ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING

Contractor **shall** comply with the following performance-based standards which will be part of the Contract.

I. Contractor's failure to comply with Contract obligations, any applicable State and federal laws, regulations, and policies in performance of the Contract services **shall** be deemed insufficient and unacceptable performance.

II. During the contract term, the State will complete sufficient performance evaluations to determine the acceptability of Contractor's performance. The State's determination of "Acceptable Performance" as defined herein **shall** be final and controlling. In the event a Performance Standard is not met, Contractor will have the opportunity to defend, respond to, or cure the insufficiency to the State's satisfaction.

III. Failure to meet the minimum Performance Standards as specified may result in the assessment of damages as set forth below. The State may, at its sole discretion, waive damages if it determines there were extenuating factors beyond Contractor's control that hindered the performance of services if it is in the State's best interest. Contractor **shall** follow the State's instructions regarding payment of any assessed damages. The damages 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 Contractor's input so as to establish reasonably achievable standards.

V. The contract program deliverables and performance indicators to be performed by Contractor are:

Applicable for All Below Service Criteria

1. 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.
2. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Contractor.
3. Upon DHS request, a Corrective Action Plan (CAP) acceptable to DHS **shall** be due to DHS within ten (10) business days of the request.

DHS reserves the right to impose additional penalties to those stated below, including without limitation: (a) Withholding payment on future invoices until Contractor is in full compliance; (b) Maintaining a below standard Vendor Performance Report (VPR) in Contractor's vendor file; and (c) Contract termination.

Service Criteria[i]	**Acceptable Performance**	**Damages for Insufficient Performance**[ii]

Data Extraction and Transfer Contractor **must** extract and transfer all data from the current incident management software application into its own software application according to the requirements specified in the Scope of Work (SOW).	All data is completely and accurately extracted and transferred by the go-live date.	A $500 penalty will be assessed for each calendar day after the go-live date that the data transfer is incomplete.
General Software Application Requirements The software application **must** comply with the general requirements specified in the SOW regarding components, functionality, and up time.	Notify DHS of all planned downtime in writing no less than fourteen (14) calendar days in advance. Notify DHS immediately of any unplanned downtime. Downtime shall not exceed 0.1% per month.	A $1,000 penalty will be assessed per incident of downtime exceeding 0.1% per month. After five (5) incidents, a $2,000 penalty will be assessed for downtime exceeding 0.1% per month. Downtime exceeding 0.5% per month will be grounds for contract termination.
Backup, Restoration, and Disaster Recovery Contractor's data backup, restoration, and disaster recovery plans **must** comply with the requirements specified in the SOW. An incident is any unexpected disruption, failure, or degradation affecting a software application, computer system, or its components, resulting in reduced functionality, diminished performance, security vulnerabilities, or service interruptions.	Contractor **shall** resolve one hundred percent (100%) of incidents according to the following severity level: Critical – full outage; **must** be resolved within eight (8) hours High – Large business impact to a single functional area or multiple users or multiple functional areas; **must** be resolved within twenty-four (24) hours Medium – Medium business impact or urgency; **must** be resolved within three (3) business days. Low – Low business impact or urgency; **must** be resolved within fifteen (15) business days. Notify DHS within ten (10) minutes of initial discovery of a critical, high, or medium level incident and within one (1) hour of a low-level incident. An incident report **must** be submitted the same day of incident discovery unless otherwise approved by DHS.	For critical and high severity incidents: A $1,000 penalty will be assessed per hour of noncompliance. For medium severity incidents: A $500 penalty will be assessed per calendar day of noncompliance. For low severity incidents: A $100 penalty will be assessed per calendar day of noncompliance.
Audit, Compliance, and Infrastructure Security Contractor **shall** comply with all audit, compliance, and infrastructure security requirements as outlined in the	Contractor shall provide notification to DHS within twenty-four (24) hours of a suspected or confirmed security or privacy incident, regardless of the time of day, with ongoing communications. Contractor shall disclose any breaches	A $2,000 penalty will be assessed per occurrence of noncompliance. A $1,000 penalty will be assessed for each hour Contractor fails to notify

scope of work.	of privacy or security by contacting the DHS Information Technology Security Office within one (1) business day of the breach. Any confirmed attempts of improper modification of ePHI shall be reported to DHS within twenty-four (24) hours of identification.	DHS of any security or privacy incidents beyond the twenty-four (24) hour notification window.
Mandated Reporting 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: a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; c. A child died suddenly and unexpectedly; or d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. or 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. 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	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.	For each failure to report, DHS may impose: 1. A ten percent (10%) penalty, assessed in the for each failure to report.; or 2. A one percent (1%) penalty, calculated from the projected yearly contract amount, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.

section. An employer or supervisor of a mandated reporter **shall not** prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline. 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. 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.		
Performance Bonding Contractor **shall** obtain performance bonds to protect the State's interest as follows: The amount of the performance bonds **shall** be 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. The State **shall** require additional performance bond protection when a contract price is increased or modified.	Acceptable performance is defined as one hundred percent (100%) compliance with these Service Criteria at all times throughout the contract term as determined by DHS. The additional performance bond **must** be delivered to the DHS Chief Procurement Officer within fourteen (14) calendar days of request. Contractor **shall** notify the State of any changes, modification, or renewals for the performance bond during the contract term. Documentation **must** be provided to the State with each required notice.	Damages **shall** be one percent (1%) per day, calculated from the annual contract amount, for each day Contractor fails to meet the Performance Bonding Requirements specified in the Service Criteria. Failure to provide is a breach of contract and may result in immediate contract termination.
Conflict of Interest Mitigation Contractor **shall** comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. Contractor **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	Contractor **must** maintain one hundred percent (100%) compliance with this item at all times throughout the contract term. Contractor **shall** disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) days of having knowledge of them.	Contractor **shall** 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. Contractor **shall** be fined ten thousand dollars ($10,000) for the first failure

by DHS.		to comply with the mitigation plan approved by DHS. Each subsequent violation of the mitigation plan **shall** be twice the amount of the immediately preceding violation fine.
Transition Planning Ninety (90) days prior to the contract end date, Contractor **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. 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.	Contractor **must** maintain one hundred percent (100%) compliance with this item at all times throughout the contract term.	Final payment may be withheld until all elements of the transition are satisfied as determined by DHS.
Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.): Contractor **shall** cooperate with DHS requests for information and documents required to fulfil a FOIA request. Contractor **shall** timely provide all documents in its possession or control to DHS that match the request. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. § 25-19-103(7)(A). Contractor **shall** timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. § 25-19-101 et seq. for specific	Contractor **shall** respond to FOIA requests timely and accurately one hundred percent (100%) of the time. 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.	For each failure to meet performance standard, DHS may impose: a. A ten percent (10%) penalty for each failure to report.; or b. A one percent (1%) penalty calculated from the projected total yearly contract amount, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence. Contractor **shall** be responsible for any penalties, fees, and costs imposed on DHS associated with Contractor's failure to timely and

requirements. For all FOIA requests received, Contractor **shall** also notify DHS of the request at DHS.FOIA@arkansas.gov.		accurately provide the requested information and documents.

[i] Nothing in this table is intended to set forth all of Contractor's obligations 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.