

YH24-0041 H2O Program Administrator RFP

EXHIBIT J: Contractor Penalties

PERFORMANCE BASED CONTRACTING

Pursuant to AHCCCS guidelines, policies and regulations, the selected Contractor shall comply with performance-based standards. AHCCCS expects the Contractor to align its performance of the Contract with the AHCCCS mission and vision and implement program innovation and best practices on a continual basis while adding value to the AHCCCS H2O program. In the event the Contractor fails to demonstrate compliance with contractual requirements, AHCCCS may elect to impose an administrative action for any occurrence of non-compliance. Each occurrence of non-compliance will be evaluated for determination and issuance of potential administrative action. Administrative actions may include issuance of any or all of the following: Notice of Concern (NOC), a mandate for Correction Action Plan (CAP), and penalties. Penalties outlined below in Table 1 are not to exceed the monthly contract invoice amount for the month in which the penalty occurs. Penalties may be incurred across consecutive months if corrective action is not taken to bring the service criteria or deliverable into acceptable performance.

The administrative actions described are non-exclusive; that is, the issuance of an administrative action or the imposition of any particular penalty by AHCCCS does not preclude AHCCCS from pursuing any other remedy available in law or contract arising from the same conduct.

TABLE 1: H2O Program Service Criteria and Deliverables:

PEN #	Service Criteria or Deliverable ⁱ	RTM / RFP Reference	Acceptable Performance	Penalties for Insufficient Performance ⁱⁱ
PEN-01	<p>Standards - Documentation Management The Contractor must develop, submit, and maintain all identified deliverables according to RFP Section 6 & Exhibit I – Contractor Chart of Deliverables.</p>	<p>RFP Section 6 Exhibit I – Contractor Chart of Deliverables</p>	<p>The Contractor must deliver all Deliverables to the State as required in RFP Section 6; Exhibit I – Contractor Chart of Deliverables, and Exhibit B: Requirements Traceability Matrix, in final form on the dates specified in the RFP.</p> <p>AHCCCS must review and provide final acceptance in written form of all Deliverables as specified in the RFP.</p>	<p>Up to two hundred fifty dollars (\$250) per Deliverable for each State business day after the Deliverable is late or fails to meet AHCCCS’ material specifications for that deliverable (excludes waived Deliverables determined in advance of start-date not subject to the standard reviews and rework cycle times by AHCCCS and the Contractor due to volume, size, or complexity in subject matter or development).</p>
PEN-02	<p>Staffing Management - General The Contractor must maintain the minimum number and levels of qualified contract staff specified in its proposal, and in all other respects meet the staffing requirements of their Personnel Plan. The Contractor will produce and submit to AHCCCS a functional operational organization chart, to be updated monthly, that will denote key/lead positions/titles and names.</p>	<p>RFP Section 4 Deliverables / DEL-024: Key Staff: Organizational Chart</p>	<p>One hundred percent (100%) of the time the Contractor may meet the described service criteria.</p>	<p>Up to two hundred fifty dollars (\$250) per State business day the Contractor does not meet the schedule as mutually agreed upon with AHCCCS.</p>

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PEN-03	<p>Standards - Reporting Management Contractor must provide reports and data, as required by AHCCCS.</p>	<p>RTM: Compliance / Monitor / CPM-016; CPM-017 & CPM-026</p> <p>Deliverables / DEL-023: Responds to AHCCCS Requests for Information or any other reports</p>	<p>Monthly: 15 days after month end,</p> <p>Quarterly: 45 days after the end of each quarter and</p> <p>Annually: Within 90 days of the start of the Contract year</p>	<p>Up to two Hundred Fifty Dollars (\$250) per State business day the scheduled report is not received or is unacceptable to AHCCCS.</p>
PEN-04	<p>Standards – Monthly Contract Performance Reporting The Performance Summary Report must be included within the monthly Operations Report produced by the Contractor, and submitted to AHCCCS for review and approval must contain the following information:</p> <ol style="list-style-type: none"> 1. Performance of the previous reporting period 2. Compliance status 3. SLA and service level target and actual performance <p>For each SLA and service level reported as non-compliant:</p> <ol style="list-style-type: none"> 1. Actions to be taken for non-compliant SLA and service level requirements 2. Estimated compliance date 3. Status of resolution date 	<p>Deliverables / DEL-037: Performance Summary Report</p> <p>RTM: Global Requirements / Performance Management/ GR-040</p>	<p>Monthly Reporting: Any/all reports determined to be "monthly" in nature are due 15 days after month end, unless otherwise directed by AHCCCS.</p>	<p>Up to two Hundred Fifty Dollars (\$250) per State business day the Status/Scheduled Report is not received or is unacceptable to AHCCCS.</p>
PEN-05	<p>Standards - Documentation Management Contractor must submit a monthly report for the publishing mail date of all publications including but not limited to general bulletins, priority bulletins, Provider letters, and training materials. Contractor will maintain a tracking system for all mailings which must be updated within two State business days of any publication activity. Contractor must include in the monthly report for the number of calendar days between the receipt date of the publication request and the date the request was routed to AHCCCS for approval.</p>	<p>Deliverables / DEL-038: Monthly Documentation Management Report</p>	<p>Monthly Reporting: Any/all reports determined to be "monthly" in nature are due 15 days after month end, unless otherwise directed by AHCCCS.</p>	<p>Up to two Hundred Fifty Dollars (\$250) per State business day the scheduled report is not received or is unacceptable to AHCCCS.</p>

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<p>PEN-06</p>	<p>Performance Management - System Compliance and Security Per security incident, the Contractor shall notify AHCCCS within one (1) hour of identifying any potential or actual physical or system security incident and work to plan and implement corrective action to mitigate the security incident. (The one (1)-hour notification requirement overrides the twenty-four (24)-hour notification requirement for security incident reporting found in the Business Associate Agreement [BAA] and Data Sharing Agreement (DSA).)</p> <p>(The Contractor shall follow the intermediate and final reporting guidelines of the 24-hour notification SLA as follow up to the incident.)</p>	<p>RTM: SLA / Risk Management / Data breach / SLA-011</p> <p>Business Associate Agreement (BAA)</p>	<p>An occurrence is considered to be any instance the Contractor fails to notify AHCCCS of a potential or actual physical or system security incident and work to plan and implement corrective action within one (1) hour of incident identification/discovery.</p> <p>Penalties are applicable to every singular instance of an occurrence. Partial time periods succeeding initial noncompliance are rounded up to the nearest fifteen (15)-minute increment and prorated.</p>	<p>Up to five percent (5%) of monthly invoice per incident and an additional two-and-one-half percent (2.5%) of monthly invoice per every one (1)-hour period succeeding initial noncompliance.</p> <p>Assessed Monthly</p> <p>Example: One instance of notifying AHCCCS of an outage and working to plan and implement corrective action three hours after security incident is identified is calculated as $(\\$100,000 \times .05 \times 1) + (\\$100,000 \times .025 \times 2) = \\$10,000.00$.</p>
<p>PEN-07</p>	<p>Performance Management - System Compliance and Security The Contractor must ensure the confidentiality, integrity, and availability of Electronic Protected Health Information (ePHI). Further, the Contractor must ensure the system supports integrity controls to guarantee that transmitted ePHI is not improperly modified without detection. Any confirmed attempts of improper modification of ePHI should be reported to AHCCCS.</p> <p>(The Contractor shall follow the intermediate and final reporting guidelines of the 24-hour notification SLA as follow up to the incident.)</p>	<p>RTM: SLA / Risk Management / Data breach / SLA-011</p> <p>RTM: Compliance-Monitor Program / Data Management / CPM-013; CPM-014: & CPM-015</p>	<p>The Contractor will notify AHCCCS within four (4) hours of any known improper or unauthorized attempt at modification of ePHI.</p>	<p>Up to one thousand dollars (\$1000) in which notification has not been received within four (4) hours, and then \$1,000 per State business day for each additional day a CAP is not submitted to AHCCCS.</p>

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PEN-08	<p>Performance Management - System Compliance and Security Contractor shall provide an initial written report to AHCCCS within twenty-four (24) hours following the identification of any Security Incident detailing all actions taken concerning the incident. "Security incident" does not include pings, port scans, unsuccessful log-on attempts, denials of service, other broadcast attacks on our firewall, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI; or system unavailability, this includes communications to a defined list of personnel at AHCCCS.</p> <p>AHCCCS staff will be informed of the response plan, including specific steps and timeframes for resolution or indicate that it is continuing to investigate.</p> <p>The Contractor shall provide a final report with the details of any root cause analysis, forensic analysis or investigative outcomes that outlines the full details of the incident, response and resolution at an agreed upon time with AHCCCS.</p>	<p>RTM: Global Requirements / Maintenance & Operations / GR-035</p> <p>RTM: Global Requirements / Privacy and Security / GR-043</p> <p>Deliverables: Business Continuity, Cyber Incident Response, and Disaster Recovery Plan (BC/CIR/DR) / DEL-001</p>	<p>The Contractor will initiate communications with AHCCCS staff during an incident and ongoing communications will be determined and agreed upon with AHCCCS and the Contractor.</p>	<p>Up to one thousand dollars (\$1000) per State business day in which notification has not been received within twenty-four (24) hours, and then \$1,000 per State business day in which the final report is not delivered upon the agreed scheduled date.</p>
PEN-09	<p>Performance Management-System Compliance All non-security incidents that negatively affect SLAs and / or program outcomes occurring within the Contractor's production system environment must have an incident report submitted within the agreed upon time established with AHCCCS.</p>	<p>RTM: Global Requirements / Maintenance & Operations / GR-035</p> <p>RTM: Global Requirements / Privacy and Security / GR-043</p> <p>Deliverables: Business Continuity, Cyber Incident Response, and Disaster Recovery Plan (BC/CIR/DR) / DEL-001</p>	<p>One hundred percent (100%) of the time the Contractor may meet the described service criteria.</p>	<p>Up to one thousand dollars (\$1000) per incident that a report is not submitted.</p>

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<p>PEN-10</p>	<p>Performance Management - System Compliance and Security The Contractor shall develop and maintain a System Security Plan (SSP) and perform all required activities, tests and audits as outlined in the SSP and documented by the required artifacts and outputs in order to demonstrate system and operations compliance with state and federal guidelines.</p> <p>The SSP is subject to AHCCCS review and approval. All CMS and Agency required testing, assessments, and monitoring reports, letters, and results should be provided upon AHCCCS request.</p>	<p>Deliverables: System Security Plan (SSP) / DEL-007</p>	<p>All systems and operations must be kept in compliance with the SSP and the Contractor must maintain accurate records to validate compliance.</p> <p>Initial report is due thirty (30) days after contract start. The SSP shall be updated as necessary and reviewed upon updates or at a minimum annually.</p>	<p>Up to one thousand dollars (\$1000) per incident that the Contractor is out of compliance with their SSP.</p>
<p>PEN-11</p>	<p>Performance Management - System Compliance and Security The Contractor shall meet all State and federal regulations regarding standards for privacy, security, and individually identifiable health information, including security incidents, data breaches, and unauthorized access (including MARS-E (current version) and NIST 800-53 Rev 5 (Moderate)).</p> <p>The Contractor must deliver, maintain, and operate systems in full compliance with HIPAA and the Contractor’s System Security Plan.</p>	<p>Deliverables: Business Continuity, Cyber Incident Response, and Disaster Recovery Plan (BC/CIR/DR) / DEL-001</p> <p>Deliverables: System Security Plan (SSP) / DEL-007</p> <p>RTM: Global Requirements / Privacy and Security / GR-044</p> <p>RTM: SLA / Risk Management / Data breach / SLA-011</p>	<p>All systems and operations must be kept in compliance with HIPAA, the Contractor’s SSP, MARS-E (current version), and NIST 800-53 Rev 5 (Moderate). The Contractor must maintain accurate records to validate compliance.</p> <p>All deficiencies that are identified during scans and audits must be remediated and tracked according to the policies and procedures outlined in the Contractor’s SSP and federal guidelines to avoid penalties of non-compliance.</p>	<p>Up to Five percent (5%) of monthly invoice per incident.</p> <p>Assessed Monthly</p>

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PEN-12	<p>Performance Management - Call Center Support Response Time Ninety-eight percent (98%) of all internal Help Desk Support calls in a calendar day will have ring-answer contact (i.e. not receive a busy signal); these metrics will be reported in the monthly Performance Summary report.</p>	<p>RTM: Provider Mgmt Services / Call center support / PM-0011</p> <p>RTM: Provider Mgmt Services / Technical Support / PM-0042</p> <p>RTM: Provider Mgmt Services / Telephone Performance Standards / PM-0043</p> <p>Deliverables / DEL-037: Performance Summary Report</p>	<p>Measured per hour, per day and reported weekly.</p> <p>Ninety-eight percent (98%) of all AHCCCS support calls in a calendar month must have ring-answer contact (i.e., not receive a busy signal).</p>	<p>Up to fifty dollars (\$50) per call representing over two percent (2%) of all calls in a calendar month receiving a busy signal.</p>
PEN-13	<p>Performance Management - Call Center Support Response Time Every support call with ring-answer contact (i.e., not receiving a busy signal) must be in the control of an authorized and trained specialist or technical services representative within an average of thirty (30) seconds after caller makes selection in (IVR) and call is placed in queue; these metrics will be reported in the monthly Performance Summary report.</p> <p>In any month where the average speed of answer exceeds thirty (30) seconds, a review of the call list for that month will be conducted and all calls that have exceeded 30 second response time will be identified.</p>	<p>RTM: Provider Mgmt Services / Telephone Performance Standards / PM-0043</p> <p>Deliverables / DEL-037: Performance Summary Report</p>	<p>These metrics will be reported in the monthly Performance Summary report, utilizing the service criteria parameters as defined in this SLA, measured per hour, per day and reported weekly.</p>	<p>In months where the average speed of answer exceeds thirty (30) seconds, up to fifty dollars (\$50) for each call that is not in the control of an authorized and trained specialist or technical services representative within thirty (30) seconds. AHCCCS agrees to allowing the 1st month above an average ASA of 30 seconds without penalty to allow Contractor to adjust prior to AHCCCS assessing a penalty – no penalty will be assessed until the 2nd month of ASA’s above 30 seconds.</p>

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PEN-14	<p>Process / Member Eligibility and Enrollment The Contractor’s solution will ensure the following key metrics for member H2O eligibility and enrollment are fulfilled:</p> <ol style="list-style-type: none"> 1. Retrieve and process a potential H2O member eligibility file from AHCCCS on a weekly basis 2. Complete member enrollment processing within forty-five (45) State business days of receipt of the potential member’s eligibility 3. Assign the member selected H2O Service Provider or complete the initial auto-assignment to H2O Service Provider within seven (7) State business days of establishing eligibility 	<p>RTM: Member Eligibility / ME-0002; ME-0026; & ME-0028</p> <p>RTM: Compliance / Monitor / CPM-007</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Up to two percent (2%) of monthly invoice for failure to meet H2O member eligibility and enrollment SLA’s on a monthly basis.</p> <p>Assessed Monthly</p>
PEN-15	<p>Process / Claims Billing & Payment The Contractor shall ensure that all invoice / claims submission and associated payments are processed and documented according to the Housing Related Service chapter of the AHCCCS Fee-for-Service Billing Manual.</p>	<p>All requirements listed in the RTM: Billing – Claims Processing</p> <p>Housing Related Service chapter of the AHCCCS Fee-for-Service Billing Manual</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Up to five percent (5%) of monthly invoice per incident or the total outstanding claims payment amount for the month.</p> <p>Assessed Monthly</p>
PEN-16	<p>Process / Grievance & Appeals The Contractor shall ensure that all grievance and appeal processes comply with the Grievance and Appeal system standards outlined in the RFP.</p>	<p>RFP Sections: 5.1 and 5.2</p> <p>Deliverables / DEL-030: Grievance & Appeals Report</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Up to five percent (5%) of monthly invoice per incident.</p> <p>Assessed Monthly</p>
PEN-17	<p>Process / Establishing H2O Service Provider Network The Contractor shall ensure that the established H2O Service Provider network meets all defined criteria developed by the Contractor and approved by AHCCCS in accordance with section 3.3 of the RFP.</p>	<p>RFP Section 3.3</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Up to five percent (5%) of monthly invoice</p> <p>Assessed Monthly</p>

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PEN-18	<p>Transition Planning</p> <p>Nine (9) months prior to the contract end date or as directed by AHCCCS, the Contractor may submit to AHCCCS a detailed plan for transitioning all contracted services to AHCCCS, or to another Contractor selected by AHCCCS to provide the contracted services.</p> <p>The transition plan may include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to AHCCCS 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, may be delivered to AHCCCS no more than fifteen (15) days following the contract end date.</p>	<p>RTM: Global Requirements / Transition / GR-086 & GR-087</p> <p>Deliverables: Transition Plan / DEL-008</p>	<p>The Contractor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Contractor fails to meet the acceptable performance standard, AHCCCS may issue a below standard Contractor Performance Report (VPR) maintained in the Contractor file.</p> <p>Final payment may be withheld from the Contractor until all the elements of the transition are satisfied as determined by AHCCCS.</p>

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

In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to, or remediate to the satisfaction of AHCCCS, the insufficiency. AHCCCS may waive penalties if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, AHCCCS may have final determination of the performance acceptability.

Should any compensation be owed to the agency due to the assessment of penalties, Contractor shall follow the direction of the agency regarding the required compensation process.

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

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