2
MANDATORY SUBMITTALS CHECKLIST**

A complete proposal or proposal package shall consist of the items identified below.

Complete this checklist to confirm the items in your proposal. Place a check mark or “X” next to each item that you are submitting to the Lottery. For your proposal to be responsive, all required attachments shall be returned. This checklist shall be returned with your proposal package.

<u>Attachment</u>	<u>Attachment Name/Description</u>
_____ N/A	Proposal Cover Page & Introduction Letter (no attachment number)
_____ N/A	Agency Profile (no attachment number)
_____ Attachment 2	Mandatory Submittals Checklist
_____ Attachment 3	Agency Fact Sheet
_____ Attachment 4	Form Std. 204
_____ Attachment 5	Proposer Certification Form
_____ Attachment 6*	Schedule of Subcontractors
_____ Attachment 7*	Small and Microbusiness Participation
_____ Attachment 8*	Disabled Veteran Business Enterprise Participation Forms
_____ Attachment 10	Non-Disclosure Agreement

*If applicable

**ATTACHMENT 3
AGENCY FACT SHEET**

Company	
Address	
Phone	
Email	
Names and Titles of Principals	
Key Business Contact	
Phone	

1. Agency History, Ownership and Key Employees

- A. Founding Date: When was your office opened?
If the office that will service the Lottery is different, please indicate the date that office opened?
- B. Mergers and Acquisitions: List any subsequent or pending mergers, acquisitions, or name changes.
- C. Current Ownership: Who are the current owners of your Agency?
- D. Principals: Provide names and titles of principals and a short biography for each.
- E. Key Executives: Provide a short biography of your key executives and describe their current roles.
- F. Parent Company/Affiliation: Provide a listing of all companies/agencies that are owned or affiliated with your parent company.

2. Current Clients, Account Gains and Losses

A. Current Clients:

Provide a list of accounts for the three years prior to due date of responses to this RFP. The accounts should be in order of dollar value, high to low. Provide the following information for each contract in a table format:

- i. Company name, and the name/address/title/phone number/email of the contact person.
- ii. Approximate annual billing size for each account.
- iii. Start and end dates of each account.
- iv. Identify regional and/or national account.
- v. Identify the industry: for example: entertainment, consumer packaged goods, or other segments
- vi. Description of the type of work the agency performed for each account

B. Account Gains: Of the accounts acquired within the past two years, please comment on why your Agency was chosen to service these new accounts.

C. Account Losses: Of the accounts lost in the past two years, explain why these accounts left or were resigned.

3. Current Size

A. Current Size: Summarize the total billings for calendar years 2019 to 2021, number of employees and number of accounts currently being handled directly by your office.

Calendar Year	Total Billings Per Year	Number of Employees	Number of Accounts
2019			
2020			
2021			

4. Scope and Nature of Agency Services:

Agency Services: List the various services offered by your agency, the number of full-time employees dedicated to each department. Please include account management, creative services, digital/interactive, strategic planning, production/operations services, financial services, and any other relevant departments. Indicate how many people from each department are dedicated to promotions and the retail marketing.

Strategic Planning: Detail the agency's strategic planning capabilities. List any research and planning tools used to provide insights into the development of promotions and retail marketing.

Creative Services: List the types of creative services offered and any in-house production services and capabilities.

Promotional Marketing Services: Describe the agency's strengths and capabilities in creating and implementing promotions. Include the various types of promotions that the agency specializes in and has successfully delivered for clients

Retail Marketing Services: Describe the agency's expertise and capabilities in developing retail marketing initiatives.

Business to Business Services: List the agency's capabilities and relevant experience in developing B2B programs, including advertising, retailer initiatives, sales enablement, and internal sales support.

Additional Services: Detail agency's additional capabilities relevant to this SOW, including, partnership marketing, sponsorships, and retail media planning and buying services.

5. References

A. Client references: List five client references (name, title, company, address, telephone, email, and fax number) the Lottery can contact.

6. Percentage Breakdown by Service:

List the percentage of services provided by your agency using the chart below. For additional information, descriptions, and details refer to Exhibit A – Scope of Work

Promotions	%	Experiential	%	Retail Marketing	%	Point of Sale	%
Consumer Promotions	X%	Large Activations	X%	Product Merchandising	X%	Campaign POS	X%
Retail Promotions	X%	Digital Experiential	X%	Loyalty Programs	X%	Retail POS	X%
B2B Co-Marketing Promotions	X%			Retail Media Buying/Placement	X%	Static-Animated-Digital POS	X%
Digital Promotions	X%			Retailer Communications	X%	Promotional Product Displays	X%
Mobile/App Promotions	X%					Permanent POS	X%
Price/Coupon Promotions	X%					Custom/Specialized POS	X%
Sponsorships	X%						
Partnerships	X%						

ATTACHMENT 4
STD 204 – PAYEE DATA RECORD

Proposers may download the Payee Data Record (STD 204) through the following link:

<https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>

If you are unable to download this file, please contact the Procurement Specialist.

**ATTACHMENT 5
CERTIFICATION**

I. PROPOSER INFORMATION

Proposer's Name:

Street Address:

City/State/Zip Code:

Contact Person:

Telephone:

Email:

List person(s) legally authorized to contractually bind the Proposer.

1. Name: _____ Title: _____

Address: _____

2. Name: _____ Title: _____

Address: _____

(Attach additional pages if needed)

II. PROPOSER CERTIFICATION

By executing this Certification, the Proposer acknowledges that failure to comply with any of this Certification's terms may result in disqualification from participation in the solicitation process. The Proposer has reviewed, agrees to, and certifies the following:

- a. The Proposer meets all minimum qualifications specified in the section entitled "Minimum Proposer Qualifications."
- b. The Proposer agrees the Lottery shall not be liable for any of the costs incurred by Proposer in preparing, submitting, or otherwise participating in a response to this solicitation.

- c. The Proposer's response to the solicitation constitutes an irrevocable offer for 180 days following the date proposals are due to the Lottery.
- d. The Proposer has made no attempt to induce any other person or entity to submit or not to submit a proposal.
- e. The prices in the proposal have been developed and calculated independently, without consultation, communication or agreement on any matter relating to such prices with any other Proposer or competitor for the purpose of restricting competition or providing a competitive advantage.
- f. The Proposer has read the solicitation, understands it, and agrees to comply with all terms and conditions.
- g. The Proposer agrees to provide insurance/bond coverage as described in the Contract Terms and Conditions.
- h. Recognizing that initial payments to the Contractor may be delayed approximately 45 days, the Proposer has sufficient resources to meet his/her obligations during this period.

III. CONTRACTOR CERTIFICATION CLAUSES

By executing this Certification, the prospective Contractor or its authorized representative certifies under penalty of perjury that the prospective Contractor has reviewed and agrees to be bound to the Contract Terms and Conditions and the following Contractor Certification Clauses.

A. NONDISCRIMINATION CLAUSE: During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the Contract by reference and made a part thereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other

agreement. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

B. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
2. Establish a Drug-Free Awareness Program to inform employees about:
 - a. the dangers of drug abuse in the workplace;
 - b. the Contractor's policy of maintaining a drug-free workplace;
 - c. any available counseling, rehabilitation, and employee assistance programs; and,
 - d. penalties that may be imposed upon employees for drug abuse violations.
3. Every employee who performs work under the Contract shall receive a copy of the Contractor's drug-free workplace policy statement and agree to abide by the terms of the Contractor's statement.
4. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract, and the Contractor may be ineligible for award of any future state contracts if the Contractor has made false certification or violated the certification by failing to carry out the requirements as noted above.

C. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: The Contractor certifies that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to abide by a federal court order to comply with a directive of the National Labor Relations Board.

D. DOMESTIC PARTNERS: For contracts executed or amended after July 1, 2004, the Contractor may elect to offer domestic partner benefits to the Contractor's employees. The Contractor cannot require an employee, on the basis of marital or domestic partner status, to cover the costs of providing any benefits which have otherwise been provided to all employees.

IV. DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

A. CONFLICT OF INTEREST: The Contractor is aware of the following provisions regarding current or former state employees. If the Contractor has any questions about the status of any person rendering services or involved with the Contract, the Lottery shall be contacted immediately for clarification.

Current State Employees:

1. No state officer or employee may engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
2. No state officer or employee may contract as an independent contractor with any state agency to provide goods or services.

Former State Employees:

1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any state agency.
2. For the 12-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
3. If the Contractor violates any of the above provisions, such action by Contractor shall render this Contract void.
4. Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

B. LABOR CODE/WORKERS' COMPENSATION: The Contractor is aware of the provisions which require every employer to be insured against liability for Worker's Compensation and the Contractor agrees to comply with such provisions before commencing work on this Contract.

C. AMERICANS WITH DISABILITIES ACT: The Contractor assures the Lottery that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA and all California accessibility statutes and regulations.

D. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

1. The Contractor certifies it is currently qualified to do business in California.
2. The Contractor certifies that it is in good standing with the California Secretary of State's Office.

E. AIR OR WATER POLLUTION VIOLATION: The Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

F. PAYEE DATA RECORD FORM STD. 204: This form shall be completed by all Contractors except state agencies or other governmental entities.

V. CONFIDENTIALITY STATEMENT

A. I warrant that neither the Contractor nor its employees shall disclose any document, diagram, or information made available to it by the Lottery. I warrant that only those employees who are authorized and required to use such information shall have access to it.

B. I further warrant that all materials provided by the Lottery shall be returned promptly after use and all copies or derivations of the materials shall be physically and/or electronically destroyed. I shall include with the returned materials a letter attesting to the complete return of materials and documenting the destruction of copies and derivations. Failure to comply may subject the Contractor to criminal and civil liability. I authorize the Lottery to inspect and verify the above.

C. I further warrant that if awarded the Contract, the Contractor shall not disclose to any third-party information pertaining to the Contract prior to receiving the written consent of the Lottery.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the Proposer and prospective Contractor to the

clause(s) above and that the signature affixed below and dated constitutes a certification that all information provided by the Proposer and prospective Contractor is true and correct.

Contractor/Proposer Firm Name:

By (*Authorized Signature*):

Name of Person Signing:

Title of Person Signing:

Date Executed: _____

**ATTACHMENT 6
SCHEDULE OF SUBCONTRACTORS**

Subcontractor Name, Contact Person, Phone Number	Subcontractor Address & Email Address	CA Certification (MB, SB, DVBE or None) Include Certificate #	Work performed or goods provided for this contract	Corresponding % of bid price

ATTACHMENT 7
SMALL AND MICROBUSINESS PARTICIPATION (SMP)

Continued on Next Page



SMALL AND MICRO BUSINESS PARTICIPATION (SMP)

Small Business Preferences/Definition

The Small Business Procurement and Contract Act (Gov. Code section 14835 et seq.) requires that a fair share of the state's purchases and contracts for goods, information technology, services and construction be placed with small businesses or micro businesses. In order to facilitate the participation of these businesses, the Act requires state agencies to: (1) establish small business participation goals, (2) provide a 5% small business preference; and (3) provide a non-small business preference of up to a maximum of 5% for agencies utilizing small businesses or micro businesses as subcontractors.

SMP Goal and Preference

Based upon the nature of the goods/services to be utilized under this solicitation (as outlined in the Scope of Services), the Lottery has set a SMP Goal of 25%. Proposers that qualify as a small or micro business have met this participation goal by virtue of their small business status.

For bid evaluation purposes, where there is at least one non-small business Proposer subcontracting at least 25% of its bid amount to one or more small businesses, the Lottery shall calculate the preference by computing an amount not to exceed 5% from the lowest, responsible bid of a non-small business Proposer that is not subcontracting to a small business. The preference amount shall be deducted from the bids of the non-small business Proposer's subcontracting at least 25% of their bid amounts to small businesses, as referenced above. Agencies that subcontract less than 25% shall receive a prorated preference.

For bid evaluation purposes, where there is at least one small business Proposer, the Lottery shall calculate the preference by computing an amount of up to 5% of the lowest, responsible bid of a non-small business Proposer that is not subcontracting to a small business. The preference amount shall not exceed \$50,000 and shall be deducted from the small business' bid amount as referenced above.

During the Contract term, the Proposer's SMP compliance shall be calculated based on the Proposer's completed work as verified by an audit of Proposer's invoices and Proposer's payments to designated subcontractors.

Definition

To be eligible for the SMP Preference as a "small business," a company shall be an independently owned and operated business, not dominant in its field of operation, with its principal place of business located in California and officers domiciled in California, and which together with affiliates is:



SMALL AND MICRO BUSINESS PARTICIPATION (SMP)

- A business with 100 or fewer employees and average annual gross receipts of \$14,000,000 or less over the previous three years, **or**
- A manufacturer with 100 or fewer employees. A manufacturer is a business that is both:
 - 1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and
 - 2) Classified between Codes 31 to 339999, inclusive, of the North American Industrial Classification System (NAICS) Manual, published by the United States Census Bureau, 2007 edition.

To be eligible for the SMP Preference as a "micro business," a company shall be a small business that, together with affiliates, has average annual gross receipts of \$3,500,000 or less over the previous three years, or is a manufacturer, as defined above, with 25 or fewer employees.

If a proposing Proposer is currently certified as a small or micro business by the Department of General Services, Office of Small Business and DVBE Services, or any city, county, federal, etc. certifying office, only a copy of that certification is required (to be certified small or micro business, visit the DGS website at www.pd.dgs.ca.gov/pd/Programs/OSDS.aspx). The successful Proposer shall be required to provide this information for the small or micro business enterprises to be utilized as subcontractors.

The successful Proposer's SMP Goal shall become part of the Contract resulting from this solicitation with the Lottery. The Lottery shall monitor Proposer's compliance by requiring annual reports.

Agencies requesting either of the SMP Preferences are required to complete and submit the required forms.

(Revised 11/19)



SMALL AND MICRO BUSINESS PARTICIPATION (SMP)

INSTRUCTIONS/FORMS

All agencies shall complete this page and the “Declaration of Compliance for Small and Micro Business Subcontractor Participation” form. Non-small agencies that are subcontracting with small or micro businesses shall also complete the “Small and Micro Business Subcontractor” form, and agencies that are small businesses or micro businesses shall complete the “Small and Micro Business Program” form. All forms are included in this package.

General Information

Proposer’s Name: _____

Street Address: _____

City/State/Zip Code: _____

Contact Person: _____

Telephone: _____ **Fax:** _____

Email: _____

SMP Program Form CSL 1180

Complete and sign this form if your company is a certified small or micro business.

SMP Declaration of Compliance Form CSL 1178

Complete and sign this form certifying all the information is true and correct. This form shall be signed by the person legally authorized to contractually bind the Proposer as stated in the Certification.

SMP Subcontractor Form CSL 1177

Complete and sign this form for all small and micro business subcontractor(s) that you plan to utilize as part of your small business participation goal. Please duplicate this page for additional companies.

Small and Micro Business & DVBE Program Form CSL 0718

Complete and sign this form if your business is participating in this program.

CSL 1180 (11/19)



SMALL AND MICRO BUSINESS PARTICIPATION (SMP)

DECLARATION OF COMPLIANCE

Complete and sign this form certifying all the information is true and correct. This form shall be signed by the person legally authorized to contractually bind the Proposer as stated in the Certification.

Proposer's Name: _____

Street Address: _____

City/State/Zip Code: _____

Contact Person: _____

Telephone: _____ **Fax:** _____

Email: _____

Declaration

I declare under penalty of perjury that the information provided in this Attachment is true and correct. (Please check one)

___ Our firm is a small business or micro business. **Certification #:** _____

___ Our firm is not a small business or micro business, but guarantees that a minimum of ___% of the total cost shall be paid to small business and micro business subcontractors for work performed under the Contract.

___ Our firm shall not participate in the SMP Participation Program.

Executed on (Month/Date/Year): _____

In the city of _____ State of _____

Proposer's Authorized Signature:

Name of Person Signing: _____

Title: _____

Telephone: _____ **Fax:** _____



SMALL AND MICRO BUSINESS PARTICIPATION (SMP)

SUBCONTRACTOR FORM

Complete and sign this form for all small and micro business subcontractor(s) that you plan to utilize as part of your small business participation goal.

Please duplicate this page for additional companies.

Name of Subcontractor: _____

Street Address: _____

City/State/Zip Code: _____

Contact Person: _____

Telephone: _____ **Fax:** _____

Email: _____

Goods/Services to be provided: _____

Business Category _____ **Percentage of Contract** _____%

Certifying Proposer: _____ **Certification #:** _____

By signing below, the Proposer indicates its intent to utilize the small business or micro business identified above as part of the Contract associated with this solicitation, as applicable; and also certifies that all information contained herein is true and correct.

Proposer's Authorized Signature: _____ **Date:** _____

Name of Person Signing: _____

Company Name: _____

By signing below, the small business or micro business certifies it has been contacted, and has expressed interest in participating in the Contract in the work area identified; and also certifies that all information contained herein is true and correct.

Subcontractor's Authorized Signature: _____

Date: _____

Name of Person Signing: _____

Company Name: _____

Business Name:

Street Address:

City: _____ **State:** _____ **Zip Code:** _____

Name of Owner:

Telephone: _____ **Email:** _____

Name of Contact Person: _____

Telephone: _____ **Email:** _____

Business Category: _____

Business Certified with (Agency Name):

Certification #: _____

Select one that applies: _____

Goods/Services, etc. to be provided:

By signing below, the Proposer certifies that the company above is a small business or microbusiness, as defined in this attachment.

Signature of Authorized Representative:

Date: _____

Title: _____

CSL 0718 (11/19)

ATTACHMENT 8
DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

The Lottery recognizes disabled veterans for their service by establishing a Disabled Veteran Business Enterprise (DVBE) Participation Program. The program is intended to further veterans' participation in Lottery contracting, promote competition and encourage greater economic opportunity.

The Lottery has established participation goals for DVBEs, as defined in the California Military and Veterans Code, of at least 3% of overall dollars expended for Lottery contracts annually. The Lottery determines whether to include DVBE participation requirements in specific solicitations based on the availability of contracting or subcontracting opportunities within the scope of services of the particular contract.

While the Lottery has not established a DVBE participation requirement for this solicitation, in order to encourage DVBE participation, the Lottery has applied a DVBE incentive as follows:

<u>Confirmed DVBE Participation</u>	<u>DVBE Incentive</u>
5% or Over	5%
4% to 4.99%	4%
3% to 3.99%	3%
2% to 2.99%	2%
1% to 1.99%	1%

A Proposer may achieve participation by qualifying as a DVBE and/or by contracting with DVBE subcontractors. DVBEs shall perform a commercially useful function, excluding media placement costs, related to the bid specifications as required by Military and Veterans Code section 999 (b)(5)(B). The Lottery shall determine whether Proposers have achieved qualifying levels of participation by comparing each Proposer's verified DVBE percentage to the Proposer's Price Sheet.

The incentive is applied in determining the lowest monetary bid or best value by reducing the qualified Proposer's price by the amount of the incentive as computed based on the lowest price submitted by a responsive Proposer. This reduction is applied solely for evaluation purposes. However, where the Proposer with the lowest monetary bid or best value, prior to application of the incentive, is a California certified small business, only other certified small businesses shall be eligible to receive the incentive bonus. If after application of incentives, two or more responsive bids tie for lowest monetary bid or best value, the contract shall be awarded to the Proposer with the highest level of DVBE participation.

A DVBE may also qualify as a small business if it independently meets the Small and Micro Business Participation Program requirements. (See Attachment: “Small and Micro Business Participation”)

For certification purposes, a “disabled veteran” shall be a veteran of the U.S. military, naval, or air service, have a service-connected disability of 10% or more, and reside in California.

To be eligible for certification as a Disabled Veteran Business Enterprise:

- At least 51% of the business shall be owned by one or more disabled veterans;
- Daily business operations shall be managed and controlled by one or more disabled veterans; and
- The home office shall be located in the United States. (The home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.)

In order to count toward DVBE participation, DVBEs shall be certified as such by the Department of General Services at the time the bid is submitted to the Lottery. Proposers shall submit with their bids (1) a copy of the DVBE certification for each DVBE and (2) the attached DVBE forms, completed and signed as indicated. Contact the Department of General Services, Office of Small Business and DVBE Services with certification questions or visit DGS’s Website at www.dgs.ca.gov.

During the term of the Contract, the successful Proposer shall provide annual DVBE reports to the Lottery’s Procurement Services & Support Section showing DVBE participation at the levels committed to in the bid documents. In addition, the successful Proposer shall provide a final report at the end of the Contract.

Instructions:

Proposers shall complete “Subcontractors to be Utilized” section for each DVBE subcontractor to be counted toward DVBE participation and include the form as part of their bids. [Please duplicate the page for additional DVBE businesses.] Any Proposer that is a certified DVBE and wishes to be counted toward DVBE participation shall complete “DVBE Proposer” section and submit it as part of its bid.

For questions regarding these instructions or attachments, please contact the Lottery’s Small and DVBE Program Specialist at (916) 822-8069.

SUBCONTRACTORS TO BE UTILIZED

This form shall be completed and signed by the Proposer and the DVBE subcontractor to be utilized. Please duplicate this page for additional DVBE businesses.

Name of DVBE: _____

DVBE Certification: # _____

DVBE Contact Person: _____

DVBE Street Address: _____

City/State/Zip: _____

Email: _____

Telephone: _____ **Fax:** _____

Goods/Services to be provided: _____

Percentage Participation: _____% (percent of the total contract price to be paid to the DVBE subcontractor for goods and/or services identified above)

By signing below, the Proposer indicates its intent to utilize the DVBE identified above as a supplier/subcontractor of the goods and/or services indicated, for the dollar amount represented by the percentage set forth above. The Proposer also certifies that all information contained herein is true and correct. This form shall be signed by a person legally authorized to contractually bind the Proposer.

Proposer's Authorized Signature: _____ **Date:** _____

Name of Person Signing: _____

Company Name: _____

By signing below, the DVBE certifies it has submitted a bid to the above-referenced Proposer and is ready, willing, and able to provide the goods and/or services identified above. This form shall be signed by a person legally authorized to contractually bind the DVBE.

DVBE's Authorized Signature: _____ **Date:** _____

Name of Person Signing: _____

Company Name: _____

DVBE PROPOSER

Proposer shall complete and sign this form if Proposer is a DVBE and intends to count goods and/or services it provides towards DVBE participation on this contract.

Proposer's Name: _____

DVBE Certification: # _____

Contact Person _____

Goods/Services to be provided: _____

Percentage Participation: _____% (percent of the total contract price represented by the goods/services to be provided by the DVBE Proposer (pass-through goods and/or services do not count))

By signing below, the Proposer indicates that it shall provide the goods and/or services indicated for the dollar amount represented by the percentage set forth above. The Proposer also certifies that all information contained herein is true and correct. This form shall be signed by a person legally authorized to contractually bind the Proposer.

Proposer's Authorized Signature:

Date: _____

Name of Person Signing: _____

Company Name: _____

ATTACHMENT 9
GENERAL CONTRACTOR DISCLOSURE (CONFIDENTIAL)

This document does not have to be completed or returned. However, the intended awardee may be required to complete this form.

Proposers may download the General Contractor Disclosure (Confidential) through the following link:

<https://static.www.calottery.com/-/media/Project/calottery/PWS/PDFs/RFP-Documents/CSL-0829B-General-Disclosure-reader-extended.pdf>

If you are unable to download this file, please contact the Procurement Specialist.

ATTACHMENT 10
NON-DISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is made and entered into as of _____, 20__ between the California State Lottery (“Company”) and _____ (“Recipient”).

1. Purpose. Recipient has submitted a proposal and is competing for a contract to provide Promotions and Retain Marketing services to Company pursuant to Request for Proposal #50180 (RFP). In connection with the RFP and subject to this Agreement, Company may disclose to Recipient certain confidential and proprietary technical and business information that Company desires Recipient to treat as confidential.
2. “Confidential Information” means any information disclosed to Recipient by Company, directly or indirectly, in writing, orally, or by inspection of tangible objects (including documents, prototypes, samples, and Company’s plant and equipment). Confidential Information will include the items set forth in any Appendix attached to this Agreement. Confidential Information may also include information disclosed to Company by third parties. Confidential Information will not, however, include any information that Recipient can demonstrate (a) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Company; (b) became publicly known and made generally available after disclosure to Recipient by Company through no action or inaction of Recipient; or (c) was in the possession of Recipient, without confidentiality restrictions, at the time of disclosure by Company, as shown by Recipient’s files and records.
3. Non-use and Nondisclosure. Recipient will not use any Confidential Information for any purpose except to prepare its Finalist Submittals pursuant to the RFP. Recipient will not disclose any Confidential Information to third parties or to employees of Recipient, except to those employees who are required to have the Confidential Information in order to prepare the Finalist Submittals pursuant to the RFP. Recipient will not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody Company’s Confidential Information and that are provided to Recipient in accordance with this Agreement.
4. Maintenance of Confidentiality. Recipient will use its best efforts to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient will take at least those measures that Recipient takes to protect its own most highly confidential information and, prior to any disclosure of Confidential Information to its employees, will have such employees sign a non-use and nondisclosure agreement that is substantially similar in content to this Agreement. Recipient will not make any copies of Confidential Information unless approved in writing by the Company. Recipient will reproduce Company’s proprietary rights notices on all approved copies. Recipient will immediately notify Company in the event of any unauthorized use or disclosure of the Confidential Information. discussions contemplated by this Agreement concerning the business opportunity.

5. No Obligation. Nothing in this Agreement will obligate Company or Recipient to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION.
7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information and all copies of them will be and remain the property of Company. Upon Company's request, Recipient will (a) promptly deliver to Company all Confidential Information, without retaining any copies, and (b) promptly destroy analyses, studies, and other documents prepared based on the Confidential Information, without retaining copies.
8. No License. Nothing in this Agreement is intended to grant any rights to Recipient under any patent, copyright, or other intellectual property right of Company, nor will this Agreement grant Recipient any rights in or to the Confidential Information, except as expressly set forth in this Agreement.
9. Term. This Agreement will survive until all Confidential Information becomes publicly known and made generally available through no action or inaction of Recipient.
10. Remedies. Recipient acknowledges that any breach or threatened breach of this Agreement would cause irreparable harm to Company, and in addition to any other remedies at law or in equity that Company may have, Company is entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.
11. Indemnification. Recipient agrees to indemnify and hold harmless Company from any damage, loss, cost, or liability (including reasonable attorney fees) arising or resulting from any unauthorized use or disclosure of the Confidential Information by Recipient or any of its employees.
12. Recipient Information. Company does not wish to receive any confidential or proprietary information from Recipient, and Company assumes no obligation, either express or implied, with respect to any information disclosed by Recipient.
13. Miscellaneous. This Agreement will bind and inure to the benefit of the parties and their successors and assigns. This Agreement will be governed by the laws of the state of California, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any failure to enforce any provision of this Agreement will not constitute a waiver of that provision or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original, but all of which constitute the same agreement.

CALIFORNIA STATE LOTTERY

RECIPIENT _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT 11 PROCEDURAL NON-COMPLIANCE WAIVER



Procedural Non-Compliance Waiver

Client:		Producer/Art Buyer:	
Job/Estimate #:		Job Name:	
Product:		Shoot Date:	
Location:			
Categories and or/Name of Vendor(s):			

Permission To:

Single Bid:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Double Bid:	<input type="checkbox"/> Yes <input type="checkbox"/> No	*Not Lowest Bidder:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Estimated Costs:		Estimated Costs:		Estimated Costs:	

***Please include the bottom line estimate cost difference for recommended and low bidder(s). Cost does not include shipping, mark up or tax.**

Reason for Non Compliance

- Yes Total expenditure less than \$100,000
- Yes Insufficient Time
- Yes Pre-qualified bidder with agreed to terms and pricing
- Yes One viable source (proprietary, licensing)

Detailed Reason For Non-Compliance

Please include, where applicable, specific scheduling issues, budgetary restrictions, director/photographer/other vendor availability, creative considerations or markup on production and/or editorial markup

1. Submitted by (insert agency name): Name: _____ Title: _____ Signature: _____ Date: _____	2. Approved by: Name: _____ Title: _____ Signature: _____ Date: _____
--	--

****Document Invalid Unless Signed By All Parties****