

Minnesota State Lottery Mobile Convenience App Development Agreement

This Mobile Convenience App Development Agreement (“**Agreement**”), dated as of [DATE] (the “**Effective Date**”), is made by and between [OUTSIDE SOFTWARE DEVELOPER NAME] (“**Developer**”), a [STATE OF ORGANIZATION] [ENTITY TYPE] with offices located at [ADDRESS], and the Minnesota State Lottery (“**Customer**”), a Minnesota Government Agency with offices located at 2645 Long Lake Road, Roseville, MN 55113. Developer and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, Customer issued a Request for Proposal for Mobile Convenience Application Development Services on or about August 6, 2021 (the “**RFP**,” which is incorporated by reference) to which Developer responded on or about [DATE] (the “**RFP Response**,” which is incorporated by reference); and

WHEREAS, Customer wishes to procure from Developer the mobile app development services described in the RFP and herein, and Developer wishes to provide such services and described in the RFP Response and herein to Customer, each on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“**Action**” has the meaning set forth in Section 12.1.

“**Agreement**” has the meaning set forth in the preamble.

“**Approved Third-Party Materials**” means the Third-Party Materials that Customer has approved to be included in or for use in connection with the Mobile App, in each case solely as specifically identified in Schedule [A].

“**App Store**” means Apple App Store and Google Play.

“**Background Technology**” means all software, data, know-how, ideas, methodologies, specifications, and other technology in which Developer owns such Intellectual Property Rights as are necessary for Developer to grant the rights and licenses set forth in Section 10.2(a), and for Customer (including its licensees, successors, and assigns) to exercise such rights and licenses, without violating any right of any third party or any Law or incurring any payment obligation to any third party, and that: (a) are identified as background technology in Schedule [A]; and (b) were or are developed or otherwise acquired by Developer prior to the Effective Date.

“**Code**” has the meaning set forth in Section 15.1(a).

“**Confidential Information**” has the meaning set forth in **Error! Bookmark not defined**.8.

“**Customer**” has the meaning set forth in the preamble.

“**Customer Indemnitee**” has the meaning set forth in Section 12.1.

“**Customer Materials**” means all materials and information, including documents, text, graphics, photos, designs, Marks, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form or media, directly or indirectly provided or made available to Developer by or on behalf of Customer in connection with this Agreement, whether or not the same: (a) are owned by Customer, a third party, or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

“**Deliverables**” means all software, Documentation, documents, work product, and other materials, that Developer is required to [or otherwise does] provide to Customer [or its designee] under this Agreement and otherwise in connection with the Services.

“**Developer**” has the meaning set forth in the preamble.

“**Documentation**” means all user manuals, operating manuals, technical manuals, and any other instructions, specifications, documents, and materials, in any form or media, that describe the Mobile App’s functionality, installation, testing, operation, use, maintenance, support, and technical and other components, features, and requirements.

“**Effective Date**” has the meaning set forth in the preamble.

“**Fees**” has the meaning set forth in Section 7.1.

“**Go Live Date**” has the meaning set forth in Section 5.3.

“**Harmful Code**” means any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive Customer or end users of their lawful right to use the Mobile App.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, award, decree, directive, other requirement, or rule of law of any federal, state, local, or foreign government, or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” has the meaning set forth in Section 12.1.

“**Maintenance and Support Services**” has the meaning set forth in Section 6.

“**Marks**” means the trademarks, tradenames, and logos owned or licensed by Customer and provided to Developer pursuant to this Agreement.

“**Milestone**” means an event or task described in the Milestone Schedule for which there is a corresponding date by which it must be completed.

“**Milestone Schedule**” means the schedule set forth in Schedule [B] setting out the dates by which the Parties are required to achieve the Milestones.

“**Mobile App**” means the mobile application, including software and Documentation, Developer is required to develop or otherwise provide under this Agreement[, including any updates, upgrades, new versions, new releases, enhancements, improvements, and other modifications made or provided pursuant to the Maintenance and Support Services].

“**Open Source Components**” means any software component that is subject to any open source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Platforms**” means the [[Apple iOS] [and] [Google Android] operating system[s]/operating system[s] controlling the [MOBILE DEVICE NAME(S)]].

“**Reimbursable Expenses**” has the meaning set forth in **Error! Bookmark not defined.Error! Reference source not found..**

“**Services**” has the meaning set forth in Section 2.1.

“**Source Code**” means the human readable source code of the Mobile App software to which it relates, in the programming language in which it was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, operate, support, maintain, and develop modifications, upgrades, updates, enhancements, improvements, and new versions of, and to develop computer programs compatible with, the Mobile App software.

“**Specifications**” means the specifications for the Mobile App set forth in Schedule [C] and in the RFP and RFP Response.

“**Term**” has the meaning set forth in Section 14.1.

“**Third-Party Materials**” means any materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form or media, in which any Person other than Customer or Developer owns any Intellectual Property Right.

2. Engagement of Developer; Time of the Essence.

2.1 Engagement of Developer. Customer hereby engages Developer, and Developer hereby accepts such engagement, to design, develop, create, test, deliver, integrate, customize, and otherwise provide and make fully operational the Mobile App and provide related services, including Maintenance and Support Services, as further described herein (collectively, the “**Services**”) on the terms and conditions set forth in this Agreement.

2.2 Project Management. Throughout the Term, each Party shall maintain within its organization a project manager to serve as such Party’s primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services. Each such project manager is responsible for providing all day-to-day consents and approvals on such Party’s behalf under this Agreement. Each Party shall ensure its project manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. The Parties’ initial project managers are: identified in [SCHEDULE [D]]. Each Party shall use commercially reasonable efforts to maintain the same project manager in place throughout the Term. If a Party ceases to employ its project manager or a Party otherwise wishes to replace its project manager, such Party shall promptly name a new project manager by written notice to the other Party.

2.3 Time of the Essence. Developer acknowledges that time is of the essence with respect to Developer’s obligations hereunder and agrees that prompt and timely performance of all such obligations in accordance with this Agreement is strictly required.

3. Mobile App Development.

3.1 Developer’s Performance. Promptly following the Effective Date, Developer will perform the Services in a timely, professional, and workmanlike manner and in accordance with the terms and conditions of this Agreement. Developer shall ensure that the Mobile App, including Deliverables, complies with the Specifications.

3.2 Third-Party Materials.

(a) Developer shall not include in the Mobile App, and operation of the Mobile App in accordance with its Documentation shall not require, any Third-Party Materials, other than Approved Third-Party Materials licensed to Customer in accordance with Section 10.2(b).

(b) Except as provided otherwise in Schedule [A], Developer shall secure, at its sole cost and expense, all necessary rights, licenses, consents, approvals, and authorizations necessary for Customer to use, perpetually and throughout the universe, all Approved Third-Party Materials as incorporated in or otherwise used in conjunction with the Mobile App.

3.3 Open Source Components. Developer shall not include in the Mobile App, and operation of the Mobile App in accordance with its Specifications and Documentation must not require the use of, any Open Source Components.

3.4 Subcontracting. Developer may not engage any third party to perform Services (including to create any Deliverables) hereunder, without written approval by Customer.

4. Customer Obligations.

4.1 Customer Resources and Cooperation. Customer shall, in accordance with the Milestone Schedule:

(a) provide the Customer Materials and all such other resources as the Milestone Schedule may specify;

(b) provide Developer with access to Customer's premises as necessary for Developer to perform its obligations in accordance with the Milestone Schedule;

(c) participate with suitably qualified and authorized personnel in all meetings scheduled in, or in accordance with, the Milestone Schedule and any other meetings as may be scheduled by the Parties on at least seven (7) days' prior notice; and

(d) provide all consents, approvals, exception notices, and other communications the Milestone Schedule specifies, or this Agreement otherwise requires.

4.2 Effect of Customer Delays. If, as a result of Customer's failure to perform any of its obligations set forth in Section 4.1 on a timely basis, Developer is unable to timely meet all or any remaining dates in the Milestone Schedule, including without incurring additional costs, Developer may extend such dates for up to the length of Customer's delay or, at Customer's option, increase the related Fees solely to recover any such additional costs in accordance with the following:

(a) Developer shall promptly notify Customer in writing, proposing a revised Milestone Schedule, which dates may be extended by no longer than the length of Customer's delay and, if Developer is able to meet the original Milestone Schedule by incurring additional costs, its proposed Fee increase for meeting the original Milestone Schedule.

(b) Upon receipt of any notice given under Section 4.2, subject to Section 4.2(c), Customer shall promptly notify Developer in writing of its election.

Customer's failure to notify Developer within seven (7) days after such receipt will be deemed an acceptance of the new Milestone Schedule dates and rejection of all Fee increases.

(c) If Customer disputes Developer's right to extend Milestone Schedule dates or increase Fees, or the extent of any proposed extension or increase, Customer shall promptly notify Developer and the Parties shall negotiate in good faith to resolve the dispute.

Notwithstanding anything contained in this Section 4.2 or otherwise in this Agreement, Developer shall use its commercially reasonable efforts to meet the Milestone Schedule without any extension or Fee increase. Customer will not be deemed in breach of this Agreement for failure to perform its obligations on a timely basis, and this Section 4.2 sets forth Developer's sole and exclusive remedy, and Customer's sole and exclusive liability, for Customer's failure to perform its obligations under this Section 4.

5. Delivery, Approval Process, and Submission.

5.1 Delivery. Developer shall deliver to Customer the Deliverables for each Milestone in accordance with the Specifications on or before the date set forth in the Milestone Schedule. Except as otherwise specified in the Milestone Schedule, Developer shall deliver each software Deliverable to Customer in both object code and Source Code form. The Milestones consist of the following: (a) Milestone 1, [TO BE NEGOTIATED]; (b) Milestone 2, [TO BE NEGOTIATED]; (c) Milestone 3, [TO BE NEGOTIATED]; (d) Milestone 4, [TO BE NEGOTIATED]; and (e) Milestone 5, [TO BE NEGOTIATED].

5.2 Approval Process. Within [NUMBER] days following receipt of the applicable Deliverables for Customer's review, Customer shall provide Developer with either: (a) written approval of the applicable Deliverables; or (b) a written rejection, including a list of changes that must be made before Customer will approve such Deliverables. In the case of Customer's rejection, Developer shall use commercially reasonable efforts to complete the changes Customer requires and shall resubmit the Deliverables to Customer, as corrected in Developer's view, within [NUMBER] days after Customer's rejection. This procedure will repeat until Customer approves the applicable Deliverables. Customer's failure to respond within the time set forth above will be deemed a disapproval of the Deliverables.

5.3 Submission and Go Live.

(a) Upon Customer's request, Developer shall assist Customer with submitting the Mobile App for acceptance and publication as required by the applicable App Store operators. Developer shall ensure that the Mobile App is compliant with all specifications set forth by the applicable App Store operators. In the event the Mobile App is not accepted by any App Store operator, Developer shall, at its sole expense, make such revisions and further modifications, and re-submit the Mobile App to such App Store operator for approval until such time as the Mobile App is accepted. Notwithstanding Section 2.3, the Parties acknowledge that App Store

operators may delay or withhold approval and publishing of the Mobile App in their sole discretion.

(b) For purposes of Section 14.1, “Go Live Date” shall mean the date the Mobile App is accepted by the last App Store Operator.

6. Maintenance and Support. Developer shall provide maintenance and support services for the Mobile App, as further set forth in Schedule [E] (“**Maintenance and Support Services**”).

7. Payments.

7.1 Development and Monthly Fees. Subject to all terms and conditions of this Agreement, and Developer’s performance of the Services to Customer’s reasonable satisfaction and approval and acceptance of the Deliverables, including approval of the Mobile App by the applicable App Store operators, in accordance with Section 5, Customer shall pay Developer the development fees (“**Fees**”) as set forth in the Milestone Schedule.

8. Confidential Information and Minnesota Government Data Practices Act.

8.1 Confidential Information. Developer agrees to hold Customer’s confidential information, including player information, in strictest confidence except as previously authorized in writing by the Customer, and as permitted under Minnesota law. Developer agrees to (i) use confidential information only in furtherance of the Agreement, (ii) only to copy confidential information to the minimum extent necessary to perform the necessary tasks relating to the confidential information, and (iii) not to disclose the confidential information to any person or entity except those employees of the Developer to whom the information has been disclosed who have a need to know the confidential information for purposes contemplated by the Agreement and to the extent permitted by Minnesota law. The Developer’s obligations under this section are perpetual and shall survive the conclusion of the Agreement.

8.2 Minnesota Government Data Practices Act. Developer and Customer must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 as it applies to all data provided by Customer under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Developer under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Developer or the State. If Developer receives a request to release the data referred to in this clause, Developer must immediately notify and consult with Customer as to how Developer should respond to the request. Developer’s response to the request shall comply with applicable law

9. Intellectual Property Rights.

9.1 Intellectual Property Ownership. Except as set forth in Section 9.3, Customer is and will be the sole and exclusive owner of all right, title, and interest in and to the Mobile

App, including all Intellectual Property Rights therein. In furtherance of the foregoing, subject to Section 9.3:

(a) Developer shall create the Mobile App as work made for hire as defined in Section 101 of the Copyright Act of 1976; and

(b) To the extent the Mobile App or Intellectual Property Rights therein do not qualify as, or otherwise fail to be, work made for hire, Developer shall, and hereby does:

(i) assign, transfer, and otherwise convey to Customer, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Mobile App, including all Intellectual Property Rights therein; and

(ii) irrevocably waive any and all claims Developer may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of *droit moral* with respect to the Mobile App.

9.2 Further Actions. Developer shall ensure that (a) the Mobile App is prepared by an employee of Customer; (b) Developer and any such employee takes all appropriate action and executes and deliver all documents necessary or reasonably requested by Customer to effectuate any of the provisions or purposes of Section 9.1, or otherwise as may be necessary or useful for Customer to prosecute, register, perfect, record, or enforce its rights in or to the Mobile App or any Intellectual Property Right therein. Developer hereby appoints Customer as Developer’s attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Developer refuses, or within a period deemed reasonable by Customer otherwise fails, to do so.

9.3 Background Technology and Approved Third-Party Materials.

(a) Developer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Background Technology, including all Intellectual Property Rights therein, subject to the license granted in Section 10.2(a).

(b) Ownership of all Approved Third-Party Materials, and all Intellectual Property Rights therein, is and will remain with the respective owners thereof, subject to any express licenses or sublicenses granted to Customer pursuant to or in accordance with this Agreement.

9.4 Customer Materials. Customer and its licensors are and will remain the sole and exclusive owners of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Developer has no right or license to, and may not, use any Customer Materials except solely during the Term to the extent necessary to perform the Services. Customer expressly reserves all other rights in and to the Customer Materials.

10. Licenses.

10.1 Grant of Licenses to Developer. Customer hereby grants to Developer the limited, royalty-free, non-exclusive right and license to Customer Materials solely as necessary to incorporate them into, or otherwise use them in connection with creating, the Mobile App. The term of such license will commence upon Customer’s delivery of the Customer Materials to Developer and will continue in effect until termination or expiration of this Agreement. Except for the limited license expressly granted under this Section 10.1, Customer reserves all rights in the Customer Materials. Customer Materials are deemed to be Customer’s Confidential Information.

10.2 Grant of Licenses to Customer.

(a) License to Background Technology. Developer hereby grants to Customer all rights and licenses to the Background Technology to allow Customer to use and otherwise exploit perpetually throughout the universe for all or any purposes whatsoever the Mobile App without incurring any fees or costs to Developer (other than the Fees) or any other Person in respect of the Background Technology. In furtherance of the foregoing, such rights and licenses:

(i) are irrevocable, perpetual, fully paid-up, and royalty-free; and

(ii) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create derivative works of, distribute, import, make, have made, sell, and offer to sell the Background Technology, including all such modifications, improvements, and derivative works thereof, solely as part of, or as necessary to use and exploit, the Mobile App.

Developer reserves all rights in the Background Technology not expressly granted to Customer herein.

(b) License to Approved Third-Party Materials.

(i) Developer hereby grants, or before the delivery date for any Deliverables shall procure for Customer the grant of, such licensed rights in the Approved Third-Party Materials, as are described in such Schedule [A] or set forth in each license agreement for such Approved Third-Party Materials and attached as sequentially numbered attachments (A-1, A-2, etc.) to such Schedule [A].

(ii) All royalties, license fees, or other consideration payable for the Approved Third-Party Materials are included in the Fees. Any additional amounts are Developer’s sole responsibility.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the Laws of its jurisdiction of incorporation or organization;

(b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of the Party; and

(d) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

11.2 Additional Representations and Warranties. Developer represents and warrants to Customer that:

(a) it will perform all Services in a professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under this Agreement;

(b) It is in compliance with, and will perform all Services in compliance with, all applicable Law;

(c) Customer will receive good and valid title to the Mobile App, free and clear of all encumbrances and liens of any kind, except as otherwise provided in Section 9.1;

(d) When delivered by Developer, the Mobile App, including all Deliverables, will not contain any Harmful Code;

(e) The Mobile App, including any updates, upgrades, new versions, new releases, enhancements, improvements, and other modifications thereof, but excluding Customer Materials and Approved Third-Party Materials, is or will be the original creation of Developer; [and]

(f) As delivered, installed, specified, or approved by Developer and used by Customer or any third party authorized by Customer, the Mobile App (excluding Customer Materials): (i) will be in conformity with this Agreement and the

Specifications and Documentation therefor; (ii) will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; and (iii) will comply with all applicable Laws.

11.3 Disclaimer of Representations and Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT.

12. Indemnification.

12.1 General Indemnification. Developer shall defend, indemnify, and hold harmless Customer and the State of Minnesota’s directors, employees, agents, successors, and assigns (each, a “**Customer Indemnitee**”) from and against all any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, fees, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers that are incurred by a Customer Indemnitee (“**Losses**”) arising out of or resulting from any third party claim, suit, action, or proceeding (each, an “**Action**”) that arises out of or results from:

(a) Developer’s breach of any of its representations, warranties, covenants, or obligations under this Agreement; or

(b) any action or failure to take a required action or omission (including recklessness or willful misconduct) by Developer in connection with performing Services under this Agreement.

12.2 Indemnification Procedure. Customer will promptly notify Developer in writing of any Action for which it seeks to be indemnified pursuant to Section 12.1 and cooperate with Developer at Developer’s sole cost and expense. Developer shall immediately take control of the defense and investigation of such Action and shall employ counsel [of its choice/reasonably acceptable to Customer] to handle and defend the same, at Developer’s sole cost and expense. Developer shall not settle any Action in a manner that adversely affects the rights of Customer or any Customer Indemnitee without Customer’s prior written consent, which may not be unreasonably withheld or delayed. Customer’s failure to perform any obligations under this Section 12.2 will not relieve Developer of its obligations under Section 12.1 except to the extent that Developer can demonstrate that it has been materially prejudiced as a result of such failure. Customer may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13. Force Majeure. Neither party shall be responsible to the other or considered in default of its obligations within this Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party

prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

14. Term and Termination.

14.1 Term. This term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement’s express provisions, will continue in effect until three (3) years from the Go Live Date (the “**Term**”).

14.2 Termination.

(a) Customer may terminate, at any time without cause, and without incurring any additional obligation, liability, or penalty this Agreement, by written notice to Developer.

(b) Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

(c) Either Party may terminate this Agreement by written notice to the other Party if the other Party: (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.3 Effect of Expiration or Termination. Upon the expiration or termination of this Agreement:

(a) Developer shall (i) return to Customer all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the Customer Materials or Customer’s Confidential Information; (ii) permanently erase the Customer Materials and Customer’s Confidential Information from its computer systems; and (iii) certify in writing to Customer that it has complied with the requirements of this Section 14.3(a), in each case to the extent such materials are not required by Developer to perform its surviving obligations under this Agreement.

(b) Customer shall (i) return to Developer all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Developer’s Confidential Information; and (ii) permanently erase Developer’s Confidential Information from its computer systems, in each case to the extent that

such Confidential Information is not required by Customer for full use of the Services and Mobile App pursuant to this Agreement.

(c) If Customer terminates this Agreement:

(i) Developer shall (A) promptly deliver to Customer all Deliverables related to the Mobile App generated by Developer (whether complete or incomplete); (B) provide reasonable cooperation and assistance to Customer [upon Customer’s written request and at Customer’s expense] in transitioning the Services to an alternate service provider; and (C) on a pro rata basis, repay to Customer all amounts, if any, that Customer paid in advance for any Services or Deliverables that have not been provided as of the effective date of termination.

(ii) Customer will be relieved of any obligation to pay any Fees hereunder, for termination by Customer pursuant to Section 14.2(b).

(d) Except as set forth in Section 14.3(c), for termination by either Party, Customer remains obligated to pay Fees [and Reimbursable Expenses] for all Services and Deliverables Customer receives [and approves] before the effective date of termination.

(e) All licenses granted to Developer in the Customer Material shall immediately and automatically terminate. No expiration or termination of this Agreement will affect Customer’s rights in any Deliverables or the Mobile App.

14.4 Surviving Rights. Any right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1, **Error! Bookmark not defined.**8, Section 9, Section 10.2, Section 12, **Error! Bookmark not defined.****Error! Reference source not found.**, Section 14.3, this Section 14.4, and Section 15.

15. Miscellaneous.

15.1 Effect of Developer Bankruptcy.

(a) All rights and licenses granted by Developer under this Agreement are and will be deemed to be rights and licenses to “intellectual property,” and the Mobile App is and will be deemed to be “embodiment[s]” of “intellectual property” under, Section 365(n) of the United States Bankruptcy Code (the “Code”). If Developer or its estate becomes subject to any bankruptcy or similar proceeding, Customer will retain and have the right to fully exercise all rights, licenses, elections, and protections under this Agreement, the Code and all other applicable bankruptcy, insolvency, and similar Laws with respect to the Mobile App.

(b) Without limiting the generality of the foregoing, Developer acknowledges and agrees that, if Developer or its estate becomes subject to any bankruptcy or similar proceeding:

(i) all rights and licenses granted to Customer hereunder will continue subject to the terms and conditions of this Agreement, and will not be affected, even by Developer's rejection of this Agreement; and

(ii) Customer will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to the Mobile App, and the same, if not already in Customer's possession, will be promptly delivered to Customer, unless Developer elects to and does in fact continue to perform all of its obligations under this Agreement.

15.2 Further Assurances. Upon a Party's reasonable request, the other Party shall, at such other Party's sole cost and expense, promptly execute all such further documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.3 Relationship of the Parties. The relationship between the Parties is that of independent Developers. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.

15.4 Public Announcements. Neither Party will issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation or sponsorship, in each case, without the other Party's prior written consent, which consent may not be unreasonably withheld.

15.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving notice from time to time in accordance with this Section). All notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) or email] (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a notice is effective only: (a) upon receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

15.6 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference (specifically including but not limited to the RFP and the RFP Response) and all related schedules, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency

between the statements made in the body of this Agreement, the related schedules, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its schedules; (b) second, the schedules to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

15.7 Assignment. Developer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of Law or otherwise, without Customer's prior written consent, which consent Customer may not unreasonably withhold. No delegation or other transfer will relieve Developer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.7 is void. Customer may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Developer's consent. This Agreement is binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

15.8 State Audits. Under Minn. Stat. § 16C.05, subd. 5, the Developer's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

15.9 Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions. Developer certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Developer's certification is a material representation upon which the Agreement award was based. Developer shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

15.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

15.11 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.12 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.13 Governing Law, Jurisdiction, and Venue. Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15.14 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of **Error! Bookmark not defined.**8 or Section 9 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity, or otherwise, subject to any expression exclusions or limitations in this Agreement to the contrary.

15.15 Background Investigations. Upon execution of the Contract, and upon the addition of a new employee, officer, director or owner, Developer shall submit to Customer a list of the names, addresses, dates of birth, social security numbers, and fingerprint cards bearing a signed authorization to allow law enforcement agencies to release to Customer any criminal history that pertains to such person, of all officers and employees of the Developer and any Developers involved in the work for delivering the scope of the Contract. This information is required for employees, officers, directors, five percent (5%) plus shareholders only for the division providing Contract-related services for Customer. For the avoidance of doubt, this does not apply to Developer's shareholders owning publicly traded shares. Customer may inspect all premises of the Developer or authorized subcontractors involved in providing services required by the Contract, to determine the degree of compliance with security and operational requirements. Such inspection/audit may be unannounced. Customer or authorized personnel may conduct a background investigation of the Developer, all of its principals, and each individual assigned to the project, pursuant to Minnesota Statutes, section 349A.07, subdivision 2. The ability to conduct such investigations is a continuing right of Customer throughout the Term of the Contract.

15.16 Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Developer or member of the immediate family of the officer or employee residing in the same household of the officer or employee may purchase a lottery ticket from Customer or be paid a prize from Customer from a game or promotion during the term of the Contract. For the purpose of this section, "immediate family member" means spouse, child, brother,

sister or parent living in the same household as the officer or employee. To effectuate this provision, in addition to the persons in section 3.1 above, the Developer may be required to provide social security numbers of prohibited persons along with signed authorization of such.

15.17 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set out above.

[DEVELOPER NAME]

By _____

Name:

Title:

Minnesota State Lottery

By _____

Name:

Title:

SCHEDULE A

APPROVED THIRD-PARTY MATERIALS AND BACKGROUND TECHNOLOGY

SCHEDULE B
MILESTONE SCHEDULE

Milestone 1 [DELIVERABLES DESCRIPTION]	[DATE]	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]
Milestone 2 [DELIVERABLES DESCRIPTION]	[DATE]	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]
Milestone 3 [DELIVERABLES DESCRIPTION]	[DATE]	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]
Milestone 4 [DELIVERABLES DESCRIPTION]	[DATE]	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]
Milestone 5 [DELIVERABLES DESCRIPTION]	[DATE]	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]
Monthly Fee	Invoiced on or after the <input checked="" type="checkbox"/> of each month for 36 months following the Go Live Date	[AMOUNT OF APPLICABLE DEVELOPMENT FEES INSTALLMENT]

SCHEDULE C
SPECIFICATIONS

[Those products and services requested in and pertaining to the RFP (attached hereto as Schedule C1), as described in detail in Developer’s Proposal (attached hereto as Schedule C2), as may have been clarified and modified in response to questions submitted by Customer (attached hereto as Schedule C3). Schedules C1, C2, and C3 are incorporated into this Agreement by reference the same as if recited at length and are made a part of this Agreement for all purposes.]

SCHEDULE D
PROJECT MANAGERS

SCHEDULE E

MAINTENANCE AND SUPPORT

[Insert Service Level Agreements from RFP Proposal.]

Insert Definition of In Scope Maintenance and Support

Insert Rates from RFP Proposal for Out of Scope upgrades]