

Attachment 16. Performance Standards and Liquidated Damages

The DNR acknowledges that failure of the ELSI 3 System or interrupted or otherwise inadequate or poor performance of the ELSI 3 System will have devastating effects on the DNR licensing process, operations, reputation, and will result in lost or reduced license revenues. As such, the DNR shall require the successful Contractor to agree in any resulting contract to reasonable liquidated damages in the event ELSI 3 is not working or is otherwise unavailable for reasons within the vendor's or a sub-contractor of the vendor's control. The Contractor shall certify in its application that it will agree to a liquidated damages provision in any contract that may result from this RFP and shall provide documentation that supports its ability to provide this coverage in the event that ELSI 3 is not developed and implemented timely, and/or in the event that ELSI 3 is not fully functional at any time following implementation.

PRE-IMPLEMENTATION PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

DNR declares that time is of the essence in the completion of the System, and further that DNR may suffer damages if the contractor fails to implement the System by the date(s) specified. If the contractor fails to complete the System and all required testing by the date or dates specified in the Contract and as part of the Design Document, and DNR elects to continue the Contract with current contractor, DNR may assess liquidated damages in an amount of not less than One-Thousand Dollars (\$1,000.00) for each day, or part of a day, in which contractor fails to implement the System. Liquidated damages shall not be considered a penalty and may be deducted from the amount of any payment due or owing to the contractor by DNR; provided the state has met the deadlines agreed upon by the parties and provided necessary assistance and information required by the Contract in a timely manner; and provided that in the event the state has not met agreed upon deadlines or has not provided required information or assistance in a timely manner, the contractors delay shall not exceed the extent to which the DNR may have caused the delay.

Review of Work; Acceptance. DNR will monitor the performance of the contractor in a manner more fully described in the Special Conditions of the Contract and, at a minimum, by logging complaints regarding contractor's performance and meeting with contractor to address those complaints to make sure that the contractor is meeting the deliverables of the Contract and achieving the specified results. As is consistent with the monitoring plan described in the Special Conditions of the Contract, contractor shall be required throughout the duration of the contract to satisfactorily provide timely services in order to meet the desired outcomes, or shall be subject to liquidated damages.

POST-IMPLEMENTATION PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

DNR depends on the reliance of the System to sell Licenses and Privileges that provide a substantial amount of the operating revenue for the DNR, and to manage data that is necessary for DNR's effective management of the natural resources under its jurisdiction. Therefore, the following performance standards, and their corresponding liquidated damages, shall be enforceable for the term of the Contract:

Privilege Sales. The following performance standards shall govern Privilege sales.

- A. The System shall be fully operational at least 99.5% of every month during the term of the Contract. For purposes of this requirement the System shall be available 24 hours a day, seven days a week, and 365 days a year, except during times of scheduled maintenance, as approved by the DNR.
- B. All Active Network functions that support the System shall meet the same performance standards. Administrative functions conducted by DNR shall meet these standards during DNR's regular business hours, which are 8:00 am to 4:30 pm, Central Time, Monday through Friday

Failure to meet these standards may, at the sole discretion of the DNR, result in liquidated damages of either:

- a. Five-thousand Dollars (\$5,000.00) for each disruption of service lasting more than three (3) consecutive hours. For disruptions of service lasting longer than three (3) consecutive hours, additional liquidated damages may, at the sole discretion of the DNR, accrue at the rate of One thousand Dollars (\$1,000.00) per each full hour until service is fully restored.
- b. One-thousand Dollars (\$1,000.00) per three hours of disruption of service that may not last more than sixty (60) consecutive minutes but which result in total monthly disruption of the System of more than a cumulative of four (4) total hours.

- c. The maximum damages that may be assessed for any single incident is sixty-eight thousand (\$68,000), per 24-hour period beginning at the point when the disruption began. No charges under this section will accrue after 24 hours provided the System is functional and operating within 48 hours of the initiation of the incident.

Harvest Report

The following performance standards shall govern the System as it relates to the Harvest Report functions.

- a. The System, as it relates to the Harvest Report function, shall be fully operational at least 99% of every month during the term of the Contract. This function shall be available 24 hours a day, seven days a week, excluding time for scheduled maintenance.

Failure to meet these standards may, at the sole discretion of the DNR, result in liquidated damages of either:

- a. Three-thousand Dollars (\$3,000.00) for each disruption of service lasting more than sixty (60) consecutive minutes. For disruptions of service lasting longer than sixty (60) consecutive minutes, additional liquidated damages may, at the sole discretion of the DNR, accrue at the rate of One-thousand Dollars (\$1,000.00) per each full hour until the System is completely restored to fully operational function.
- b. One-thousand Dollars (\$1,000.00) per sixty minutes of disruption of service that may not last more than sixty (60) consecutive minutes but which result in total monthly disruption of the System of more than a cumulative of seventy-two (72) total hours.

The maximum liquidated damages that may be assessed for any single incident is ten thousand dollars (\$10,000) per 24-hour period beginning at the point when the disruption began.

Landowner-tenant Registration

The following performance standards shall govern the System as it relates to the Landowner-tenant Registration functions.

- a. The System, as it relates to the Landowner-tenant Registration function, shall be fully operational at least 99.8% of every month during the term of the Contract. This function shall be available 24 hours a day, seven days a week, excluding time for scheduled maintenance.

Failure to meet these standards may, at the sole discretion of the DNR, result in liquidated damages of either:

1. Five-thousand Dollars (\$5,000.00) for each disruption of service lasting more than three (3) consecutive hours. For disruptions of service lasting longer than three (3) consecutive hours, additional liquidated damages may, at the sole discretion of the DNR, accrue at the rate of One-thousand Dollars (\$1,000.00) per each full hour until the System is completely restored to fully operational function.
2. One-thousand Dollars (\$1,000.00) per three hours of disruption of service that may not last more than sixty (60) consecutive minutes but which result in total monthly disruption of the System of more than a cumulative of seventy-two (72) total hours.

The maximum liquidated damage that may be assessed for any single incident is Ten-thousand Dollars (\$10,000.00), per 24-hour period beginning at the point when the disruption began.

Quality of IVR Service.

The following performance standards shall govern the System as it relates to the IVR Service functions.

- a. The IVR Services shall be fully operational at least ninety-nine percent (99%) of each month. This function shall be available 24 hours a day, seven days a week, excluding time for scheduled maintenance.
- b. Voice responses to questions asked of Customers using the IVR Service function of the System must be accurately recognized with a minimum accuracy rate of ninety percent (95%), as measured monthly, for those months in which Harvest Reports are gathered. During the term of the Contract, the contractor shall be responsible for monitoring recognition rates of voice responses and shall provide a report to DNR quarterly to demonstrate compliance with this performance standard. Contractor shall submit for DNR's review and approval the methods used to monitor and calculate these rates, and shall provide raw data to the DNR, upon request, regarding such calculations.

- c. Issues associated with the IVR Service function of the System that are identified by either Party shall be resolved within five (5) business days.

Failure to meet these standards may, at the sole discretion of the DNR, result in liquidated damages in the amounts of either:

- a. One-thousand Dollars (\$1,000.00) per day for each day the IVR Service function is not functioning after five (5) days' notice to the contractor that an issue has arisen.
- b. One-thousand Dollars (\$1,000.00) per day for each day that the total accuracy rate falls below the rate of 99.5%

The maximum liquidated damages that may be assessed for any single incident is Five-thousand Dollars (\$5,000.00), per any single incident. Individual on-going issues associated with specific data, such as recognition of a specific county, may not be subject to the penalties described above, provided the overall performance standard enumerated above

Deadlines for Drawings. Contractor shall conduct drawings for some licenses, as identified by DNR and established by Iowa Code and Iowa Administrative Code, and shall manage the Preference Point records as defined in the Detailed Design Document. Drawings required by the Contract shall be completed and the results supplied to DNR for posting in a format specified by DNR within ten (10) business days from the end of the particular Privilege's application period. Failure to meet this deadline may, in the sole discretion of the DNR, result in liquidated damages of One-thousand Dollars (\$1,000.00) per day for each full day after the deadline until the information is supplied to DNR, provided DNR has met its obligations with regard to the drawing. The maximum liquidated damage that may be assessed is Ten-thousand Dollars (\$10,000.00) per drawing.

Devices. If one or more Devices are non-functioning for more than twenty-four consecutive hours from the time the contractor is notified that a Device(s) is non-functioning, the contractor may be assessed liquidated damages of Five-hundred Dollars (\$500.00) per day until such Device is repaired and/or replaced to fully operate. For purposes of the Contract, shipping a new Device to the License Agent by the next business day after receiving notification that a Device is non-functioning shall be satisfactory.

Exceptions. Scheduled maintenance periods for the System shall not be included in down-time calculations for purposes of meeting performance standards. Contractor shall make every effort to keep these scheduled maintenance operations and the maintenance operations of subcontractors coordinated, short and scheduled at times the System has traditionally not been busy and in consultation with and with approval from the DNR. Contractor shall inform DNR of all maintenance or repairs that may result in the System being non-operational. Penalties shall be imposed for interruptions of service that could reasonably have been avoided by the actions of the contractor and its subcontractors, or by failure of the contractor and its Subcontractors to take prompt action to remedy a problem. System failures beyond the control of the contractor or its Subcontractors shall not be included in down-time calculations.