

**ARKANSAS DEPARTMENT OF HEALTH
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 ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
<ol style="list-style-type: none"> 1. All aspects of patient privacy will be maintained in compliance with Arkansas Constitution Amendment 98, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), ADH rules and policies to include phone calls, emails and forms and information viewed and stored on computers. A secure environment will be provided according to all provisions of the Scope of Work where processing staff can review protected health information. 2. Applications will be processed within twelve (12) days of receipt. 3. Average caller hold time should not exceed five (5) minutes and abandoned rings should not exceed 20% of total calls. 4. All voicemail messages are returned within one (1) working day. 5. The Call Data Report will be sent to ADH before noon each Tuesday listing for the previous week: <ol style="list-style-type: none"> a. Total Calls b. Total Calls Answered c. Average Wait Time d. Average Hold Time e. Abandoned Rings f. Additional Call Data Requested 9 Respond to all inquiries or complaints promptly, not to exceed 24 business day hours from inquiry. 10 All complaints will be resolved within two (2) working days. Each complaint not resolved will be reported to ADH. 	<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 ADH.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to ADH shall be due to ADH 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, ADH 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 ⁱ	Acceptable Performance	Damages for Insufficient Performance ⁱⁱ
<p>11 Paper applications received by ADH will be picked up before noon each day.</p> <p>12 Creation of internal training program to include processes for application processing, HIPAA, Amendment 98 and ADH Rules.</p> <p>13 ADH will be notified immediately of all staff terminations.</p> <p>14 ADH will be notified within 24 hours of new hires.</p> <p>15 Provide ADH with proof of new employee hire completion of internal training program per 14 above.</p>		
<p>Transition Planning Ninety (90) days prior to the contract end date, the vendor shall submit to ADH a detailed plan for transitioning all contracted services to ADH, or to another vendor selected by ADH 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 ADH 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 ADH no more than fifteen (15) days following the contract end date.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Vendor fails to meet the acceptable performance standard, ADH may issue a below standard Vendor Performance Report (VPR) maintained in the vendor file.</p> <p>Final payment may be withheld from the vendor until all elements of the transition are satisfied as determined by ADH.</p>
<p>Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.):</p> <ol style="list-style-type: none"> 1. Contractor shall cooperate with ADH requests for information and documents that ADH requires to fulfil an Arkansas Freedom of Information Act (FOIA) request. 	<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 ADH</p>	<ol style="list-style-type: none"> 1. For each failure to meet performance standard, ADH may impose: <ol style="list-style-type: none"> a. A ten percent (10%) penalty, assessed in the following months' payment for each

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<p>2. Contractor shall timely provide all documents in its possession or control to ADH that match the request made by ADH.</p> <p>3. 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.</p>	<p>upon request in the timeframe specified in the request one hundred percent (100%) of the time. ADH shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p>	<p>failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or</p> <p>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 ADH.</p> <p>ADH may elect to calculate penalties or damages differently per occurrence.</p> <p>In addition to the above, Contractor shall be responsible for any penalties, fees, and costs imposed on ADH associated with vendor's failure to timely and accurately provide the requested information and documents.</p> <p>In addition to the above penalties, ADH reserves the right to impose additional penalties including without limitation, requiring a Corrective Action Plan (CAP), withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file and contract termination.</p>

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

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

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

ⁱ Nothing in this table is intended to set forth all obligations of the Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

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