

**REQUEST FOR PROPOSALS (RFP)**  
**LOTTERY CENTRAL MONITORING AND CONTROL SYSTEM**  
**#2015-01**

**RESPONSES TO WRITTEN QUESTIONS (Q&A #5)**  
**February 24, 2016**

This list of questions and responses #5 (Q&A#5) is being issued to clarify certain information contained in the above named Request for Proposals (RFP). The statements and interpretations of Contract requirements, which are stated in the following responses are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the Contract does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the State Lottery and Gaming Control Agency's ("MLGCA") responses to those questions:

**137. QUESTION:** Attachment A – Section 9 Risk of Loss; Transfer of Title, page 187: This Section states that title to the “conforming supplies, equipment and materials specified as deliverables to the State hereunder” shall pass to the State upon its acceptance. However, as this draft Contract/RFP is what the Offeror considers a “facilities management contract” in accordance with industry practice, pursuant to which title to the equipment, goods, etc. is retained by the Contractor (and removed upon expiration of the contract), will the MLGCA clarify the “deliverables” for which the MLGCA would expect title to pass to the State?

**ANSWER:** MLGCA will retain the Deliverables required in Section 3.31.4 of the RFP. Upon expiration or termination of the Contract:

- MLGCA may choose to retain any previously delivered consumables or may require the Contractor to dispose of consumables that are no longer relevant to MLGCA,
- All data, analyses and reports will become the property of MLGCA, and
- All Contractor hardware and infrastructure will remain the property of the Contractor and shall be removed in accordance with Section 3.3.3.

**138. QUESTION:** Section 3.3.15 Custom Software, page 71:

a) In connection with the rights under Section 3.3.15(1), will the MLGCA confirm that any of the MLGCA's ownership rights would be limited to that software, including, but not limited to application modules developed to integrate with a COTS, source-code, maintenance updates, documentation, and configuration files which has been created by Contractor exclusively for this Contract?

b) Will the MLGCA please confirm that Contractor shall retain those intellectual property rights in existence prior to the formation of the Contract and which MLGCA may use under license during the term of the Contract?

c) Will the MLGCA confirm that the rights granted in Section 3.3.15(2) extend only to intellectual property that (a) was created exclusively for this Contract; and (b) was not based on, nor does it incorporate, any intellectual property rights, in whole or in part, of the Contractor which is not the subject of this Contract nor the intellectual property rights of any third-party?

**ANSWER: a) No, but the State shall *solely* own only custom software, including, but not limited to application modules developed to integrate with a COTS, source-code, maintenance updates, documentation, and configuration files, when developed under this Contract.**

**b) Yes, the Contractor keeps the rights in existence prior to the formation of the Contract, but the MLGCA retains the right to use those rights past the term of the Contract.**

**c) No. Under bankruptcy or insolvency, the MLGCA requires the rights to the software and IP provided by the Contractor.**

**139. QUESTION: Section 3.27.8 Data Security, page 135:**

a) It is requested that this Section be revised to limit the scope of the license granted to that software installed by the Contractor, as well as maintenance or enhancements to that Software, and all program documentation supplied by the Contractor for the duration of the Contract that: (1) was created exclusively for the Contract; and (2) was not based on, nor does it incorporate, any intellectual property rights, in whole or in part, of the Contractor which is not subject to the Contract nor the intellectual property rights of any third-party.

b) Will the MLGCA also confirm that the license to Software required in Section 3.27.8(2) shall be subject to the rights in intellectual property held by the Contractor or applicable third-parties and with respect to any third-party software, the Contractor and the MLGCA shall abide by the terms and conditions of the applicable third-party license agreement?

**ANSWER: a) No.**

**b) No, but the Contractor must divulge and advise the MLGCA of any such limitations and restrictions as they arise and the MLGCA will address them at that time.**

**140. QUESTION:** Attachment A – Contract Section 4.2, page 182: Pursuant to the terms of the Contract, the Contractor should be compensated: (a) the Fixed Percent of Net Sales bid by such Contractor (under Section A(1) of the Financial Proposal), plus (b) any additional compensation (on a Fixed Monthly Fee basis), if any, for items included in Sections A(2)-A(7) based upon the amounts (if any) selected by the MLGCA, plus (c) any additional compensation for the Additional Tasks I-VI, if any, which may be payable as: (i) a Fixed Percentage of E-Commerce Sales (Task I), (ii) a Fixed Monthly Fee (Tasks II, III, IV, V and VI (Sub-Parts CI and CII), or (iii) a Fixed “Percentage of Net Sales” for Task VI, Sub-Part CIII, all to the extent the MLGCA elects to implement such Tasks.

a) Will the MLGCA clarify where in the draft Contract (Attachment A) the above percentages/fixed amounts will be listed/set forth?

b) Will the MLGCA provide clarification of the intent of Section 4.2 of the Contract (Attachment A), specifically, how the “NTE Amount” (and discussion of “time and materials” payments) applies to the above compensation structure?

**ANSWER:** a) The Attachment F – Price Sheet submitted by the Offeror containing all of the Contract prices will be attached as an exhibit to Attachment A – Contract when the sample format contained in the RFP is completed with all of the information necessary to create the actual Contract document to be signed by the Contractor and the MLGCA.

b) The NTE amount will be projected by the MLGCA based on the various price components proposed by the Offeror on Attachment F – Price Sheet and the MLGCA’s estimate of the actual utilization of those components over the Contract term. The NTE amounts are not guaranteed amounts, but only the maximum amount authorized to be expended under the Contract without further properly authorized modification. As stated in the RFP Attachment F – Financial Proposal Pricing Instructions, Item #N, “The amount to be paid to the Contractor will be calculated using the Fixed Percentages and Fixed Unit Prices specified on the Financial Proposal Sheet multiplied by the actual MLGCA Net Sales, E-Commerce Sales (if applicable), and actual quantities purchased by the MLGCA, respectively.”

**141. QUESTION:** Attachment A – Contract Section 5.2, page 183:

a) Section 5.2 provides for the State’s ownership of Work Product which includes all documents, materials and software provided by the Contractor for purposes of the Contract. The LCMCS and other deliverables that may be provided by Contractor for

purposes of the Contract will likely be part of Contractor's standard product offering provided and offered to other customers. Accordingly, will the MLGCA revise the definition of Work Product set forth in Section 5.2 to include the underlined text shown below?

"Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials....prepared by or for the Contractor exclusively for purposes of the Contract and funded solely using funds from this Contract ("Work Product")..."

b) In addition, the RFP and Contract contemplate a commercial relationship whereby the Contractor furnishes and runs the LCMCS on behalf of the State but ownership of the system and services of the LCMCS, including all hardware and software, does not pass to the State. Accordingly, will the State confirm that ownership of LCMCS provided by Contractor under this Contract and related materials remains with Contractor and ownership does not pass to the State by adding the following underlined text before the last sentence of Section 5.2?

"For the avoidance of doubt, Contractor shall retain ownership in the LCMCS and any documents and materials, including software, and any intellectual property rights related thereto, that are either: 1) owned or created by Contractor independently from its performance of this Contract; or 2) that are owned or created not solely using funds from this Contract."

c) The language of this section regarding the definition of Work Product exceeds other references to rights in data, copyrights, patents and other intellectual property owned by MLGCA elsewhere in the contract terms. For instance, both Sections 22 and R24.2.2 refer to the ownership rights of MLGCA in intellectual property creates "as a result of the Contract" or "created in the performance of the Contract", whereas this section materially incorporates all such intellectual property "prepared by or for the Contractor for purposes of this Contract". This language materially expands the scope of such ownership rights by including anything materials prepared by or for the Contractor even if it is not provided or even intended to be provided to the MLGCA, or is created for a third party, but later offered to or utilized by Contract in relation to this Contract. Will the MLGCA please confirm that, consistent with the other Contract terms in the RFP, the definition of Work Product is intended to include only materials created for or on behalf of MLGCA in the performance of the Contract?

**ANSWER: a) Yes, but the MLGCA's ownership includes the creation of Work Product prior to compensation. Accordingly, the Contract will be modified to add the following language to Section 5.2 (See Amendment #6 to the RFP):**

**"Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials....prepared by or for the Contractor exclusively for purposes of the Contract and funded solely using funds**

from this Contract or created related to this Contract during the period prior to compensation (“Work Product”)...”

**b) No, the proposed wording will not be added. The MLGCA considers its answer in a) to adequately respond to this question.**

**c) No. See the Answer to Question 141 a).**

**142. QUESTION:** Attachment A – Contract Section 5.3, page 184: Section 5.3 states that all Work Product shall be considered “works made for hire” as that term is understood under US Copyright Law and that the State shall be the owner of such rights. Further, Section 5.3 states that ownership in the Work Product includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

a) The Contractor’s or a third-party’s proprietary information may be used to formulate Work Product but such information will likely not have been developed pursuant to this Contract or funded solely by this Contract. Since Section 5.4 provides for the MLGCA’s right to use Contractor and third-party proprietary material incorporated in Work Product, will the MLGCA confirm that its ownership of Work Product does not include information used to formulate such Work Product by deleting from the second sentence of Section 5.3 the language shown in strikethrough text below?

“Ownership includes the right to copyright, patent, register, and the ability to transfer these rights ~~and all information used to formulate such Work Product.~~”

b) In connection with the Work Product owned by the MLGCA, Contractor may require certain rights in the Work Product to perform its obligations under the Contract. Will the MLGCA include a license grant to the Contractor for the Work Product needed to allow complete performance of Contractor’s obligations under the Contract?

**ANSWER: a) No.**

**b) No, the Contractor must advise the MLGCA of any such requests for a license along with an explanation of the rights required and all reasons those rights are needed. The MLGCA will address any such requests as they arise.**

**143. QUESTION:** Attachment A – Contract Section 5.4, page 184: Section 5.4 provides for a license to the State to use Third-party Intellectual Property as necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. The Contractor will provide such a license to any of its proprietary Pre-Existing Intellectual Property necessary for the use of Work Product for its intended purposes provided that the license is limited solely to use in connection with the applicable Work Product and does not include rights to the LCMCS. However, with

respect to COTS, Contractor cannot legally grant more to the MLGCA than what it has obtained from third-party licensors. Accordingly, license rights granted in Section 5.4 should be subject to all relevant contractual obligations that the Contractor is bound by in its agreements with third-party licensors of COTS.

a) Will the MLGCA revise the license grant in Section 5.4 to specifically exclude rights to the LCMCS?

b) Will the MLGCA revise Section 5.4 by adding the following underlined text before the last sentence of the section?

“Any license to Third-party Intellectual Property provided in this Section 5.4 shall be subject to the limitations and restrictions associated with such Third-party Intellectual Property, including but not limited to sublicense rights which may be revocable or terminable.”

c) Will the MLGCA confirm that the license proposed under this section covers only such Pre-Existing Intellectual Property that is specifically embodied by the Work Product, and not simply related to it?

**ANSWER: a) No. See the Answer to Question 141.**

**b) No, Contractor must divulge and advise the MLGCA of any such limitations and restrictions as they arise and the MLGCA will address them at that time.**

**c) No. The license applies to any Pre-Existing Intellectual Property incorporated in the Work Product, as well as any Pre-Existing Intellectual Property required to access, install, build, compile or otherwise use the Work Product.**

**144. QUESTION:** Attachment A – Contract, Section 5.5, page 184: Will the MLGCA delete indemnification for infringement of third-party intellectual property rights by any Third party Intellectual Property provided by Contractor? Contractor exercises no control over the design or production of any Third party Intellectual Property and therefore has no way to ensure such product or service does not infringe any other third party rights.

**ANSWER: No. The Contractor indemnifies the State against all claims for infringement regarding all and any of the rights and/or products that Contractor provides to the State in completing its tasks under this Contract.**

**145. QUESTION:** Attachment A – Contract, Section R25.7, page 199: In connection with the right of the Procurement Officer to “suspend, delay or interrupt all or any part” of the Contractor’s performance of work, assuming that the Contractor was not the cause (i.e., at fault) for such suspension, will the MLGCA confirm that the term of the

Contract will be extended by the corresponding period of such suspension to ensure that the Contractor will be compensated for the entire term that was bargained for?

If not, and assuming again that the Contractor was not the cause (i.e., at fault) for such suspension, will the Contractor be entitled to compensation during such period of suspension?

**ANSWER:** This provision is required by State law and, to MLGCA's knowledge, has not been exercised by the Agency. MLGCA will not speculate on what actions might be taken in the event of a theoretical possibility because any action taken will necessarily be driven by the facts of the specific situation. However, in the event of a suspension, MLGCA and the Contractor would need to look at the Contract in its entirety and apply this provision and all other appropriate contract language to the situation. Potential offerors may wish to review other required provisions, such as R25.11 "Delays and Extensions of Time," for context.

**146. QUESTION:** Section 3.26.1 TASK I – E-Commerce Subscriptions, page 126: Item #9 states "Provide all banking fees associated with creating and maintaining an account funded by a bank transfer or debit transaction". Calculating the potential banking fees will be very difficult to forecast and would labor the pricing. By "Provide" what exactly is the RFP requiring? Does this mean to include it in the pricing or is it ok to specify the fees that players will pay for using debit?

**ANSWER:** The banking fees shall be the responsibility of the Contractor and should be included in the price proposed.

**147. QUESTION:** Section 3.26.2, TASK II – HOST "MDLOTTERY.COM" ONLINE NETWORK, page 127:

a) What is meant by Private VLAN? Is this for a Private VLAN inside the MD Lottery's facility or for the web hosting environment?

b) What is meant by customer firewall? Is this a firewall that is provided at the MD Lottery's facility or at the web hosting facility? Also if this is at the web hosting facility is this firewall for MD Lottery's connectivity to administer the system?

c) Development Server – is this a development server that is supplied for MD Lottery or for the web hosting development vendor to use?

d) Offsite Replication – Is this meant as offsite data retention or full system replication?

**ANSWER:** a) The private VLAN is referring to a VLAN for incoming traffic, as well as an internal VLAN within the hosting network.

b) The customer firewall will be located at the hosting facility to secure traffic, and to support administrative access by the MLGCA to the MLGCA's environment. In a commercial hosting environment, it is the firewall securing traffic to a customer's environment, which is behind the hosting company's firewall that supports traffic for many/all customers.

c) The development server is for use by the MLGCA.

d) The requirement refers to off-site data retention.

148. **QUESTION:** Amendment #1 dated 1-20-2016 Revised: Attachment F – Price Sheet: The Price Sheet states: “This form must be completed in its entirety (prices must be provided for each section in Part A, each Task in Part B, and items in Part C as appropriate) and submitted by Offeror as its Financial Proposal.”

**PART A. – LOTTERY CENTRAL MONITORING AND CONTROL SYSTEM:** The Offeror must provide its price in Section A(1) to provide all hardware, software, personnel and services including a Telecommunications Network required by this RFP for a Lottery Central Monitoring and Control System. The prices shall be expressed as Fixed-Price type Unit Prices based on a **Fixed Percent of Net Sales**. Offerors must provide their proposed incremental price to provide the various types of Additional Hardware stated in Sections A(2) – A(7) in the form of a **Fixed Monthly Fee** based on the various specified unit quantity ranges. **Price shall include the provision of necessary spare levels.**

a) In PART C – Additional Tasks VI, Sub-Part CII, Page 254 (Alternative Payment Methods), would the Lottery allow offerors to propose TBN pricing due to definition and scope of this item?

b) In PART C – Additional Tasks VI, Sub-Part CIII, Page 254, would the Lottery allow offerors to propose Offered Options at a TBN price due to the definition and scope of these items?

**ANSWER:** a) Assuming that “TBN” pricing means “To Be Negotiated” pricing, the answer is “No”, the MLGCA will not accept pricing that is to be negotiated. The Offeror must provide its proposed pricing with its Proposal.

b) See a) above.

149. **QUESTION:** Questions and Answers dated 1-15-16: We would like to further clarify content placement for requirements 4.2.2.6.5, 4.2.2.6.6, and 4.2.2.6.14. In the first round of Q&A (answer 36), the Lottery indicated that section 4.2.6.14.b should

include suggested games to replace existing games and mentions a replacement to Racetrax in the response.

Would the Lottery confirm that we are correctly interpreting which type of content should be placed within the following RFP Sections:

4.2.2.6.5

- Should include any suggested game modifications to the Lottery's current draw games (i.e. new game matrix or game add-on, etc.)
- Should include any new games that are in addition to the Lottery's existing draw game portfolio

4.2.2.6.6

- Should include any suggested game modifications to the Lottery's current Monitor games (i.e. new game add-on, etc.)
- Should include any new games that are in addition to the Lottery's existing Monitor game portfolio

4.2.2.6.14

- Should include any suggested new games that will replace a current Draw or Monitor game (i.e. a replacement for Racetrax)

**ANSWER: Yes, that would be an acceptable format.**

**150. QUESTION:** Section 3.4.1, page 76: The MLGCA indicated in Question #16(b) of Q&A #1 that Item #29 (hardware list) of Section 3.4.1 was correct and that the Price Sheet (A(1).) would be updated to be consistent with this Item #29. However, the Price Sheet, as amended, still does not include all of the hardware items listed under Item #29 of Section 3.4.1 (for example, "Scrolling Message Signs"). Will the MLGCA revise the Price Sheet to include all items of hardware (with amounts required) listed in Item #29 of Section 3.4.1 or, alternatively, remove those hardware components set forth in Item #29 of Section 3.4.1 that are not required or intended to be included in as part of the listed price for A(1).?

**ANSWER: Scrolling Message Signs are not required by the RFP and will be deleted from Section 3.4.1. (See Amendment #6 to the RFP)**

**151. QUESTION:** Attachment A – Contract, Section 1.13, page 181: Will the MLGCA confirm that in the definition of "Software", the reference to "all prior . . . versions of the Software" means only the Software version licensed to MLGCA under the Contract?

**ANSWER: Yes.**

152. **QUESTION:** Attachment A –Contract, Section 6.2, page 186: While the need for indemnification of the MLGCA by the Contractor is understandable, the provisions of this section do not include the commercially reasonable exclusions from such obligation for liability that arises from the acts or omissions of the MLGCA, its agents, any third parties acting on behalf of the MLGCA, and events of force majeure. Will the MLGCA include such commonly accepted exclusions?

**ANSWER: No, but see Section 6.1.**

153. **QUESTION:** Attachment A- Contract, Section 11, page 187: The use of the phrase “relating to the Contract” in this Section potentially creates application of the rights and obligations in this section far beyond the scope of the Contract and could unreasonably restrict the Contractor’s ability to utilize its own proprietary information and products. Therefore, will the MLGCA replace “relating to the Contract” with “required by the Contract”?

**ANSWER: No, because this Section includes reference to “information or material provided to Contractor by the Agency...” and the MLGCA does not believe that it creates an unreasonable restriction.**

154. **QUESTION:** Attachment A – Contract Section 12.1, page 187: In connection with the Source Code Escrow Package, will the MLGCA identify such information as “Contractor’s trade secret and confidential information” to ensure it falls within the exception to disclosure found in Ann. Code of MD, General Provisions Article §4-335?

**ANSWER: No, the MLGCA is obligated to make such a determination at the time a request is made under the PIA. The Offeror should follow the provisions of Section 1.14.**

155. **QUESTION:** Attachment A – Contract, Section 14, page 189: While there is no objection to the obligations owed to the State under this Section, will the MLGCA make such obligations reciprocal since the MLGCA will have access to Contractor’s confidential and trade secret information?

**ANSWER: No, but see Section 1.14.**

156. **QUESTION:** Attachment A – Contract, Section 15, page 189: Will the MLGCA clarify how often such audits will be conducted?

**ANSWER: Annually, see Section 3.33.2.**

**157. QUESTION:** Attachment A – Contract, Section 17, page 189: Often the employees of prospective bidders will sign nondisclosure obligations covering all information, including MLGCA’s, to which such employees receive access. Will the MLGCA confirm whether such nondisclosure obligations are sufficient to satisfy the requirements of this section?

**ANSWER:** Yes, to the extent that they meet the requirements of Section 17.

**158. QUESTION:** Attachment A – Contract, Section 22, page 190:

a) Similar to Section 11, the use of the phrase “relating to the Contract” in this Section potentially creates application of the rights and obligations in this section far beyond the scope of the Contract and could unreasonably restrict the Contractor’s ability to utilize its own proprietary information and products. Therefore, will the MLGCA replace “relating to the Contract” with “required by the Contract”?

b) Will the MLGCA confirm that the Contractor would be allowed to use such information for internal research or use in future proposals or other business documents on an anonymous basis?

c) Will the MLGCA include the breach of this Contract by MLGCA or any party acting on behalf or at the direction of MLGCA as an exception to the usufruct granted in this Section?

**ANSWER:** a) See the Answer to Question #153.

b) Yes.

c) No.

**159. QUESTION:** Attachment A – Contract, Section R23.6, page 192: Will the MLGCA confirm that termination for default requires a material breach of the Contract, consistent with the use of the term “material breach” throughout the RFP and Contract terms?

**ANSWER:** See the Answer to prior Question #108 (Q&A#3).

**160. QUESTION:** Attachment A – Contract, Section R25.11, page 200: Will the MLGCA confirm that the limitation on claims for compensation for delay or hindrances applies only to such delays or hindrances caused by the Contractor, and not to such delays or hindrances caused by the MLGCA or any party acting on behalf or at the direction of the MLGCA?

**ANSWER:** No, this is a required Contract provision and will not be changed.

**161. QUESTION:** Attachment A – Contract, Section R25.14, page 201: Will the MLGCA explain how it will calculate the duration of the retention of records provision in this Section, since multiple measuring standards are listed? How will the Contractor know which standard applies?

**ANSWER:** The Contractor is responsible for knowing the requirements of State law, etc., but may consult with the MLGCA at the appropriate time before destroying any records to coordinate proper dates for the destruction of records.

**162. QUESTION:** Attachment A – Contract, Section R26, page 201: Will the MLGCA confirm that, unless it has reasonable cause, it will not require audits to be conducted more than once per contract year and that such audits shall be conducted at the State’s expense?

**ANSWER:** No, this is a required Contract provision and will not be changed. See Section 3.33.2.

**163. QUESTION:** Section 3.30, Liquidated Damages, page 143: Will the MLGCA confirm that:

- a. Liquidated damages will be assessed only in situations where it is difficult to ascertain actual damages arising from the occurrence of the specified events in this section;
- b. Liquidated damages shall not be imposed as a penalty by the Lottery;
- c. Liquidated damages shall not be assessed in the event the Lottery does not actually incur any damages;
- d. In the event such liquidated damages are assessed by the Lottery, it shall be the Lottery’s sole remedy for the corresponding incident;
- e. Liquidated damages will not be assessed by the Lottery under multiple provisions relating to a single incident;
- f. Contractor shall not be liable for liquidated damages to the extent the incident was caused by the Lottery, its retailers, third parties, communications failures or events of Force Majeure;
- g. Any assessment of liquidated damages shall be made within twelve (12) months of the incident, or such liquidated damages are deemed waived by the Lottery; and h. Contractor shall have the right to reasonably object to any such assessment within ten

(10) business days following its receipt of the notice, provided that any portion of liquidated damages assessed to which SGI does not object shall be due and payable.

**ANSWER: No, the MLGCA has defined in the RFP and will assess Liquidated Damages pursuant to the Contract and consistent with State law.**

**164. QUESTION:** Section 3.30.6, Timely and Accurate Reports or Files, page 145: Will the MLGCA provide a detailed explanation of how the 500% increase in the liquidated damage amount associated with an inaccurate report and the 1000% increase in the liquidated damage amount associated with an inaccurate file when compared to the amounts agreed upon under the current system contract for such events?

**ANSWER: The requirements of the MLGCA's current Contract for On-Line Gaming System #2005-11 are completely separate from and have no relevance to this RFP #2015-01.**

**165. QUESTION:** Section 3.30.11, Unauthorized Software/Hardware Modifications, page 147: Will the MLGCA provide a detailed explanation of how the 500% increase in the liquidated damage amount associated with an unauthorized software/hardware modifications when compared to the amounts agreed upon under the current system contract for such events?

**ANSWER: The requirements of the MLGCA's current Contract for On-Line Gaming System #2005-11 are completely separate from and have no relevance to this RFP #2015-01.**

**166. QUESTION:** Section 3.30.15, Invalid Winning Tickets, page 148: This Section does not appear to cover an appropriate liquidated damages event since the damages to the MLGCA will be easily calculable.

**ANSWER: See the Answer to prior Question #101 (Q&A#3).**

**167. QUESTION:** Section 3.30.21, System Degraded Performance, page 149: This provision, as drafted, would impose liquidated damages based on the sales levels of the entire Retailer network in the event that even a single Terminal is not 100% functioning. This is not a reasonable measure of either degraded performance or damage. Will the MLGCA consider a revision that the LCMCS would be in a degraded condition only if it cannot process wagers from 5% or more of the installed and operational Terminals and that the measure of damages be based upon the sales rates of the affected Terminals?

**ANSWER:** The intent of this Condition is to consider degraded performance to exist when the LCMCS cannot process transactions from a significant percentage of the installed and operational Terminals or when transactions are unable to be processed for an individual game or multiple games. (See Amendment #6 to the RFP)

**168. QUESTION:** Section 3.4.1, Primary System Requirements, page 74: The RFP states that: “5. The LCMCS shall support all current and future products offered to the public by the MLGCA. This shall include all games as described within this RFP, games introduced by the MLGCA between the issuance of this RFP and the LCMCS Start-up, and any future games. The LCMCS shall also be capable of incorporating additional promotions.” This requirement as written is very open ended and could prove to be cost prohibitive as prospective vendors have no method to price ideas that the MLGCA may decide to offer the public in the future. Would the MLGCA consider modifying this requirement to be more defined, have price cap or provide guidance as to how vendors should cost for this requirement?

**ANSWER:** No, the requirement will not be modified. The MLGCA does not anticipate the introduction of any games that are outside the broad operational scope of current lottery products and therefore there should be no excessive costs to implement them.