

**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. The damages set forth below are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.
  
- 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>Contractor <b>must</b> comply with all requirements of governmental agencies that license, certify, or regulate the Arkansas Health Center (AHC) and the Division of Youth Services (DYS). This includes labeling all medications and providing the necessary equipment for a medication administration system. The Contractor shall provide routine medications as well as having a system in place for floor stock medications, as needed (PRN) medications, and emergency/urgently needed medications.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with no citations of violation or deficiencies with all service criteria and standards for acceptable performance 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>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in Vendor's file, and contract termination.</p>
<p>Contractor <b>shall</b> provide medications in unit dose packaging, medication review, and billing to the appropriate Medicaid, Medicare Part D, or private insurance(s) for medications not covered by the applicable Medicaid, or Medicare Part D plan. The Contractor <b>must</b> be able to directly bill drug vendor programs such as Medicaid, Medicare, and private insurance companies or other payer sources before invoicing. If the drug vendor programs are not directly billable or billable to other payor services, then the division shall be billed for this service.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with no citations of violation or deficiencies with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>1st Incident: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the</p>

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		right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.
<p>Essential Services</p> <p>1. The Contractor <b>shall</b> have a blister pack system for unit dose delivery of medications as the method for drug dispensing. This is the preferred method for dispensing both prescription and over-the-counter medications. However, it is understood that not all medications will be able to be provided in a blister pack delivery system for a variety of reasons. The Contractor <b>must</b> provide information on situations when it is anticipated that blister packs cannot be used.</p> <p>2. The Contractor <b>shall</b> dispense scheduled medications and over-the-counter medications for treatment of individuals residing in the AHC nursing home that are ordered by a Doctor of Medicine or other health care professional, who is duly licensed and qualified under the laws of this jurisdiction in which scheduled medications and over-the-counter (OTC) medications are prescribed.</p> <ul style="list-style-type: none"> <li>▪ OTC medications include, without limitation diabetic strips and/or any diabetic supplies.</li> <li>▪ Prescription containers (including blister packs) shall be labeled to include the individuals name, date, prescribing physician, medication name, lot number, strength, dosage, directions for administration, and any applicable warnings or dietary instructions or other information in compliance with federal regulations and the laws of the State of Arkansas.</li> </ul> <p>3. Medication orders must be dispensed for thirty (30) days, unless prescribed for a lesser amount of time, in a blister packaging system or alternative AHC</p>	<p>Acceptable performance is defined as one hundred percent (100%) with zero instances of non-compliance documented by DHS throughout the course of the contract.</p>	<p>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>

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<p>security-approved packaging system for pill form. Liquid medications, including vaccines, must be manufactured and bottled for pharmacy use and must bear the contracting pharmacy's label.</p>		
<p>Technical Functionality</p> <ol style="list-style-type: none"> <li>1. Within six (6) months of the contract start date, the Contractor <b>must</b> have a computer system in place that will interface with each division's electronic health records that is readily available and capable of providing and maintaining drug profiles on every individual client for medical staff. This system must be responsive to medical staff needs while adhering to the regulations for protection of patient privacy.</li> <li>2. The system <b>must</b> adhere to regulations for protection of patient privacy, including without limitation, the Health Insurance Portability and Accountability Act (HIPAA).</li> <li>3. Contractor <b>must</b> monitor the ordering and receiving of medications to ensure medications are ordered on a timely schedule and are received from the pharmacy accurately and timely.</li> <li>4. Contractor must maintain accurate counts of prescription and OTC pharmaceuticals dispensed and maintained in inventory.</li> <li>5. Contractor <b>must</b> provide routine checking of medication lists for allergies and drug interactions, especially when new medications or medication changes are ordered.</li> </ol>	<p>Acceptable performance is defined as no more than three (3) verified shortages and/or inaccurate dispensing counts per month.</p>	<p>A five percent (5%) penalty will be assessed for each shortage occurrence of more than three (3) times per month. The five percent (5%) penalty will be applied to the identified month in which the shortage took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p>Medication Delivery Requirement</p> <ol style="list-style-type: none"> <li>1. Contractor <b>must</b> provide delivery services up to three (3) times daily, Monday through Saturday as needed. Pharmacy services <b>must</b> also be available twenty-four (24) hours per day, seven (7) days a week for urgent/emergent medication orders and Schedule II Narcotics, within two (2) hours from time ordered. New orders called in by 2:00 p.m. shall be delivered on the same day.</li> </ol>	<p>Acceptable performance is defined as one hundred percent (100%) timeliness with zero instance of non-compliance throughout the duration of the contract.</p>	<p>A three percent (3%) penalty will be assessed in the following months' payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p>

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<p>2. The Contractor <b>shall</b> provide backup plans for urgent/emergent drug delivery in the event of: hazardous road conditions, natural disasters, etc. The Contractor <b>shall</b> give the facility immediate notice of any anticipated delays that will affect the service delivery requirement.</p>		<p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Pharmacy Services</b> Contractor <b>shall</b> provide the following services:</p> <ol style="list-style-type: none"> <li>1. Drug identification information shall be included with the blister packs/bottles.</li> <li>2. A system for checking medications onto the floor for accuracy of blister packs.</li> <li>3. Provide a bar-code system in the pharmacy to reduce medication dispensing errors and provide a bar-code system to improve the accuracy of ordering and receiving medications.</li> <li>4. Clozapine Registry: The pharmacy must be certified in the clozapine Risk Evaluation and Mitigation (REM) program, obtain Pre-Dispense Authorization (PDA) from the REM's website and have authorized representatives to enter Absolute Neutrophil Count (ANC) as needed.</li> <li>5. Off cycle: Therapeutic and new admission short cycle drugs.</li> <li>6. Drug distribution system utilizing a cycle delivery for all routine oral dosage forms on a 30-day cycle.</li> <li>7. Supply IV services, which may include IV infusion medications such as IV infusions balls.</li> <li>8. Provide Schedule II Narcotics with a physician verbal telephone order followed by a written order/prescription.</li> <li>9. Provide a clear and concise system of documentation to process prior authorization of medications.</li> <li>10. Provide a method for medication management for client's visit(s) home.</li> </ol>	<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>A three percent (3%) penalty will be assessed in the following months' payment to the provider for each instance of non-compliance with all requirements of the contract. The three (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>General Responsibilities</b> Contractor <b>shall</b> be available to assist the pharmacy consultant as needed in educating the nursing staff. Specific requirements include but are not limited to</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the</p>

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<p>the following:</p> <ol style="list-style-type: none"> <li>1. Directing the daily operation of the drug delivery system and monitor the ordering, receiving, and accuracy of delivery of all medications.</li> <li>2. Monitoring the proper storage of medications.</li> <li>3. Reviewing all pharmacy charges to the facility. Attending meetings with facility administrative staff in an effort to find ways to keep pharmacy costs as low as possible.</li> <li>4. Making recommendations for changing drug therapy to medications that may be billed to other payor sources or change to the lowest cost products with the same therapeutic effectiveness.</li> <li>5. Assisting the nursing staff with pharmacy questions, order entry, and questions of drug compatibility.</li> <li>6. Monitoring for the proper utilization of medications.</li> <li>7. Develop a report and provide to the Director of Nursing and consultant Pharmacist.</li> <li>8. Coordinating with nursing staff and the attending physicians to obtain medication orders to comply with the established facility formulary and perform follow-up to ensure the order change was appropriately transcribed to the orders and Medication Administration Record (MAR).</li> <li>9. Assisting nursing staff or transcribing medication orders into the computer or creation of the computer printed orders and MAR.</li> <li>10. Providing a method of medication management for client visits home.</li> </ol> <p>The Contractor shall be responsive to the Quality Assurance Committee and, if possible, be willing to provide a liaison to this committee if notified in a timely manner.</p>	<p>performance throughout the contract term as determined by DHS.</p>	<p>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 Vendor 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>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Customer Service</b></p> <ol style="list-style-type: none"> <li>A. Contractor <b>shall</b> ensure that its staff maintain good interpersonal skills and a professional business appearance.</li> <li>B. Contractor <b>shall</b> designate a pharmacy liaison to assist DHS with assessing client needs and providing product</li> </ol>	<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</p>	<p>1st Incident: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A three percent (3%) penalty will</p>

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<p>information and samples. The pharmacy liaison <b>must</b> conduct monthly visits and <b>shall</b> provide training and education.</p> <p>C. Contractor <b>shall</b> be able to provide compounded medications or arrange orders with another provider.</p> <p>D. The Contractor <b>shall</b> assist DHS in resolving order and delivery issues.</p>	<p>by DHS.</p>	<p>be assessed in the following months' payment to the provider for each thirty (30) day period Vendor is not in full compliance with all requirements of the contract. The three percent (3%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Privacy &amp; Security</b></p> <p>A. Contractor <b>shall</b> ensure and maintain compliance with the most current version of Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH), The Privacy Act of 1974, Arkansas Personal Information Protection Act (A.C.A. § 4-110-104), and other Federal and State privacy and security standards. Prior to award, Contractor <b>must</b> complete and sign a Business Associate Agreement (BAA). The State of Arkansas Security and Privacy policies can be found at:</p> <p><a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1001.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1001.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1003.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1003.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4002.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4002.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4008.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4008.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4009.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4009.pdf</a></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>1st Incident: A 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 Vendor 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>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding</p>

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<p><a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5000.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5000.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5010.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5010.pdf</a></p> <p>B. Contractor <b>shall</b> disclose any breaches of privacy or security by contacting the DHS Information Technology Security Office within one (1) business day of the breach at  DHS.IT.Security.Team@dhs.arkansas.gov.</p> <p>C. Contractor <b>shall</b> use protected health information and/or other confidential information only in a manner that is necessary to provide the services required in this solicitation.</p> <p>D. Contractor <b>shall</b> safeguard the use and disclosure of, and restrict access to, protected health information and/or other confidential information.</p> <p>E. Contractor <b>must</b> maintain confidentiality and meet any applicable Privacy Act of 1974, Health Insurance Portability and Accountability Act (HIPAA), and Health Information Technology for Economic and Clinical Health (HITECH) Act requirements. Prior to award, the Contractor must complete and sign a Business Associate Agreement (BAA).</p>		<p>payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Payment and Invoicing</b>  All invoices for the AHC <b>shall</b> be mailed or delivered to the Business Office when medication is delivered to the units. Mailing address:  <i>Arkansas Health Center</i>  6701 Highway 67  Benton, AR 72015-8489</p> <p>All invoices for DYS <b>shall</b> be mailed to DYS Finance:  PO Box 1437 S501, Little Rock, AR 72203</p> <p>Invoices <b>must</b> include the following: patient name, name of medication, RX number, date filled, notation as RX, OTC, or wound product, and the amount owed (not covered by insurance). Invoices must have a total per patient and the total owed by facility not covered by insurance.</p>	<p>Acceptable performance is defined as ninety-eight percent (98%) accuracy each quarter.</p>	<p>If less than ninety-eight percent (98%) of all invoices submitted in a quarter are deemed accurate upon DHS review, there will be damages equal to five percent (5%) of the amount of the total invoices for the quarter. The Contractor will issue a credit memo to DHS for the five percent (5%) penalty.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full</p>



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<p>Contractor shall be responsible for the payment of state and federal taxes and Federal Insurance Contributions Act (FICA) with regards to wages received.</p> <p>Contractor shall be responsible for all meals, lodging, and any other expense accrued during required travel.</p>		<p>compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Mandated Reporting</b> Pursuant to Ark. Code Ann. §§ 12-18-402 (b)(10) and 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> <ol style="list-style-type: none"> <li>a. A child has been subjected to child maltreatment;</li> <li>b. A child died as a result of child maltreatment;</li> <li>c. A child 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>or</p> <ol style="list-style-type: none"> <li>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.</li> </ol> <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</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> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a CAP, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>

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<p>supervisor, before reporting maltreatment to the Hotline.</p> <p>Pursuant to Act 531 of 2019, Ark. Code Ann. §§ 12-18-402 (b)(10) and 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><b>Performance Bonding</b> Contractor <b>shall</b> be required to obtain performance bonds to protect the State's interest as follows:</p> <ol style="list-style-type: none"> <li>1. The amount of the performance bonds <b>shall</b> 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.</li> <li>2. The State <b>shall</b> require additional performance bond protection when a contract price is increased or modified.</li> <li>3. The additional performance bond <b>must</b> be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request.</li> <li>4. Contractor <b>shall</b> 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.</li> </ol>	<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 Vendor fails to meet the Performance Bonding Requirements specified in Service Criteria.</p> <p>In addition, Vendor's continued failure to meet Service Criteria, may result in a below standard VPR to be maintained in Vendor's file, and contract termination.</p> <p>Failure to provide is a breach of contract and may result in immediate contract termination.</p>
<p><b>Conflict of Interest Mitigation</b> During the term of this contract, Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. Vendor shall disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) days of having knowledge of them. 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>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>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. 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</p>

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<p><b>Transition Planning</b> Ninety (90) days prior to the contract end date, 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>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>amount of the immediately preceding violation fine.</p> <p>If Vendor fails to meet the acceptable performance standard, DHS may issue a below standard VPR to be maintained in Vendor's file. Final payment may be withheld from Vendor until all elements of the transition are satisfied as determined by DHS.</p>
<p><b>Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.):</b></p> <ol style="list-style-type: none"> <li>1. Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request.</li> <li>2. Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</li> <li>3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A).</li> </ol> <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. For all FOIA requests received, Contractor shall also notify DHS of the request at <a href="mailto:DHS.FOIA@arkansas.gov">DHS.FOIA@arkansas.gov</a>.</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"> <li>1. For each failure to meet performance standard, DHS may impose: <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol> </li> </ol> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>In addition to the above,</p>

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		<p>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 CAP, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's 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, 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 Vendor's control that hindered the performance of services if 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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<sup>i</sup> Nothing in this table is intended to set forth all obligations of Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

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