

ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING

Pursuant to Ark. Code Ann. 19-11-267 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:

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<p>General Requirements The Contractor shall perform the following duties, described as a minimum, in conjunction with providing laboratory diagnostic testing services under this contract. The Contractor shall:</p> <ol style="list-style-type: none"> 1. Provide on-site (ASH) phlebotomy collection and transport services. These services shall be available twenty-four (24) hours a day and seven (7) days a week. Saturday and Sunday specimen collection, except STAT/Emergency, will be done by ASH. 2. Perform specimen collection and route the specimens to the Contractor's laboratory facility for testing. 3. Provide STAT/Emergency pick-up service on demand. Requests for STAT/Emergency pick-up service may occur at any time of day or night and on any day of the week or weekend. 4. Provide requested diagnostic laboratory testing for all patients referred by ASH. 5. Provide back-up procedures to deliver reports when specimens are picked up should the primary method for reporting fail. 6. Provide timely responses to any/all questions and/or concerns. 7. Accept orders by phone, fax, and/or electronically. 8. Correct or revise any errors, omissions, or other deficiencies in its deliverables and other services without any additional compensation. 9. Maintain and keep sufficient records to verify billing for all testing. 	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>

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<p>10. Provide an antibiogram for ASH physicians on a quarterly basis.</p> <p>11. Make the quarterly Laboratory Quality Assurance Reports (LQA) available upon request.</p>		
<p>Supplies The Contractor shall:</p> <ol style="list-style-type: none"> 1. Provide all expendable laboratory supplies. These supplies shall include but are not limited to the items listed in Section 2.4A of the IFB. 2. Deliver all requested supplies within two (2) regular (excluding weekend and holidays) business days of request. 3. Provide all requisition forms, including pre-printed lab requisition forms, pathology association requisition forms, any other forms that may be necessary in the processing of laboratory tests, and a local or toll-free contact number for ordering laboratory supplies. 4. Provide a contact supply person name and phone number. 5. Provide the equipment necessary to report results to include connectivity and supplies (paper, ink cartridges, etc.) at no extra charge to ASH. <p>Contractor shall receive requests for supplies by courier through the phlebotomists or through fax transmission.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>
<p>Reporting Results The Contractor's response time to a laboratory diagnostic testing request must be timely, determined for the purpose of this contract to mean the following.</p> <ol style="list-style-type: none"> 1. Contractor shall provide an average turnaround time (TAT) for standard 	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty</p>

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<p>tests no later than 09:00am CST, the morning after the specimen is drawn, and provide STAT TAT within one (1) hour and on-call support twenty-four (24) hours a day.</p> <p>2. Verbal reports (via phone) of requested routine tests must be available on a same-day basis, unless the test is too complex for this to be feasible. The expectation is that routine lab test results are reported the same business day.</p> <p>3. Contractor shall provide preliminary results for cultures within twelve (12) hours and final results within twenty-four (24) to forty-eight (48) hours, dependent upon the specific test.</p> <p>4. Written reports of routine tests must be provided electronically as each test is verified or within twenty-four (24) hours of completion of services, depending upon the complexity and length of the analysis.</p> <p>5. Reports must to be delivered Monday thru Friday by 2:00PM CST. The weekend reports Saturday and Sunday must be delivered on Monday morning (6:00AM CST).</p> <p>6. Contractor shall provide a list of critical alert labs which require immediate phone notification. Labs that are not critical in nature, but are out of range, must have a mechanism in place to denote the value is out of range and require clinical decision-making.</p> <p>7. All abnormal/critical (life threatening) results must be reported by telephone immediately (within fifteen (15) minutes of completion of the test) by the Contractor laboratory personnel to the attending physician and/or unit nurse supervisor. These calls must be documented within the laboratory system with the name of ASH personnel, time, and date.</p>		<p>will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>

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<p>8. Contractor shall provide procedures for reporting panic, critical, or very abnormal results that exceed pre-defined criteria established by the contract. Any and all critical alerts must be reported to the phone number provided by ASH.</p> <p>9. All STAT test results must be reported by fax transmission within one (1) hour from the time of the receipt of the request for service.</p> <p>10. Contractor laboratory personnel must provide all STAT test requests to the attending physician and/or unit nurse supervisor via telephone.</p> <p>11. Contractor shall provide automatic confirmation on positive drug tests.</p> <p>12. Contractor shall input daily test results which can be easily accessed and downloaded by authorized ASH personnel. ASH/DHS will assume all rights to data entered.</p> <p>13. The Contractor shall maintain all records for a minimum of three (3) years unless advised otherwise by the State. In no case will records be maintained longer than five (5) years. All records shall be subject to the Federal Privacy Act, 5 USC 552a, and other applicable federal and state laws and regulations, and shall be maintained and used with the highest regard for patients' privacy.</p> <p>14. The Contractor shall absorb any/all cost of merging existing lab reports into electronic medical records.</p>		
<p>Courier Services</p> <p>1. Contractor shall provide courier service twenty-four (24) hours per day.</p> <p>2. The phlebotomist shall daily, Monday-Friday, 6:00AM CST-9:00PM CST, pick-up any specimen (e.g., UA, UDS, PAP, etc.) and deliver laboratory reports. The phlebotomist must remain at ASH for completion of specimen collections</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider</p>

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<p>and laboratory report delivery; they are not to remain at ASH throughout the entire scheduled time frame but must be available during that time frame. However, the phlebotomist must be available twenty-four (24) hours a day and seven (7) days a week for collecting and transporting a STAT/Emergency request, which can be made at any time by the attending physician at ASH.</p> <p>3. When a STAT/Emergency situation occurs, the Contractor shall arrive at ASH within one (1) hour from receipt of the initial call and results must be available within one (1) hour from receipt of specimen. Results of STAT/Emergency testing must be available in the computer as soon as testing is complete.</p> <p>4. Pickup and transport of STAT tests must be available on an as-requested basis. STAT/Emergency tests must be performed at any time, as quickly as staffing and methodology permit, but must be collected within one (1) hour of being called.</p>		<p>for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>
<p>Transport of Specimens</p> <p>1. Contractor shall use universal precautions for collecting and handling all specimens.</p> <p>2. Contractor shall deliver all specimens to the laboratory as soon as possible after collection.</p> <p>3. Certain specimens must be transported to the laboratory in viral transport media on ice (2-8°C) or refrigerated.</p> <p>4. Urine specimens must be transported to the laboratory or refrigerated within thirty (30) minutes. Refrigerated specimens must be delivered to the lab as soon as possible.</p> <p>5. All specimens must be appropriately labeled with two (2) patient identifiers. Identifiers used at</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p>

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<p>ASH and the Contractor's lab must include:</p> <ul style="list-style-type: none"> • patient name • birthdate • hospital number <p>6. A requisition must accompany each different specimen type and include the following:</p> <ul style="list-style-type: none"> • patient's name • hospital number • hospital service • date and time of collection • specimen type • tests requested <p>7. Specimens must be in tightly sealed, leak-proof containers and transported in sealable, leak-proof plastic bags. Specimens for tuberculosis must be double bagged. Specimens must not be externally contaminated. Specimens grossly contaminated or compromised may be rejected.</p> <p>8. Specimens for bacterial culture must be transported at room temperature. If transport is delayed, the following specimens must be refrigerated:</p> <ul style="list-style-type: none"> • urine within thirty (30) minutes • stool within one (1) hour • respiratory specimens <p>9. Specimens for viral culture must be transported to the laboratory immediately on ice.</p> <p>10. Contractor shall perform daily checks of refrigerators on units A, B, C, 5L and any other venue identified by the Department of Nursing Services for specimen collections.</p> <p>11. Specimen transport shall be available twenty-four (24) hours a day seven (7) days a week.</p>		<p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>
<p>Web-Based Reporting Program The Contractor shall provide a secure (enforced through access control, auditing and encryption) and confidential</p>	<p>Acceptable performance is defined as one hundred percent (100%)</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten</p>

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<p>web-based reporting program that exports downloadable daily specimen results of each tested individual.</p> <ol style="list-style-type: none"> 1. The reporting program must be compatible with existing DHS/ASH software (Microsoft Office Word, Excel, Access) and any upgrades to these software programs. 2. The reporting program must be accessed through a secure and protected server provided by the Contractor. 3. The reporting program must provide daily access to test results. Access to the Contractor's website must be granted to designated ASH personnel twenty-four (24) hours per day. 4. The Contractor's program shall offer the capability of retrieving patient's results remotely via secure web access to designated ASH personnel, utilizing their personal iOS (iPhone, iPad) or Android devices. 5. The Contractor's web-based reporting program must meet the requirements as listed in the table in IFB Section 2.4H. 	<p>compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>(10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>
<p>Data Confidentiality</p> <ol style="list-style-type: none"> 1. All financial, statistical, personnel and/or technical data supplied by ASH to the Contractor are confidential. The Contractor shall use reasonable care to protect the confidentiality of such data. Any data storage or transmission shall be secure and comply with all state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA). 2. Any use, sale, or offering of this data in any form by the Contractor, or any individual or entity in the Contractor's charge or employ, shall be considered a violation of this contract and may result in contract termination and the Contractor's suspension or 	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total</p>

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<p>debarment from contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.</p>		<p>payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and terminating the contract.</p>
<p>Staffing</p> <p>A. The Contractor shall:</p> <ol style="list-style-type: none"> 1. Provide day-to-day supervision of all staff responsible for laboratory services and laboratory support services. 2. Provide manuals, instructions, etc., needed to accomplish all tasks, including specimen collection, identification, storage, and quality control/quality assurance. 3. Provide qualified, certified/licensed, and trained personnel and certified/licensed and approved testing laboratory facilities as required by law for medical laboratory diagnostic testing and services. 4. Provide a licensed and qualified Phlebotomist. 5. Employ only competent and qualified personnel. 6. Provide a sufficient number of qualified and licensed employees to perform the required services efficiently and in a manner satisfactory to ASH. 7. Obtain and maintain in full force and effect all required licenses, 	<p>Acceptable performance is defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd incident: A ten percent (10%) penalty will be assessed in the following months' payment to the provider for each thirty (30) calendar day period the Vendor is not in full compliance with all requirements of the contract. The ten percent (10%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>3rd incident: DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file</p>

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<p>permits, and authorizations necessary to perform this contract. The Contractor shall supply ASH with evidence of all such licenses, permits, and authorizations.</p> <p>B. If the Contract Administrator or designee notifies the Contractor in writing that any person employed on this contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from employment in the execution of this contract.</p> <p>C. Contractor's employees shall dress in a respectable manner and wear a picture identification badge, with their name, occupation, and Contractor's name/logo. Identification badges must be worn at all times.</p> <p>D. Upon arrival at ASH, Contractor's employee must report to the public safety office to leave their driver's license and collect a set of keys and proximity card in order to gain access to the units.</p> <p>E. Upon departure, Contractor's employee must return to the public safety office to turn in keys and proximity card, and their driver's license will be returned to them.</p> <p>F. If it becomes necessary for the Contractor to substitute any management, supervisory, or key personnel, the Contractor shall identify the substitute personnel and the work to be performed.</p> <ol style="list-style-type: none"> 1. The Contractor shall provide detailed justification documenting the necessity for the substitution to the Director of Nursing Services and Chief Compliance Officer. 2. The Contractor shall forward a request to substitute staff to the Director of Nursing Services and 		<p>and terminating the contract.</p>

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<p>Chief Compliance Officer for consideration and approval. No substitute personnel shall be authorized to begin work until the Contractor has received written approval to proceed from the Director of Nursing Services and Chief Compliance Officer.</p> <p>3. Certification/license must be submitted as evidence that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.</p>		
<p>Insurance</p> <p>1. Before proceeding with any work, the Contractor shall furnish to the State a "Certificate of Insurance" executed by an insurance company that has been approved by the State, to evidence coverage by the Contractor as set forth herein, and shall keep said insurance in full force throughout the contract period.</p> <p>2. Such insurance shall be modifiable or cancelable only on written notice from such insurance company and must be mailed to ASH/DHS fifteen (15) calendar days in advance of modification or cancellation. The insurance shall not be modified without AHC and DAABHS approval.</p> <p>3. The insurance must meet the requirements of IFB Section 2.6C.</p> <p>4. Contractor shall assume all liability for any accidental or criminal occurrence.</p>		
<p>Mandated Reporting</p> <p>Pursuant to Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents shall immediately make a report to the Child Abuse Hotline or the Adult Maltreatment Hotline (based on type of maltreatment) if Contractor or any of its employees, agents, or Subcontractors' employees and agents,</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>For each failure to report, DHS may impose:</p> <p>1. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency</p>

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<p>while performing duties under this contract, have reasonable cause to suspect that:</p> <ol style="list-style-type: none"> a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; c. A child died suddenly and unexpectedly; or d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. <p>or</p> <ol style="list-style-type: none"> e. An endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment. <p>A privilege or contract shall not prevent a person from reporting maltreatment when he or she is a mandated reporter and required to report under this section.</p> <p>An employer or supervisor of a mandated reporter shall not prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline.</p> <p>An employer or supervisor of a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting maltreatment to the Hotline.</p> <p>Pursuant to Act 531 of 2019, Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>		<p>took place; or</p> <ol style="list-style-type: none"> 2. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p>Conflict of Interest Mitigation During the term of this contract, the Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times</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</p>

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<p>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>throughout the term of the contract.</p>	<p>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>Transition Planning 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.</p> <p>Final payment may be withheld from the vendor until the all elements of the transition are satisfied as determined by DHS.</p>
<p>Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</p> <ol style="list-style-type: none"> 1. Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request. 2. Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS. 3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A). Contractor shall timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. §25-19-101 et seq. for specific requirements. 	<p>Contractor shall respond to FOIA requests timely and accurately one hundred percent (100%) of the time.</p> <p>Contractor shall provide information and documents to DHS upon request in the timeframe specified in the request one hundred percent (100%) of the time. DHS shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p>	<ol style="list-style-type: none"> 1. For each failure to meet performance standard, DHS may impose: <ol style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or b. A one percent (1%) penalty, assessed in the

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		<p>next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS.</p> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>In addition to the above, Contractor shall be responsible for any penalties, fees, and costs imposed on DHS associated with vendor's failure to timely and accurately provide the requested information and documents.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</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 or 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 of 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.

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.