

**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:

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p><u>Service Delivery Location</u></p> <p>A. All services <b>must</b> be provided during normal state work hours of 8:00am – 4:30pm and within the agreed upon number of days unless otherwise arranged and coordinated with the agency. The Contractor <b>shall</b> give the agency immediate notice of any anticipated delays that will affect the service delivery requirement.</p> <p>B. The Contractor <b>must</b> be on-site during regular business hours and on as needed basis. The Contractor may occasionally be required to provide services, after-hours, on holidays and during inclement weather days. The Contractor may occasionally be required to work overtime hours.</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 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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><u>Insurance Requirements</u></p> <p>The Contractor <b>shall</b> maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the contract by the Contractor, its agents, servants, or employees.</p> <p>Liability Limits:</p> <p>1. Workers Compensation and Liability Policy. Workers Each Occurrence: Statutory Limits</p> <p>Employers Liability: \$1,000,000.00 each accident</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 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 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>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>2. Comprehensive General Liability Policy Premises and Operations Personal Injury</p> <p>Each item for Comprehensive General Liability Policy <b>must</b> have:</p> <p>Bodily Injury \$500,000.00 each person \$500,000.00 each occurrence</p> <p>Property Damage \$1,000,000.00 each occurrence \$1,000,000.00 each aggregate</p> <p>Prior to award, Contractor <b>must</b> provide to DHS/DDS an approved "Certificate of Insurance" and <b>must</b> maintain the insurance requirements throughout the contract period.</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 the vendor file and contract termination.</p>
<p>The Contractor <b>shall</b> provide the following speech therapy services for individuals that have a primary diagnosis of intellectual disabilities that vary in their level of physical condition, disability, functioning and age.</p> <p><u>Screening of Patients</u> The Contractor <b>must</b> conduct a screening on every patient within fourteen (14) calendar days of admission. The screening results <b>shall</b> be forwarded to the physician within five (5) business days for consideration of referral for further evaluation. Time spent on screening may vary according to admissions.</p> <p><u>Evaluation</u> 1. The Contractor <b>shall</b> perform an evaluation on each referred patient. Patients <b>must</b> be seen within five (5) business days of the date of referral.</p> <p>2. The Contractor <b>must</b> provide the following within fourteen (14) calendar days from the date of referral:</p> <ul style="list-style-type: none"> <li>• Administer testing</li> <li>• Complete the interpretation</li> <li>• Recommend course of treatment</li> </ul> <p>Provide a report summarizing the findings of the evaluation</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 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 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 Vendor Performance Report (VPR) in the vendor file and</p>

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<p><u>Planning</u></p> <ol style="list-style-type: none"> <li>1. Contractor <b>shall</b> participate in Interdisciplinary Team meetings as needed and as requested by the Program Coordinator. Therapy hours <b>must</b> be coordinated with the Interdisciplinary team and unit schedule. Time spent in meetings may vary. Contractor <b>shall</b> work with the facility's interdisciplinary team members to develop speech/communication training goals and objectives.</li> <li>2. Contractor <b>must</b> participate in the Individual Program Plan (IPP) development which entails the initial program planning (30-day review) for all individuals residing at the facility and all new admissions.</li> </ol>		contract termination.
<p><u>Services</u></p> <ol style="list-style-type: none"> <li>1. The Contractor <b>shall</b> comply with all State and Federal Intermediate Care Facilities for Individuals with Intellectual Disabilities Standards for Speech and Audiology services.</li> <li>2. The Contractor <b>shall</b> 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 <b>shall</b> be deemed unacceptable performance.</li> <li>3. Direct speech therapy services <b>must</b> be provided by the Contractor at the frequency stated in the individual's 24-hour schedule and as stated in the individual's program plan (IPP).</li> <li>4. Contractor <b>must</b> participate in discharge planning for all individuals discharged from SEAHDC who have received direct and maintenance speech therapy services.</li> <li>5. Contractor is solely responsible for obtaining and maintaining all relative licenses and credentials for the full duration of the contract.</li> </ol>	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>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 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 Vendor Performance Report (VPR) in the vendor file and</p>

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<p>6. Contractor <b>shall</b> comply with all identification, security, and access requirements established by DHS.</p> <p>7. Contractor <b>shall</b> perform additional clinical, consultative, and/or mandated services or activities as required by state or federal regulations.</p> <p>8. Therapy services <b>must</b> be provided in accordance with the IPP which entails the initial program planning (30-day review) for all individuals residing at the facility and all new admission.</p> <p>9. The Contractor <b>must</b> provide direct observations of each patient during mealtime.</p>		contract termination.
<p><u>Training</u></p> <p>1. Contractor <b>must</b> provide ongoing training and supervision on communication objectives to DHS staff assigned to perform communication training services such as sign language training, picture exchange communication system training, and technology-assisted communication training. Therapist <b>must</b> provide quarterly monitoring of direct communication staff.</p> <p>2. Contractor <b>must</b> provide all necessary in-service training and orientation as determined by the Interdisciplinary team to facilitate progress on established speech therapy objectives.</p> <p>3. Contractor must develop written training plans to include short term and long-range goals and objectives. No decisions shall be made, or changes initiated which conflict with written policy statements of the Center.</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 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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<u>Records and Reporting</u>	Acceptable performance is defined as one	1st Incident: A Corrective Action Plan (CAP)

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>The following documentation <b>shall</b> be generated in compliance with Intermediate Care Facilities for Individuals with Intellectual Disabilities regulations and The Commission on Accreditation of Rehabilitation Facilities standards (CARF). Such records <b>shall</b> remain the property of Southeast Arkansas Human Development Center:</p> <ul style="list-style-type: none"> <li>• Progress reports</li> <li>• Treatment plans</li> <li>• Short-term goals and objectives</li> <li>• Long-range goals and objectives</li> <li>• Discharge planning</li> <li>• Demonstrated need for the person served to continue receiving services.</li> </ul>	<p>hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><u>Schedule</u></p> <ol style="list-style-type: none"> <li>1. Services <b>must</b> be provided Monday through Friday from 8:00 am – 4:30 pm CST.</li> <li>2. The Contractor <b>must</b> be onsite during regular business hours on an as needed basis.</li> <li>3. Contractor may occasionally be required to work overtime, after hours, holidays, and/or during inclement weather days.</li> <li>4. In coordination with the HDC Superintendent, the Contractor <b>shall</b> provide Speech Therapy Services, an estimated twenty (20) hours per week, on the premises of the Southeast Arkansas Human Development Center (SEAHDC) in Warren,</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>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 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</p>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>Arkansas. Schedules for speech therapy services will be maintained and kept current by the Superintendent at all times.</p> <p>5. Contractor shall schedule clinic days and times in coordination with the Superintendent and/or Behavioral Health Staff at HDC, who maintain the clinic schedules.</p> <p>6. The Contractor shall provide Speech Therapy Services, an estimated twenty (20) hours per week, on the premises of the Southeast Arkansas Human Development Center (SEAHDC) in Warren, Arkansas.</p>		<p>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 the vendor file and contract termination.</p>
<p><u>Call-Ins or Cancellations</u></p> <p>Any call-ins or cancellations <b>must</b> be communicated with DHS/DDS at least one (1) hour prior to the start of the required shift.</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 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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><u>Security</u></p>	<p>Acceptable performance is defined as one</p>	<p>1st Incident: A Corrective Action Plan (CAP)</p>



Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>The Contractor and subcontractor, if applicable, <b>shall</b> display an ID badge in a visual location at all times while on State premises. Upon request of authorized State personnel, the Contractor and subcontractor, if applicable, <b>shall</b> provide additional photo identification.</p>	<p>hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><u><b>Criminal Background Check</b></u> Prior to the contract award and throughout the term of the contract the Contractor and subcontractor <b>must</b> provide the following clearance including any personnel that may provide services under this solicitation:</p> <ol style="list-style-type: none"> <li>1. Adult Maltreatment Registry (Refer to <a href="#">Link</a> for additional information)</li> <li>2. Child Maltreatment Registry (Refer to <a href="#">Link</a> for additional information)</li> <li>3. Excluded Provider Lists (Refer to <a href="#">Link</a> for additional information)</li> <li>4. State Criminal Background Checks (Refer to <a href="#">Link</a> for additional information)</li> <li>5. A drug screening with passing</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>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 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</p>



Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p>documentation provided for file.</p> <p>6. Copies of all current licenses and/or certifications required to perform essential job functions</p> <p>7. The Contractor shall provide background checks to SEAHDC at no cost to the State.</p> <p>8. All required ASP forms and fees must be submitted by the Contractor to ASP within three (3) business days of the notification date.</p> <p>9. The State shall have the right to require the Contractor to provide a new background check for an employee at any time during the term of this contract.</p> <p>10. The State shall have the right to require the Contractor to remove and replace a provider based on any findings in the background checks.</p> <p>11. The Contractor's employee(s) who fail the criminal background check shall not be permitted to perform work at the facility or to visit the facility in performance of any contractual duties or responsibilities.</p> <p>12. Background checks must be current. Current is defined as background checks which are dated and received by HDC within seventy-two (72) hours of being sent by ASP. Background checks which are not current shall not be considered.</p> <p>13. Prior to any renewal option being exercised, DHS may require the Contractor to provide a new background check for an employee(s). If required, DHS will provide written notification.</p> <p><b>NOTE:</b> Any employee with five (5) years residency in Arkansas is required to obtain the state's criminal background check. Employees with less than five (5) years residency <b>must</b> obtain both state and federal criminal background checks.</p>		<p>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 the vendor file and contract termination.</p>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<p><b>Payment and Invoicing</b>  All invoices <b>shall</b> be forwarded to:  Southeast Arkansas Human Development Center  ATTN: Business Office  1 Center Circle  Warren, AR 71671</p> <p>Contractor <b>must</b> provide, upon request by the patient's accounting office, information needed to process insurance claims for speech therapy within three (3) business days.</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 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 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 Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b>Mandated Reporting</b>  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> <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; or</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>For each failure to report, DHS may impose:</p> <ol style="list-style-type: none"> <li>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>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</li> </ol>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
<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>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 Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>
<p><b>Conflict of Interest Mitigation</b></p> <p>During the term of this contract, the Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Vendor shall disclose all actual, apparent, or potential conflicts of interest to the Department of Human Services (DHS) within five (5) days of having knowledge of them. The Vendor shall develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. Any</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. The Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. Each subsequent</p>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
changes to the approved mitigation plan must be approved in advance by DHS.		violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.
<p><b>Transition Planning</b> Ninety (90) days prior to the contract end date, the vendor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.</p> <p>The transition plan shall include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) days prior to the contract end date. All proprietary data collected and/or created during the final thirty (30) days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date.</p>	The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.	If the Vendor fails to meet the acceptable performance standard, DHS may issue a below standard Vendor Performance Report (VPR) maintained in the vendor file. Final payment may be withheld from the vendor until all elements of the transition are satisfied as determined by DHS.
<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.</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>

Service Criteria <sup>i</sup>	Acceptable Performance	Damages for Insufficient Performance <sup>ii</sup>
		<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 Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>

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

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

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

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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.