

RIDER D: Liquidated Damages

I. General Provisions – Liquidated Damages

1. Liquidated Damages

- A.** The Department and the Provider agree that it is impractical and difficult to determine actual damages sustained by the Department. The goods and services provided under this Contract are not readily available on the open market. Any breach by the Provider will delay and disrupt the Department's operations and will lead to damages. Therefore, the Department and the Provider agree that the liquidated damages as specified in Rider D are reasonable and are not construed as a penalty.
- B.** In no case shall liquidated damages be measured in terms of potential lost revenue or potential lost net profit to the Department, unless and to the extent that a court of competent jurisdiction should determine that a liquidated damage provision is unenforceable as a matter of law.
- C.** Assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Department.

- 2. Notification of Liquidated Damages.** Upon determination that liquidated damages are to or may be assessed, the Department shall notify the Provider of the assessment in writing. The availability of any period of cure will depend on the situation and will be in the sole discretion of the Department.

3. Conditions for Termination of Liquidated Damages.

- A.** As determined appropriate by the Department, the Provider may obtain relief from the continued assessment of liquidated damages that have been imposed under the following conditions:
 - i. Except as waived in writing by the Department, no liquidated damages imposed shall be terminated or suspended until the Provider issues a written notice verifying the correction of the condition(s) for which liquidated damages were imposed, and all corrections have been subjected to system testing or other verification at the discretion of the Department.
 - ii. The Provider shall conduct system testing of any correction, as the Department deems necessary. Such testing shall be developed jointly by the Department and the Provider. Such testing must be approved by the Department, including the test script, test environment, and test results. A notice of correction will not be accepted until verification by the Department.

- 4. Severability of Individual Liquidated Damages.** If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

5. **Waivers of Liquidated Damages.** The waiver of any liquidated damages due the Department shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to assess liquidated damages or to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Department.
6. **Payment of Liquidated Damages.** All assessed liquidated damages will be deducted from any moneys owed to the Provider by the Department. In the event the amount due to the Provider is not sufficient to satisfy the amount of the liquidated damages, the Provider shall pay the balance to the Department within thirty (30) calendar days of written notification. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the Provider. At the Department's sole option, in those circumstances where moneys owned to the Provider are less than any applicable liquidated damage, the Department may obtain payment of assessed liquidated damages through claims upon the Performance Bond.
7. **Applicability of Liquidated Damages and Pro Rata Liquidated Damages.** The Provider shall not be required to pay liquidated damages for delays solely due to matters as enumerated under "Force Majeure" in Rider B-IT, or for time delays specifically due to, or approved by, the Department. In all the below liquidated damages sections, the damages shall be pro-rated for partial periods.

II. Liquidated Damages

1. Gaming System Installation

- A. Condition.** The Provider shall complete all installation preparations as required, pass the Department's lottery acceptance testing, comply with all other contractual requirements in effect during the implementation period, and achieve readiness for production operations, on or prior to the installation date agreed to by the Department.
- B. Damages.** The Department may impose liquidated damages on the Provider for each calendar day of delay in delivering the following benchmarks:
 - i. **Readiness for Start of Lottery Acceptance Testing.** Up to five thousand dollars (\$5,000) per day, beginning ninety (90) days prior to the agreed-upon production start-up date.
 - ii. **Successful Completion of Lottery Acceptance Testing.** Up to ten thousand dollars (\$10,000) per day beginning fourteen (14) days prior to the production start-up date, when such delay is caused by the Provider as a result of unresolved errors and issues encountered in acceptance testing.
 - iii. **Production Operations.** Up to fifty thousand dollars (\$50,000) per day beginning with the production start-up date. At start-up, all terminals, network, communications, and System features shall be ready to go live.

- iv. **Missing Deliverables.** Up to five hundred dollars (\$500) per day for each and every failure to provide a deliverable, meet a requirement, or resolve an acceptance test problem pursuant to the agreed-upon project schedule until such is provided or performed

2. Terminal and Peripheral Provisioning: Moves, Adds, Removals, Changes

- A. Condition.** The Provider shall install, move, and remove terminals (including their associated retailer-site peripherals and communications equipment) in accordance with the provisioning schedules that are agreed to by the Provider and the Department.
- B. Damages.** In the event the Provider fails to install a new terminal, remove an existing terminal, or conduct an outside or inside move for a retailer on the agreed upon schedule, the Department may impose liquidated damages of up to three hundred dollars (\$300) per day per terminal until provisioning is complete. For the purposes of this paragraph the Department shall assume that a retailer terminal includes all associated peripherals and communications equipment.

3. System Unavailable

- A. Condition.** The Provider shall ensure that the System is not “Unavailable” for more than three minutes per Day. The Gaming System shall be considered “Unavailable” if any of the following conditions are present:
 - i. Tickets cannot be sold;
 - ii. Tickets cannot be canceled (under the allowed conditions);
 - iii. Winning Tickets cannot be validated; during a day;
 - iv. The Gaming System is unable to accept any connections and/or process any requests during a period of time when any applicable third-party network being used to access the Gaming System for such connections and/or requests (such as the Internet) is operational; or
 - v. Instant tickets cannot be moved from one status to another. The calculation of the Gaming System being down for the purpose of moving tickets from one status to another will start from the time the Gaming System is unable to move from one status to another until the Gaming System is able to move packs properly.
- B. Damages.** In the event that the central system has been “Unavailable”, the Department may impose liquidated damages as a result of the total time during each daily operational sales period that the central system is unavailable, beyond the initial (3) three minutes that the Gaming System is “Unavailable” each day, according to the following schedule:
 - i. Liquidated damages in an amount up to one thousand dollars (\$1,000) may be assessed for each one (1) minute “Unavailable”.
 - ii. In the event that two (2) incidents in excess of three (3) minutes each have already occurred in a business week, the grace period of three (3) minutes is rescinded and liquidated damages will accrue immediately.

4. System Degraded Performance

A. Condition. The system shall evidence "degraded performance" of no more than one (1) hour during the operational sales period on any day. The system shall be considered as having degraded performance when:

- i. Retailer terminals exceed the average response time requirements, or the System is incapable of meeting the throughput specifications provided in this Contract.
- ii. Partial retailer network failure due to the central system if five percent (5%) or more of the retailer network is offline.
- iii. The System processes transactions from less than 95% of the installed and operational terminals (due to a central system, not network difficulty).
- iv. The System can process transactions but not for all gaming products and retailer-related activities. For example, degraded performance would exist if the central system allowed sales and cashes of most but not all active games. As another example, degraded performance would also exist if the central system supported activations but not settlements of instant ticket packs.
- v. Transactions do not log at the data center to at least two (2) systems, one remote system, and to the Department's ICS.
- vi. During a defined promotion period, the System cannot issue Tickets and conduct transactions to support the intended promotion.
- vii. Critical functions of the System management and administration cannot be supported or are substantially negatively impacted including, but not limited to, file transfers to or integrations with the Department accounting, retailer, business intelligence or third-party software or locations, and use of the Department's management terminals.
- viii. Instant ticket inventory management is compromised, including the ability to receive, order, pack, ship and track instant tickets, etc. in a manner concordant with production schedules and overall product management needs.
- ix. Gaming system cannot issue Tickets, special coupons, conduct transactions or other activities as designed in support of a short-term or ongoing promotion at one or more Department and retail locations.
- x. ICS is not receiving real-time feed from the Gaming System.

B. Damages. In the event that the central system has "degraded performance" that collectively exceeds one (1) hour in a day, the Department may impose liquidated damages as a result of the total time during each daily operational sales period that the central system is "degraded", except for the cure period of the first one (1) hour, according to the following schedule:

- i. Liquidated damages in an amount up to one thousand dollars (\$1,000) may be assessed for each hour of degraded time.
- ii. In the event that two (2) degraded performance incidents in excess of one (1) hour have occurred in a business week, the cure period shall be rescinded, and liquidated damages shall begin immediately with a subsequent degraded performance incident in that week.

5. Timely and Accurate Reports

- A. Condition.** The Provider shall produce and deliver timely, sufficient, and accurate management reports within the specified timeframes, as categorized and approved in writing by the Department. The Department shall also determine a cure period for the delivery of late, incomplete, or incorrect reports.
- B. Damages.** For each late, insufficient, or inaccurate report, once the cure period has passed, the Department may impose liquidated damages up to one thousand dollars (\$1,000) per day per report, until the report is provided, made sufficient, or corrected.

6. Timely and Accurate Files

- A. Condition.** The Provider shall produce and deliver timely, sufficient, and accurate files, including retailer website, within the specified timeframes, as categorized and approved in writing by the Department. The Department shall also determine a cure period for the delivery of late, incomplete, or incorrect files.
- B. Damages.** For each late, insufficient, or inaccurate file, the Department may impose liquidated damages up to one thousand dollars (\$1,000) per hour per file, until the file is provided, made sufficient, or corrected.

7. Terminal / Retailer Site Repair

A. Condition

- i. The Provider shall ensure that “non-operational” terminals (and their associated peripherals and communications devices) are repaired or replaced and operational within six (6) hours of notification of a non-operational condition. Repairs are required only during gaming operating hours. A retailer terminal is considered non-operational if tickets cannot be sold, canceled (under allowable conditions) or validated. The terminal is also considered inoperable or “down” if the reader and/or scanner cannot process wagers, or play slips, coupons, or financial transactions via mobile wallet.
- ii. For less critical failures that do not render the terminal non-operational (e.g., the terminal’s advertising display is out of service), the Provider has twenty-four (24) hours to complete a repair from the time of retailer notification.
- iii. For purposes of this paragraph, “terminal” refers to the retailer terminal, all associated peripherals, and all retailer-site communications equipment.

B. Damages

- i. If there has been a maintenance delay beyond the allowable six (6) hours for non-operational terminals, the Department may impose liquidated damages up to fifty dollars (\$50) per terminal per hour, or portion thereof, excluding gaming system non-operating hours and hours the retailer is not open.
- ii. For terminals with non-operationally critical failures, the Department may impose liquidated damages up to one hundred dollars (\$100) per day until a repair has been completed.
- iii. For chronic failures applying to individual retailers, in which the retailer terminal has failed and required a dispatch and repair/replacement three (3) times or more in any 30-day period, the Department may impose liquidated damages up to five hundred dollars (\$500). Chronic failure does not apply under Force

Majeure as provided by Rider B-IT, or tampering or abuse by the retailers or their customers.

8. Terminal Preventative Maintenance

A. Condition

- i. The Provider and the Department shall agree on a preventative maintenance cycle based on best practices to ensure terminals are functioning properly.. The Provider's failure to maintain the preventive maintenance schedule shall be subject to liquidated damages.
- ii. Unless otherwise agreed to by the parties, the following Terminal preventative maintenance applies, including, but not limited to:
 - a. POS On-Counter Terminals will have preventative maintenance performed once every 90 days.
 - b. SSTs will have preventative maintenance performed at least 90 days between each PM.

- B. Damages.** If the Provider has delayed preventative maintenance on retailer terminal beyond thirty (30) days after the agreed-upon service cycle, then the Department may impose liquidated damages up to one hundred dollars (\$100) per day until the condition is rectified.

9. Failure to Modify Existing, Add or Remove Draw Games Features

- A. Condition.** The Provider shall modify existing features, add new features, or remove current features and their supporting controls, reports, analytics, integrations, and data feeds within one hundred twenty (120) days from Department-approved game feature specifications, inclusive of time required for acceptance testing, any third-party requirements and Department process necessary for written approval, unless an extension is authorized in writing by the Department.
- B. Damages.** The Department may impose liquidated damages up to five thousand dollars (\$5,000) per day if the change or addition is not installed. The Provider is not obligated to pay liquidated damages if the Department opts to release the change later than the agreed-upon schedule.

10. Failure to Produce an Administrative Software Change

- A. Condition.** The Provider shall modify or add software to produce reports, screen displays, inquiries, and other administrative applications within ninety (90) days from Department-approved specifications, unless an extension is authorized in writing by the Department. The Provider's change shall incorporate an acceptance test and receive the Department's written approval, within the timeframe specified.
- B. Damages.** The Department may impose liquidated damages up to five hundred dollars (\$500) per day that the modified or additional software is not installed.

11. Failure to Support an Instant Ticket Game

- A. Condition.** The Provider shall ensure that all instant ticket games are securely and accurately supportable across the System in compliance with the agreed upon

schedule and in alignment with game design and features. The System shall handle all aspects of instant ticket game support including game design and printing, inventory management, third-party integrations, promotions, game ordering, shipping and delivery, activation, validations, transactions and all agreed upon Department and retailer Instant Game reporting and tracking.

- B. Damages.** The Department may impose liquidated damages of up to fifteen thousand dollars (\$15,000) per day for any instant games for which the Provider does not provide timely and/or correct instant ticket solutions.

12. Failure to Modify, Add or Remove Promotional Features

- A. Condition.** The Provider shall modify, add, or remove promotional features and their associated elements and controls including, but not limited to, components, reports, workflows, APIs, and data feeds and integrations within one hundred twenty (120) days, inclusive of acceptance testing and Department written approval, from date of Department-approved Specification associated to modify, addition or removal, unless an extension is authorized in writing by the Department.
- B. Damages.** The Department may impose liquidated damages up to ten thousand dollars (\$10,000) per day that the promotional feature is not installed, removed, or modified in compliance with the Department-approved schedule.

13. Unauthorized Modifications

- A. Condition.** The Provider shall not modify any software, hardware or integrations associated to the System without the prior written consent of the Department, except in emergency situations where specific procedures, including Department authorization, are followed. The Department may issue a written order that the change or modification be removed, and the System restored to its previous operating state at the Provider's expense. "Modification" does not include replacement of a System component with an essentially similar working component in the event of necessary maintenance.
- B. Damages.** If an unauthorized modification occurs, the Department may assess initial liquidated damages of \$100,000 and additional liquidated damages of \$15,000 per day for each day between the issuance of a removal order and the actual removal of the unauthorized modification and restoration of the system to its previous operating state.

14. Unauthorized Access or Compromise

- A. Condition.** The Provider shall preclude personnel not authorized by the Department from accessing the Maine gaming operations, system computer facilities and data centers, associated to the delivery of this contract. The Provider shall properly configure, provision access to, and take all actions necessary to prevent personnel not authorized by the Department from accessing, modifying, or otherwise interfering with the Gaming System, or Gaming System data or Software.
- B. Damages.** If the Provider fails to preclude access by unauthorized personnel, the Department may impose liquidated damages up to ten thousand dollars (\$10,000) for each person and for each incident in violation. Each and every act that permits access by an unauthorized person is an incident.

15. Cyber Security Breach

- A. Condition.** The Provider shall preclude any compromises in the security, integrity, confidentiality, or integrity of any lottery, player, retailer, partner, or Provider data, lottery game or lottery promotion associated to all aspects of the operations and management of the lottery and play of the lottery games as deployed under this contract.
- B. Damages.** If the Provider fails to preclude a data breach, the Department may impose liquidated damages based on a fixed sum of twenty-five hundred (\$2,500) per compromised record, with a minimum payment of ten thousand (\$10,000) and maximum cap of one hundred thousand (\$100,000) per breach incident.

16. Supply Shortage

- A. Condition.** The Provider shall furnish retailer supplies including, but not limited to, draw ticket stock, play slips, tax reporting forms, and any essential supplies and consumables for all games (not including instant tickets or point-of-sale advertising materials).
- B. Damages.** In the event that retailers are unable to sell or validate tickets as a result of the Provider's failure to provide adequate supplies, the Department may impose liquidated damages of five hundred dollars (\$500) per retailer per day of outage.

17. Failure to Report Incidents

- A. Condition.** The Provider shall immediately report all significant incidents related to the operation of the System associated with the implementation of this contract. The reporting shall be delivered to the Department Director and/or designee as defined in associated SOP by telephone, by text, by instant message, or by electronic mail within one (1) hour of the discovery of the incident, followed by a report delivered to the Department Director and/or designee within twenty-four (24) hours, electronically via email or hand delivered, of the incident. Significant incidents include, but are not limited to, the following and shall require a written report:
 - i. System takeovers and major equipment failures (physical or virtual).
 - ii. Major communications failures.
 - iii. Cloud system failures.
 - iv. Significant operator errors.
 - v. Out of balance conditions.
 - vi. Emergency software or hardware changes.
 - vii. Security violations.
 - viii. Cyber security breaches in:
 - a. The gaming system.
 - b. Other supporting systems, for example claims, retailer management).
 - c. Website, Mobile Applications.
 - d. Promotion systems.
 - e. Player Rewards or account systems.
 - f. Retailer(s) transaction, promotion, account, or billing data.

- g. Other associated systems that might impact the Department.
 - ix. Other conditions as defined by a memorandum of understanding.
 - x. Any situation that may cause the general public to become alarmed and/or that may damage the integrity, reputation, or public image of the Department.
- B. Damages.** In the event that the Provider fails to report incidents as defined in this Section, the Department may impose liquidated damages up to one thousand dollars (\$1,000) per day until an incident is correctly reported.

18. Failure to Timely Respond to Retailer Hotline Calls

- A. Condition.** The Provider shall respond to the retailer hotline in a professional and timely manner. During regular day to day business, the Provider shall answer no less than ninety percent (90%) of retailers' calls within two (2) minutes. Should a systemic problem or other unusual or adverse event occur impacting call volumes, the Provider shall ensure the call system plays a prerecorded message, calls are effectively managed through queuing, and calls that cannot be completed or effectively queued due to volume must allow for a retailer to leave a message.
- B. Damages.** If hotline calls are not serviced in a timely manner the Provider may be charged liquidated damages of five thousand dollars (\$5,000) for any week during which the ninety percent (90%) minimum is unmet.

19. Communications Network Outages

- A.** The communication equipment and network provided by the Provider shall be subject to liquidated damages for outages and degraded performance (rendering retailers unable to conduct ordinary business). For the purposes of this Contract, failure of communications equipment at the retailer's premises shall be considered part of Rider D, Item 7. Terminal / Retailer Site Repair.
- B.** The Provider shall provide, arrange for, and manage network elements once installed. Failures may result in a systemic outage event affecting the network at large or affecting individual retailers. Liquidated damages apply to chronic conditions as well as events
- C. Condition**
 - i. The System loses connection to more than forty percent (40%) of the retailer terminal network and there is a general outage of service for those retailers. This may be caused by failure of the Provider's staff to correctly carry out their established duties in supporting or administering the network or by failure of a Provider-specified protectively redundant network element to support a fail-over.
 - ii. Failure of the network infrastructure to provide continuously reliable service to retailers given reasonably anticipated equipment failures, weather conditions, and operational errors or incidents.
 - iii. Network availability from the retailer's location, as measured on a monthly basis, shall be a minimum of 99.7% of games operation hours. The Service Level Agreement may commit to a higher level of monthly availability. If the Proposal commits to a higher level of network availability, the Provider will be held to that standard for the corresponding liquidated damages.

D. Damages

- i. In the event that more than forty percent (40%) of the communications network is unavailable, the Department may impose liquidated damages as a result of the total time during each daily operational sales period that such portion of the network is unavailable, except for the first three (3) minutes, according to the following schedule:
 - a. Liquidated damages in an amount up to one thousand dollars (\$1,000) may be assessed for each one (1) minute of network outage, or fraction thereof.
 - b. In the event that two (2) network incidents in excess of three (3) minutes each have already occurred in a business week, the grace period of three (3) minutes shall be rescinded, and liquidated damages shall begin immediately with any subsequent outage in that week.
- ii. In the event that network availability, as measured on a monthly basis from the retailer location, is less than the Service Level Agreement provided by the Provider, liquidated damages may be assessed for that month at the rate of sixty dollars (\$60) per retailer terminal affected.

20. Failure to Remedy Audit Recommendations

- A. Condition.** If the Provider fails to address recommendations made as a result of a System or operational audit by a recognized authority such as the State of Maine, Department-approved auditors, MUSL, Tri-State, or NASPL, there will be liquidated damages assessed.
- B. Damages.** In the event that audit recommendations addressing any of the Provider's operational or System activities are not corrected within sixty (60) days of notification, unless specifically exempted by the Department Director, the Provider may be charged liquidated damages of five thousand dollars (\$5,000) at the end of the initial 60-day period and an additional five thousand dollars (\$5,000) for each subsequent 30-day period or any portion thereof, for which the audit recommendation corrections have not been completed.

21. Failure to Provide Software Testing and Quality Software Turnover

- A. Condition.** If the Provider fails to provide a quality assurance test plan or a report on the quality assurance test, or fails to provide release notes and quality tested software in accordance with MUSL or NASPL quality assurance standards, there will be liquidated damages assessed.
- B. Damages.** In the event that untested software is turned over for user acceptance testing and that the software does not meet the specifications standards established by the Department, the Provider may be charged liquidated damages of five thousand dollars (\$5,000) for the first violation (return of the software due to being non-testable) and ten thousand dollars (\$10,000) for each subsequent violation.

22. Failure to Provide Deliverables

- A. Condition.** The Provider shall comply with all commitments of the RFP, the Proposal, and the Contract, and all clarifications and amendments to these documents. If the

Provider fails to provide products, services, data, or documents as obligated thereby, the Department may invoke liquidated damages where not otherwise addressed.

- B. Damages.** In the event that the Provider fails to provide an obligated product, service, data, or document, the Department may impose liquidated damages up to five hundred dollars (\$500) per day or per incident (at the Department's discretion) until the condition is rectified.

23. Late Delivery of Instant Ticket Game

- A. Condition.** The Provider shall establish a delivery schedule for each instant game approved and ordered by the Department. If an agreed upon game delivery date is missed and the Department is unable to sell a new or re-ordered game, liquidated damages may be assessed.
- B. Damages.** In the event a game is not delivered as established by the approved schedule and the Department is unable to sell a game, the Department may require the Provider to pay the sum of ten thousand dollars (\$10,000) per game, per day, or part of a day until the game is successfully received by the warehouse.

24. Unusable Instant Games

- A. Condition.** The Provider is required to retrieve from retail agents or warehouse inventory, any packs produced by the Provider that are deemed unusable due to quality concerns including, but not limited to, security, integrity, quality, trademark issues, or inadequate shelf life.
- B. Damages.** In the event the Provider fails to retrieve identified packs in a timely manner, Department may assess liquidated damages of five dollars (\$5) per affected pack.

25. Incorrect Instant Software or Algorithms Prohibiting or Impacting Games Sales, Validations, Prize Award or Other Concerns

- A. Condition.** The Provider shall deliver instant game software that conforms to the specifications set forth in the executed working papers and delivers game play, activations, and validations as planned.
- B. Damages.** Should the Provider fail to deliver software in compliance with the approved working papers, the Department may assess liquidated damages of one-thousand dollars (\$1,000) per game per day, or part of a day, that the software is operating improperly may be imposed.

26. Security and Integrity of Instant Tickets of Game Production

- A. Condition.** The Provider shall create and secure Department approval of a comprehensive security program designed to ensure the continuous security and integrity of Instant tickets during printing, warehousing, and shipping of Instant tickets.
- B. Damages.** Should the Provider fail to maintain the security and integrity of the Instant tickets, the Department may charge one hundred thousand (\$100,000) per incident.

27. Inadequate Trademark Search

- A. Condition.** The Provider shall provide a thorough trademark or service mark search to confirm the availability of a name, art, game play or other protected aspect of a game, advertising or promotion.
- B. Damages.** If the Provider fails to conduct a thorough search and this failure nullifies the Department's ability to offer a game and/or the inadequacy of such search directly results in a dispute, the Department may assess liquidated damages of five-thousand dollars (\$5,000) per incident may be imposed.

28. UAT Environment

- A. Condition.** The Provider shall make all integral parts of the UAT environment available for the use of the Department at the beginning of and during normal business hours. This includes the UAT server(s), all communication types, terminals, and requested data as agreed by the Provider and the Department.
- B. Damages.** Liquidated damages up to two thousand dollars (\$2,000) may be assessed per day that any element of the UAT environment is unavailable.

29. System Restoration

- A. Condition.** The Provider shall restore the system for retrieval of the previous 18 months of wagering transactions and instant ticket accounting system transactions within 12 hours of the Department's written request.
- B. Damages.** The Department may assess liquidated damages up to five hundred dollars (\$500) per hour beyond an initial 12-hour grace period.

30. Failure to Meet Staffing Requirements

- A. Condition.** The Provider and the Department shall agree to a set of criteria for the staffing of hotline, operational, development, system support, conversion, field service, marketing support, and training services based on performance measures and standards. The Department will notify the Provider of its failure to meet the performance measures and standards. The Provider will have fourteen (14) calendar days from its receipt of written notice by the Department to remedy the failure
- B. Damages.** In the event that the Provider fails to maintain sufficient resources, the Provider may be charged liquidated damages of two hundred and fifty dollars (\$250) per day, per position, for each day after fourteen (14) days from written notification until the condition is corrected.

31. Failure to Comply with Security Requirements

- A. Condition.** The Provider shall provide, install and maintain all security requirements as set forth in the Contract and as approved by the Department. Upon receipt of written notification from the Department of new security requirements and/or modifications to existing security requirements, the Provider shall have a maximum of 30 (thirty) days to be in full compliance with the new or modified security requirements.
- B. Damages.** In the event that the Provider fails to comply with Department security requirements within the 30 (thirty) days, the Department may assess, as liquidated damages, one thousand dollars (\$1000) per day per violation.

32. Multi-Jurisdiction Standards

- A. Condition.** The Provider shall comply with MUSL Rule 2 and the Mega Millions Finance and Operating Procedures plus any Tri-State Lottery Rules and Regulations.
- B. Damages.** If the Provider fails to comply with any required Agency or multi-jurisdictional association standard within 60 calendar days following notification by the Agency, the Agency may impose liquidated damages of \$5,000.00 for each instance of non-compliance. In addition, the Agency may impose an additional \$5,000.00 for each subsequent seven-day period, or portion thereof, for each instance for which compliance has not been achieved.

33. Testing and Corrective Actions of the Disaster Recovery Plan

- A. Condition.** The Provider shall submit a Disaster Recovery Plan to the Department for approval no later than ninety (90) Days after the Contract execution.
- B. Damages.** If the Provider fails to comply with any required Department or multi-jurisdictional association standard within 90 calendar days following notification by the Department, the Department may impose liquidated damages of \$5,000.00 for each instance of non-compliance. In addition, the Department may impose an additional \$5,000.00 for each subsequent seven-day period, or portion thereof, for each instance for which compliance has not been achieved.

34. Failure to Submit a Final Implementation Plan

- A. Condition.** The Provider shall submit a final Implementation Plan, as required in Section 2.9.5 (Formal Implementation Strategy), to the Department for approval no later than thirty (30) Calendar Days after the Contract is executed.
- B. Damages.** The Provider may be assessed liquidated damages in the amount of ten thousand dollars (\$10,000) per Calendar Day for each Day beyond the due date that the final Implementation Plan is not submitted to the Department.

35. Performance During Conversion

If the Department awards a new contract for the gaming system to another entity, the Provider must cooperate fully and in good faith, and assist to the extent reasonable and practical to accomplish Conversion or transition in a timely and economical fashion and at no additional cost to the Department for such assistance. During the Gaming System Conversion or during the transition process set forth in the Contract, the Department may impose liquidated damages under the following conditions.

A. Timely Cooperation with Transition Activities and Vendors

- i. **Condition.** The Provider must ensure that qualified and knowledgeable staff members attend transition meetings.
- ii. **Damages.** If the Provider is not attending conversion and transition meetings and responding to requests in a timely manner, liquidated damages may be imposed of up to \$5,000 per occurrence.

B. Timely and Accurate Supply of Requested Data

- i. **Condition.** The Provider must provide requested data in a timely manner and in agreed upon formats throughout the transition process. The timeliness, completeness, and accuracy of the Data is essential, and efforts that deliver otherwise may delay that conversion project.
- ii. **Damages.** If Provider does not supply timely and accurate data as requested, liquidated damages may be imposed of up to \$5,000 per occurrence of delay.

C. Removal of Equipment, Supplies in Retail Locations

- i. **Condition.** The Provider must remove all of its equipment in retail locations.
- ii. **Damages.** If the Provider does not remove its equipment in all retail locations as required, liquidated damages may be imposed of up to \$500.00 per Retailer location, per Day.

D. Timely and Proper Destruction of Data

- i. **Conditions.** At least 30 days prior to the effective date of the new gaming system contract, the Provider must submit for approval its data destruction plan. The timely submission and approval of the plan is required before any data destruction can begin. The Provider must also certify that data destruction has been completed per the plan.
- ii. **Damages.** If the Provider does not submit a data destruction plan on time, the Lottery may impose liquidated damages of up to \$500.00 per Day of delay. If the Provider fails to timely complete the data destruction according to the plan and certify completion of destruction to the Department, the Department may impose liquidated damages of up to \$5,000.00 per week, or portion thereof, of delay in destruction or certification.