THE MILLE LACS BAND OF

# OJIBWE INDIANS

*Legislative Branch of Tribal Government*

**JOINT RESOLUTION 18-04-101-19**

**A JOINT RESOLUTION APPROVING THE AMENDMENT TO THE PUBLIC LAW 102-477 PLAN FOR THE AANJIBIMAADIZING PROGRAM TO INCLUDE THE DOLLAR AMOUNT OF CARRY-OVER FUNDS TO BE USED FOR OJIBWE LANGUAGE DEVELOPMENT**

WHEREAS, the Mille Lacs Band Assembly ("Band Assembly") is the duly-elected governing body of the Mille Lacs Band of Ojibwe ("Band"), a federally-recognized Indian Tribe; and

WHEREAS, pursuant to 3 MLBSA § 2(d), the Band Assembly has the power to adopt resolutions to promote the general welfare of the Band; and

WHEREAS, pursuant to 4 MLBSA § 2, the Chief Executive is empowered to exercise the Executive Branch powers of the Band; and

WHEREAS, the Band Assembly and Chief Executive have established as a priority the improvement of the spiritual, physical, mental, social, and economic wellbeing of the people of the Band; and

WHEREAS, the Band Assembly and Chief Executive recognize the Band's Public Law 102-477 program, AanjiBimaadizing, ("Program") goal to empower Band members to acquire a role purpose and occupation that will contribute to the wellbeing of their community and family while embracing the traditions and beliefs of the Band; and

WHEREAS, the Band Assembly and Chief Executive support the development of Ojibwe language fluency amongst its membership with the guidance and knowledge of the Elders and other fluent speakers in the community; and

WHEREAS, on February 11, 2019, the Program received approval from the United States Department of Interior to use carry-over funds to incorporate research and Ojibwe language into the Band's 102-477 Program including the Rosetta Stone software module; and

WHEREAS, the Program will utilize carry-over funds for the Program in the amount of seven million, five hundred thousand dollars ($7,500,000); and

WHEREAS, the Program's 2013-2016 and 2016-2019 Master Plan must be amended to reflect the dollar amount of the carry-over funds to be used for Ojibwe language development in the Band's Program; and


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WHEREAS, the Band Assembly and the Chief Executive have determined the amendment to the Program's Master Plan to fulfill the necessary requirements as required by the Department of Interior for the Program.

NOW, THEREFORE, BE IT RESOLVED that the Band Assembly and Chief Executive do hereby approve the amendment to the Public Law 102-477 Plan to include the dollar amount of carry-over funds, to be used for Ojibwe Language Development, in the Program's Master Plan.

WE DO HEREBY CERTIFY that the foregoing resolution was duly concurred with and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present, held on the 23rd day of July, 2019 at Chi Minising, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

IN WITNESS WHEREOF, we, the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly.

Sheldon Boyd, Speaker of Assembly

IN CONCURRENCE, with the action of the Speaker of the Assembly, I hereunto set my hand to this resolution.

Melanie Benjamin, Chief Executive

**OFFICIAL SEAL OF THE BAND**

**Amendment to Mille Lacs Band of Ojibwe 2013-2016 and 2016-2019 P.L. 102-477 Plan**

*OJIBWE LANGUAGE AND CULTURE:*

It is the purpose of Aanjibimaadizing to prepare the members of the MLBO community to contribute to the Mille Lacs Band. While a primary part of this contribution is in the form of employment that helps enrolled members thrive financially, it is of equal importance that MLBO membership reflects the unique history and culture of its people. As such, the Program also recognizes the vital role of education in traditional cultural and linguistic practice which allows those who receive services to contribute across the whole spectrum of membership in the Mille Lacs Band community. In pursuit of this balance the Program will provide Ojibwe cultural and language training which encourages fluency in the Ojibwe language, at the heart of which lie the values and lived experience of MLBO culture as a whole.

A language and culture focus serves as the nucleus of greater cohesion within family units, as both financial stability and a sense of cultural belonging are essential to the ongoing stability and health of MLBO families. A sense of respect for family is deeply embedded within the Mille Lacs Band tradition and culture. One form this respect takes is a belief that children inherit what their parents create. Because of this, they are deserving of the greatest respect and support in their movement toward adulthood. It is the position of the MLBO that education and training specifically oriented toward the preservation and dissemination of MLBO culture, particularly as it is encoded in the Ojibwe language, are of vital importance in furthering the aims of the MLBO in creating families that are financially, spiritually, and socially stable. These forms of stability are mutually supportive. This stability will support the four purposes of TANF.

As components of this goal, services include, but are not limited to, the creation of Ojibwe language resources and activities, internships for MLBO members with elders and other Ojibwe language experts, as well as other resources and activities that support Ojibwe language and cultural awareness. MLBO has planned to collaborate in the creation of a Mille Lacs Band Ojibwe Rosetta Stone software module, which will assist in the wider objective of preserving MLBO culture through language

Aanjibimaadizing will use funding to support the advancement and retention of Ojibwe language and culture. These services will include, but are not limited to the creation of Ojibwe language resources and activities, internships with elders or other Ojibwe experts, and resources and activities that promote Ojibwe language culture.

The Rosetta Stone for Ojibwe is one project planned to produce fluent Ojibwe speakers. The MLBO plans to spend up to $7,500,000 of carryover dollars on a contract with the Rosetta Stone to develop six language learning levels. At the completion of level six, the learner would be considered proficient. This project is planned to begin in 2019 with federal and Tribal approval.

## PRODUCT DEVELOPMENT AND LICENSE AGREEMENT

This Product Development and License Agreement ("**Agreement**"), dated effective as of July 31, 2019 (the "**Effective Date**") is made by and between **Rosetta Stone Ltd.**, a Virginia corporation having a business address at 135 West Market Street, Harrisonburg, VA 22801, USA ( "**Licensor**" or "**Rosetta Stone**") and **The Mille Lacs Band of Ojibwe,** having a business address at 43408 Oodena Drive, Onamia, MN 56359 (the "**Licensee**" or "**Customer**").

## RECITALS

**WHEREAS**, Licensor has developed and is the owner of a proprietary software-as-a-service-based learning platform, including, without limitation, all software, companion materials, password-protected access to a Rosetta Stone hosted Website (the "**Website**") and/or application, and all related products, materials, training, services, functionality and documentation (collectively, the "**Platform**") which enables Licensor to develop, host and support the web and mobile-based language learning products that it markets and sells under its ROSETTA STONE® brand;

**WHEREAS**, Customer has requested Licensor to develop, host and license to it for use by its Authorized End Users a customized, web and mobile-based learning solution utilizing, hosted and provisioned by Licensor through its Platform, consisting of a curriculum of instructional content focused on teaching the Ojibwe language (the "**Customized Content**");

**WHEREAS**, Licensor has agreed to utilize its Platform to develop and host a customized, web and mobile-based learning solution for the Customized Content, as more fully described below, to be known as the **Rosetta Stone® Language Learning Solution – Ojibwe** (hereafter, the "**Product**"), and Customer has agreed to co-operate with Licensor in creating Customized Content for the Product, for the fees and under the terms and conditions set forth herein; and

**WHEREAS**, Licensor has agreed to license the Product to the Customer for use by its tribal members, and Customer has agreed to accept such license, for the fees and under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS**:

"**Affiliate**" means with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

**"Annual Licensing Year"** means each annual licensing period commencing on the date Level 1 Custom Content is delivered to Customer as provided in Schedule A hereto, and on each consecutive anniversary date of such date during the Initial Term and any renewals thereof.

**"Authorized End User(s)"** means the members of the **Mille Lacs Band of Ojibwe** and its tribal organization and any other individuals who are authorized by the Customer to access and use the Product.

**"Enterprise Administrator(s)"** shall mean the Authorized End User(s) designated by the Customer who shall act as administrators for Customer with responsibility on behalf of Customer for overseeing and managing the access of Authorized End Users to the Product. Customer shall provide Licensor with the names of such Enterprise Administrators.

**"License"** means a single subscription for one Authorized End User to access and use the Product on a concurrent basis for the term of such subscription as specified in this Agreement or the applicable Order Form.

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

**"Order Form(s)"** means each order form quote or other order documentation provided by Licensor and accepted by Licensee (or, if applicable, a Licensee Affiliate), that incorporates the terms of this Agreement.

**"Password"** means, collectively, the user ID, default password assigned to an Authorized End User and any personalized password created by such Authorized End User.

**"Product"** means the online learning solution consisting of Customized Content as organized into the course player for beginner, intermediate, and/or advanced learners, as released), as described in Schedule A attached hereto, and any ancillary materials and services, and any updates thereto, that are provided by Licensor to Customer, hosted and provisioned by Licensor through the Platform, and accessible through password-protected access to a Licensor Website and/or mobile application.

**"Term"** has the meaning given it in Section 11.1 below.

## 2. DEVELOPMENT OF THE PRODUCT.

2.1 Licensor Responsibilities. Subject to the terms and conditions hereof, Licensor agrees to perform the tasks and fulfill the responsibilities assigned to it in Schedule A hereto for the purpose of developing the Product in accordance with production schedule set forth in Schedule A.

2.2 Customer Responsibilities. Subject to the terms and conditions hereof, Customer agrees to perform the tasks and fulfill those responsibilities assigned to it in Schedule A within the timeframes stated in Schedule A. Customer acknowledges and agrees that Licensor's timely performance of its responsibilities in Schedule A is dependent on Customer's timely and effective performance of its responsibilities and its giving of timely responses as

specified in Schedule A, and that Licensor will not be responsible for costs or damages attributable to acts or omissions of Customer that delay or adversely impact Licensor's progress or performance of its obligations under this Agreement, including but not limited delay or failure of Customer to provide content, input, instruction, confirmation or approval within the time reasonably requested by Licensor.

2.3 Project Managers. Upon execution of this Agreement, each party shall assign a project manager (**"Project Manager"**) to oversee the performance of such party's responsibilities under this Agreement and to act as the primary liaison with the other party with respect to the coordination of each party's activities under this Agreement. The Project Manager(s) of each party shall be responsible for arranging all meetings and consultations between the parties, coordinating with respect to Customer recommended SMEs and contracted talent or resources, arranging production and/or site visits, and for all administrative matters such as invoices, payments, scoping and reviewing Change Order requests and administrating Customer reviews and approvals of deliverables, etc. Either party may change its designated Project Manager by providing written notice to the other party.

2.4 Content Development Schedule. Licensor shall develop **six (6)** levels of Customized Content in accordance with the timeline in Schedule B.

2.5 Customer-provided Content. In accordance with Schedule A, Customer, at its sole expense, may provide Licensor with certain audio and video content and/or other photos, trademarks or materials supplied by or for Customer for inclusion in the Product (collectively **"Customer-provided Content"**). The parties shall cooperate to ensure that the Customer-provided Content is culturally or linguistically relevant for its intended use within the Product and is of suitable production quality. Licensor shall have right, in its sole discretion, not to use in the Product any Customer-provided Content that it deems to be unsuitable for the Product. Customer shall, at its sole expense, secure any consents, approvals, releases or licenses required for the use of the Customer-provided Content, including the reproduction, sale, promotion, publication, display and exhibition thereof. Customer will provide to Licensor in a timely manner, copies of all such consents, approvals, releases or licenses upon request. To the extent Licensor creates new, original voice recordings, original video recordings, original grammar documents or original syntax documents incorporating or depicting the **Ojibwe** language, that are incorporated and used in the Product under this Agreement and that do not include any Rosetta Stone or third-party intellectual property rights, Licensor agrees that such newly created materials will also be included as Customer-provided Content and the property of Customer. Licensor will maintain a list of such materials, and will provide a copy to Customer following conclusion of Customized Content development period of the Project.

2.6 Change Orders. If, during the performance of the development work described in Schedule A, the Customer requests a change in the project scope or in Licensor's responsibilities, Licensor will prepare a document (a **"Change Order"**) that describes the impact of the requested change on Licensor's responsibilities and estimated delivery schedule under Schedule A, and an estimate of additional fees that will be required to as a result of the additional work described in the Change Order. Licensor will submit the Change Order to Customer for review and approval. Proposed Change Orders will remain valid for a period of ten (10) business days from the date of submission. If Customer does not approve the

Change Order within the ten (10) business days, and Licensor has not extended the period of validity in writing, the Change Order will automatically expire. Upon receipt of written approval, Licensor will begin performing the work described in the Change Order in accordance with the time schedule set forth in Schedule A as it may be modified by the Change Order.

2.7 Product Updates. Licensor reserves the right, in its sole discretion and without incurring any liability to Customer, to update, improve, replace, modify or alter the specifications for and functionality of all or any part of the Platform or Product from time to time, provided that the specifications or functionality of the Product are not materially adversely affected by any such change.

## 3. DEVELOPMENT AND LICENSE FEES AND LICENSE GRANT.

3.1 The Fees. As consideration for developing, hosting, maintaining, supporting and licensing the Product to Customer under the terms herein and in any Schedule hereto, Customer shall pay Licensor the applicable Development and Annual Licensing Fees, (plus any applicable tax) specified in Schedule B attached hereto, or as set forth in an Order Form agreed to by both parties (the **"Fees"**). Unless otherwise agreed in the Schedule or applicable Order Form, all Fees will be invoiced and paid in advance. Fee payments are subject to the terms set forth in Section 8.1 below.

3.2 Committed Licenses. Subject to Customer's timely payment of the Fees in accordance with Schedule B or the applicable Order Form, Licensor shall provide Customer with Annual Licenses allowing for access to and use of the Product by the number of Authorized End Users identified in the Schedule B or applicable Order Form, on a concurrent basis. The Licenses shall become activated following the completion and delivery of Level 1 of the Customized Content. The Licenses shall continue in effect and automatically renew for each Annual Licensing Year during the Initial Term.

3.3 License Terms. Subject to the terms of this Agreement, the Licensor grants Licensee and its Authorized End Users a limited, non-transferable, non-exclusive license to access and use the Product and/or receive materials and services as identified and for the duration of the subscription services period in the applicable Order Form. For purposes of the preceding sentence, "use" of the Product shall mean access by an Authorized End User to the functionality and content of the Product by means of password-protected online access to the Website and/or mobile application for language learning purposes only. The Licenses granted hereby are subject to the following terms:

i. Concurrent Users: The maximum number of concurrent Authorized End Users who may access and use the Product at any time shall not exceed number of Licenses granted to Customer herein and each applicable Order Form, subject to increases in the number of such Licenses made by new orders submitted by Customer and accepted by Licensor from time to time based on mutually agreed license fees for the additional Licenses. Customer agrees not to allow the number of Authorized End Users who are using the Product at any time to exceed the maximum number of Licenses which are then in effect.

ii. License Availability. Subject to the terms herein, Authorized End Users will have the right to access and use the Product on a 24 hour/day, 7 days/week basis during the Annual License subscription period, subject to downtime for scheduled maintenance or circumstances beyond Rosetta Stone's reasonable control.

iii. Internet & Systems Requirements: Continuous Internet access, connectivity, and certain minimum systems and technical requirements are required to access and use the Product, which are not provided by Licensor and are the sole responsibility of Customer and/or its Authorized End Users. The parties understand and agree that supported systems and minimum technical requirements for the Product will evolve over the course of this multi-year Agreement. Licensor will have the right to update supported systems and technical requirements for the Product in keeping with Licensor's supported systems and requirements for its other commercially available products and services. Information regarding current minimum systems and technical requirements for the Product will be available to Customer from the Rosetta Stone website or Rosetta Stone Customer Support.

iv. Terms of Use. Each Authorized End User must accept the Product's Terms of Use and Privacy Policy prior to using the Product.

3.4 No Transfer. Licensee may not, and may not permit others to, directly or indirectly, sell, rent, lease, loan, timeshare, or sublicense the Product, without Licensor's express prior written consent.

## 4. OWNERSHIP OF INTELLECTUAL PROPERTY.

4.1 Customer Proprietary Rights. All Customer-provided Content supplied by or on behalf of Customer shall be, and remain, the property of Customer. Customer retains all right, title and interest in and to, and is responsible for, all such Customer-provided Content and use thereof under this Agreement. Customer hereby grants to Licensor a non-exclusive, royalty-free, perpetual right to use and display the Customer-provided Content as required by Licensor to create, provide, license and maintain the Product and as Licensor deems necessary and appropriate in the performance of its obligations under this Agreement. For the avoidance of doubt, Licensor may not copy, use or otherwise reproduce any of the Customer-provided Content for any purpose other than for the development of the Customized Content and provisioning of the Product as set forth herein without the Customer's express prior written consent, except where Licensor is presenting the Customized Content in the context of its language preservation work with the **Mille Lacs Band of Ojibwe**.

4.2 Licensor Proprietary Rights. Subject to Section 4.1 above, Customer acknowledges and agrees that Licensor or its third-party licensors will own all right, title and interest in and to the Product, including, without limitation, the Platform and the Customized Content (but excluding any Customer-provided Content included in the Customized Content) and all software, text, photographs, graphics, animation, music, video and audio incorporated therein and any related user guides and documentation, as well as any know-how and designs associated therewith, and the trademark ROSETTA STONE, and other marks related to Licensor's products and URLs such as, www.rosettastone.com and the trade

dress and look and feel of the Product (collectively, the "**Licensor Intellectual Property**"), all of which are covered by various protections including, without limitation, copyright, trademark, and trade secrecy law. Nothing contained in this Agreement shall be construed as transferring any such rights in and to the Licensor Intellectual Property to Customer or any third party, except as expressly set forth herein. If Customer suggests new features or functionality that Licensor, in its sole discretion, adopts for any Licensor product, such new features or functionality will be the sole and exclusive property of Licensor and any and all claims of Customer as to the same are hereby waived and released.

## 5. SECURITY AND PASSWORDS

5.1 Authorized End Users. Where applicable, Licensor will provide the Customer with a username and/or password for each Authorized End User, and the Authorized End User will receive a notification email providing the link to and instructions on accessing the online Product. At the initial login, the Authorized End User will be given the option to change the default password provided by Licensor to a personalized password that will enable such Authorized End User to access the Product in accordance with this Agreement. The transmission of any Authorized End User's name or password to allow any other Person who is not an Authorized End User to use the Product is expressly prohibited.

5.2 Enterprise Administrators. Licensee will designate at least one Licensee Authorized End User to act as Enterprise Administrator for the licenses. The Enterprise Administrator will be granted administrator privileges for the Licensee's account, enabling the Enterprise Administrator to assign, disable and otherwise administer all other Authorized User access. Licensee represents, warrants and agrees that each Enterprise Administrator shall have authority, on behalf of Licensee, to perform his or her duties, and serve as primary point of contact to and direct and instruct Licensor with respect to Product and service operations to Licensee and its Authorized End Users. Personal information of Licensee Enterprise Administrators may be used for purposes of communicating to those Enterprise Administrators information relating to Rosetta Stone's business and services (e.g., account activity reminders, activities to support Product usage and engagement by users, downtime or new product or feature notifications, technical and other support services).If, during the term of the services under the applicable Order Form, a then-current Enterprise Administrator ceases to be an active employee of Licensee or ceases to serve as an Enterprise Administrator, and if there are no remaining Enterprise Administrators, Licensee shall promptly appoint another Authorized End User as an Enterprise Administrator. When an Enterprise Administrator accesses the Product using his or her Password, the Product shall provide the Enterprise Administrator with certain administrative capabilities with respect to Licensee's use of the Product that other Authorized End Users will not have, including the ability to cancel Password access and thereby deny access to the Product through use of such Password. Using such functionality provided by the Product, Licensee agrees that the Enterprise Administrator shall promptly deactivate and cancel Password access of any Authorized End User who (i) ceases to be employed by Licensee, (ii) Licensee no longer wishes to have access to the Product, or (iii) Licensee knows or reasonably believes is causing or may cause Licensee to breach any provision of this Agreement or is in any way mishandling Passwords or access. Licensee shall notify Licensor at the time a password access is deactivated or cancelled for any of the reasons specified in clauses (i) through (iii) above.

5.3 Passwords. Licensor shall have the right to replace Passwords with new Passwords during the term of this Agreement. Further, if Licensor reasonably believes that an Authorized End User is causing Licensee to breach this Agreement or is in any way mishandling a Password or using the Product in violation of this Agreement, then Licensor may, at its sole discretion, suspend the use of such Authorized End User's Password indefinitely without providing a replacement for such Authorized End User, in addition to any other rights or remedies provided under this Agreement or under law. All use of Passwords assigned to Licensee and its Authorized End Users shall be at Licensee's sole responsibility and risk. Licensee shall not, and shall cause its Authorized End Users not to, disclose, transfer or disseminate any Password to any third party. Licensee shall take such actions as may be necessary to maintain the confidentiality of and to prevent the unauthorized use of each Password, and shall immediately notify Licensor in the event of a breach of security. For the avoidance of doubt, Licensee and its Authorized End User shall, at its option, reset its passwords following receipt of initial login credentials.

5.4 Responsibility: Except to the extent otherwise expressly provided in this Agreement, Licensee understands and agrees that it is responsible for costs or expenses arising from or related to any misuse of Passwords or any Product or other breach of the restrictions or conditions contained in this Agreement, by Licensee's Authorized End Users or other personnel.

## 6. LIMITATIONS ON USE.

Licensee agrees not to, and not to permit others to, directly or indirectly (a) reverse assemble, reverse compile, or otherwise reverse engineer or attempt to derive the source code of all or any part of the Product (b) copy, modify, translate, alter, change or collect information that can be used to create derivative works of all or any part of the Product, (c) download, copy or collect information that could be used to copy all or any part of the Product, or (d) access or use all or any part of the Product for any purpose other than for language learning purposes, except as and only to the extent expressly permitted by applicable law, notwithstanding this limitation, or expressly authorized in writing by Licensor. Any such information supplied by Licensor, and any information obtained by Licensee by any such expressly permitted de-compilation may only be used by Licensee for the purpose expressly authorized by Licensor, and may not be disclosed to any third party, or used to create any software that is substantially similar to the Product. If the applicable Order Form or invoice specifies a maximum number of Authorized End Users or concurrent users that may access the Product, Licensee agrees not to exceed such maximum number without the prior written approval of Licensor. Licensee agrees, upon request by Licensor, to exchange its current version of the Product for an updated version and to discontinue use of the version that was replaced.

## 7. CUSTOMER SUPPORT.

Licensor offers support to Licensees of the Product in accordance with its published support policies. Hours of support may vary for certain products and territories. The hours of operation and means of accessing Licensor's customer support are available at the following web address: http://www.rosettastone.com/policy, or may be obtained from Rosetta Stone Customer Support.

Licensor reserves the right to make changes to these customer support provisions at any time and will post those changes on the support page.

## 8. PAYMENT TERMS AND EXPENSES.

8.1 Payment Terms. Licensor shall invoice Customer, and Customer shall pay Licensor, in accordance with the payment schedule set forth in Schedule B or in accordance with the terms of any Order Form, as the case may be. Unless otherwise stated in Schedule B or the applicable Order Form, all invoiced amounts shall be due within thirty (30) days of date of each invoice. Payments due hereunder shall be made by Customer in US Dollars without any deduction, set-off or bank charges to Licensor at the banking institution designated by Licensor. Overdue payments required to be paid by Customer pursuant to this Agreement (other than amounts that are the subject of a good faith dispute) shall accrue interest at the lesser of one percent (1.0%) per month or the maximum allowable interest under applicable law, from the due date until paid. The amounts due to Licensor as set forth in Schedule B and/or any applicable Order Form do not include, and Customer shall pay, any sales, use, property, value-added or other taxes relating to, resulting from or based on purchase or use of the Product.

8.2 Possible Suspension of Work. If Customer's account is more than fifteen (15) days overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any other rights or remedies it may have under this Agreement or by law, Licensor reserves the right to immediately suspend the performance of its responsibilities under Schedule A, without notice and without liability to Customer, until such amounts are paid in full.

8.3 Expenses. Customer assumes full responsibility for all costs and expenses which it incurs in carrying out its obligations under this Agreement (including the costs associated with the Customer-provided Content). Unless otherwise agreed in writing by Licensor, if Customer requests any trips by Licensor personnel, Customer will reimburse Licensor at its then current per diem rate plus travel costs and expenses (airfare, lodging, and food at cost).

## 9. LIMITED WARRANTY, DISCLAIMERS, AND LIABILITY LIMITATIONS.

9.1 Limited Warranty and Disclaimer. General: Licensor warrants, for the Customer's benefit alone, that that it shall perform its obligations described in Schedule A in a professional and workmanlike manner and that the Product will be completed substantially in accordance with Schedule A. Hosted Product: Licensor warrants that the hosted Product will perform substantially in accordance with the descriptions and specifications applicable to such Product for the Subscription Period of the Product license set forth in the Order Form (the "Hosted Product Warranty Period") under normal use. Notwithstanding anything to the contrary, Licensor makes no representation or warranty with respect to any third party software or Customer-provided Content, and undertakes no obligations with respect to any of same. Licensor's sole liability and Licensee's sole remedy for breach of the foregoing Product warranty during the Hosted Product Warranty Period will be, at Licensor's option, the repair or replacement of the Product, or a refund of the prepaid subscription fees received by Licensor from Licensee for the unused portion of the Product

subscription licenses under the applicable Order Form(s) from the date written notice of deficiency was received from the Licensee by Licensor.

9.2 DISCLAIMER OF WARRANTIES. OTHER THAN AS STATED IN SECTION 9.1 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY THE LAW, LICENSOR AND ITS THIRD PARTY LICENSORS DISCLAIM ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PRODUCT AND ANY SERVICES PROVIDED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT OR THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED, VIRUS-FREE, OR ERROR-FREE. OTHER THAN AS STATED IN SECTION 9.1 ABOVE, THE PRODUCT AND SUPPORT SERVICES (IF ANY) ARE PROVIDED "AS-IS" WITH NO WARRANTIES EXCEPT TO BE PROVIDED IN A "PROFESSIONAL AND WORKMANLIKE MANNER." AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY AND PERFORMANCE SHALL BE WITH THE CUSTOMER. THE CUSTOMER ACKNOWLEDGES THAT NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES ARE MADE BY ANY THIRD PARTY LICENSORS HEREIN.

9.3 Customer Assurances. Customer represents and warrants that Customer is the owner, licensor, or authorized user of all Customer-provided Content. Customer warrants to Licensor that it has all rights, licenses and permissions necessary to enter into this Agreement on behalf of itself and its Authorized End Users, and that its provision of Customer-provided Content and/or Customer user data to Licensor, and its instructions to Licensor related to the processing of same shall at all times be in compliance with all applicable laws, including any notice and/or consent requirements.

9.4 Limitations of Liability. In no event will either party be liable to the other party for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. In no event shall either party's total liability for all actual direct damages, if any, whether arising in contract, tort, including negligence or otherwise, exceed the cumulative payments actually received by Licensor from Customer pursuant to this Agreement during the one-year period immediately preceding the occurrence of the event or circumstance which results in such damages; provided, however, that neither party's indemnity liability under Article 10 below shall be subject to any monetary limitation under this Section 9.4. The allocations of liability in this Section 9.4 represent the agreed and bargained-for understanding of the parties and Licensor's compensation reflects such allocations.

## 10. INDEMNITIES.

10.1 Licensor Indemnity. The Licensor agrees to indemnify, defend and hold harmless the Customer from and against any loss, claim, judgment, liability, damage, action or cause of action (including reasonable attorneys' fees and court costs) (collectively, "**Losses**") arising from or based on a third party claim or assertion that the Platform infringes or misappropriates a valid U.S. or Canadian patent, copyright, trademark or other intellectual property or publicity right, excluding a third party claim which is based on or arises from

Customer-provided Content or the misuse of the Products by the Customer or its Authorized End Users in violation of this Agreement.

10.2 Customer Indemnity. The Customer and its successors and assigns agree to indemnify, defend and hold harmless the Licensor and its Affiliates from and against any Losses arising from or based on (i) a third party claim that use of the Customer-provided Content or any other trademark, content, data or other materials provided or made available by or through Customer pursuant to this Agreement infringes or misappropriates a valid U.S. or Canadian patent, copyright, trademark or other intellectual property, publicity or personal right, and (b) any breach by Customer of its obligations set forth in Section 6.

10.3 Indemnity Process. The indemnity obligations of each party pursuant to this Section shall be subject to the giving of prompt written notification by the applicable indemnified party to the indemnifying party of its receipt of any such claim or action and any information or assistance reasonably requested by the indemnifying party in defending against claims against the indemnified party, with the reasonable cost of any such assistance to be reimbursed by the indemnifying party. The indemnifying party shall have sole control over the defense and all negotiations for the settlement or compromise of any such claims, provided that the indemnified party shall have the right to pre-approve the settlement of any claim subject to indemnification which imposes any culpability or liability upon the indemnified party.

## 11. TERM AND TERMINATION

11.1 Initial and Renewal Term. This Agreement shall commence on the Effective Date and shall remain in effect for a term ending fifteen (15) years after the initial launch date of the subscription services, as defined in Schedule A attached hereto (the "**Initial Term**"), unless terminated earlier in accordance with this Article 11. Following the Initial Term, the term of this Agreement may be renewed for consecutive annual renewal terms and at Annual Licensing Fees as mutually agreed by the parties in writing. The Initial Term together with the renewal terms shall be referred to herein as the "**Term**".

11.2 Termination.

A. Either party shall have the right to terminate this Agreement or any Order Form for cause in the event of any of the following by the other party:

i. a failure to fulfill or perform any material duties or obligations pursuant to this Agreement, provided that non-breaching party provides written notice outlining the other party's deficiency promptly following its determination of such material breach, and such party fails to take steps reasonably acceptable to the non-breaching party to remedy any such deficiency within thirty (30) days of its receipt of such written deficiency notice; or

ii. if a party is the subject of a voluntary bankruptcy, insolvency or similar proceeding, suffers or permits the appointment of a receiver for its business or assets, or makes a general assignment for the benefit of creditors.

B. Customer may terminate this Agreement at any time for convenience by providing thirty (30) days prior written notice to Licensor of its intent to terminate the Agreement and paying all outstanding and/or remaining fees under this Agreement and all Order Forms. For clarity, termination of this Agreement by Customer for convenience shall not relieve Customer of its obligation to pay all unpaid amounts and fees owed for all Products and/or services ordered by Customer and/or Customer Affiliates under all Order Forms and/or SOWs, including, but not limited to, any and all unpaid payment obligations for all development performed or to be performed, and for all remaining Annual Licensing Fees, including all training or support or other fees, yet to be paid for the remainder of full term of all Order Forms and/or SOWs, which Customer shall pay to Licensor within thirty (30) days after the date of termination.

11.3 Effect of Termination. Upon termination of this Agreement for any reason, Licensor shall immediately cease performance of all work under Schedule A, and Customer shall cease all further use of the Product. If this Agreement is terminated by Customer due to the uncured material breach of the Licensor, Licensor will prepare and provide Customer with an accounting of all administrative and development costs and expenses incurred, and all associated fees and costs, including out-of-pocket expenses and non-cancellable contract commitments, incurred and/or entered into in fulfillment of this Agreement, as well as all hosting, maintenance, training and support and other costs incurred by Licensor in performance of this Agreement up to the date of termination, and, unless subject to good faith dispute, Licensor will refund to Customer the amounts previously paid by Customer which exceed such incurred amounts set forth in the accounting, within thirty (30) days of Customer's request and invoice. Further, upon receipt of Customer's request following termination of this Agreement, and subject to payment of applicable undisputed amounts in accordance with the terms herein, Rosetta Stone will deliver to Customer all Customer-provided Content as specified in the SOW(s). The provisions of Articles 4, 6, 9, 10, 11, 12 and 13, and those other provisions that expressly or by their nature are intended to continue in effect, shall survive the expiration or termination of this Agreement.

## 12. CONFIDENTIALITY.

12.1 Obligations. Each party agrees to hold Confidential Information in confidence and not use or disclose it to a third party as long as the information is confidential. The receiving party will protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of Confidential Information as the receiving party uses to protect its own confidential information of like nature. **"Confidential Information"** means the proprietary information exchanged between the parties, which is (i) marked "confidential" or "proprietary" at the time of disclosure by the disclosing party; or (ii) by its nature or content is reasonably distinguishable as confidential or proprietary to the receiving party, and includes, without limitation, information (tangible or intangible) regarding a party's technology, designs, techniques, research, know-how, specifications, product plans, pricing, customer information, user data, current or future strategic information, current or future business plans, policies or practices, employee information, and other business and technical

information, and shall include the terms and conditions of this Agreement or of any Order Form and the pricing provisions thereof. The receiving party may disclose the Confidential Information to its employees, agents, financial advisers and independent contractors, only as necessary to fulfill the Services and provided such parties have executed a written nondisclosure agreement substantially as protective of the Confidential Information as this Agreement, or as may be required under regulatory requirements.

12.2 Exclusions. Confidential Information will not include information that (a) is made generally available in the public domain prior to time of disclosure; (b) is or becomes publicly available through no act or omission by the receiving party; (c) was already in the receiving party's possession without restriction before receipt from the disclosing party and was not subject to a duty of confidentiality; (d) is rightfully disclosed to the receiving party by a third party without confidentiality restrictions; or (e) that the receiving party independently developed without use of or reference to Confidential Information. The receiving party may disclose the disclosing party's Confidential Information as required by law or court order provided: (i) the receiving party reasonably notifies the disclosing party in writing of the requirement for disclosure, unless notice is prohibited by law; and (ii) discloses only that portion of the Confidential Information legally required.

12.3 Data Collection and Use. Licensee understands and agrees that certain limited personal data of Authorized End Users is typically required and used to enable Product and service provisioning and functionality, that such information is stored by Licensor in centrally organized data center facilities, that certain services and functionality of the Products and associated services are provisioned through utilization of third-party provider services engaged by Licensor to deliver and support the Product and services to Licensor's enterprise licensee customers, and that Licensor will have the right to collect use and process information provided by Licensee and/or its Authorized End Users in order to provide them with, and monitor and support their use of, the Product and related services, in accordance with Licensor's standard privacy policies and the terms herein, and Rosetta Stone's Standard Data Processing Addendum available at www.rosettastone.com/RS-US-DPA and incorporated and made part by this reference. Licensee acknowledges and agrees that data generated through the use of the Product by Licensee and Authorized Users from which personally identifiable information and attributes has been removed ("De-identified Data") may be used by Rosetta Stone for any lawful purposes, including, without limitation, benchmarking, development of best practices, to assess, improve or develop Rosetta Stone products and services or demonstrate efficacy, and/or for research and/or statistical purposes, without obligation of any kind to Licensee or Authorized End Users. Rosetta Stone will not use or publish such De-Identified Data in any way that associates or identifies Licensee or any Authorized End User as the source of that data without the prior written consent of Licensee and/or the applicable Authorized End User. In addition, data may be used by Rosetta Stone in anonymized or aggregate form to assess compliance with the terms and conditions of this Agreement and for other lawful purposes.

13. **MISCELLANEOUS.**

13.1 Assignment. This Agreement and all rights and obligations hereunder are personal to the parties hereto and may not be assigned in whole or in part by either party without the prior written consent of the other party in its sole discretion; provided, however that Licensor

may assign this Agreement to its Affiliate without the Customer's consent, but notice of such assignment shall be given to the Customer.

13.2 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been effectively given upon (i) personal delivery; (ii) the third business day after first class mailing; or (iii) the next business day after sending by electronic mail or facsimile with confirmation of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page below or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Subsection 13.2. If notice is given to the Licensor, a copy shall also be given to the attention of Licensor's Office of General Counsel at the address set forth below in the signature section.

13.3 Publicity. Neither party shall release or publish any news release or other public announcement relating to this Agreement or the transactions contemplated therein without the prior review and written approval of the other party, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the other party's approval, (a) make casual text references to the relationship between the parties following the initial press announcement with respect to their relationship, and (b) make such disclosures as are required by legal, accounting, or regulatory requirements after making reasonable efforts to consult in advance with the other party.

13.4 Independent Contractors. The status of the parties under this Agreement shall be that of independent contractors. No party shall be authorized to waive any right, or assume or create any contract or obligation of any kind in the name of, or on behalf of, the other or to make any statement that it has the authority to do so. Nothing in this Agreement shall be construed as establishing a partnership, joint venture, agency, employment or other similar relationship between the parties hereto.

13.5 Interpretation. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

13.6 Audit. The Mille Lacs Band, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Licensor which are directly pertinent to this agreement, for the purpose of making audits, examination, excerpts and transcriptions. The Licensor shall retain records related to this contract for three years after the Mille Lacs Band makes final payments and all other pending matters are closed.

13.7 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

13.8 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision

is invalid, illegal or unenforceable, or in the event that the parties become aware that any applicable laws or regulations which are inconsistent with the provisions of this Agreement, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

13.9 Dispute Resolution And Protection Of Rights. The parties will use their best efforts to amicably resolve any dispute. However, nothing contained in the Agreement shall be construed to waive the sovereign rights of the **Mille Lacs Band of Ojibwe**, its officers, employees, or agents; provided that either party may seek injunctive relief or other equitable or legal remedies in appropriate judicial proceedings to protect its intellectual property and other rights under this Agreement from being damaged by a breach or threatened breach of this Agreement by the other party.

13.10 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Licensor or Customer employees, respectively), computer attacks or malicious acts, such as attacks on or through the Internet. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

13.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.12 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13.13 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

13.14 Entire Agreement. This Agreement, including the Schedules hereto and Order Forms hereunder, constitute the entire agreement of the parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous

understandings and agreements, both written and oral, with respect to such subject matter.

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

*Signature Page Follows*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ROSETTA STONE LTD.**

By: _____

Name: _____

Title: _____

Address: 135 West Market Street
Harrisonburg, VA 22801 U.S.A.

**MILLE LACS BAND OF OJIBWE**

By: _____

Name: _____

Title: _____

Address:

## SCHEDULE A

## STATEMENT OF WORK AND DELIVERABLES

This Schedule A is incorporated as part of, and is subject to the terms of, the Product Development and License Agreement (the "Agreement") entered into by and between **The Mille Lacs Band of Ojibwe** (the "**Ojibwe**" or "**Customer**" or "**Licensee**") and Rosetta Stone Ltd. ("**Rosetta Stone**" or "**Licensor**"). Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings given to them in the Agreement.

### I. Project Overview:

In consideration of the commitment by Customer to purchase the development and licensed services as set forth in the Agreement and Schedules, Rosetta Stone will allocate resources and staff to enable the Rosetta Stone Development Team to provide professional services under this SOW to design and deliver, with the assistance and input of the Customer, a customized, web and mobile-based learning solution to be known as the **Rosetta Stone® Language Learning Solution – Ojibwe** (the "Product"), according to the terms and delivery schedule set forth herein, and to be licensed to Customer for the Service Period according the terms of the Agreement and those of Schedule B attached hereto.

The **Development Period** will commence upon the execution of the Agreement by both parties, and continue through each Development Contract Year and delivery of all Product Levels hereunder. The Development Period may be modified by mutual written agreement of the parties. The Development Period consists of three (3) Phases:

- The Analysis and Design Phase
- The Development Phase
- The Implementation Phase

A "**Development Contract Year**" means each annual period commencing on the Effective Date of the Agreement, and on each consecutive anniversary date of such date during the Development Period hereunder.

The **Services Period** will commence upon delivery and launch of the Product Level 1 content (the "**Services Launch Date**"), and continue for fifteen (15) annual subscription Service Contract Years thereafter.

A "**Services Contract Year**" means each annual period commencing on the Services Launch Date, and on each consecutive anniversary date of such date during the Agreement Term.

### II. Product Description and Development Schedule:

- The Product is an Ojibwe language e-learning curriculum for Ojibwe language learners, focused on the native language and customs, consisting of Customized Content

organized into the course player for beginner, intermediate, and/or advanced learners, as released.

- The Product will be built and hosted on Licensor's existing e-learning Platform.
- The Product will include six (6) Custom Content levels covering mutually agreed upon topics defined during the Analysis & Design Phase.
- The Product lessons will be developed based on the following schedule:
  - Level 1 to be delivered 18 months after contract is signed;
  - Level 2 to be delivered during Contract Year 2;
  - Level 3 to be delivered during Contract Year 3;
  - Level 4 to be delivered during Contract Year 4;
  - Level 5 to be delivered during Contract Year 5; and
  - Level 6 to be delivered during Contract Year 6

## III. Phases of the Work and Associated Responsibilities:

1. **Analysis and Design:**

1.1 Rosetta Stone Responsibilities:

Working with Subject Matter Experts ("SMEs") identified and recommended by the Customer and contracted by Rosetta Stone, the Rosetta Stone Language Development Team will identify the language learning goals, expectations, learner demographics, assessment instruments, prescribed orthography, and other factors key to producing a mutually agreed customized curriculum that meets the Customer's defined needs.

1.1.1 Output:
Scope and Sequence document to include:
- a description of each of the different lesson structures including
  - target language content items and distribution across the lessons
  - target cultural and or historical content items and distribution across the lessons;
- the lexical corpus for the program and the distribution of those items across the lessons;
- scenario descriptions for any videos.

1.2 Customer Responsibilities:

- Designate and provide the contact information of and access to recommended Ojibwe SMEs for Rosetta Stone to engage as needed to work with the Rosetta Stone Language

Development Team to identify the desired language, cultural and historical content for the curriculum.

- Provide feedback on the scope, sequence, vocab lists and outlines, and any other materials or content, when requested, within five (5) business days, according to the terms herein. Any such materials or content will be subject to one revision cycle, providing that feedback is received within the five-day review period. Changes after this time may incur additional costs and will require a documented scope change request.

2. **Development:**

2.1 Rosetta Stone Responsibilities:

- Working with the Customer Project Manager and designated Ojibwe SMEs, Rosetta Stone will populate each lesson's content in Rosetta Stone's authoring tool.

- All lessons and other content will undergo an internal review at Rosetta Stone, and will then be released to the Customer for review and acceptance per Section 2.2 below. Once the Customer indicates that content is approved for release, the development and editing process will be complete and no further lesson or other modifications will be accommodated within the scope of the project unless otherwise mutually agreed through the change order process.

- Rosetta Stone will also develop its speech language models to better optimize its proprietary speech recognition engine for outputs for this Product. This may require the collection of voice recordings from native speakers or SMEs designated by the Customer.

- Rosetta Stone agrees that it will spend, as needed, up to $50,000 per Development Contract Year during the Development Period as defined in this Schedule A, on Project Management support by a Project Manager identified by the Customer to assist in content development for the Product.

- Rosetta Stone agrees that it will spend, as needed, up to $100,000 per Development Contract Year during the Development Period as defined in this Schedule A, on Ojibwe language SMEs, voicers, and production support personnel, contracted by Rosetta Stone to assist in content development for the Product.
    - Tier 1: Native Speaker / Master Level Expert – $60 per hour
    - Tier 2: Other Proficiency Level Contributors - $25 per hour

- Rosetta Stone agrees that it will spend, as needed, up to $40,000 per Development Contract Year during the Development Period to engage Ojibwe language speakers and students contracted by Rosetta Stone to assist in the development of samples of Ojibwe language inputs for the speech recognition engine. Rosetta Stone estimates that this will require approximately 1,200 hours, with such contractors to be paid by Rosetta Stone at the rate scale of:
    - Tier 1: Native Speaker – $60 per hour
    - Tier 2: Other Proficiency Level Speakers - $25 per hour

2.2 Customer Responsibilities:

- Identify and provide access to, and facilitate the engagement of, qualified Ojibwe SMEs, voice talent, and/or actors for Rosetta Stone to engage as needed to work with the Rosetta Stone Language Development Team to populate lesson content into the content authoring tool, and provide other related support for the development of the Product and associated materials as requested by the Rosetta Stone team.

- Identify and provide access to, and facilitate the engagement of qualified Ojibwe language speakers who will act as contractor(s) to Rosetta Stone as needed in developing samples of Ojibwe language inputs for the speech recognition engine in accordance with Section 2.1 above.

- Throughout the Development Period, the Customer designated Project Manager will serve as the main Customer point of contact to facilitate the Customer's review and written approval (email acceptable) of all documents, plans, specifications/scopes, lessons, creative, content, production or any other materials ("Deliverables"), in accordance with the terms hereunder. The Customer Project Manager may be an SME if so designated by Customer. Unless otherwise agreed by the parties in writing, reviews of any Deliverables hereunder must be completed within five (5) business days from the date the Deliverable item, and approval request, was provided by the Rosetta Stone Language Development Team to the Customer ("Acceptance Period"); if written acceptance or rejection is not received within the Acceptance Period, the Deliverable will be deemed conforming and accepted. In the event the Customer provides written notice of rejection of any Deliverable, the Customer will include in such notice the specification within the project scope deemed non-conforming, and the specific reasons for rejection. Requested changes that deviate from the scope will require a documented scope change request, consideration of the viability and impacts on development, schedule and resources, and may incur additional costs to be mutually agreed by the parties.

- Customer understands and agrees that Rosetta Stone's development of Deliverables and ability to meet the delivery schedules is dependent on continuous access to one or more qualified SME(s) throughout the Development Period of this Schedule. In the event a Customer-identified SME is unavailable during the Development Period and any Deliverables are still being produced, Rosetta Stone may obtain the services of a qualified linguist to replace the customer-identified linguist SME.

3. **Implementation**:

3.1 Once Level 1 has been delivered, and in anticipation of the initial launch of subscription access, Rosetta Stone and Customer will work together on the a plan to support Customer's efforts to communicate and optimize the availability of the Product to learners, define language learning goals facilitate learner orientation sessions, and support periodic reviews.

3.2 Rosetta Stone Responsibilities:

- Provide online self-help resources and/or phone support to the Customer-designated administrator of the Product account to support the Customer administrator, as needed, in its allocation and administration of subscription licenses to its designated end users.

- Provide a Technical Requirements Guide for settings support for optimizing the Product and program.

- Provide online training to the Customer staff on:
  - Using Administrator Tools
  - Conducting learning orientation sessions

- Provide systems and technical requirements, including updated documentation as necessary as changes to the technical architecture supporting the Product and/or the operating systems commonly used in end user computers and supported by Rosetta Stone, evolve over time.

- Provide documentation on Rosetta Stone's Single Sign-On (SSO) support, and answer questions on SSO implementation.

3.3 Customer Responsibilities:

- Identify and maintain a single point of contact for implementation planning (may be the Customer-designated Enterprise Administrator for the Product/program).

- Implement Rosetta Stone SSO, if desired.

- Maintain an Enterprise Administrator to manage overall access to the Product subscriptions by Customer's designated end user learners, using Rosetta Stone's proprietary Enterprise Administration tools within the Product.

4. **Ongoing Support:**

4.1 The Customer will have access to Rosetta Stone's general online support portal for enterprise clients/solutions anytime and anywhere there is Internet access. The categories of resource materials available in the support portal may change over time, but currently include topics such as: **How to get Started**, and **Find Specific Technical Product Information**.

4.2 Rosetta Stone Technical Support is available via email and phone. Email requests are answered within 2 business days.

IV. Additional Customer General Responsibilities:

- Program launch support, including production, coordination and communication of ongoing messaging/outreach about the availability of the Product by the Customer to its Authorized End Users and prospects.

- Facilitate and support access and use of the Product throughout each Service Contract Year during the Service Period, to assigned End User learners, and perform general user management tasks (ex. assigning user licenses, sending welcome emails, etc.).

- Designate and maintain a named contact (may be the Customer-designated Enterprise Administrator) for ongoing program management and technical support.

- Designate named contact for invoicing/payment issues.

- During the Development Period, ensure appropriate Customer participation and responsiveness at regularly-scheduled meetings.

- When requested or required, provide feedback, approvals and/or information promptly and fully; delays may result in final delivery delay and additional costs and fees.

## SCHEDULE B

## FEES AND PAYMENT SCHEDULE

This Schedule B is incorporated as part of, and is subject to the terms of, the Product Development and License Agreement entered into by and between The Mille Lacs Band of Ojibwe (the "Ojibwe" or "Customer" or "Licensee") and Rosetta Stone Ltd. ("Rosetta Stone" or "Licensor"). Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings given to them in the Agreement.

In consideration of the Development, Ongoing Licensing, Maintenance & Support, and other services identified in the Agreement and Schedules A and B, Customer agrees to pay Rosetta Stone as provided herein.

### Total Fees

The Total Fees payable by Customer under this Schedule: **$7,213,000.00 USD** (plus any applicable tax), as provided below

Includes:

- All actions undertaken for development of the Product throughout the Development Period and all development phases, as set forth in Schedule A and Table 1.
- Supplemental Education Materials and Audio Companion (digital audio files) as set forth in Table 1.
- Pre-launch Promotional Video as set forth in Table 1.
- Annual License, Maintenance, Hosting & Support, based on a population of up to 8,000 concurrent users for each Services Contract Year throughout the Service Period, as set forth herein and in Table 2.
- Training and Learner Engagement Support as set forth in Table 2.
- Discounts set forth below

### Table 1: Contracted Development Scope and Fees***

| Core Development | Description | # of Lessons | Lesson Duration | SRE (RS Speech Rec. Engine) | Mobile w/ Offline Access | Anticipated Delivery Schedule | Total US Dollars |
|---|---|---|---|---|---|---|---|
| **Level 1** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1,150,000 |
| **Level 2** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1,150,000 |
| **Level 3** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1, 150,000 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Level 4** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1,150,000 |
| **Level 5** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1,150,000 |
| **Level 6** | To Be Determined | 30-40 | 30-45 minutes | Yes | Yes | TBD* ** | $1,150,000 |
| **SEMs** | **SUPPLEMENTAL EDUCATION MATERIALS:**<br>• **36-Week Curriculum**: Instructor's Guide, Worksheets, Tests, etc.<br>• **Visual and Ancillary Materials:** Projectables, Flash Cards, Memory Cards.<br><br>The types of Supplemental Education Materials provided with each Level may vary based on the nature of the content in each Level. | | | | | Within 3 months of level release | Included |
| **Audio Companion** | Audio Companion - downloadable Audio Companion (digital audio files) for each level (a Master CD-ROM [or comparable media] copy to be provided to project manager). Additional Master(s) available at an additional cost. | | | | | Within 3 months of level release | Included |
| **Pre-Launch Video** | Promotional video to be launched no-later than 2-3 months prior to the launch of the first level. (Customer agrees that Rosetta Stone will have the perpetual, non-exclusive right and license to share, display, publicize, distribute or otherwise use the promotional video, and/or any content therein or portion thereof, in any media, to support Customer's promotional efforts and/or for its commercial purposes relating to its language preservation work with Customer.) | | | | | ($5,000) Discount | $15,000 |
| Total For All Development + Pre-Launch Video | | | | | | | $6,915,000 |

** Level 1 estimated delivery date will be approximately 18 months following execution of the Agreement, with subsequent Levels 2-6 estimated to be delivered annually thereafter.*

*** Some Levels may be delivered as "modules" rather than sequential levels of proficiency, which may modify the delivery schedule (not to exceed the anticipated schedule or Development Period above unless otherwise agreed by the parties in writing).*

*** Customer understand that the Development pricing herein includes some costing assumptions regarding the availability of linguistic resources, culturally appropriate imagery, audio recordings, and other media as well as a diverse group of Ojibwe Speakers (diverse in proficiency levels, age, gender, etc.)

Table 2: *Annual License, Maintenance, Hosting & Support*

| Description | Number of Licenses | Total US Dollars |
|---|---|---|
| Annual fixed-term site license, maintenance, hosting and support for the Product as a combined web-based and mobile application for use on Windows and Mac computers and iOS and select Android devices, based on a population of up to 8,000 concurrent users for each Services Contract Year, throughout the Service Period. | Up-to 8,000* concurrent users (to cover the entire citizenry of the Mille Lacs Band of Ojibwe, as well as other Peoples to whom Customer wishes to extend user access.) | 100,000 per Services Contract Year |
| **Training and Learner Engagement Support:** Rosetta Stone will provide a dedicated client manager, as well as a dedicated trainer who will be available to assist the Customer in its on-the-ground engagement efforts, which may including, as requested by Customer, quarterly workshops (live) and monthly webinars designed to engage and support both the instructional staff and learners. (Quarterly live workshops include flight and lodgings of up-to 4 days, 4 times per Services Contract Year). | | Included |
| Total Contracted License, Maintenance, Hosting & Support for the 15-year Services Period. | | 1, 500,000 |

*During the Services Period, additional 12-month subscription licenses may be purchased by Customer in groups of 1,000 licenses, for $15 per license. Minimum of 1000 licenses per order. For clarity, all such additional licenses purchased shall expire after the 12-month subscription period for licenses under the order, which will begin on or about the date Rosetta Stone processes the order. If Customer wishes such additional licenses to renew following the end of the 12-month subscription period, an additional order will be required. Orders for additional licenses will be invoiced upon acceptance, payable net 30 days.

**Invoicing & Payment**

Based on the request of the Customer for up-front pricing, Rosetta Stone offers the following discounted pricing based on payment made within 60 days of the execution of the Agreement.

- Total – Development Fee (without discount) = $6,915,000
- Up-front Payment Discount - Development (not inclusive of Promotional Video) = ($552,000) (8%)
- Total for Annual Licensing, Maintenance & Support (w/o discount) = $1,500,000
- Up-front Payment Discount - Annual Licensing, Maintenance & Support = ($500,000) (15 years for the price of 10)
- Total Development + Annual Licensing, Maintenance & Support (w/o discounts) = **$8,415,000**
- Total Development + Annual Licensing, Maintenance & Support (with discounts) = **$7,363,000**

| | Single Payment Schedule | Total |
|---|---|---|
| **Development** | **8% Discount for upfront payment. This discount does not apply to the promotional video** ($552,000) | **$6,348,000** |
| **Annual License & Services** | **15 years for the price of 10** ($500,000) | **$1,000,000** |
| **Pre-Launch Promotional Video** | ($5,000) | **$15, 000** |
| | **Total Discounts Applied** | ($1,057,000) |
| | **Total Payment Due** | **$7,363,000** |

*Bonus Discount if contract signed by July 31, 2019*

| Description | Total Additional Discount |
|---|---|
| **Additional discount will apply if the Agreement is signed and returned to Rosetta Stone on or before July 31, 2019** | $150,000 |

Upon execution of the Agreement by both parties, Rosetta Stone will invoice the Customer for the Total Fees of **$7,213,000 USD**, plus any applicable taxes, payable net 60 days.

Pricing and terms herein valid with an executed Agreement received by Rosetta Stone no later than **July 31, 2019**.