

## **Technical Proposal Attachment E**

### **Liquidated Damages**

Each party agrees that the failure by the Contractor to provide timely and accurate reports required by this contract will cause the State to suffer damages which are difficult to estimate. Each party represents, after all diligence it has determined appropriate, that the liquidated damages set forth below (“**Liquidated Damages**”) are reasonable estimates of the damages which the State will suffer and are compensation for untimely reports and damages which are difficult to accurately determine. For these reasons, the parties agree to the liquidated damages set forth below:

1. For the failure to provide timely Member Service Reports as required by Section 9.1.2 of the RFP, an amount of \$300.00 per reporting period. The intended periodicity of these reports is submission 30 days after each calendar quarter of the year.
2. For the failure to provide accurate Provider Service Reports as required by Section 9.1.4 of the RFP, an amount of \$500.00 per reporting period. The intended periodicity of these reports is submission 30 days after each calendar quarter of the year.
3. For the failure to meet service level performance of the Member Service Helpline, an amount of \$1,500.00 per month.
4. For the failure to meet service level performance of the Provider Service Helpline, an amount of \$1,500.00 per month.
5. For the failure to provide timely information regarding the ACO affiliated provider file as required by Section 10.4.1, an amount of \$5,000.00 per month. The intended periodicity of this file submission is monthly.
6. For the failure to provide accurate information regarding the ACO affiliated provider file as required by Section 10.4.1, an amount of \$2,500.00.
7. For the failure to provide timely information regarding the ACO Decision Response File as required by Section 10.4.5, an amount of \$5,000.00 per week. The intended periodicity of this file submission is weekly.
8. For the failure to provide accurate regarding the ACO Decision Response File as required by Section 10.4.5, an amount of \$5,000.00 per week.
9. For the failure to timely provide information system reports regarding the ACO Case Management File as required by Section 10.4.9 an amount of \$500.00 per month. The intended periodicity of this file submission is monthly.

The parties agree that no liquidated damage will be made prior to February 1, 2017.

The parties agree that while liquidated damages may be assessed as provided for above, such assessment of damages do not prevent the Department of Vermont Health Access from requiring a corrective action plan regarding deficiencies regarding reporting nor does it prevent DVHA from terminating this Contract and seek any other remedies to which it may be entitled in equity or at law.

In the event of an assessment of liquidated damages and DVHA seeks to seek actual damages, any Liquidated Damages paid hereunder shall be deducted from any damages award.

If any Liquidated Damages are held to be unenforceable, then such Liquidated Damages shall be deemed deleted from this Contract, and DVHA shall have the right to recover such damages as it is able to recover under this Contract.

### **Payment of Liquidated Damages**

Liquidated damages shall be assessed by letter with reasoning by DVHA. The parties agree that liquidated damages may be withheld from the capitation payment made monthly from DVHA to the Contractor. DVHA's decision not to immediately withhold capitation payment shall not be construed as a waiver of the right to liquidated damages.