

Request for Proposal Mobile App Development/Design and Related Services

Issued by

Multi-State Lottery Association

Date of Issuance: January 2, 2020

Proposals to RFP Due January 27, 2020 by no later than 3:00 P.M. CT

INTRODUCTION

The Multi-State Lottery Association (MUSL) is an unincorporated non-profit government benefit association owned and operated by thirty-eight (38) governmental lotteries (Member Lotteries). MUSL assists both Member Lotteries and additional lotteries licensed to sell multi-jurisdictional lottery games such as POWERBALL®, in the operation and sale of those lottery games.

Currently, MUSL is pursuing the development of a mobile application. The app will be used by players across the United States, and possibly internationally. It is expected that this app perform consistently, be compatible with popular mobile platforms, load within five (5) seconds, offer ease of use for checking game numbers, and gaining access to applicable lotteries. Achieving app store optimization will also be a key factor in offering the official POWERBALL app. The app will not allow purchase of tickets, but should have the capability of re-directing users to various state-specific websites for further information.

The app should be able to update routinely, efficiently and quickly information regarding the POWERBALL® game and drawings.

2020 TIMELINE FOR THE RFP

January 2 – RFP issued
January 10 – Questions from Interested Vendors
January 15 – Answers to Vendor Questions
January 27 - Proposals Due by 3:00 pm CT
Week of February 3 – Vendor interviews (at the discretion of MUSL)
February 10 – Selection
February 10 – 24 – Contract Negotiation

PROPOSALS

Proposals are due no later than January 27.

Proposals must be sent by email to Procurement@musl.com, **and** three (3) hard copies by USPS or overnight delivery to:

Procurement
Multi-State Lottery Association
4400 NW Urbandale Drive
Urbandale, IA 50322

All Proposals must include a transmittal letter, signed by an officer of the company that indicates The company will provide the goods and services requested in this RFP in accordance with this RFP and the company's proposal; warrants that it has not made any material misrepresentation or omission in connection with its Proposal; has not acted with other entities, including other companies that might submit a proposal, to restrict competition for this solicitation; and, has not agreed to pay any person or entity (other than a bona fide employee of the company) a fee or commission conditioned on the award of this contract.

Companies interested in submitting proposals shall contact only MUSL at Procurement@musl.com; other communications may be grounds for disqualification.

REQUEST FOR PROPOSAL

A. BACKGROUND INFORMATION

MUSL desires to engage a mobile app developer that will also supply related services, such as cutting-edge and interesting design elements, implementation and maintenance. Requirements for any future app design will likely highlight content used on POWERBALL.com, the official site.

Additionally, MUSL will require that the app design/development will be user friendly and allow users to perform these activities: enter and save ticket numbers and other information; scan tickets to see if the ticket-holder is a winner of any POWERBALL prize; view present and past winning numbers (manual, and/or camera OCR entry availability); receive notifications regarding various events; and create accounts to sync information to other devices.

MUSL will need assistance and information regarding the scanning capabilities used for various items (play slips, tickets) that do not use universal bar codes or design. Ideally, the app will scan any ticket or play slip from any and all of the 47 jurisdictions that sell the POWERBALL game.

The app should be compatible with a number of operating systems, including iOS and Android. MUSL will require that the Vendor manage all submissions to Apple App Store and Google App Store. Vendor will be responsible for completing any requirements so that the app is available on each of the two stores.

B. PROJECT REQUIREMENTS

1. GENERAL REQUIREMENTS

- a. The selected Vendor will be required to produce an attractive and engaging mobile app design, which allows users to create accounts, and addresses ADA (Americans with Disabilities Act) compliance. MUSL shall provide the final approval of the mobile app design.
- b. Proposals must also include a plan for regular updates and a description of the Vendor's capacity to perform the updates, and associated costs.
- c. Additionally, the Proposal should include an option for integration of the sub-content for other games and provide a solution for the simple management of additional game content, including the ability to remove and/or add game information.
- d. The mobile app design must include state lottery links and/or display of appropriate lottery(ies) through geolocation.
- e. The mobile app design must incorporate a variety of information, including, but not limited to near real-time updates of selected numbers for POWERBALL drawings and informational pages of participating lotteries.
- f. The mobile app should include space for advertisement placement, opt-in to email list(s), and potentially allow entry points for promotions offered by MUSL and its Member Lotteries.
- g. The application should include options for push notifications to players if desired.
- h. MUSL suggests that the app be created using Xamarin. Communication with any required back-end services must be well documented and use software available to MUSL. MUSL also asks developers to offer other suggestions.
- i. Vendors should anticipate that MUSL will own the code for the proposed solution without additional royalty or other payments.
- j. A list of the staff who will likely be working on this mobile app redesign, including professional background information. Staff assigned to this project will undergo criminal background checks.
- k. Three client references, names and contact information.
- l. Proposals must include as separate line items the following costs:
 - I. Design and development
 - II. Ongoing support for MUSL
 - III. Ongoing maintenance services (annual fees)
 - IV. Ongoing costs for customer support (including responding to customer complaints and issues associated with the app performance (annual fees)).

2. USER EXPERIENCE

The overall user experience is one of, if not the most important elements of this Project.

- a. In addition to availability on the app stores identified above, the app must be available for download from a website.
- b. Game results in a readable, and possible other format (such as animation, etc.) must be available.
- c. MUSL desires Vendor's input to describe the best user experience possible in terms of visual interest, intuitiveness, keystrokes, etc.
- d. Updates must be made when necessary, along with notifications to users regarding the downloadable updates.
- e. Data analytics and that show number of visitors, users, user demographics, and user behaviors while using the app may also be required.

3. MAINTENANCE, WARRANTY AND SUPPORT SERVICES AND FEES REQUIREMENTS

- a. The successful Vendor will supply to MUSL a dedicated account manager as the primary point of contact throughout the development/design, maintenance and training stages.
- b. Any service level agreement (SLA) should allow for a 99.99% uptime; if Vendors cannot provide this level of service, please provide the SLA for your product.
- c. Vendor must provide a warranty period. Please describe in detail what type and length of warranty you will provide. Maintenance fees will begin after the warranty period has expired.
- d. Maintenance, updates, upgrades, power recycles or other action that stops the mobile app and its supporting or back-end system from fully functioning must be performed between 2:00 a.m. CT and 5:00 a.m. CT.
- e. The Vendor selected for this project must notify MUSL immediately (within one hours) by email to support@musl.com of any issue, bug, problem, etc. found during maintenance periods.
- f. It is required that maintenance of the mobile software application and its supporting and/or back-end system start subsequent to the warranty period, and continue throughout the life of the contract, including any renewals.
- g. It is mandatory that the Vendor, upon receiving notice from MUSL of the need for maintenance, work with MUSL to develop a plan and timely schedule for performing maintenance.
- h. During the contract the Vendor, upon receiving notice of any downtime (any event other than scheduled maintenance) that causes the mobile application software and/or its supporting or back-end system to suddenly stop performing, will immediately (within 30 minutes) work to fix the issue and recover the mobile software application and/or its

supporting system or back-end to its normal and full operation and functionality as soon as possible.

- i. The successful Vendor must make repairs within one (1) business day. For each day the system does not perform as intended, there shall be a credit of ten percent (10%) per day of the monthly maintenance fee to be applied to the next payment period.
- j. All actions of maintenance or work on the mobile software application and its supporting system or back-end be approved by MUSL prior to performance.
- k. Please explain in detail what kind of maintenance program can be provided.

4. ONGOING CUSTOMER SUPPORT REQUIREMENTS

- a. The Vendor selected for this project must provide ongoing customer support, and respond to questions and complaints within 24 hours of receipt. This includes responses to negative reviews of the app, complaints and/or questions about how to use the app, etc. Vendor shall submit weekly reports to MUSL which identify the questions and complaints, and the response to each.

5. SECURITY AND INTEGRITY REQUIREMENTS

- a. Both secured storage of any input and the transfer of user data to MUSL's systems are required.
- b. The mobile application software communications protocols must be tailored to meet all of MUSL's network security requirements, including but not limited to firewalls, and levels of authentication. The app and its support system in its implementation and performance shall not put the MUSL systems at risk to accessibility from outside entities.
- c. Security incident reporting shall be directed by MUSL, and will likely include immediate (within 30 minutes) notification by the Vendor to MUSL by telephone, email, or as otherwise specified by MUSL in the event of a security breach. Vendor shall cooperate with MUSL to investigate and remedy any breach of security, both short- and long-term as required. Items that are reportable shall be defined by MUSL in accordance with MUSL policies.
- d. Specific security requirements will be provided to the successful Vendor.
- e. The app shall not transmit ticket images from the device, nor store ticket images on the device. The app must store and transmit only the data specified by MUSL, and not store or transmit any other ticket information. Any OCR or barcode decoding must be performed on the device, unless the device has been registered to a person and the person's identity verified.

6. TECHNOLOGY TRANSFER AND TRAINING

- a. The Vendor must deliver the software source code assets and development tools to MUSL, and also provide formal instruction or training on the mobile software application development process and programming to MUSL personnel.
- b. The Vendor must include MUSL personnel in the mobile software application development and Vendor testing processes and update development processes as part of a technology-transfer instruction process.
- c. The technology-transfer instruction process must include on-site or remote training and classes scheduled and conducted by the Vendor. Documentation and instruction manuals on the development process, prepared by the Vendor, that are thorough and cover as many aspects of the development process as possible are required. Please explain in detail the methodology to accomplishing this transfer and performing the training.
- d. The Vendor must provide at least one (1) experienced mobile software application programmer who worked on the MUSL mobile software application to be available to MUSL personnel for up to 180 days after the technology-transfer instruction process has finished in order to answer questions, reinforce training and help MUSL personnel familiarize with and perform the duties of programming the mobile software application.
- e. The Vendor provide instruction or training on any operational activities, i.e. any periodic maintenance or procedures that maintain functionality and performance, required by the mobile software application and its supporting system or back-end.
- f. On a bi-monthly basis (or as mutually determined by the Parties) the Vendor should advise MUSL of future industry trends and requirements as part of its communication with MUSL during development, implementation, technology transfer and training, and the maintenance period of the mobile software application.

7. USER ACCEPTANCE TESTING REQUIREMENTS

- a. Once the successful Vendor has completed the design, development, and testing of the mobile app in accordance with the specifications and the Statement of Work (SOW) (if any), and prior to the actual launch date of the mobile app, the Vendor shall deliver the mobile app to MUSL for MUSL ("Acceptance Testing").
- b. The Acceptance Testing shall test compliance of the mobile app with the specifications and security requirements as required by MUSL. Vendor shall assist MUSL with Acceptance Testing as MUSL may require.
- c. Acceptance of the mobile app shall occur when the Mobile app has passed the Acceptance Testing process as determined by MUSL. MUSL shall formally accept the

mobile app with notification to Vendor as soon as reasonably practicable after Acceptance by MUSL.

- d. In the event that any Acceptance Tests are not passed, the defects that cause(d) the relevant failures (Defects) shall be documented by MUSL and the Vendor for discussion on how Vendor shall address and rectify such Defects.
- e. If any failure to pass the Acceptance Tests results from a defect which is caused by MUSL, or by one of MUSL's agents for whom the Vendor has no responsibility (Non-Vendor Defect):
 - i. the mobile app shall be deemed to have passed the Acceptance Tests;
 - ii. the Vendor shall provide all assistance reasonably requested by the MUSL in remedying any Non-Vendor Defect by supplying additional services or products;
 - iii. if such assistance in (ii) above is requested, MUSL shall pay the Vendor in full for all such additional services and products at the Vendor's then current fees and prices, as mutually agreed upon prior to provision of any additional services by Vendor to MUSL.
- f. If the Defect is caused by Vendor's work, the Vendor shall remedy any Defects promptly in order to ensure that the Mobile app passes the Acceptance Testing on a retest.
- g. If such a retest demonstrates that the Mobile app is still not in accordance with the Mobile app specifications due to Vendor code/work, MUSL may, by written notice to the Vendor choose to fix a new date for further tests on the Mobile app on the same terms and conditions as the retest at the Vendor's cost.
- h. If the Mobile app fails the retest in this clause, MUSL may, at its sole discretion:
 - i. choose to accept the Mobile app subject to a reduction of the payment to Vendor such reduction to be an amount that is reasonable, taking into account the circumstances; or
 - ii. reject the Mobile app as not being in conformity with this RFP, in which event this agreement shall automatically terminate and the Vendor shall refund to MUSL all sums already paid to the Vendor under this Agreement.

8. ADDITIONAL INFORMATION REQUIREMENTS

Please address these questions in your Proposal:

- a. How long have you been continuously engaged in the business of providing mobile application design/development/maintenance services?
- b. Please provide several examples of apps created by your company and/or current employees of the company.

- c. Will you be able to transfer all ownership of the source code, keys, and external sources used and required to run, maintain, and download the application?
- d. Will you provide training on technical and non-technical requirements necessary to maintain the app?
- e. Will the app allow for modifications? If modifications are performed by staff other than your company, what impact will those modifications have on the warranty you provide (if any)?
- f. On what mobile operating systems will your proposed app work?
- g. Please provide in detail the experience your company has in building applications involving cellular triangulation or GPS.
- h. What is your recommended platform (including functionality of the same, such as hosting and infrastructure availability, device and development support, backend integration, team based development and collaboration, administration and app management, reporting, scalability, and administration) for this application?
- i. Is the platform cloud-hosted? What is the disaster recovery capability?
- j. Which devices and operating systems are supported for the development of hybrid and native apps?
- k. Describe how the platform handles integration with back-end systems and data.
- l. Does the platform provide multiple environments for developers to separate development and production?
- m. Describe the options available for managing data security from device to back-end systems.
- n. Outline the hosting options supported by the platform (e.g. Public/Private/Hybrid), providing examples.
- o. Describe your experience in developing apps downloaded through the Apple App Store, Google Play, and Microsoft Store.
- p. Please provide a sample of the terms and conditions that you require users to accept.
- q. Please provide a copy of the legal and privacy notices associated with apps you have developed and deployed.
- r. How do you notify, facilitate and manage user updates?

- s. What are your capabilities to capture user input, and how to you store, share, and use historical data?
- t. What types of processes do you use to address downtime, interruption of services, and detecting/alleviating bugs?

9. ANTICIPATED PROJECT SCHEDULE AND DELIVERABLES

- Kick-off meeting: March 2020
Discuss in greater detail the content requirements
Assignment of tasks
Weekly meetings during the project schedule by Vendor
- Anticipated mobile app launch: May 2020
- Initial designs – Delivery on or before March 2020
- Modified design and test of mobile app – March/April 2020
- Final design and fully-functioning mobile app – May 2020
- All source code and assets – Delivered upon final acceptance of design – May 2020

10. EVALUATION AND VENDOR SELECTION

Vendor Evaluation and Selection will begin February 2020

The following are criteria which will be used for consideration of Proposals (order not necessarily indicative of evaluation weighting): Prior design work and vision for the Project; ability to perform the requirements of the RFP; and, proposed costs.

Proposals should address each requirement by section and paragraph; general sales and marketing materials are not helpful to the team that will evaluate the Proposals.

MUSL may contact any Vendor for clarifications or additional information regarding their Proposals and may negotiate contract terms including Scope of Work, deliverables and budget.

MUSL may contact any client or former client of the Vendor for additional information on the Vendor's services.

MUSL will notify all Vendors submitting proposals as to the selection.

Anticipated contractual terms are located on the following pages.

11. MUSL Contact Information

Thank you for your interest in this Project.

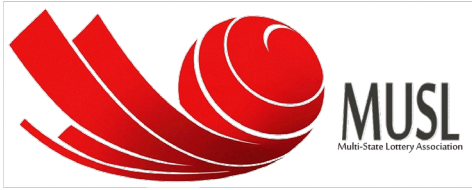
Interested vendors may submit their questions by email only (**no phone calls**) to:

Procurement@musl.com

Note: *The Selected Vendor is subject to successful completion of a financial and criminal history background check of the organization, its owners and any staff who will be assigned to work on the mobile app design. Any resulting contract will include requirements regarding confidentiality, bonding and insurance, compliance with MUSL security requirements, intellectual property assurances and other provisions. Vendors should review the attached Agreement and anticipate that the terms and conditions contained therein will form the basic Agreement.*

Vendors are responsible for their own costs in the submission of Proposals to this RFP; MUSL will not reimburse any vendor costs incurred in the submission of their Proposal. MUSL is not required to enter into a contract with any Vendor due to the issuance of this RFP.

By issuing this RFP MUSL is not offering to enter into a contract with any interested Vendor, nor does acceptance of a proposal or additional information constitute an agreement to enter into a contract with any interested Vendor. Vendor selection schedule may change.



**MOBILE APPLICATION DEVELOPMENT
AND
SERVICES AGREEMENT**

This Mobile Application Development and Services Agreement ("Agreement") is made by and between XXXXXXXX (the "Vendor") and the Multi-State Lottery Association ("MUSL"), collectively the "Parties", for and on behalf of the state lotteries that are parties to the Amended and Restated Multi-State Lottery Agreement dated September 30, 2013, as it may be amended from time to time as of the date upon which both parties have executed this Agreement (the "Effective Date").

WHEREAS, MUSL requires the services of a Mobile Application vendor to develop a mobile application platform (the "app" or "project") for the sole purpose of providing information on the Powerball game, and to provide ongoing services to support the app;

WHEREAS, the Vendor possesses experience and qualifications in performing the services described;

WHEREAS, MUSL wishes to engage the Vendor to perform the services described below.

THEREFORE, the Parties agree as follows:

1. SCOPE OF SERVICES. MUSL desires Vendor to perform, and Vendor agrees to perform, the services as identified in the Request for Proposal, the Vendor's Proposal, and as specified in Exhibit A (the "Services"), attached hereto and/or incorporated by reference. In the event of a conflict, the requirements of this Agreement shall govern.

2. ADMINISTRATION. The individuals in charge of administering this Agreement on behalf of MUSL and the Vendor, respectively are:

- a. Executive Director or Designee on behalf of MUSL;
- b. XXXXXX on behalf of Vendor.

3. TRADEMARK LICENSE. MUSL grants to Vendor a limited, non-exclusive, royalty-free and revocable right to use the Powerball and associated trademarks, both in word and design in order to perform the Services of developing the app. The display of any logo or MUSL Trademarks shall be performed in compliance with MUSL's policies governing use of such logo or Trademark. MUSL agrees to provide all such policies to Vendor. The use of any logo or trademark requires prior, written sign-off by MUSL on samples of each display offered by

Vendor. Vendor agrees it shall not use any of the MUSL trademarks or any combination thereof, with or without any other words, logos, or images, as part of its corporate name, or for purpose of advertising Vendor's business, without the prior written consent of MUSL. On termination of this Agreement, or on the request of MUSL, Vendor shall, as promptly as commercially practicable discontinue all use of the MUSL trademarks. Vendor shall not directly or indirectly license or attempt to license, whether orally or in writing any person or entity to use any of the MUSL trademarks, and shall not use the Powerball or other associated MUSL-owned or used marks in connection with any other project.

3.1 Ownership of the App. The code and application program interface, and the name of the app developed for MUSL shall be owned by MUSL. All rights to content, usage, advertising of the app and any modifications and /or upgrades to the owned content shall also be owned by MUSL.

4. NON-EXCLUSIVE AGREEMENT. Nothing in this Agreement shall be construed or interpreted to prevent MUSL and/or its members from obtaining the same or similar services and app development, or any other services as described in this Agreement. This Agreement is not an exclusive agreement as related to MUSL or its members.

5. PERFORMANCE. The Vendor shall perform the Services at such times and in such sequence as may be reasonably requested by MUSL. Vendor shall comply with any timeline or deadlines for app delivery, and all service levels as identified in Exhibit A.

6. FEES. Fees will be paid to Vendor as identified in Exhibit C so long as the service levels identified in Exhibit A are met by Vendor, and successful testing is performed, and final acceptance in writing of the app is provided by MUSL, as set out in Exhibit B. Exhibits B and C are attached hereto and incorporated by reference.

7. TERM. The initial term of this Agreement shall be for one (1) year following the Effective Date, unless otherwise terminated in accordance with the provisions herein.

8. RENEWALS. The Agreement shall automatically renew for additional one (1) year terms for four years (total term of the Agreement shall not exceed five (5) years) unless either party provides a 30-day notice to the other. Termination provisions may be applied to renewal periods.

9. TERMINATION. This Agreement may be terminated prior to the expiration of the initial Term, and/or during any renewal period pursuant to the following:

9.1 Mutual Agreement. The parties may terminate at any time by mutual written agreement of both parties.

9.2 By MUSL or Vendor. Either party has the right to terminate this Agreement immediately upon notice to the other party on any of the following grounds:

(a) For Cause. For purposes of this Agreement, any of the following shall constitute cause: conviction of the party or one of its principals for any felony under federal or state law or any violation of federal or state law that materially jeopardizes the business interests of the terminating party, without regard to whether it leads to a criminal conviction; willful misconduct or gross negligence that jeopardizes the business interests of the terminating party or its affiliates/partners/owners/customers, in the sole discretion of the terminating party; the commencement of a lawsuit against the terminating party as a result of the acts or omissions of the non-terminating party; the material breach of this Agreement which is not cured to the reasonable satisfaction of the non-breaching party within ten (10) days of receipt of written notice of such breach describing, in reasonable detail, the nature of the breach and the sections of this Agreement being breached;

(b) If the non-terminating party attempts to assign or transfer this Agreement or any right granted under the terms of this Agreement without the prior written consent of the other party (except where the party in question is being acquired by a third party and the third party is assuming or otherwise becomes legally responsible for the acquired party's obligations under this Agreement); or

(c) Immediately upon operation of law.

9.3 By MUSL. MUSL shall have the right to terminate for convenience this Agreement with a 15-day notice to Vendor. Upon notice, User Data shall be provided to MUSL no less than 15 days after termination of the Agreement in a format as required by MUSL. Should Vendor fail to provide the User Data, or fails to provide the User Data in a format as required by MUSL, liquidated damages in the amount of \$25,000 shall be paid by Vendor within 15 days of the failure to provide the User Data, or failure to provide the User Data in a format required by MUSL.

Upon receipt of written notification of termination from MUSL, Vendor shall (unless otherwise directed by MUSL in the notice): immediately cease to perform the Services; and shall assemble and deliver to MUSL within five (5) days all Records and User Data (as further defined below) in its possession or custody; and, cease use of the Powerball and associated marks.

10. CONFIDENTIALITY AND NON-DISCLOSURE

10.1 "Confidential Information" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, by MUSL (the "Disclosing Party") to the other Party (the "Recipient") or discovered by the Recipient, or its affiliates, or disclosed to or discovered by any of such Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors (collectively, "Representatives"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," including, without limitation:

(a) all information concerning the Disclosing Party's and its Member and Licensee Lotteries, their affiliates', and their customers', suppliers' and other third parties' past, present and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies;

(b) the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(c) all designs, specifications, documentation, components, source code, object code, images, icons, audio-visual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(d) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient or its Representatives; and

(e) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials (the "**Notes**") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing or otherwise are created as result of the Purpose.

10.2 Exclusions from Confidential Information. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

10.3 Recipient Obligations. The Recipient shall:

(a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose or any related transactions between the Parties, or otherwise in any manner to the Disclosing Party's detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Disclosing Party's proprietary services, products and/or confidential intellectual property;

(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

(ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

(iv) be responsible for any breach of this Agreement caused by any of its Representatives.

10.4 Additional Confidentiality Obligations. Except as required by applicable federal, state or local law or regulation, or otherwise as mutually agreed to in writing by the Parties, the Recipient shall not, nor permit any of its Representatives to, disclose to any person that the Confidential Information has been made available to it or its Representatives, or that it has inspected any portion of the Confidential Information; that discussions or negotiations may be, or are, underway between the Parties regarding the Confidential Information or the Purpose, including the status thereof; or any terms, conditions or other arrangements that are being discussed or negotiated in relation to the Confidential Information or the Purpose.

10.5 Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall provide the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a

protective order or other remedy; and reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient's legal counsel, such Legal Order specifically requires the Recipient to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

10.6 Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed.

11. DATA OWNERSHIP, USAGE AND PRIVACY. The parties make the following agreements and acknowledgements regarding the data (both personal data and metadata) collected from users of the app ("User Data"). The requirements of this provision shall survive both termination of this Agreement, as well as any transfer of assets by XXXXXXXX to any other party or parties.

(a) User Data Ownership. MUSL shall own all User Data. The collection of the User Data and use shall be in accordance with privacy laws, as provided for in section (ii) below. MUSL may obtain the User Data upon written request, which Vendor shall provide upon written request within three (3) business days, the whole in a format required by MUSL. In the event of termination of the Agreement, Vendor shall supply the User Data within three (3) business days in a format required by MUSL.

No personally identifiable information (PII), other than email addresses may be collected by Vendor. Vendor shall ensure that users are appropriately informed that PII may be collected and if a user does not consent to collection of the PII, no downloading of the app shall occur.

Vendor may not use User Data for any reason, and shall not sell, lease or otherwise make available (other than for verification activities noted above) the User Data to a third party to use in marketing and advertising, provided, however, this restriction will not apply to a sale of User Data as part of a sale of all or substantially all of the assets of Vendor, or a transfer in connection with a merger or other combination of Vendor with one or more third parties, where Vendor is not the surviving entity (so long as the surviving entity will remain subject to the provisions of this Section, and is not a direct or indirect competitor of MUSL).

Vendor may not use the User Data to contact individuals. Additionally, Vendor shall not, without prior, express written consent of MUSL, which MUSL may withhold in its sole discretion, use the User Data, directly or indirectly to: send any marketing communication, display any advertising, or send any email, message, text or other communication to or using the user data.

(b) Privacy Policy. Vendor agrees to adopt and maintain at all times a privacy policy that complies with data privacy and security best practices, and is compliant with all laws and regulations, including international laws applicable to commercial website, online and mobile application owners and operators.

(c) End User Agreement. Vendor agrees to adopt and maintain at all times an end user agreement that, among other information, provides for consent of users of information being collected, and how that information may be used.

(c) Marketing Restrictions. Vendor expressly agrees that without the prior, express written consent of MUSL, which MUSL may withhold for any reason, Vendor will not sell, lease or otherwise make available the User Data to a third party to use in marketing and advertising, provided, however, this restriction will not apply to a sale of User Data as part of a sale of all or substantially all of the assets of Vendor, or a transfer in connection with a merger or other combination of Vendor with one or more third parties, where Vendor is not the surviving entity (so long as the surviving entity will remain subject to the provisions of this Section including but not limited to obtaining express written consent of MUSL regarding use of the User Data.

(d) MUSL-retained Rights. MUSL shall retain the rights to the content, usage data, advertising of the app and any modifications/updates to its owned content.

12. REPORTING. Vendor will provide, by the 10th business day of each calendar month, a report to MUSL with information regarding sessions, views, and similar information for the preceding month relating to the app.

13. REPRESENTATIONS AND OTHER AGREEMENTS.

13.1 Authority. Each Party represents and warrants that it has the right, power and authority to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations described herein.

13.2 Vendor Indemnification. Vendor agrees to indemnify, defend and hold MUSL and its designee(s) and their officers, directors, agents, representatives, Member Lotteries, shareholders and employees harmless from and against any and all claims, suits, expenses, damages and other liabilities, including reasonable attorney's fees and court costs, arising out of: (i) the breach by Vendor of any of the representations and warranties made by Vendor in this Agreement; and/or (ii) any activity by or on behalf of Vendor in advertising or operation of the mobile app that results in MUSL and/or its designee(s) being found liable to any third party(ies) for such activity; (iii) against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection

with any action or proceeding threatened or brought to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by Vendor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trademark, license, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. This section shall survive termination of the Agreement.

In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in Vendor's opinion be likely to become the subject of a claim of infringement, Vendor shall at Vendor's sole expense (i) procure for MUSL the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to Vendor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing. provided, however, the foregoing indemnity will not apply to any claims, suits, expenses, damages or other liabilities, which arise out of, relate to, or are contributed to in any material way by any act or omission of MUSL.

14. MUSL RELEASE OF LIABILITY. MUSL and its designee(s) release Vendor and its officers, directors, agents, representatives, shareholders and employees from liability for any action arising out of: (i) the breach by MUSL and/or its designee(s) of any of the representations or warranties made by them in this Agreement; and (ii) the authorized use by Vendor, of any MUSL-owned trademarks during the term of this Agreement.

15. RESPECTIVE INTELLECTUAL PROPERTY RIGHTS. The parties acknowledge that all rights in the app will be owned exclusively by MUSL. Vendor acknowledges and agrees that, except as provided herein, it shall have no right, title or interest in or to any of MUSL's intellectual property. Content and information provided on the app will be controlled by MUSL. Each party represents and warrants to the other that the party has all necessary rights, whether by ownership, license or other means, to any and all content prepared and posted by such party.

16. THIRD-PARTY PRODUCTS. If Vendor uses any third-party products, Vendor shall secure a license of the third-party products, and transfer the license to MUSL.

17. NOTICES. Notices by either party to the other will be given by personal service, by fax, by registered or certified mail, return receipt requested, or by private overnight mail courier services, to the respective addresses set forth below.

MUSL:

Executive Director
Multi-State Lottery Association
4400 NW Urbandale Drive
Urbandale Iowa 50322
515-453-1420 (Fax)

With a copy to:

Legal Department
Multi-State Lottery Association
4400 NW Urbandale Drive
Urbandale, Iowa 50322
legal@musl.com

Vendor:

XXXXXXXX

[Address]

[email, phone, fax]

18. INSURANCE REQUIREMENTS. Vendor shall maintain adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent of them, for and from all claims of liability which is or may be the result of Vendor's actions during the performance of the contract. The purchase or non-purchase of such insurance or the involvement of Vendor in any legal or equitable defense of any action brought against Vendor based upon work performed pursuant to the contract will not waive any defense which MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent might otherwise have against such claims, specifically including the defense of sovereign immunity where applicable, and MUSL, its Members and their individual jurisdictions, and any agency, officer and/or employee or agent thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

Vendor shall purchase and maintain insurance for claims set forth below which may arise out of or result from Vendor's operations under the contract, whether such operations be by Vendor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims under workers' compensation, disability benefit and other similar employee benefit acts per statute in each state in which Vendor does business.
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death of Vendor's employees
- (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than Vendor's employees
- (d) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom

(e) General Liability insurance coverage with limits of not less than \$2,000,000 for injury to any one person, \$4,000,000 for any one occurrence of personal injury and \$2,000,000 for any one occurrence of property damage.

19. PUBLICITY. All media releases, public announcements and public disclosures by the Vendor relating to this Agreement or its subject matter, including promotional or marketing material, shall be coordinated with, and pre-approved by MUSL. MUSL reserves the right to disallow any and all media releases, public announcements and public disclosures (unless otherwise required by appropriate law) by the Vendor relating to this Agreement or its subject matter, including promotional or marketing material.

20. FORCE MAJEURE. Vendor shall not be liable to MUSL or its designee(s) for delay or default in the performance of or completion of any services under this Agreement, if caused by conditions beyond its control, including, but not limited to, any act of God, governmental authority, or war, terrorist act, riot, fire, flood, severe weather, earthquake, accident, telecommunications or network failures, failure of the Internet, or electrical outages.

21. APPLICABLE LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa, without regard to its conflicts of law principles. The parties agree to submit to the exclusive jurisdiction of the state and federal courts located in a court of competent jurisdiction with respect to any legal proceeding arising out of this Agreement, waiving all defenses with respect to jurisdiction, forum and venue. This Agreement and associated exhibits are the complete and exclusive agreement between the parties with respect to the subject matter and supersede any prior or contemporaneous agreements, negotiations and communications, whether written or oral, between the parties regarding such subject matter.

22. MODIFICATIONS AND AMENDMENTS. This Agreement may only be modified amended, or any rights under it waived, by a written document executed by both parties. This Agreement may be executed in multiple counterparts and by facsimile, each of which, when so executed, shall be deemed to be an original copy hereof, and all such counterparts together shall constitute one single agreement.

23. AUDIT. MUSL shall have the right to audit the Developer's compliance with this agreement on giving seven days' written notice to the Developer. At the MUSL's option, this audit may cover documents only or may include onsite audit, subject to the MUSL notifying the Developer of the identity of any onsite auditors and giving confirmation that any external auditors have entered into appropriate confidentiality agreements.

24. MISCELLANEOUS. If any provision of this Agreement is declared invalid and /or contrary to any law of public policy, the remaining provisions hereof will continue to remain in full force and effect. MUSL and its designee(s) will not have the right to assign, sell, lease, license or sublicense, in whole or in part, any of its rights or obligations hereunder. A waiver of a breach or

default will not constitute a waiver of any terms or conditions of this Agreement or of any subsequent similar breach or default.

IN WITNESS HEREOF, the parties are executing this Agreement as of the date set forth below.

Multi-State Lottery Association

By: _____

Name: _____

Title: _____

Date: _____

Vendor

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

SERVICES AND DELIVERABLES

1. Services. Vendor will provide creation and maintenance of the information-only mobile app for Powerball, for the transmittal and upload of information of lottery draws and the upload of short video clips by MUSL, all of which are then accessible by Users of the app.
2. Vendor will gain pre-approval from MUSL for app design, content, including any and all content and/or ad placement, and any modifications made to the app
3. Minimum requires for the Vendor and the app:
 - (a) The app shall be on both iOS and Android platforms
 - (b) Vendor will ensure the app is accessible from both the Google and Apple App Stores
 - (c) Privacy policies and end user license agreements will be developed and provided by Vendor
 1. Vendor shall not shift any liability to MUSL in the privacy policies or end user license agreements
 - (d) Vendor shall supply customer service support for Users seven days per week, 8:00 a.m. to 5:00 p.m. CT.
 - (e) Updates shall be performed by Vendor during off-peak hours, to be determined by MUSL
 - (f) 24/7/365 access to content manager for MUSL's team to update
 - (g) 24/7/365 support from Vendor's assigned App account manager
 - (h) 99.9% uptime for app
4. Deliverables:
 - (a) A Powerball app that is user friendly and easy to use
 - (b) Free training and ongoing consultation for MUSL in the use of the app to achieve MUSL's objectives, such as improving brand identity, and increasing awareness of Powerball
 - (c) Monthly analytics meeting with MUSL and its marketing team
 - (d) Analytics reports provided on an ongoing basis to MUSL, at any time upon request

(e) Monthly updates with both management and marketing teams to review the current status and upcoming goals

(f) Specifications used for the app for review and approval by MUSL. Should any specification not meet with MUSL approval, Vendor shall change the specification(s) as required by MUSL.

5. Download Prompt; App Download Message. Vendor will create and provide the necessary code, documentation and instructions for a download prompt on the Powerball.com website for use by Users accessing the website via a mobile browser, and an app download message for use with Powerball print advertising.
6. User registration for the app will collect for each user a valid email address, a password (if required by MUSL), confirmation that the user is 18 years of age or older (by affirmative action of clicking a button), an acceptance of the terms of use, and an understanding of the privacy policies, which shall include that the app is collecting personally identifiable information, user consents to the collection of the PII, and that the privacy policies will be updated on an as-needed basis on the app.

EXHIBIT B

TESTING AND FINAL ACCEPTANCE OF THE APP

Pursuant to section 5 of the RFP, once the Vendor has completed the design and development of the App in accordance with any specifications and statements of work that may be devised by MUSL, and prior to the actual launch date of the App, the Vendor shall deliver the App to MUSL for Acceptance Testing.

The Acceptance Testing shall test compliance of the App with the specifications and security requirements as required by MUSL. Vendor shall assist MUSL with Acceptance Testing as MUSL may require.

Acceptance of the App shall occur when the App has passed the Acceptance Testing process by MUSL. MUSL shall formally accept the app with notification to Vendor as soon as reasonably practicable after Acceptance by MUSL.

In the event that any Acceptance Tests are not passed, the defects that cause(d) the relevant failures (**Defects**) shall be documented by MUSL and the Vendor for discussion on how Vendor shall address and rectify such Defects.

If any failure to pass the Acceptance Tests results from a Defect which is caused by MUSL, or by one of the MUSL 's agents for whom the Vendor has no responsibility (**Non-Vendor Defect**):

- (a) the App shall be deemed to have passed the Acceptance Tests;
- (b) the Vendor shall provide all assistance reasonably requested by the MUSL in remedying any Non-Vendor Defect by supplying additional services or products;
- (c) if such assistance in (b) above is requested, MUSL shall pay the Vendor in full for all such additional services and products at the Vendor's then current fees and prices, as mutually agreed upon prior to provision of any additional services by Vendor to MUSL.

The Vendor shall remedy any Defects promptly in order to ensure that the App passes the Acceptance Testing on a retest.

If such a retest demonstrates that the App is still not in accordance with the App specifications, MUSL may, by written notice to the Vendor choose to fix a new date for further tests on the App on the same terms and conditions as the retest at the Vendor's cost. If the App fails the retest in this clause, MUSL may, at its sole discretion reject the App as not being in conformity with this Agreement, in which event this agreement shall automatically terminate.

EXHIBIT C

FEES

Payments to Vendor are made upon successful completion of major milestones as mutually agreed upon by the Parties. No pre-payments will be made, and undisputed payments will be made within 45 days of receipt of an invoice.

EXHIBIT D

SAMPLE STATEMENT OF WORK

STATEMENT OF WORK

FOR

(PROJECT NAME)

As agreed to by

THE MULTI-STATE LOTTERY ASSOCIATION

And

VENDOR/SUPPLIER NAME

Pursuant to the Agreement, signed by the Multi-State Lottery Association and (NAME OF VENDOR) ("Parties") on **XXX, 20XX**, this Statement of Work (SOW) is hereby incorporated and made a part of the Agreement. Any modifications to the SOW must be mutually agreed to in writing, and signed by the Parties in accordance with the Change Order provisions identified below.

1. Introduction

Describe the deliverables-based services and/or goods and each of the deliverables at a summary level.

2. Background

Why MUSL is contracting for this deliverables-based service. Provide useful information regarding the MUSL organization, project history, future plans or any other relevant information regarding the work to be performed. Identify the Project Managers for the Project.

3. Scope

(Example - Provide a detailed listing of what will be required for the project)

- Scope of work
- Security measures
- Roles and responsibilities of the supplier and MUSL
- Detailed description of deliverables (see chart below)
- Acceptance criteria
- Project completion criteria and date
- Project schedule
- Identify who from MUSL, and who from the vendor will be responsible for monitoring and tracking the services and performance
- A kickoff meeting will be held no later than **XXXXXX, 20XX** at a location and time selected by MUSL where

the Vendor and its staff will be introduced to MUSL staff.

4. Deliverables

(Example – at a minimum, MUSL should consider the following items when developing the SOW)

- Deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the MUSL project manager, or contract manager, or designee.
- All deliverables must be submitted in a format pre-approved by the MUSL project manager.
- If the deliverable cannot be provided within the scheduled timeframe, the Vendor is required to contact the MUSL project manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project, including any impacts to project costs.
- A request for a revised schedule must be reviewed and approved, in writing by the MUSL project manager before being effective. Contract Terms and Conditions may dictate that an amendment be entered into, and should reflect the appropriate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
- MUSL will complete a review of each submitted deliverable within specified working days from the date of receipt, and identify if the deliverable is accepted (per the acceptance criteria), or, if the deliverable is rejected as not meeting the agreed-upon deliverable. Vendor will have time to correct the deficiencies.

Sample Delivery Schedule

| No. | Item | (optional column for payment amount associated with the deliverable or other requirements) | Due Date | Recipient |
|-----|-------------------------------------|--|----------|-----------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | Project completion/sign off by MUSL | | | |

5. Performance Monitoring

(Example – at a minimum, MUSL should consider the following items when developing their SOW)

- The Vendor is required to provide MUSL's project manager with weekly written progress reports of this project. Items to be covered in the progress report may include:
 - 1) Required documents (plans, estimates, schedules, analyses)
 - 2) Description of all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
 - 3) Identification of outstanding issues encountered with an explanation of the cause, proposed resolution, and timeframe in which the issue will be resolved.
 - 4) Schedule of progress/status meetings with the MUSL project manager.

6. Invoices

Describe the Vendor's responsibilities for invoicing MUSL including invoice content, frequency/schedule and instructions for submitting invoices. Payments will be made in accordance with the Contract.

7. MUSL/Vendor-Furnished Equipment and Work Space

Specify what equipment and/or work space the MUSL will provide or the expectations of what the Vendor will provide.

8. Pricing

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

(Example - expand or revise as needed)

| Deliverable No. | Deliverable Name | Price |
|------------------------|-------------------------|--------------|
| | | |
| | | |
| | | |

9. Acceptance Criteria

(Example – expand or revise as needed)

| Deliverable No. | Deliverable Name/Acceptance Criteria | Accepted (y/n) |
|------------------------|---|-----------------------|
| | | |
| | | |
| | | |

(Payments should be made based on MUSL's Acceptance of the Deliverables.)

10. Change Order Process

Changes to the original scope of the project shall be identified through a change order proposal, which shall be in writing, and submitted to the other party. The proposal shall describe the specific change(s) needed, why it wasn't identified in the original project scope, and how it will assist in successful completion of the project. The proposal shall also include the increase, or decrease in costs associated with the proposed change.

The other party shall have three (3) business days to review, and discuss with the other party. If accepted, the proposal shall be signed, and dated by both parties. If rejected, the parties may discuss alternatives to the proposal, and jointly develop a change order proposal for review, and signature.