

**ARKANSAS DEPARTMENT OF HUMAN SERVICES**  
**PERFORMANCE BASED CONTRACTING**  
**Pre-Admission Screening and Resident Review**  
**710-25-002**

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 part of the contract and with which Contractor must comply for acceptable performance to occur under the contract.

- I. Contractor must comply with all statutes, regulations, codes, ordinances, license, and certification requirements applicable to Contractor, Contractor's agents, employees, and the contract subject matter. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, Contractor agrees to indemnify and hold harmless 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 Contractor's performance or lack of performance.
- III. During the contract term, the Division/Office will complete sufficient performance evaluations to determine if 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 contract term, should the State determine it is in its best interest. Any changes or additions to Performance Standards will be made in good faith following acceptable industry standards and may include Vendor's input so as to establish reasonably achievable standards.
- V. The contract program deliverables and performance indicators to be performed by Contractor are:

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<p><b>REQUIREMENTS FOR PRE-ADMISSION SCREENINGS/RESIDENT REVIEW (PASRR) ASSESSMENTS</b></p> <p><b>Regulations, Laws, and Policies</b> Level II PASRR assessments shall be conducted in accordance with 42 CFR §§ 483.100 – 483.138, applicable Arkansas statutes and rules, and DHS policies.</p> <p>The content and documentation of Level II PASRR assessments shall comply with the federal regulations above.</p> <p>Any and all instruments, methodologies, and processes used to conduct PASRR assessments and create reports shall conform to the most current Federal and State regulations, laws, and CMS guidelines.</p> <p>Level II PASRR assessments must be completed within seven (7) to nine (9) business days, as required by 42 CFR § 483.128. Determinations shall be communicated to DHS within forty-eight (48) business hours of completion. Contractor must also communicate determinations to the nursing facility (NF), hospital, the Office of Long-Term Care (OLTC), and/or resident.</p> <p><b>Psychiatric Evaluations</b> Contractor must arrange any second opinions or more extensive psychiatric evaluations when necessary for the effective assessment of an individual. DHS must approve, in writing, any additional costs for these evaluations prior to the evaluation.</p> <p><b>History and Physicals</b> Contractor shall contact the attending physician, hospital physicians, NFs, or others to obtain recent histories and physicals for individuals requiring assessments.</p> <p>In some cases, Contractor will have to arrange for a history and physical to meet federal regulations. DHS must pre-approve, in writing, any additional costs for these physicals.</p> <p><b>Emergency Placement Procedures</b> In emergency medical situations, the State</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>A fail rate greater than 1% of the total reviewed forms within one (1) quarter shall constitute grounds for the State to request that the Contractor implement improved instruments and/or methodology or both. The State reserves the right to accept or reject any or all instruments and methodologies.</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 Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard Vendor Performance Report (VPR) in the vendor file, and contract termination.</p>

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<p>may authorize NF placement of a PAS applicant prior to the completion of the Level II assessment. These authorizations are based on the applicant's need for skilled nursing care at a level less than that provided in the acute care facility.</p>		
<p><b>STAFFING AND OPERATIONS</b></p> <p><b>Schedule</b> Contractor shall maintain a fully staffed office in Little Rock, AR, open for business five (5) days per week, Monday through Friday, between 8:00 a.m. and 4:30 p.m. CST, with the exception of official State holidays.</p> <p>At a minimum, staff shall include: two (2) full-time professionals, (e.g.: Master of Social Work (MSW), Registered Nurse (RN), Licensed Practical Nurse (LPN)), one of which shall also be a Qualified Intellectual Disability Professional (QIDP) qualified to complete and interpret PASRR assessments, and at least one (1) full-time clerical assistant.</p> <p>Contractor shall recruit and train key personnel in the fields of medicine, psychiatry, psychology, nursing, and social work. All key personnel must maintain a current and valid license and/or certification.</p> <p>Contractor must perform criminal background checks on all proposed staff members.</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.</p> <p>Contractor shall ensure all staff conducting PASRR assessments have the required credentials.</p> <p>Contractor must provide copies of licensure and/or certification upon request.</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 Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>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 VPR in the vendor file, and contract termination.</p>
<p><b>COORDINATION PROCEDURES</b></p> <p>Contractor shall implement procedures necessary to complete Level II PASRR assessments within seven (7) to nine (9) business days as required by federal regulation.</p> <p>Procedures shall include, without limitation:</p> <ol style="list-style-type: none"> <li>1. Determination of the appropriate PAS evaluation type (MI, ID/DD, and/or Dual) and assignment to a properly credentialed evaluator.</li> <li>2. Forwarding all necessary material to the evaluator.</li> <li>3. Simultaneous routing of a copy of the</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.</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 ten percent (10%) penalty will be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The</p>

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<p>packet to OLTC for medical necessity review after the Level II evaluation.</p> <ol style="list-style-type: none"> <li>4. Conduct an on-site, face-to-face, Level II PASRR evaluation of the applicant.</li> <li>5. Receipt of completed evaluation packet from the evaluator and the medical determination from OLTC.</li> <li>6. Determination of appropriate placement, specialized services, and other service determinations as specified for the different assessment categories.</li> <li>7. Ensuring that these service determinations are made by psychiatrists and QIDPs.</li> <li>8. Routing of a copy of the service determination summary information form to OLTC.</li> <li>9. Determination of the current location (i.e.: facility or residence) of the applicant at this point in the evaluation.</li> <li>10. Completion of telephone and written notifications as specified in the Federal regulations.</li> <li>11. Maintenance of the OLTC copy of the PASRR evaluation.</li> </ol> <p>Contractor shall explain in person or by phone PASRR processes, results, and procedures to applicant/resident, guardian, physician, provider (i.e.: NF, ICF/ID), legal representative or family. In some cases, Contractor may need to assist the applicant or family in accessing other services through referral to OLTC, DDS, PASSE and/or DAABHS.</p> <p>Contractor <b>shall</b> participate in all PASRR trainings to providers in conjunction with DHS.</p>		<p>ten percent (10%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>ADMINISTRATIVE SERVICES</b></p> <p><b>Modes of Communication</b> Contractor shall maintain a toll-free telephone number and an email address for individuals to obtain information regarding the PASRR process. The toll-free number and email address must be included in all correspondence.</p> <p>Contractor shall maintain a computer and</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.</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</p>

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<p>email address for the receipt of PAS packets.</p> <p>Contractor must develop and manage a web page specific to the Arkansas PASRR program. The web page is for informational purposes only and must include, at least, instructions on how to submit a request.</p> <p><b>Data Collection and Maintenance</b> Contractor shall maintain a computerized management, information, and tracking system for each assessment program.</p> <p>The system must be able to: (1) incorporate and maintain historical program data received from DHS within twenty-four (24) hours, (2) separately assess MI and ID/DD specialized services, (3) track assessments in progress, (4) track placement determinations and recommended health rehabilitation services, (4) maintain and track data for each completed assessment, (5) generate statistics and reports required by DHS, and (6) utilize the updated list of all licensed NFs provided by DHS.</p> <p>Contractor will also specifically track the progress of arrangements for alternative placements for individuals determined (prior to and during the course of the contract): (1) inappropriate for nursing home placement or for continued nursing home placement, and (2) requiring only convalescent care in a nursing facility.</p> <p>Contractor will track and monitor: (1) the provision of specialized services in NFs to residents determined to require specialized services, (2) the service determinations for severe illness, terminal illness, ventilator dependent, or comatose individuals in NFs to residents requiring exemptions.</p>	<p>Contractor <b>shall</b> document the name and telephone number of the staff person in the receiving NF that was notified by telephone that the resident was approved for convalescent care only.</p> <p>This tracking and monitoring <b>shall</b> be limited to receipt, data entry, and forwarding of the services determination material to the appropriate office of the NF.</p>	<p>following months' payment to Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>REPORTING REQUIREMENTS</b></p> <p>All reports shall be submitted to DHS via email on DHS-approved report templates. Any special reports, requested by DHS in writing, must be submitted within the agreed upon timeframes.</p> <p><b>Monthly Reports</b> A monthly report shall be received by DHS</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</p>

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<p>no later than the fifth (5<sup>th</sup>) business day of the following month. Contractor will use the DHS-provided Monthly Report template.</p> <p><b>Final Report</b> A cumulative Final PASRR Summary Report shall be received by DHS no later than July 10<sup>th</sup> of each year. The report shall include data concerning: (1) the full contract term and (2) the outgoing State Fiscal Year. Contractor will use the DHS-provided Final PASRR Summary Report template.</p> <p>Contractor shall maintain data in a format and manner compatible with DHS computer systems and shall provide said data to the OLTC upon request, in the format specified by OLTC.</p>		<p>be assessed in the following months' payment to Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>TECHNOLOGY REQUIREMENTS</b></p> <p>Contractor shall provide its own software and hardware, including any software necessary to interface with ARIES for bi-directional data transfer. Contractor must submit an Interface Control Document (ICD) to DHS. Contractor shall be responsible for coordinating interface plans throughout the life of the contract.</p> <p>Contractor shall provide a web portal for DHS's direct access to data.</p> <p>Contractor shall provide and maintain a complete list of all software, components, libraries, and any assets that will convey or will not convey to DHS at contract closeout.</p> <p>Contractor shall notify DHS within twenty-four (24) hours of any system outages and shall provide DHS with three (3) days advance notice of any planned outages.</p> <p>Contractor must have a backup system in place to recover data. All backup servers and backup data associated shall reside in the continental United States. Contractor's</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.</p> <p>The hardware and software must be compatible at all times with the hardware and software utilized by DHS and its security and privacy policies.</p> <p>Automatic backup of data must occur every four (4) hours.</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 Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until</p>

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<p>backup and recovery procedures shall provide for recovery of the system and all data up to the moment of an outage and successfully resume data collection within twenty-four (24) hours of any outage and/or disaster.</p>		<p>Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>DISASTER RECOVERY</b></p> <p>Contractor must submit a Disaster Recovery and Business Continuity and Contingency Plan for the technology and infrastructure components, as well as the business area operations continuity and contingency plan.</p> <p>The plan must include a procedure to allow facility access in support of restoration of lost data and to support emergency mode operations in the event of an emergency. Access control will include procedures for emergency access to electronic information.</p> <p>The system must be protected against hardware and software failures, human error, natural disasters, and other emergencies that could interrupt services. The plan must address recovery of business functions, business units, processes, human resources, and the technology infrastructure.</p>	<p>Acceptable performance is always defined as one hundred percent (100%) compliance with Service Criteria throughout the contract term as determined by DHS.</p> <p>Contractor shall conduct disaster recovery testing on an annual basis.</p> <p>The Disaster Recovery Plan and results of testing shall be provided to DHS upon request.</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 two-thousand-dollar (\$2,000) penalty will be deducted from Vendor's next scheduled payment for each failure to satisfy this service criteria.</p> <p>In the event of a disaster and subject to agreement on processes and responsibilities, a five-thousand-dollar (\$5,000) penalty shall be assessed per each twenty-four (24) hour period beyond the initial seventy-two (72) hour period Contractor is out of compliance with these service criteria. This penalty shall not exceed twenty-five-thousand dollars (\$25,000) per Disaster, or one-hundred-thousand dollars (\$100,000) per full term of Contract.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the</p>



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		vendor file, and contract termination.
<p><b>PRIVACY AND SECURITY</b></p> <p>Contractor shall comply 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.</p> <p>Contractor shall only use PHI and/or other confidential information as is necessary to provide the services.</p> <p>Contractor shall safeguard the use and disclosure of, and restrict access to, PHI and/or other confidential information.</p> <p>Contractor shall disclose any privacy or security breaches 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>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 Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>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 VPR in the vendor file, and contract termination.</p>
<p><b>INSURANCE</b></p> <p>Contractor shall maintain insurance policies with an Arkansas licensed company in the following minimum amounts:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 per occurrence general liability; and</li> <li>▪ \$3,000,000 aggregate, for professional liability, negligence, errors and omissions and public liability.</li> </ul> <p>The insurance <b>must</b> have limits sufficient to cover losses resulting from, or arising out of, action or inaction in the performance of the contract by Contractor and/or Contractor's agents, servants, employees, or subcontractors.</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>Contractor must furnish an approved "Certificate of Insurance" and must maintain the insurance Requirements throughout the contract and any/all</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 Vendor for each thirty (30) day period Vendor is not in full compliance with all contract requirements. The five percent (5%)</p>



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<p>Contractor must notify DHS not less than forty-five (45) days in advance of any non-renewal, cancellation, or expiration of the insurance policies. In the event of non-renewal, Contractor shall provide DHS with an insurance policy from another carrier at least thirty (30) days prior to the expiration of the insurance policy then in effect.</p> <p>DHS shall have the right to inspect the original insurance policies held by the Contractor.</p>	<p>extensions. The insurance shall not be modified without DHS approval.</p> <p>DHS shall have the right to inspect Contractor's original insurance policies.</p>	<p>penalty will be calculated from the total months' payment in which the deficiency took place.</p> <p>DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance with these service criteria, maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>MANDATED REPORTING</b></p> <p>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 child has been subjected to child maltreatment;</li> <li>A child died as a result of child maltreatment;</li> <li>A child died suddenly and unexpectedly;</li> <li>Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. or</li> <li>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</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>A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total months' payment in which the deficiency took place; or</p> <p>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 as determined by DHS.</p> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>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 with the service criteria,</p>

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<p>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 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>maintaining a below standard VPR in the vendor file, and contract termination.</p>
<p><b>PERFORMANCE BONDING</b></p> <p>Contractor <b>shall</b> obtain performance bonds for one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the State's protection.</p> <p>The State <b>shall</b> require additional performance bond protection when a contract price is increased or modified. The additional performance bond <b>must</b> be delivered to the DHS Chief Procurement Officer within fourteen (14) calendar days of request.</p> <p>Contractor <b>shall</b> notify the State of any changes, modifications, or renewals for the performance bond during the term of the contract. Documentation must be provided with each notice.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with these service criteria at all times throughout the contract term.</p>	<p>Damages shall be one percent (1%) of the annual contract amount, per day, for each day Vendor fails to meet the Performance Bonding Service Criteria.</p> <p>Vendor's continued failure to meet these service criteria may result in a below standard VPR to be maintained in the vendor file and/or contract termination.</p> <p><b>Failure to provide the required performance bonds is a breach of contract and may result in immediate contract termination.</b></p>
<p><b>CONFLICT OF INTEREST MITIGATION</b></p> <p>Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions.</p> <p>Vendor shall disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) days of having knowledge of them.</p>	<p>Vendor must maintain one hundred percent (100%) compliance with these service criteria at all times throughout the contract term.</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 not disclosed.</p>

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<p>Vendor shall develop a mitigation plan 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 shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding fine.</p>
<p><b>TRANSITION PLAN</b></p> <p>Contractor must submit to DHS its proposed Transition Plan at least ninety (90) business days prior to the contract end date. The plan must include, at a minimum:</p> <ul style="list-style-type: none"> <li>• Approach to the transition</li> <li>• Complete/updated system and user documentation</li> <li>• List of operational tasks, subtasks, procedures, and schedules necessary for all transition activities and to support ongoing operations during transition</li> <li>• Contractor's organizational chart and staffing matrix, for all staff responsible for transition activities including title, telephone number, and email address</li> <li>• A detailed description of the services required by the new Contractor to complete the transition.</li> <li>• Specify the format and delivery method to return all proprietary data back to DHS</li> </ul> <p>Regarding the transfer of data to DHS, the Transition Plan must include:</p> <ul style="list-style-type: none"> <li>• Provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) business days prior to the contract end date</li> <li>• All proprietary data collected and/or created during the final thirty (30) business days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no later than fifteen (15) business days following the contract end date</li> </ul> <p>Any applications software developed by Contractor in the performance of this</p>	<p>Vendor must maintain one hundred percent (100%) compliance with this service criteria at all times throughout the contract term.</p> <p>DHS reserves the right to request re-submission of any proprietary information deemed unacceptable after the Contractor's initial transfer.</p>	<p>For failure to meet the acceptable performance standard, DHS may issue a below standard VPR to be maintained in the vendor file.</p> <p>Final payment may also be withheld from Vendor until all elements of the transition are satisfied as determined by DHS.</p>

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<p>contract must become the property of the State at no additional cost. Any existing software applications owned by Contractor and used in the performance of this contract must be granted to the State at no additional cost, subject to customary confidentiality and other license terms and conditions.</p> <p>Contractor shall not implement the Transition Plan until it has received DHS's written approval. Contractor shall take all reasonable action to provide a minimally disruptive turnover.</p> <p>Ten (10) business days after the completed transition, Contractor must provide DHS with a Transition Results Report documenting the results of each step of the Transition Plan. The transition shall not be considered complete until this document is approved by DHS.</p>		
<p><b>ARKANSAS FREEDOM OF INFORMATION ACT (FOIA) (Ark. Code Ann. § 25-19-101 et seq.):</b></p> <p>Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas FOIA request.</p> <p>Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</p> <p>Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. § 25-19-103(7)(A).</p> <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.</p> <p>DHS shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p>	<p>For each failure to meet this performance standard, DHS may impose:</p> <p>A ten percent (10%) penalty, assessed in the following months' payment, for each failure to report. The penalty will be calculated from the total months' payment in which the deficiency took place; or</p> <p>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, as determined by DHS.</p> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>Contractor shall be responsible for any penalties, fees, and/or costs imposed on DHS</p>

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		<p>associated with Contractor's failure to timely and accurately provide the requested information and documents.</p> <p>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 with these service criteria, maintaining a below standard 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, Vendor will have the opportunity to defend, respond to, or cure the insufficiency to the State's satisfaction. 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.

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<sup>i</sup> 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.

<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.