

ATTACHMENT G
Amended December 9, 2011
Liquidated Damages

Purpose: The purpose of liquidated damages is to ensure adherence to the performance requirements in the Contract. No punitive intention is inherent. It is agreed by the State and the CONTRACTOR that, in the event of a failure to meet the performance requirements listed below damage shall be sustained by the State, and that it is and shall be impractical and extremely difficult to ascertain and determine the actual damages which the State shall sustain in the event of, and by reason of, such failure; and it is therefore agreed that the CONTRACTOR shall pay the State for such failures at the sole discretion of the State according to the following sections and attachments found in the table below.

Damage assessments are linked to performance of system implementation or operational responsibilities. Where an assessment is defined as an “up to \$,,\$,\$” amount, the dollar value shall be set at the discretion of the State.

With the exception of the requirement to begin operations on January 1, 2013, written notification of each failure to meet a performance requirement shall be given to the CONTRACTOR prior to assessing liquidated damages. The CONTRACTOR shall have five (5) business days from the date of receipt of written notification of a failure to cure the failure or submit a corrective action plan (CAP). The plan must be approved by the State. If the failure is not resolved within this warning/cure period, liquidated damages may be imposed retroactively to the date of failure to perform. The imposition of liquidated damages is not in lieu of any other remedy available to the State.

If the State elects to not exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the State’s rights to pursue future assessment of the performance requirement and associated damages.

Deductions of Damages from Payments: The State may deduct amounts due as actual or liquidated damages from any monies payable to the contractor pursuant to its Contract. The State shall notify the CONTRACTOR of any claim for damages prior to the date upon which such monies are deducted from monies payable to the CONTRACTOR.

Performance Guarantees

	Requirement	Liquidated Damages
1.	Start up: CONTRACTOR must be appropriately staffed and trained to begin operations and provide services at 7:00 am CST January 1, 2013	
2.	Start up: CONTRACTOR shall provide to the State all deliverables within the time frames indicated following Contract award, including all deliverables specified in RFP Section 3.4 and Attachment K	\$1,000 per calendar day for each day a deliverable is late, inaccurate or incomplete.
3.	General Requirement: CONTRACTOR fails to timely perform an MCO Administrative Services that is not otherwise associated with a performance standard in this matrix and, in the determination of the State, such failure either: (1) results in actual harm to the member or places a member at risk of imminent harm, or (2) materially affects State’s ability to administer the Programs(s).	\$1,000 per calendar day for each incident of non-compliance.
4.	General Requirement: CONTRACTOR fails to timely provide an MCO covered service that is not otherwise	\$1,000 per calendar day for each incident of non-compliance.

	associated with a performance standard in this table and, in the determination of the State, such failure results in actual harm to a member or places a member at risk of imminent harm. RFP section 2.2.1, 2.2.15, Contract Attachment F	
5.	Provider Network: CONTRACTOR must submit to the State, documentation that demonstrates the provider network offers an appropriate range of specialty services that is adequate for the anticipated number of members. RFP section 2.2.8, 2.2.10	\$1,000 per calendar day for each day the documentation is late, inaccurate or incomplete.
6.	Provider Information Accuracy: RFP Section 2.2.8 generally	<p>\$5,000.00 per quarter if data for more than 10% but fewer than 30% of providers is incorrect for each data element.</p> <p>\$25,000.00 per quarter if data for more than 30% of providers is incorrect for each data element.</p> <p>The \$25,000.00 liquidated damage may be lowered to \$5,000.00 in the event that the Contractor provides a corrective action plan that is accepted by the State in writing.</p>
7.	Approval of materials: all materials sent to the plan participants shall be approved by the State prior to printing and distribution. RFP Sections 2.2.17; 2.3.3.2	Failure to submit material for approval will be assessed a \$1000.00 per incident liquidated damage.
8.	Reports and Data Delivery: Timeliness: Reporting requirements and standards are found throughout the Contract and attachments. This performance requirement applies to all reports and data to be delivered to the State or its designee. Reports and data must be produced in the format and media approved by the State. The State and the CONTRACTOR must agree in writing as part of the requirements on reports and data to be delivered to the State and its appropriate designee or distributed as required by the State according to a defined schedule.	<p>1st time 'late' /1-10 days: \$5,000 1st time 'late' /11-20 days: \$10,000 1st time 'late' /over 21 days: \$15,000</p> <p>2nd time 'late'/1-10 days: \$10,000 2nd time 'late'/11-20 days: \$20,000 2nd time 'late'/over 21 days: \$30,000</p> <p>3rd time 'late'/1-10 days: \$20,000 3rd time 'late'/11-20 days: \$40,000 3rd time 'late'/over 21 days: \$60,000</p>
9.	Reports and Data Delivery: Accuracy: Reporting requirements and standards are found throughout the Contract and attachments. The CONTRACTOR is responsible for the accuracy of all reports, including calculations and completeness of data used as input	\$500.00 per business day shall be assessed for each business day for each report that has been identified as inaccurate from the date of notification until the date the State approved, corrected report is delivered and accepted by the State.
10.	Encounter Data: CONTRACTOR shall prepare and submit encounter data as prescribed in Attachment K to the State through the State's designated fiscal agent. RFP Section 2.2.27; 2.2.33 and Attachment K	<p>\$5,000.00 per quarter if more than 10% but fewer than 30% of encounter data is missing or incorrect.</p> <p>\$25,000.00 per quarter if more than 30% of encounter data is missing or incorrect.</p> <p>The \$25,000.00 liquidated damage may be lowered to \$5,000.00 in the event that the Contractor provides a corrective</p>

		action plan that is accepted by the State in writing.
11.	Claims Processing: Timeliness: CONTRACTOR must pay all claims timely. The CONTRACTOR is responsible for submitting information about services rendered and reimbursed in the HIPAA required formats specified in the 837 Institutional Claim and Encounter Transactions, the 837 Professional Services Claim and Encounter Transactions companion guides and NCPDP standards. RFP Section 2.2.38	\$10,000.00 for each month determined to be non-compliant
12.	Personnel: CONTRACTOR must provide staff to perform all tasks specified in this Contract. CONTRACTOR is responsible for maintaining a level of staffing necessary to perform and carry out all of the functions, requirements, roles and duties. RFP Section 2.2.41	\$1,000.00 per calendar day per position for each day after the thirty (30) allowed calendar days that a key position may be vacant.
13.	General Access Standards: CONTRACTOR shall provide available, accessible, and adequate numbers of institutional facilities, service locations, service sites, professional, allied and paramedical personnel for the provision of covered services, including all emergency services, on a 24 hour a day, 7 day a week basis. Section 2.2.15	\$25,000.00 if ANY of the listed standards are not met, either individually or in combination, on a monthly basis.
14.	Member Grievances: CONTRACTOR must resolve 98% of grievances within 30 days from the date the grievance is received. CONTRACTOR must resolve 100% of grievances within 60 days from the date of the grievance is received. Attachment D	\$10,000.00 for each quarter determined to be non-compliant
15.	Member Appeal Process: CONTRACTOR must resolve 98% of member appeals within 30 days of receipt of the appeal by the CONTRACTOR. Attachment D	\$10,000.00 for each quarter determined to be non-compliant
16.	Provider Complaints: CONTRACTOR must resolve 98% provider complaints within 30 days from the date the complaint is received. Attachment D	\$10,000.00 for each quarter determined to be non-compliant
17.	Customer Service Center: 100% of incoming and outgoing calls must be documented. 99% of calls will be answered by an individual or an electronic device without receiving a busy signal. 95% of all calls, whether incoming or outgoing, will be placed on hold for no more than one (1) minute. 90% of calls answered will be resolved by the CONTRACTOR during the initial contact. 100% of received phone calls are recorded and recordings maintained. 98% of the time, facsimile (FAX) lines shall meet customer demand. RFP Section 2.2.42.	\$10,000 for each full percentage point below requirement.
18.	Miscellaneous Damages: The objective of this section is to provide the State with an administrative procedure to address general contract compliance issues not defined elsewhere in this agreement. The State may identify a condition resulting from the CONTRACTORs' non-	If the non-compliance is not corrected by the specified date, the State reserves the right to assess liquidated damages in an amount not to exceed five hundred dollars (\$500) per working day per

	<p>compliance with the Contract through outline monitoring activities. If this occurs, the State will notify the CONTRACTOR in writing of the contractual non-compliance. The CONTRACTOR must provide a written response to the notification within five (5) business days of receipt of the notice. The State will recommend, when appropriate, a reasonable period of time within which the CONTRACTOR shall remedy the non-compliance. This liquidated damage may be independent or combined with any of the other liquidated damages listed above.</p>	<p>occurrence after the due date until the non-compliance is corrected.</p>
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