

## INSTANT TICKET SUPPLY AGREEMENT

THIS INSTANT TICKET SUPPLY AGREEMENT ("**Agreement**") made and entered into effective as of May 21, 2015, by and between Pollard Banknote Limited, with offices at 1499 Buffalo Place, Winnipeg, MB Canada R3T 1L7 ("**Pollard**") and the Office of the Arkansas Lottery, with offices at 124 West Capitol Avenue, Suite 1400, Little Rock, AR USA 72201 ("**Lottery**") (each a "**Party**" and collectively the "**Parties**") which sets out the terms pursuant to which Pollard will design, manufacture and deliver to Lottery a range of lottery tickets for onward sale to the public.

In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties intending to be legally bound, agree as follows:

### 1. SUPPLY OF PRODUCTS

- 1.1 Subject to the terms and conditions of this Agreement, Lottery hereby engages Pollard as its non-exclusive provider of such Tickets as Lottery may request from time to time, and Pollard accepts such appointment.
- 1.2 Working Papers shall be agreed and executed by the Parties in respect of each order of Tickets by Lottery and shall be incorporated into this Agreement by reference as if written concurrently with the execution of this Agreement. Any inconsistency between the Working Papers and the terms of this Agreement shall be resolved by first giving effect to the terms of the Working Papers.

### 2. PRODUCT DETAILS AND PRODUCTION

- 2.1 The Tickets to be provided pursuant to the terms of this Agreement by Pollard are scratch-off, instant win lottery tickets to be manufactured in accordance with the technical specifications described in the Working Papers executed by the Parties from time to time.
- 2.2 In the absence of a detailed specification in respect of the supply of any Tickets or for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard for the manufacture of Tickets and related services.
- 2.3 Subject to Lottery's obligations under Section 9, Lottery shall be entitled, upon reasonable notice in writing to Pollard, to inspect the production of the Tickets at Pollard's manufacturing premises.

### 3. THE SERVICES

- 3.1 Pollard will perform the Services:
  - (a) in accordance with the Working Papers and the technical specifications specified therein which, for each order of Tickets, shall be substantially in the form attached as Appendix A;
  - (b) with reasonable skill and care;
  - (c) in compliance with all Applicable Laws;

- (d) in accordance with Lottery's reasonable instructions given in accordance with this Agreement;
  - (e) using the proprietary algorithm licensed for use by the Lottery and sublicensed for use by Pollard;
  - (f) performing the agreed upon procedures (AUP) on every game printed and will provide an independent accountant's report on applying the AUP substantially in the form attached as Appendix B; and
  - (g) by performing a trademark search for every game ordered from Pollard and providing a trademark search and clearance letter in a form acceptable to the Lottery.
- 3.2 Pollard will ensure that those Services to be performed by personnel are performed by sufficient numbers of its staff who are:
- (a) appropriately qualified and skilled; and
  - (b) employees of Pollard.

#### **4. PRICING**

- 4.1 The pricing matrix for the Tickets shall be as set forth in Appendix C and the pricing for each batch of Tickets shall be as confirmed in each applicable set of Working Papers.
- 4.2 Pollard shall invoice the Lottery upon delivery of the Tickets to the Lottery's premises. Payment for each batch of Tickets shall be made within thirty (30) days from the invoice issue date. If Lottery fails to pay when due any amount payable under this Agreement, Lottery shall pay to Pollard on demand interest on such unpaid amount from the date such amount was due, both before and after demand and judgment, until paid in full, at a rate equal to 3% per month, calculated daily and compounded monthly. The Lottery's obligation to pay in full all amounts due pursuant to this Agreement is absolute and unconditional under all circumstances and is not and shall not be subject to any claim, defence, set off, deduction, withholding or counterclaim for any reason whatsoever.

#### **5. OVER REDEMPTIONS**

- 5.1 The Parties agree that over redemption occurs any time Lottery pays or reimburses licensees, prize winners or any other persons or entities for prizes arising from sale of the Tickets which were not anticipated and approved in advance by Lottery in the Working Papers as a result of Pollard's error or an error of a third party or individual working on behalf of Pollard.
- 5.2 If over redemption occurs, Pollard agrees to reimburse Lottery for all liabilities incurred which are attributable to over redemption and to indemnify Lottery for all liabilities, damages, losses, claims, suits or actions, costs, expenses, and attorney's fees, arising from the over redemption.
- 5.3 If the Lottery interrupts a game due to over redemption as defined above, Pollard shall reimburse the Lottery for the aggregate of Lottery's purchase price from Pollard of any Tickets not sold by Lottery due to the interruption of the game and the direct expenses of Lottery associated with the recall of the game together with a proportionate share of

any expenses incurred in advertising or promoting the game for which Lottery did not receive full value due to the interruption of the game.

- 5.4 Pollard shall reimburse Lottery's expenses on a proportionate basis which reflects the relationship which the number of Tickets unsold has to the number of Tickets ordered in the game. In determining the percentage of Tickets sold and unsold, the total delivered quantity delivered to Lottery shall be used, unless all deliveries have not yet been made, in which case, the ordered quantity shall be used. In either case, Lottery shall pay only for Tickets actually sold to the public.
- 5.5 If a game is interrupted as a result of over redemption, Pollard shall take all reasonable steps, including the payment of overtime, to ensure that the Lottery obtains replacement Tickets in the shortest possible time. Pollard shall not charge the Lottery for any additional expenses incurred to facilitate the expedited delivery of replacement Tickets.

## **6. WARRANTIES AND REPRESENTATIONS**

6.1 Pollard hereby warrants and represents to Lottery that:

- (a) it has the power and authority and all necessary licences, permits and consents to supply the Services under and in the manner contemplated by this Agreement and each set of Working Papers and to grant the rights and perform its obligations herein;
- (b) the Services will be performed in accordance with Good Industry Practice and each set of Working Papers in a timely, efficient and safe manner;
- (c) the Tickets shall be manufactured and delivered to Lottery in all material respects in accordance with the requirements of the Working Papers and will be safe for the use for which they were intended;
- (d) the Tickets will be compiled and supplied with reasonable skill and care and will be accurate in all material respects;
- (e) the Services will be performed in accordance with all Applicable Laws including without limitation all product liability and safety related laws;
- (f) neither (i) any Tickets nor (ii) its performance of the terms of this Agreement and the Working Papers will infringe the rights (including Intellectual Property Rights) of any third party; and
- (g) it will not do anything which could reasonably be considered to bring Lottery, any Lottery Affiliate or any of Lottery's (or its Affiliate's) brands into disrepute or damage the goodwill attached to them.

## **7. WARRANTY CLAIMS AND OBLIGATIONS**

Pollard, at Pollard's expense and at Lottery's option, shall deliver replacement Tickets or applicable portions thereof which are or become defective during the warranty period to Lottery's premises within a reasonable period of time after Pollard's receipt of the rejected item(s). The warranty period with respect to each batch of Tickets shall two (2) years from the date of receipt by Lottery of such batch of Tickets.

## **8. INTELLECTUAL PROPERTY OWNERSHIP**

- 8.1 Except as expressly agreed by the Parties in this Agreement, or in a formal written amendment to this Agreement signed by duly authorized officers of each Party:
- (a) Pollard shall be the Owning Party of all rights (including all Intellectual Property Rights) arising out of the processes, procedures and requirements related to the manufacture of the Tickets, (including without limitation, design, equipment, production techniques and technological processes) expressly excluding all rights in any Input Material.
  - (b) except as expressly provided herein, nothing in this Agreement shall operate to create or transfer an ownership, license or other proprietary interest in any Proprietary Information, nor require the Disclosure by an Owning Party of any of its Proprietary Information, nor restrict, inhibit or encumber any Owning Party's right or ability to Dispose of, use, distribute, Disclose or disseminate in any way its own Proprietary Information or to release or modify by further agreement the obligations of the other Party or Others with respect to such Owning Party's Proprietary Information.
  - (c) Lottery grants to Pollard a non-exclusive, revocable, non-transferrable, non-sublicensable licence to use the Input Materials for the sole purpose of providing the Services and developing and delivering the Tickets in accordance with this Agreement and any Working Papers, and provided that Pollard shall not make any alteration to or modification of any of the Input Materials without the prior written consent of Lottery and shall comply at all times with any brand guidelines provided by Lottery to Pollard from time to time.
  - (d) Lottery trademarks, including game names, trade names and service marks furnished by Lottery to Pollard and used on materials produced pursuant to this Agreement shall remain the sole property of Lottery. Pollard shall not use these marks or names on products sold to any person or entity other than Lottery. Lottery's marks and specifications concerning the marks shall be provided to Pollard by Lottery. Lottery's marks and names shall be reproduced exactly as specified by Lottery and only in the quantity specified.
- 8.2 Pollard represents and warrants that its performance under this Agreement will not knowingly infringe any patent, copyright, trademark, service mark, or other Intellectual Property Rights of any other person or entity and that it will not constitute the unauthorized use or disclosure of any trade secret of any other person or entity.
- 8.3 Pollard, at its sole expense, will conduct trademark and service mark searches for all game names ordered from Pollard during the term of this Agreement. Pollard will provide Lottery's Legal Counsel or Gaming Director with a trademark clearance letter once it determines that a trademark or service mark is cleared for use. New trademarks and service marks developed for the exclusive use of the Lottery will be registered by Lottery Legal Counsel in the name of the Lottery for its sole use.

## **9. PERFORMANCE SECURITY**

- 9.1 In order to assure full performance of all obligations imposed on Pollard by contracting with the Lottery, Pollard will be required to provide performance security in an amount of two percent (2%) of the total Agreement price submitted by Pollard within ten (10) working days from the date of the Lottery's execution of this Agreement. The form of security required shall be a performance bond such as is usually and customarily written and issued by surety companies licensed and authorized to do business in Arkansas or a cashier's/certified check. An irrevocable letter of credit from an Arkansas

bank is also acceptable. The performance security should be made out to the Office of the Arkansas Lottery and will be on file at the Lottery.

- 9.2 In the event of a breach of this Agreement, either through quality problems, late delivery, substitutions, non-performance, or other areas within the control of Pollard, the Lottery will notify Pollard in writing of the default and may assess reasonable charges against Pollard's performance security. If, after notification of default, Pollard fails to remedy Lottery's damages within ten (10) working days, Lottery may initiate procedures for collection against Pollard's performance security.
- 9.3 The performance security will be released at the end of the Agreement.

## 10. CONFIDENTIALITY

- 10.1 A Party that receives Proprietary Information of the other Party (the "Receiving Party") shall, with respect to that Proprietary Information:
- (a) Not use Proprietary Information disclosed to it pursuant to this Agreement for any purposes other than those permitted by this Agreement; and
  - (b) Not disclose Proprietary Information disclosed to it pursuant to this Agreement to any third Party other than someone assisting Pollard to complete its obligations under this Agreement.
- 10.2 Except as otherwise provided in this Agreement, the Disclosure of Proprietary Information shall not be construed as granting the Receiving Party any rights with respect to the other Party's Proprietary Information or any license under any patents, patent applications, copyrights and/or other intellectual property rights to which the Party that discloses its Proprietary Information (the "Disclosing Party") may then or thereafter own or hold licensing rights.
- 10.3 Disclosure of any Proprietary Information by a Receiving Party hereunder shall not be precluded if such Disclosure is (a) in response to a valid and legally enforceable order of a court or other government body or any political subdivision thereof; or (b) otherwise required by law, provided, however, that the Receiving Party before making such Disclosure must first (i) immediately upon receipt of such order notify the Disclosing Party of such order; and (ii) make and cooperate with the Disclosing Party in making, if available under applicable law, a good faith effort to obtain a protective order or other appropriate determination against or limiting disclosure or use of the Proprietary Information.
- 10.4 The obligations and restrictions provided in this Section 9 shall survive expiration or termination of this Agreement and shall, unless the Parties otherwise expressly agree in writing, apply to any other purchase and sale of Tickets on the same or different terms and conditions. It is further acknowledged that the obligations and restrictions in this Section 9 have applied and shall continue to apply to any and all information, material and goods provided by Pollard to Lottery prior to the date of this Agreement.

## 11. [Intentionally Deleted]

## **12. INSURANCE**

Pollard shall, at its own expense, maintain errors and omissions, over redemption and product liability insurance for not less than \$1,000,000 per occurrence, during the term of this Agreement and for two (2) years thereafter. Such insurance shall list the Lottery as an additional insured to the extent of Pollard's liability. Such insurance may not be cancelled or altered so as to affect the interest of the Lottery and shall continue throughout the entire period of this Agreement's validity and efficiency. Promptly following execution of this Agreement, Pollard shall deliver satisfactory evidence of such insurance coverage.

## **13. INDEMNIFICATION**

13.1 Subject to Section 13.3, Pollard agrees to defend, indemnify and hold Lottery, its employees, agents, appointed officials and elected officials, harmless from any and all liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, related to or arising from:

- (a) any violation or breach of any of the warranties, representations or undertakings it provides pursuant to Section 6 of this Agreement;
- (b) any negligent acts or omissions of Pollard, its officers, employees, agents, contractors or subcontractors employed or engaged by Pollard in the performance of this Agreement; or
- (c) any event in which a third party asserts that Lottery's use (or use by a third party on Lottery's behalf) of a Ticket, Ticket design, and use or sale of Tickets provided by Pollard to Lottery is a violation of such party's rights (including any Intellectual Property Rights); provided, however, that Pollard's indemnification hereunder shall not extend to claims which relate directly to Input Material furnished to Pollard by Lottery.

13.2 Lottery will cooperate with Pollard in the defense of any action or claim brought against Pollard seeking damages or relief and will promptly give Pollard written notice of any such claim or threatened or actual suit or action, setting out, to the extent reasonably feasible, particulars thereof.

13.3 The parties agree that any and all disputes which may arise from this Agreement shall be governed and resolved under the Lottery Rules for Claims in Contracts or Torts.

## **14. TERM AND TERMINATION**

14.1 This Agreement shall commence as of May 21, 2015, and shall continue until it expires on September 16, 2016.

14.2 Notwithstanding Section 14.1, this Agreement may be terminated for convenience at any time by either Party, upon providing the other Party with thirty (30) days prior written notice.

14.3 Either Party may terminate this Agreement by service on the other Party of:

- (a) notice in writing having effect forthwith, if the other Party will become insolvent or have an administrator or administrative receiver appointed over the whole or any part of its assets or go into liquidation (whether compulsory or voluntary) otherwise than for the purposes of a bona fide amalgamation or reconstruction

or will make any agreement with its creditors or have any form of execution or distress levied upon its assets or cease to carry on business; or

- (b) not less than thirty (30) days' notice in writing specifying a material or persistent breach by the other Party of a material obligation and requiring that the breach is remedied, provided that the breach is not remedied during such notice period; or
- (c) notice in writing having effect forthwith specifying a material breach by the other Party of a material obligation which is not capable of remedy; or
- (d) notice in writing thirty (30) days prior to cancellations, that the Lottery no longer needs or desires the services or commodity specified in the contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriate funding.

14.4 Lottery may terminate this Agreement on written notice to Pollard if required by the State of Arkansas.

#### 14.5 Effect of Termination and Notice of Termination

- (a) Neither the expiration nor termination of this Agreement shall relieve either Party of any obligation previously accrued, nor any obligation accruing or arising thereafter under the provisions of this Agreement.
- (b) Upon any termination, Pollard shall complete the production of any Tickets not then yet completed by the time of notice of such termination and shall deliver such completed Tickets to Lottery in accordance with this Agreement and Lottery shall pay for such Tickets (provided they pass the relevant Acceptance Test Criteria).

14.6 On termination of this Agreement howsoever arising:

- (a) Pollard will immediately return to Lottery all Input Material;
- (b) at the other Party's request, a Party will deliver up to the other all of the other Party's confidential information (including their Proprietary Information) and copies thereof in their possession, power, custody or control at that time.

### 15. SUITABILITY

If Lottery, acting in good faith and in accordance with industry practice, determines Pollard to be Unsuitable (a "**Determination**"), Lottery shall give notice to Pollard of its Determination with sufficient detail to allow Pollard to understand the basis for the Determination and the evidence on which the Determination was based, thereafter Lottery may terminate this Agreement and any associated Working Papers immediately by giving written notice to Pollard.

### 16. GENERAL

16.1 Minority-Owned and Female-Owned Business Policy.

Participation by minority-owned and female-owned businesses is encouraged in this and all other procurements by Arkansas' state agencies. "Member of a Minority" is defined at Arkansas Code Annotated § 23-115-103(15) as "a lawful permanent resident of this state who is: (a) African American; (b) Hispanic American; (c) American

Indian; (d) Asian American; or (e) Pacific Islander American". "Minority-Owned Business" is defined at Arkansas Code Annotated § 23-115-103(16) as "a business that is owned by: (a) an individual who is a member of a minority who reports as his or her personal income for Arkansas income tax purposes the income of the business; (b) a partnership in which a majority of the ownership interest is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the income of the partnership; or (c) a corporation organized under the laws of this state in which a majority of the common stock is owned by one (1) or more members of a minority who report as their personal income for Arkansas income tax purposes more than fifty percent (50%) of the distributed earnings of the corporation". The Arkansas Economic Development Commission conducts a certification process for minority businesses. Vendors unable to include minority-owned business as subcontractors "may explain the circumstances preventing minority inclusion".

16.2 Equal Opportunity Policy.

In compliance with section 5 of the Lottery Major Procurement Rules, Pollard agrees to provide the Office of State Procurement of the Arkansas Department of Finance and Administration with a copy of Pollard's Equal Opportunity policy (its "EO policy") in electronic format to the following email address: [camber.thompson@dfa.arkansas.gov](mailto:camber.thompson@dfa.arkansas.gov) or as a hard copy within thirty (30) days of executing the Agreement. The Office of State Procurement and the Lottery will maintain Pollard's EO policy on file. The submission is a onetime requirement but Pollard is responsible for providing updates or changes to their respective policies and for supplying EO policies upon request to other state agencies that must also comply with this statute.

16.3 Act 157 of 2007 Employment of Illegal Immigrants.

Pursuant to Act 157 of 2007 (Arkansas Code Annotated § 19-11-105), all Vendors must certify prior to award of a contract or agreement that they do not employ or contract with any illegal immigrants in its contract with the State. Vendors shall certify online at: [http://www.arkansas.gov/dfa/procurement/pro\\_index.html](http://www.arkansas.gov/dfa/procurement/pro_index.html)

Any subcontractors used by Pollard at the time of Pollard's certification shall also certify that they do not employ or contract with any illegal immigrant. Certification by the subcontractors shall be submitted within thirty (30) days of executing the Agreement.

16.4 Lottery Major Procurement Rules.

Pollard is subject to all requirements of the Lottery Major Procurement Rules whether such requirements are specifically set forth in this agreement or not.

16.5 EO-98-04 Governor's Executive Order.

Pollard shall complete the disclosure forms located at [www.state.ar.us/dfa/procurement/pro\\_eo9804.html](http://www.state.ar.us/dfa/procurement/pro_eo9804.html) in accordance with Governor's Executive Order EO-98-04 as a condition of obtaining, extending, amending, or

renewing a contract, lease, purchase agreement, or grant award with any Arkansas state agency.

16.6 Force Majeure.

Neither Party shall be liable to the other Party if the performance of any of its obligations under this Agreement is prevented or delayed because of causes beyond its reasonable control including, without limitation, fire, strike, war, insurrection, act of God, law, regulation and embargo of government agency, riot, or any other cause beyond its reasonable control and not due to such Party's own fault or negligence (an "**Excusable Delay**"). A Party shall be excused from its performance to the extent caused by such Excusable Delay; provided that such Party (i) gives notice of the Excusable Delay to the other Party promptly after its occurrence, (ii) uses its reasonable efforts (including executing any disaster plan) to overcome, mitigate and remove the cause of the event preventing or delaying performance, (iii) continues the performance of all its obligations under this Agreement that are not prevented or delayed and (iv) upon cessation of the Excusable Delay, promptly performs or completes performance of the obligations which were prevented or delayed. If an Excusable Delay continues for more than 30 days, either Party may terminate this Agreement upon providing written notice to the other Party.

16.7 Assignment; Binding Effect.

Neither Party shall assign or transfer this Agreement or any rights and obligations hereunder including without limitation, subcontracting of obligations, except to an Affiliate, without the other Party's prior written consent, which consent may be refused in such Party's absolute discretion. This Agreement and the transactions and other instruments provided for herein shall be binding upon and inure to the benefit of the parties, their legal representatives, successors, and permitted assignees.

16.8 Governing Law and Legal Actions.

This Agreement and any Working Papers entered into by the parties, including any claim, action, proceedings or dispute arising out of or in connection with them, shall be governed by and construed in accordance with the laws of Arkansas. The parties agree that any and all disputes which may arise from this Contract shall be governed and resolved under the Lottery Rules for Claims in Contracts or Torts.

16.9 No Waiver.

Either Party's (i) waiver of any performance by the other, (ii) waiver of any condition of this Agreement, or (iii) consent to any breach of this Agreement by the other, shall (a) be effective only if expressly set forth in a writing signed by the Party alleged to have waived or consented, and (b) not constitute or require an ongoing waiver of such performance or condition, or consent to any previous, different or subsequent breach, regardless of whether such performance, condition or breach is similar, identical or related, and regardless of the course of dealing which develops or has developed between the Parties.

16.10 Notices.

All notices, requests and other communications permitted or required to be given pursuant to this Agreement shall be in writing and shall be personally delivered, or sent by recognized delivery service, facsimile, electronic transmission or certified or

registered mail with return receipt requested and with all postage prepaid, to the recipient Party at its address set forth below:

If to Pollard, at:

Pollard Banknote Limited  
1499 Buffalo Place  
Winnipeg, Manitoba  
R3T 1L7  
Fax No.: 204.453.1375  
E-mail: jwestbury@pbl.ca  
Attention: Jennifer Westbury, Executive Vice President,  
Sales & Customer Development

If to Lottery, at:

Office of the Arkansas Lottery  
123 West Capitol Avenue, Suite 1400  
Little Rock, AR 72203  
Attention: Chief Legal Counsel

16.11 A facsimile or electronic transmission shall be deemed received on the date of transmission when transmitted to the facsimile number or e-mail address shown herein, provided such transmission is received prior to 5:00 p.m. on a business day and otherwise on the next business day. A delivered notice shall be deemed made three (3) business days after prepaid deposit, in the mail, or one (1) business day if by courier. Either Party may, by notice given in compliance with the provisions of this Section 16.10, designate another address for receipt of notice.

16.12 Entire Agreement.

This Agreement, together with its attached Appendix A, B and C and the contract elements ("Contract Elements"), which are incorporated by reference, constitute the entire agreement of the Parties respecting its subject matter. The Contract Elements order of priority shall be as follows: (a) this Instant Ticket Supply Agreement; (b) Any Certificates of Insurance or Bonds required pursuant to this agreement; Arkansas Lottery Rules for Claims in Contracts or Torts; Arkansas Lottery Procurement Contract and Vendor Rules; and (d) any future addenda, modifications or amendments to the contract which may be agreed to in writing between the parties. This supersedes all prior and contemporaneous communications and understandings and agreements, written or oral, between the parties relative to its subject matter and merges all discussions between them. Furthermore, in the event of any conflict or inconsistency between the provision of this Agreement and the provisions of the Working Papers, the provisions of the Working Papers shall govern. This Agreement may only be amended by subsequent written agreement duly executed by the Parties.

16.13 Severability

If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect

provided, however, that the court shall have authority and jurisdiction to add to this Agreement a provision as similar in terms and intended effect to such severed provision as may be possible and be legal, valid, and enforceable. If, as a result of the foregoing, a party's material benefits under this Agreement that would have existed but for the operation of the preceding sentence are materially impaired, such party may at such party's election thereafter terminate this Agreement on not less than three (3) months advance written notice to the other Party.

#### 16.14 Construction

The Parties acknowledge and agree that both Parties have participated in the drafting and negotiation of all provisions of this Agreement, and each Party hereby waives and agrees not to assert that any ambiguity should be construed for or against either Party. Except where the context clearly requires to the contrary, "including" shall mean "including, without limitation".

#### 16.15 Nature of Relationship

For the purposes of this Agreement, the Parties are deemed to be independent contractors. It is expressly agreed that this Agreement and the relationship between the parties hereby established do not constitute a partnership, joint venture, agency or contract of employment. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, except as authorized in writing by the Party to be bound. Neither Party shall bind nor attempt to bind the other to any contract or to the performance of any obligation, nor represent to third parties that it has any right to enter into any obligation on the other's behalf.

### 17. DEFINITIONS

In addition to the definitions appearing elsewhere in this Agreement, the following words and phrases shall have the meanings indicated:

**"Acceptance Test Criteria"** shall have the meaning set out in the applicable Working Papers.

**"Affiliate"** shall mean any entity directly or indirectly controlling, controlled by or under common control with that party where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all of the voting powers of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority or otherwise having power to control such entity's general activities, but only for so long as such ownership or control shall continue.

**"Applicable Laws"** means all applicable statute, ordinance, law, treaty, rule, regulation, code, judicial precedent or order of any court or any governmental or regulatory entity, or other power, department, agency, authority, or officer whether at local, national or supra national level.

**"Create"** when used with reference to Proprietary Information means to conceive, make, develop, reduce to practice, author, or otherwise materially and substantially contribute to the existence of such Proprietary Information, such that the Proprietary Information that results can be fairly and reasonably attributed in whole or in material part to such contribution. Other forms of the word "Create" (e.g., Created, Creation, etc.) shall have substantially the same meaning as required by the context.

**"Derivative"** shall mean (i) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by or is a Trade Secret or is otherwise Proprietary Information, any new material derived from such existing Trade Secret material or Proprietary Information, including but not limited to new material which may be protected by copyright, patent or Trade Secret.

**"Disclose"** shall mean to use, deliver, communicate or provide, or to use or benefit in any way or form including, by way of example and without limitation, in writing; electronically; in machine readable form; by demonstration; in tangible form; by access to plans, diagrams or equipment; or orally. Other forms of the word "Disclose" (e.g., Disclosure, Discloses, etc.) shall have substantially the same meaning as required by the context.

**"Dispose"** shall mean to practice, make, have made, use, license, grant rights to sublicense, lease, sell, Disclose, assign, encumber, dispose or otherwise exercise an incident of ownership. Other forms of the word "Dispose" (e.g., Disposition, Disposal, etc.) shall have substantially the same meaning as required by the context.

**"Gaming Approvals"** means any and all required approvals, authorisations, licences, permits, consents, findings of suitability, registrations, clearances, exemptions and waivers of or from any Gaming Authority, including those relating to the offering or conduct of lotteries, gaming and gambling activities.

**"Gaming Authority"** means collectively, those international, federal, state, local, foreign and other governmental, regulatory and administrative authorities, agencies, commissions, boards, bodies and officials responsible for or involved in the regulation of lotteries, gaming or gaming activities.

**"Good Industry Practice"** means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

**"Input Material"** means any content, materials, data, branding, trade marks, mathematical models, audio and audio-visual material, graphics, animation elements, and any other materials or information provided by Lottery to Pollard in accordance with this Agreement and/or any relevant Working Papers.

**"Intellectual Property Rights"** means all copyright, design rights, patents, trade marks, service marks, trade names, database rights, domain names, rights in know how, goodwill, and other rights of a similar nature enforceable anywhere throughout the world in all cases whether registered or unregistered and including applications for the grant of any such rights for the full unexpired period of any such rights and any extensions or renewals thereof.

**"Invention"** shall mean any invention, discovery, process, art, method (including mathematical algorithms), machine, manufacture, composition of matter, or improvement thereof, whether or not patented or patentable, to the extent that it is or is qualified to be the subject of an intellectual property right or intellectual property protection under the laws of any applicable jurisdiction under any applicable legal theory, including but not limited to rights or protections under patent, trade secret, or copyright laws or principles.

**"Made Known"** shall mean made known, received, developed, possessed or communicated, at any time before or after the date of this Agreement. "Rightfully Made Known" shall mean Made Known without, and "Wrongfully Made Known" shall mean Made Known with, any violation of any legally protectable and/or enforceable express or implied right, title, duty or

obligation of the owner of such Proprietary Information or third Parties from, by or through whom such knowledge passed.

**"Owning Party"** shall mean a Party to the extent that such Party has an ownership interest in any Proprietary Information.

**"Proprietary Information"** shall mean information or material relating to the existing or prospective business of a Party to this Agreement, as applicable, any information contained therein or Created therefrom, and any Derivatives thereof, including, by way of example and without limitation, technical, and/or business information such as processes, methods, techniques, systems, subroutines, source code, object code, documentation, diagrams and flow charts, analyses (including computer simulations), results, reports and information of all kinds Disclosed by the Disclosing Party to the Receiving Party. "Proprietary Information" shall also include Inventions, Works and Trade Secrets. Proprietary Information shall not include any information or material to the extent that the Receiving Party proves by a preponderance of the evidence that such information or material has been or becomes:

- (a) Rightfully Made Known to the Receiving Party without obligation of confidence; or
- (b) Rightfully Made Known to third parties who are neither under obligation of confidence nor who treat such Proprietary Information confidentially.

**"Proprietary Rights"** shall mean, in any country, (i) the right to file patent applications and any rights under patent applications; (ii) rights under a grant of letters patent or any similar form of statutory protection for inventions, such as utility model protection and industrial design protection; (iii) rights under copyright, trade secret, mask work or trademark law; and (iv) any other protectable intellectual property rights.

**"Services"** means the services to be performed by Pollard, as set out in this Agreement and as more particularly described in each set of Working Papers.

**"State of Arkansas"** means collectively, those state regulatory and administrative authorities, commissions, bodies and officials responsible for or involved in the regulation of lotteries, gaming or gaming activities in the State of Arkansas.

**"Tickets"** shall have the meaning set out in Section 2.1.

**"Trade Secret"** shall mean information Made Known to either Party, that is maintained by a Party in reasonable confidence such that it is not generally known and used in the Party's industry, and which gives or may give the Party a competitive, technical or other business advantage over the other Party, or third parties, who do not possess, know or use it.

**"Unsuitable"** means when Pollard: (i) is denied or disqualified from eligibility for any Gaming Approval or determined by a Gaming Authority to be unsuitable to be affiliated, associated or connected with any entity that holds a Gaming Approval; (ii) has an affiliation, association, connection or relationship with a third party which causes Lottery (or any of Lottery's Affiliates) to lose or have suspended, revoked, not renewed or denied, or be threatened by any Gaming Authority with the loss, suspension, revocation, non-renewal or denial of, a Gaming Approval; or (iii) is likely to preclude or materially delay, impede or impair, or jeopardize or threaten the loss, suspension, revocation, non-renewal or denial of a Gaming Approval of Lottery (or any of Lottery's Affiliates) or any such entity's application for, or right to the use of, entitlement to or ability to obtain or retain any Gaming Approval required for the operation of its business in any jurisdiction,

"Work" shall mean a work of authorship protectable under the copyright laws of an applicable jurisdiction, or a mask work protectable under the semiconductor chip protection laws of any applicable jurisdiction.

"Working Papers" shall mean each and every set of technical specifications for each order of Tickets, which for each order of Tickets, shall be substantially in the form attached as Appendix A and as and when executed by the Parties, be incorporated into this Agreement by this reference as an integral part hereof.

5/22/15

WITH INTENT TO BE BOUND, Lottery and Pollard have executed this Agreement as of the date first indicated above.

**POLLARD BANKNOTE LIMITED**

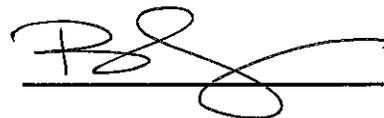
Per:



\_\_\_\_\_  
Douglas Pollard  
Co-Chief Executive Officer

**OFFICE OF THE ARKANSAS LOTTERY**

Per:



\_\_\_\_\_  
Bishop Woosley  
Director