

ATTACHMENT C

ARKANSAS DEPARTMENT OF HUMAN SERVICES PERFORMANCE BASED CONTRACTING RFP #710-22-0034

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 Contractor so as to establish standards that are reasonably achievable.
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

Service Criteria ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
<p>SC1 Standards – Portal Services Provide service solution to host and operate the metrics tracking and analytic portal to support the Patient Center Medical Home (PCMH) Program and other programs that are mutually agreed upon by DHS and the contractor.</p> <p>Said portal shall provide the following for the duration of the contract:</p> <ul style="list-style-type: none"> •Multi-factor authentication for enhanced security •Data/Analytics Dashboard: Design, implementation, and access to monthly and quarterly reports •Practice Support Activity Attestation and Supporting Documentation Upload •eCQM Data Entry •Metric tracking and Reconciliation Tool •Risk Adjustments and Calculations for Incentive and Performance metrics •Help Desk for quick responses to PCMH Provider and DHS users' questions and issues, see SC6 below. 	<p>Acceptable performance to support the Patient Centered Medical Home (PCMH) Program, and other programs agreed upon by DMS and Contractor, with regular maintenance. The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</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 five percent (5%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period the Contractor is not in full compliance with all requirements of the contract. The five percent (5%) 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 Contractor is in full compliance, maintaining a below standard Contractor Performance Report (VPR) in the Contractor file and terminating the contract.</p>
<p>SC2 Staffing Management - Infrastructure Contractor support staff must be available Monday through Friday, 7:00am through 7:00pm CST throughout the contract period, or as agreed upon with the State in advance, to assist the State with any issue resolutions.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>One hundred dollars (\$100) per hour after four (4) hours of no Contractor Key Personnel contact electronically, in writing or by phone.</p>

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<p>SC3 Staffing Management - Key Personnel The Contractor must, over the duration of the contract, maintain Key Personnel positions, based upon the current and anticipated demands and complexity of implementing, maintaining, and operating the portal solution; or as agreed upon with the State in advance.</p> <p>(Note: Staff positions proposed by the Contractor will be included in this Performance Indicator.)</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Temporary replacement named within (2) weeks after the position becomes vacant.</p> <p>Five hundred dollars (\$500) per business day for each day over 2 weeks for failure to fill vacant position with temporary replacement.</p> <p>A permanent replacement must be approved by the State and filled within 90 calendar days of the date the position becomes vacant. No position may be filled with a temporary appointee for more than ninety (90) calendar days in any one (1) year period.</p> <p>One thousand dollars (\$1,000) per business day for each day over 90 calendar days, for failure to fill a vacant position.</p> <p>Unless a different timeframe is mutually agreed upon for vacant position.</p>
<p>SC4 Standards - Reporting Management The Contractor will report progress in developing and delivering Deliverables according to the approved Deliverables Schedule in the Baseline Project Plan.</p>	<p>Monthly Reporting: Any/all reports determined to be "monthly" in nature are due within five State business days post month end, or an agreed-upon time frame depending on the complexity of the request. Timelines other than 5 days must be agreed to in writing.</p>	<p>Two hundred fifty dollars (\$250) per business day the Monthly Status Report is not received by the State.</p> <p>Five hundred dollars (\$500) per Deliverable for each State business day the Deliverable is late, excludes waived Deliverables determined in advance of start-date not subject to the standard reviews and rework cycle times by State and the Contractor due to volume, size, or complexity in subject matter or development).</p>
<p>SC5 Standards - Reporting Management Ad-hoc and scheduled reports requested by the State shall be provided in an acceptable timeframe and format as determined by the State.</p>	<p>Ad Hoc Reporting: Any/all reports determined to be "ad hoc" are due to the State within seven business days of State "ad hoc" request or an agreed-upon time frame depending on</p>	<p>Two Hundred Fifty Dollars (\$250) per business day the ad-hoc report is not received or is unacceptable to the State.</p>

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	the complexity of the request. Timelines other than 5 days must be agreed to in writing.	
<p>SC6 Deleted due to duplication. Performance Management - Service Item Tracking</p> <p>The State, in conjunction with the Contractor, will prioritize all defects with a Priority Level and seek to resolve them according to the established timeframes for the production System unless otherwise directed and agreed upon by DHS. Resolve all defects within the following timeframes:</p> <ol style="list-style-type: none"> 1. Priority Level 1 Defects - within 5 calendar days 2. Priority Level 2 Defects - within 30 calendar days 3. Priority Level 3 Defects - within 60 calendar days 4. Priority Level 4 Defects - within 90 calendar days 5. Priority Level 5 Defects - within a schedule to be mutually agreed upon by the State and the Contractor. 	One hundred percent (100%) of the time the Contractor shall meet the described service criteria.	Two hundred fifty dollars (\$250) per calendar day the Commitment Date is delayed.
<p>SC7 Standards - Defect Identification and Resolution</p> <p>The Contractor must submit an initial Defect Analysis to the State within one (1) hour from receipt¹ of a Severity Level 1 Notice for any Defect in the Production Environment that the State deems to be Severity Level 1 and provide an update of the analysis within twenty-four (24) hours.</p> <p>For Severity Level 2 defect, contractor shall submit an initial Defect Analysis to the State within two (2) hours from receipt of a Severity Level 2 Notice for any Defect in the Production Environment that the State deems to be Severity Level 2 and provide an update of the analysis within twenty-four (24) hours.</p> <p>For Severity Level 3 defect, contractor shall submit an initial Defect Analysis to the State within four (4) hours from receipt</p>	One hundred percent (100%) of the time the Contractor shall meet the described service criteria.	Five hundred dollars (\$500) per business day a Defect Analysis is not provided to the State.

¹ "Received ticket": is a support or technical ticket initiated by a provider user or any DHS authorized user via electronic means or a phone call and that the vendor's support system logs with a time stamp, description, and severity. The time clock to respond to such ticket starts at the moment the ticket is received and time stamped.

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<p>of a Severity Level 3 Notice for any Defect in the Production Environment that the State deems to be Severity Level 3 and provide an update of the analysis within twenty-four (24) hours.</p> <p>Severity Levels are defined as follow:</p> <p>SEV (severity) 1 incident as “a critical incident with very high impact.” This could include a provider/beneficiary data loss, a security breach, or when a provider-facing service is down for all providers and DHS users.</p> <p>A SEV 2 incident is a “major incident with significant impact,” including when a provider-facing service is down for a subset of customers (providers and/or DHS users) or a critical function within a system is not functioning.</p> <p>And a SEV 3 incident is “a minor incident with low impact,” such as a system glitch that is causing customers (providers and/or DHS users) slight inconvenience.</p>		
<p>SC8 Standards - Documentation Management The Contractor must update all Documentation as required to ensure that the Documentation is current when modification(s) have been made to the Product after the initial delivery.</p> <ol style="list-style-type: none"> 1. The Contractor must provide the required Documentation to the State in original formats within twenty (20) business days of final approval from the State to fully implement the modification(s). 2. The required documentation to be submitted by the vendor for review should be to a quality standard that allows for one DHS review, one update, and approval. 3. The review, update, approval process shall be no longer than 5 business days each for each of the review, update, approval steps. 	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Five hundred dollars (\$500) per business day the Documentation is not submitted to the State (includes number of copies delivered, if less than the requested count, or in the incorrect format or media). Payments are assessed separately for each deliverable document that is out of compliance and each instance of the documentation (i.e., project portal, State portal, and backup and recovery site).</p>

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<p>4. The Contractor shall forfeit the Contract payment associated with that deliverable (or pay a damage if no payment is associated) in the event that the State declines to approve that deliverable three times. In other words, the Contractor shall have two submissions in addition to the original submission for the State's approval before there is a financial consequence.</p> <p>5. In the event the State withholds approval for the third submission, this does not eliminate, alter, abrogate or otherwise change the Contractor's responsibility to submit that deliverable in a manner satisfactory to the State.</p> <p>6. Contractor shall Obtain the State's approval for a deliverable requiring State approval before the third submission of that deliverable.</p> <p>7. The Contractor must provide an online PDF version of all Documentation and, upon request by the State, one (1) printed hardcopy of Documentation.</p>		
<p>SC9 Project Management - Documentation Management All Project Component documentation must be accurate and include the following deliverables:</p> <ol style="list-style-type: none"> 1. Baseline Project Plan 2. Document Templates 3. Requirements Traceability Matrix (RTM) 4. Interface Control Document (ICD) 5. Business Requirements Document (BRD) and Data Conversion Plan 6. Design Specifications Document (DSD) 7. Communications Plan 8. Test Plan 9. Training Plan 10. Implementation Plan 11. Disaster Recovery Plan 12. System Security Plan 13. Completed System Integration Testing (SIT) 	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Five Hundred Dollars (\$500) per business day the deliverable is not received by the State.</p>

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<ul style="list-style-type: none"> 14. Completed Training Prior to Go-Line 15. Completed User Acceptance Testing (UAT) 16. Production System Acceptance 17. Conclusion of Warranty 		
<p>SC10 Standards - Contract Management The Contractor must maintain at all times and grant access to its project records upon request by State or federal government entities, DHS Standard Terms and Conditions, of the contract. The Contractor must make requested project records available to the State, other DHS staff or state or federal government entities within three (3) business days, or as mutually agreed upon, of request.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Three hundred dollars (\$300) per request per business day past the allowable agreed-upon time frame for failure to produce requested records. If, upon review, the records fail to comply with the contract Standard Terms and Conditions, the Contractor agrees to pay the same amount for each business day or part of a business day the Contractor fails to correct the records to the satisfaction of the State.</p>
<p>SC11 Performance Management - Reporting Management If the State's performance review of the Contractor indicates that the Contractor's performance is below the defined metrics or thresholds as defined in the Performance Standards, and not otherwise addressed in the contract provisions, the Contractor must submit to the State a Corrective Action Plan (CAP) within five (5) business days. The State will review the CAP within five (5) business days, and, upon request by the State, the Contractor must modify the CAP within five (5) business days.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Five hundred dollars (\$500) per calendar day past the commitment date specified in the CAP that the deficiency is not corrected to the satisfaction of the State.</p>
<p>SC12 Performance Management - Service Item Tracking An initial incident report must be submitted within 24 hours of any incident(s) occurring in the production environment.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Five hundred dollars (\$500) per calendar day that a report is not submitted within twenty-four (24) hours.</p>

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<p>SC13 Performance Management - System Compliance and Security The PCMH portal must be available. The PCMH portal availability, except for scheduled downtime as agreed to by the State, shall be 99.0% of the time or as follows: 24 hours per day, seven days per week, except for scheduled downtime as agreed to by the State. No downtime will be scheduled during normal State business hours without written prior approval (minimum 10-day notice) by the State Contract Administrator. The specific hours of scheduled down time will be determined by the State and the Contractor. Availability: 99.0% (uptime) Downtime per year: 3d 15h 39m 29s Downtime per month: 07h 18m 17s Downtime per week: 01h 40m 48s Downtime per day: 14m 24s No downtime will be scheduled during normal State business hours without written prior approval.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria. Production Environment must be available 99.9% of the time, 24 hours a day, 7 days a week. Measured per hour, per day, per week reported monthly.</p>	<p>Two hundred, fifty dollars (\$250) per failure for planned downtime. If downtime exceeds the allowable downtime, the State may assess liquidated damages up to one thousand dollars (\$1000) per day.</p>
<p>SC14 Performance Management - System Compliance and Security The portal must provide automated, real-time reporting and notification internally to Contractor of catastrophic error detection and/or any unauthorized system downtime. The Contractor must provide the notification to the State within thirty (30) minutes of the error detection and/or any unauthorized system downtime. The Contractor must maintain and provide the State with a year-to-date summary, monthly report of all unscheduled downtime. This report should distinguish between full system downtime and application-specific driven downtime.</p>	<p>100% of all Production downtime incidents must be reported and tracked, in alignment with the State expectations defined in service criteria.</p>	<p>Five hundred dollars (\$500) per instance for each business day the instance is reported late or deemed unacceptable by the State.</p>

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<p>SC15 Performance Management - System Compliance and Security The Contractor must meet HIPAA Compliance Requirements: All Federal regulations are met regarding standards for privacy, security, and individually identifiable Protected Health Information (PHI) as identified in Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) In instances when a security breach occurs, the State requires initial notification within four (4) hours based on confirmed security breach and on-going communications.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>One thousand dollars (\$1000) in which notification has not been received within four (4) hours and then one thousand dollars (\$1,000) per business day for each additional day a CAP is not submitted to the State.</p> <p>The Contractor shall be liable for all penalties that the State is assessed for failure to meet HIPAA and HITECH Compliance Requirements due to Contractor's failure to meet obligations under the contract. Reimbursement for all penalties must be made within thirty (30) business days.</p>
<p>SC16 Performance Management - System Compliance and Security The Contractor must notify the State of all remote site infrastructure downtime. Notice of planned downtime will be provided in writing to the State five (5) business days in advance.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Two hundred, fifty dollars (\$250) per failure for planned downtime.</p>
<p>SC17 Deleted due to duplication. Performance Management - System Compliance and Security Contractor shall maintain a portal availability, of 99.0% of the time or as follows: Availability: 99.0% (uptime) Downtime per year: 3d 15h 39m 29s Downtime per month: 07h 18m 17s Downtime per week: 01h 40m 48s Downtime per day: 14m 24s No downtime will be scheduled during normal State business hours without written prior approval.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>Two hundred, fifty dollars (\$250) per failure for planned downtime.</p>
<p>SC18 Performance Management - Call Center Support Response Time Every support call with ring-answer contact (i.e., not receiving a busy signal) must be in the control of an authorized and trained specialist or technical services representative within an average of thirty (30) seconds after caller makes selection in IVR and call is placed in queue.</p>	<p>One hundred percent (100%) of the time the Contractor shall meet the described service criteria.</p>	<p>In months where the average speed of answer exceeds thirty (30) seconds, five hundred dollars (\$500) per day for calls that is not in the control of an authorized and trained specialist or technical services representative within thirty (30) seconds.</p> <p>The State agrees to allowing</p>

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<p>In any month where the average speed of answer exceeds thirty (30) seconds, a review of the call list for that month will be conducted and all calls that have exceeded the thirty (30) second response time will be identified.</p> <p>These metrics will be reported in a Weekly Call Center report.</p> <p>Help Desk hours of operation are Monday through Friday, 7:00am through 7:00pm CST.</p> <p>The contractor shall provide help desk services including:</p> <ul style="list-style-type: none"> Level 0 (customer self-service) Level 1 (basic support) Level 2 (moderate support) that includes, as appropriate, escalation to the State Level 3 (technical/integration) support related to the functionality of the portal' scope of work. <p>Level 1 help desk is the first point of contact and is responsible for logging the issue and, if possible, assisting the user.</p> <p>Contractor shall respond to any support service ticket within 2 hours during help desk hours from 7 am to 7 pm CST. After hours request must be addressed immediately first thing the next morning.</p>		<p>the 1st month above an average ASA of 30 seconds without penalty to allow Contractor to adjust prior to the State assessing a penalty – no penalty will be assessed until the 2nd month of ASA's above 30 seconds.</p> <p>The State will allow calls to roll to Shared Services when the call volume escalates. Contractor and the State will mutually determine when calls should roll to Shared Service. Contractor can also renegotiate the average ASA if the membership increases or benefit changes result in a significant increase in call volume.</p>
<p>A. 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, while performing duties under this contract, have reasonable cause to suspect that:</p> <ul style="list-style-type: none"> a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; 	<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> <ol style="list-style-type: none"> 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 took place; or 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

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<p>c. A child died suddenly and unexpectedly; or</p> <p>d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.</p> <p>or</p> <p>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> <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>contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.</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 Contractor is in full compliance, maintaining a below standard Contractor Performance Report (VPR) in the Contractor file and contract termination.</p>
<p>B. Performance Bonding</p> <p>The Contractor shall be required to obtain performance bonds to protect the State's interest as follows:</p> <p>1. The amount of the performance bonds shall be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the protection of the State.</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>Damages shall be one percent (1%) per day, calculated using the annual contract amount, for each day Contractor fails to meet the Performance Bonding Requirements specified in Service Criteria.</p> <p>In addition, Contractor's continued failure to meet Service Criteria, may result</p>

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<p>2. The State shall require additional performance bond protection when a contract price is increased or modified.</p> <p>3. The additional performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request.</p> <p>4. The contractor shall notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation must be provided to the State with each required notice.</p>		<p>in a below standard Contractor Performance Report (VPR) maintained in the Contractor file and contract termination.</p> <p>Failure to provide is a breach of contract and may result in immediate contract termination.</p>
<p>C. Conflict of Interest Mitigation During the term of this contract, the Contractor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Contractor 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 Contractor 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 Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Contractor 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 Contractor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Contractor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p>
<p>D. Transition Planning Ninety (90) days prior to the contract end date, the Contractor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another Contractor 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</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Contractor fails to meet the acceptable performance standard, DHS may issue a below standard Contractor Performance Report (VPR) maintained in the Contractor file.</p> <p>Final payment may be withheld from the Contractor until all elements of the transition are satisfied as determined by DHS.</p>

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<p>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>E. 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). <p>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>	<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 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>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 Contractor's failure to timely and accurately provide the requested information and documents.</p> <p>In addition to the above penalties, DHS reserves the</p>

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		right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Contractor is in full compliance, maintaining a below standard Contractor Performance Report (VPR) in the Contractor file and contract termination.

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 Contractor 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 Contractor 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, Contractor **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.