

## **ADDENDUM XVI: LIQUIDATED DAMAGES**

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THE PROSPECTIVE PRIMARY PARTICIPANT BROKER AGREES THAT TIME IS OF THE ESSENCE IN THE PERFORMANCE OF CERTAIN DESIGNATED PORTIONS OF THIS CONTRACT. THE EXECUTIVE OFFICE AND THE BROKER AGREE THAT IN THE EVENT OF A FAILURE TO MEET THE PROJECT DELIVERABLES OR ANY CONTRACTUAL TASK DAMAGES SHALL BE SUSTAINED BY THE EXECUTIVE OFFICE AND IT MAY BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ASCERTAIN AND DETERMINE THE ACTUAL DAMAGES WHICH THE EXECUTIVE OFFICE WILL SUSTAIN BY REASON OF SUCH FAILURE. IT IS THEREFORE AGREED THAT EXECUTIVE OFFICE, AT ITS SOLE OPTION, MAY REQUIRE THE BROKER TO PAY LIQUIDATED DAMAGES NOT AS A PENALTY FOR SUCH FAILURES WITH THE FOLLOWING PROVISIONS:

1. WHERE THE FAILURE IS THE SOLE AND EXCLUSIVE FAULT OF THE EXECUTIVE OFFICE, NO LIQUIDATED DAMAGES SHALL BE IMPOSED. TO THE EXTENT THAT EACH PARTY IS RESPONSIBLE FOR THE FAILURE, LIQUIDATED DAMAGES SHALL BE REDUCED BY THE APPORTIONED SHARE OF SUCH RESPONSIBILITY.
2. FOR ANY FAILURE BY THE BROKER TO MEET ANY PERFORMANCE STANDARD, MILESTONE OR PROJECT DELIVERABLE, THE EXECUTIVE OFFICE MAY REQUIRE THE BROKER TO PAY LIQUIDATED DAMAGES IN THE AMOUNT(S) SET FORTH BELOW., HOWEVER, ANY LIQUIDATED DAMAGES ASSESSED BY THE EXECUTIVE OFFICE SHALL NOT IN THE AGGREGATE, OVER THE LIFE OF THE AGREEMENT, EXCEED THE TOTAL CONTRACT VALUE.

WRITTEN NOTIFICATION OF FAILURE TO MEET A PERFORMANCE REQUIREMENT SHALL BE GIVEN BY THE EXECUTIVE OFFICE'S PROJECT OFFICER TO THE BROKER'S PROJECT OFFICER. MTM AGREES AND AUTHORIZES THE STATE TO WITHHOLD, OFFSET, RECOUP AND DEDUCT LIQUIDATED DAMAGES FROM ANY SUMS OWING BY EOHHS TO MTM FOR SERVICES PROVIDED.

THE ASSESSMENT OF LIQUIDATED DAMAGES SHALL NOT PROHIBIT EOHHS FROM EXERCISING ANY OTHER RIGHT OR REMEDY AVAILABLE TO EOHHS AT LAW OR IN EQUITY.

## LIQUIDATED DAMAGES

The Broker must deliver all contractual services to the standards called for in this Agreement. The tasks outlined in Sections 3 and 4 shall be met fully, satisfactorily, and performed in their entirety.

In the event of any failure by the Broker to satisfy the specific requirements outlined below during the term of this contract, EOHHS may impose upon the Broker the associated liquidated damages. After thirty (30) days, any and all non-disputed liquidated damages incurred shall be considered invoiced and payable within thirty (30) days of assessment and written notice to Broker from EOHHS.

- a. At EOHHS' option, the accuracy of performance results, performance level, and execution of key expectations may be measured by independent audit.
- b. Amounts due EOHHS pursuant to liquidated damages may be withheld from the Broker's administrative monthly payment amount or paid directly to EOHHS.
- c. Total monthly liquidated damages are subject to a maximum limit of 4% of the monthly PMPM payment.

The Broker will work with EOHHS on a reporting structure to allow for measurement of any potential liquidated damage. Requirement thresholds in the table below indicate measurement of all three programs in aggregate.

**LIQUIDATED DAMAGES**

**OPERATIONAL  
REQUIREMENTS**

EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed below for the following specific requirements:

Process Trip Requests-Liquidated damages in the amount of fifty dollars (\$50) per occurrence, for each occurrence where the Broker fails to schedule valid service requests.

Verify Recipient Eligibility-Liquidated damages in the amount of fifty dollars (\$50) per occurrence, for each occurrence where the Broker schedules a NEMT trip for a non-eligible recipient.

Process Retroactive Eligibility Claims- Liquidated damages in the amount of fifty dollars (\$50) per occurrence, for each occurrence where the Broker fails to reimburse contracted and non- contracted TPs for stretcher level, BLS, and ALS transportation services rendered to individuals that have eligibility approved retroactively to the time service was rendered. Reimbursement is limited to services rendered within ninety (90) days from the date of service.

Fulfill Trip Requests- Liquidated damages in the amount of fifty dollars (\$50) per occurrence, for each occurrence where the Broker fails to fulfill a verified trip request safely and on-time.

Report Accidents, Injuries, and Incidents - Liquidated damages in the amount of five hundred dollars (\$500) per occurrence, for each occurrence where the Broker fails to report to EOHHS an accident, injury or incident that has occurred in conjunction with a scheduled trip if a Recipient was present in the vehicle. Accidents, injuries, and incidents shall be reported to EOHHS as follows: Tier One Complaint/Incident: Notification within six (6) hours or sooner upon notification from the TP, facility, or recipient; Tier Two Complaint/Incident: Notification within forty-eight (48) hours or sooner upon notification from the TP, facility, or recipient.

		<p>Conduct Recipient Satisfaction Surveys - Liquidated damages in the amount of one thousand five hundred dollars (\$1,500) per quarter, for each quarter the Broker fails to achieve an overall customer satisfaction rating of greater than or equal to ninety percent (90%) quarterly.</p> <p>Maintain Broker Websites - Liquidated damages in the amount of two hundred and fifty dollars (\$250) per calendar day, for each calendar day or any portion thereof exceeding two (2) hours where the Broker's websites are unavailable. Websites shall be available twenty-four (24) hours a day, seven (7) days a week, with the exception of EOHHS-approved downtime for maintenance.</p>
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	<p>CALL CENTER REQUIREMENTS</p>	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per month, for each month the Broker fails to answer eighty-percent (80%) of all calls on average within thirty (30) seconds. The thirty (30) seconds does not include the initial announcement.</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per month, for each month the average number of calls abandoned is greater than or equal to five percent (5%).</p>
		<p>Liquidated damages in the amount of two hundred and fifty dollars (\$250) per month, for each month the average time on hold, for calls placed on hold after being initially answered, exceeds three (3) minutes.</p> <p>For Quality Monitoring - Liquidated damages in the amount of two hundred and fifty dollars (\$250) per month, for each month all reviewed calls fail to score ninety percent (90%) or higher</p>
	<p>TRANSPORTATION SERVICES AUTHORIZATION</p>	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Recipient and Trip Eligibility Verification - Liquidated damages in the amount of fifty dollars (\$50) per occurrence for each occurrence where the Broker fails to process trip assignments in accordance with 4.5.3.2.1.</p> <p>Process Denial of Service Determination - Liquidated damages in the amount of fifty dollars (\$50) per occurrence for each occurrence where the Broker fails to correctly deny a request for NEMT services.</p> <p>Process Trip Assignments- Liquidated damages in the amount of fifty dollars (\$50) per occurrence for each occurrence where the Broker fails to process trip assignments in accordance with 4.5.3.4.</p>

	<p>TRANSPORTATION PERFORMANCE STANDARDS</p>	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages effective July 1, 2019 in the amounts listed for the following specific requirements listed:</p> <p>On Time Performance Measure – On Time Pick Up - Liquidated damages in the amount of two hundred and fifty dollars (\$250) per business day for each business day the Broker fails to achieve a Recipient on time pick up percentage greater than or equal to ninety percent (90%).</p> <p>On Time Performance Measure – On Time Drop Off - Liquidated damages in the amount of two hundred and fifty dollars (\$250) per business day for each business day the Broker fails to achieve a Recipient drop off percentage greater than or equal to ninety percent (95%).</p>
	<p>TP CONTRACTS</p>	<p>EOHHS shall be entitled to impose upon the Contracted Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>TP Records-Liquidated damages in the amount of two hundred and fifty dollars (\$250) per occurrence for each occurrence where the Broker fails to establish and maintain records and related information in its file for each of its contracted TPs as outlined in 3.10.4.2.</p>
	<p>DRIVER AND VEHICLE REQUIREMENTS</p>	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Drivers excluded from participation in any federal program by CMS or the RI state Medicaid program - Liquidated damages in the amount of two thousand five hundred dollars (\$2,500) per occurrence for each occurrence where the Broker’s contracted TP is utilizing a driver or other employee that has been terminated from the Medicaid program by EOHHS for fraud or abuse.</p>

	PAYMENT TO TPS	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per month for every month the Broker fails to provide a monthly report to EOHHS summarizing the claims payment processing.</p>
	QUALITY ASSURANCE	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Corrective action plans - Liquidated damages in the amount of two hundred and fifty dollars (\$250) per business day for every business day the Broker fails to implement corrective action plans in accordance with time frames established by EOHHS and/or CMS.</p>
	MANAGEMENT AND PERFORMANCE REPORTS	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per occurrence for every monthly encounter submission that fails to achieve a monthly acceptance rate equal to or greater than 97%.</p> <p>Liquidated damages in the amount of two hundred and fifty dollars (\$250) per management report for every management report the Broker fails to provide by the reporting deadline.</p>

	IMPLEMENTATION	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per business day for every business day past the required thirty (30) days from the effective date of the contract where the Broker fails to coordinate a kick-off meeting with EOHHS.</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per business day for every business day past the required ten (10) business days of the kick-off meeting where the Broker fails to submit the Final Implementation Plan to EOHHS.</p> <p>Liquidated damages in the amount of two hundred and fifty dollars (\$250) per business day for every business day past the close of business Friday due date where the Broker fails to submit a weekly progress report.</p> <p>Liquidated damages in the amount of five hundred dollars (\$500) per business day for each business day during which the Broker is not in compliance with the approved Final Implementation Plan.</p>
	OPERATIONAL READINESS REVIEW	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirements:</p> <p>Liquidated damages in the amount of two hundred and fifty dollars (\$250) per business day for every business day past the required thirty (30) days from the effective date of the contract where the Broker fails to comply with the readiness review.</p>



	TURNOVER	<p>EOHHS shall be entitled to impose upon the Broker liquidated damages in the amounts listed for the following specific requirement:</p> <p>Liquidated damages in the amount of fifty dollars (\$50) per business day for every business day later than ninety (90) calendar days after the beginning of the second year of the initial contract term where the Broker fails to provide a Turnover Plan.</p>
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