

**ARKANSAS DEPARTMENT OF HUMAN SERVICES**  
**ATTACHMENT D**  
**PERFORMANCE BASED CONTRACTING**

Pursuant to Ark. Code Ann. 19-11-1010 et. seq., the selected contractor shall comply with performance based standards. Following are the performance based standards that will be a part of the contract and with which the contractor must comply for acceptable performance to occur under the contract.

- I. The contractor must comply with all statutes, regulations, codes, ordinances, and licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
  
- II. Except as otherwise required by law, the contractor agrees to hold the contracting Division/Office harmless and to indemnify the contracting Division/Office for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division/Office may sustain as a result of the contractor's performance or lack of performance.
  
- III. During the term of the contract, the division/office will complete sufficient performance evaluation(s) to determine if the contractor's performance is acceptable.
  
- IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards, and may include the input of the vendor so as to establish standards that are reasonably achievable
  
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

<b>Service Criteria<sup>i</sup></b>	<b>Acceptable Performance</b>	<b>Damages for Insufficient Performance<sup>ii</sup></b>
<p><b>In-Patient Rehabilitative Services</b> The Contractor shall provide in-patient pediatric rehabilitative services for severe-needs clients up to twenty-one (21) years of age with a primary diagnosis of a developmental disability or who are medically fragile or who are both and referred by or in the custody of Arkansas Department of Human Services (DHS).</p> <p>Services will vary depending on the needs of the client, but shall include without limitation: twenty-four (24) hour nursing care, physical therapy, occupational therapy, speech-language therapy, special education, psychological services, pharmaceutical services, and community integration activities.</p>	<p>Acceptable performance, as determined by the DHS Division of Children and Family Services (DCFS), is defined as zero (0) instances of noncompliance documented by DHS throughout the course of the contract.</p> <p>The Contractor must accept DHS-referred clients from across the state and on an emergency basis, provided that that Contractor has availability, one hundred percent (100%) of the time for the duration of the contracted term as determined by DHS.</p> <p>Contractor must provide all services in a twenty-four (24) hour a day nursing environment one hundred percent (100%) of the time as determined by DHS.</p> <p>The Contractor must abide by all DHS Office of Long Term Care (OLTC) rules and regulations in the provision of contacted services one hundred percent (100%) of the time for the duration of the contract term as determined by DHS.</p> <p>Contractor must accept Arkansas Medicaid one hundred percent (100%) of the time throughout the contracted term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan acceptable to DCFS shall be due to DCFS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A three percent (3%) penalty shall be deducted from the previous month's invoice for the first incident of non-compliance.</p> <p>3<sup>rd</sup> Incident: Continued non-compliance may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file in addition to other financial penalties up to and including contract cancellation.</p>
<p><b>In-Patient Medical Services</b> The Contractor shall provide appropriate in-patient medical services to severe-needs clients up to twenty-one (21) years of age with a primary diagnosis of a developmental disability or who are medically fragile or who are both and referred by or in the custody of DHS.</p> <p>Services will vary depending on the needs of the client, but shall include</p>	<p>Acceptable performance, as determined by DCFS, is defined as zero (0) instances of noncompliance documented by DHS throughout the course of the contract.</p> <p>The Contractor must accept DHS-referred clients from across the state and on an emergency basis, provided that that Contractor has availability, one hundred percent (100%) of the</p>	<p>1st Incident: A Corrective Action Plan acceptable to DCFS shall be due to DCFS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A three percent (3%) penalty shall be deducted from the previous month's invoice for the first incident of non-compliance.</p>

<p>without limitation: trachea care, suctioning, maintenance of gastric tube and feeds, bowel &amp; bladder management (colostomy/ileostomy), and impaired communication and mobility.</p>	<p>time for the duration of the contracted term as determined by DHS.</p> <p>Contractor must provide all services in a twenty-four (24) hour a day nursing environment one hundred percent (100%) of the time as determined by DHS.</p> <p>The Contractor must abide by all OLTC rules and regulations in the provision of contacted services one hundred percent (100%) of the time for the duration of the contract term as determined by DHS.</p> <p>Contractor must accept Arkansas Medicaid one hundred percent (100%) of the time throughout the contracted term as determined by DHS.</p>	<p>3<sup>rd</sup> Incident: Continued non-compliance may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file in addition to other financial penalties up to and including contract cancellation.</p>
<p><b>Transportation</b> The Contractor shall provide for clients' transportation to and from other necessary services as determined by DCFS, including without limitation: dental care and eye care.</p>	<p>Acceptable performance, as determined by the DHS Division of Children and Family Services (DCFS), is defined as zero (0) instances of noncompliance documented by DHS throughout the course of the contract.</p> <p>The Contractor must abide by all OLTC rules and regulations in the provision of contacted services one hundred percent (100%) of the time for the duration of the contract term.</p> <p>Contractor must accept Arkansas Medicaid one hundred percent (100%) of the time throughout the contracted term as determined by DHS.</p>	<p>1<sup>st</sup> Incident: A Corrective Action Plan acceptable to DCFS shall be due to DCFS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A three percent (3%) penalty shall be deducted from the previous month's invoice for the first incident of non-compliance.</p> <p>3<sup>rd</sup> Incident: Continued non-compliance may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file in addition to other financial penalties up to and including contract cancellation.</p>

<p><b>Reporting</b> Contractor shall submit quarterly reports to the DCFS containing the following without limitation:</p> <ol style="list-style-type: none"> <li>1. All In-patient medical services provided to DHS-referred clients for the preceding quarter;</li> <li>2. All in-patient rehabilitative services provided to DHS-referred clients for the preceding quarter;</li> <li>3. Progress notes on each DHS-referred client for the preceding quarter;</li> <li>4. All transportation provided to DHS-referred clients for the preceding quarter; and</li> <li>5. All referrals to outside service providers for DHS-referred clients for the preceding quarter, including without limitation dental care and eye care.</li> </ol>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and acceptable performance standards at all times throughout the contract term as determined by DCFS.</p> <p>Quarterly reports must be submitted in a format approved by DCFS and on or before a deadline approved by DCFS.</p>	<p>1st Incident: A Corrective Action Plan acceptable to DCFS shall be due to DCFS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A three percent (3%) penalty shall be deducted from the previous month's invoice for the first incident of non-compliance.</p> <p>3<sup>rd</sup> Incident: Continued non-compliance may result in a below standard Vendor Performance Report (VPR) maintained in the vendor file in addition to other financial penalties up to and including contract cancellation.</p>
<p><b>Mandated Reporting</b> Pursuant to Ark. Code Ann. § 12-18-402(b), Contractor and all of its employees, agents, and all Subcontractors and Subcontractors' employees and agents shall immediately make a report to the Child Abuse Hotline if Contractor and any of its employees, agents, and Subcontractors' employees and agents, while performing their duties under this contract, have reasonable cause to suspect:</p> <ol style="list-style-type: none"> <li>a. That a child has been subjected to child maltreatment;</li> <li>b. Died as a result of child maltreatment;</li> <li>c. Died suddenly and unexpectedly; or</li> <li>d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.</li> </ol>	<p>Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Failure by Contractor and all of its employees, agents, and all Subcontractors and Subcontractors' employees and agents to make an immediate report to the hotline as required by Arkansas state law may constitute grounds for immediate contract termination at the sole discretion of DHS.</p> <p>In addition to immediate grounds for termination, Contractor is subject to a ten thousand dollar (\$10,000.00) fine for each instance of non-compliance as determined by DHS.</p> <p>These remedies do not bar any other remedies available through Arkansas state law, including criminal and civil penalties.</p>

<p><b>Conflict of Interest Mitigation</b> During the term of this contract, the Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Vendor shall disclose all actual, apparent, or potential conflicts of interest to the Department of Human Services (DHS) within five (5) days of having knowledge of them. The Vendor shall develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. Any changes to the approved mitigation plan must be approved in advance by DHS.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. The Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p>
<p><b>Transition Planning</b> Ninety (90) days prior to the contract end date, the vendor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.</p> <p>The transition plan shall include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) days prior to the contract end date. All proprietary data collected and/or created during the final thirty (30) days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Vendor fails to meet the acceptable performance standard, DHS may issue a below standard Vendor Performance Report (VPR) maintained in the vendor file. Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</p>

Failure to meet the minimum Performance Standards as specified **may** result in the assessment of damages.

In the event a Performance Standard is not met, the vendor will have the opportunity to defend, respond to, or cure to the satisfaction of the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond the control of the vendor that hindered the performance of services or it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

Should any compensation be owed to the agency due to the assessment of damages, vendor **shall** follow the direction of the agency regarding the required compensation process.

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i Nothing in this table is intended to set forth all obligations of the Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

ii The damages set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.

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