ATTACHMENT C

PROFESSIONAL SERVICES CONTRACT
GENERAL TERMS AND CONDITIONS FOR NON-STATE AGENCY

Contractor acknowledges its acceptance and agreement to these terms and conditions through submission of its proposal.

If the State so chooses, select terms may be negotiated at the State's sole discretion. However, **any terms and conditions designated as non-negotiable herein will be transferred to the contract as written.** DHS has determined that any attempt by a vendor to reserve the right to alter or amend non-negotiable terms and conditions via negotiations, without the approval of DHS, is an exception to the terms and conditions that will result in rejection of the proposal.

In consideration of the premises and mutual agreements hereinafter set forth, the Contractor and the Department of Human Services ("DHS" or the "State") agree as follows:

A. LEGAL CONSIDERATIONS (NON-NEGOTIABLE)

1. The contract shall be construed according to the laws of the State of Arkansas, and the rights and remedies of the parties hereunder shall be determined in accordance with Arkansas law. Any litigation involving the State must take place in Pulaski County, Arkansas. Any claims the Contractor may assert under this contract shall be brought before the Arkansas State Claims Commission ("Commission"), which shall have exclusive jurisdiction over any and all claims Contactor may have arising from or in connection with this contract. Unless Contractor's obligations to perform are terminated by DHS, the Contractor shall continue to provide the Services under this contract even in the event that the Contractor has a claim pending before the Commission. **NOTHING IN THIS CONTRACT MAY BE CONSTRUED AS A WAIVER OF THE STATES'S SOVEREIGN IMMUNITY.**

2. In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

3. In the event of any dispute concerning the State's performance under the contract, Contractor shall notify the DHS Division Director in writing of any disputes or controversies that arise under or by virtue of the contract between the parties. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession.

    a. The State Procurement Director, the head of a procurement agency, or a designee of either officer, is authorized prior to commencement of an action in court or any other action provided by law, to attempt to negotiate a settlement of the controversy with the parties in accordance with Ark. Code Ann. § 19-61-703. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties is made in accordance with Ark. Code Ann. § 19-61-703(c)(1), the State Procurement Director, the head of a procurement agency, or a designee of either officer, shall promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision shall be mailed or otherwise furnished to the Contractor. This decision will be final and conclusive.

    b. Pending final determination of any controversy hereunder, Contractor shall proceed diligently with the performance of the contract and in accordance with DHS instructions.

B. FINANCIAL TERMS OF THE CONTRACT

All services rendered under this contract must be billed as set out herein. No services may be billed to a Medicaid Provider or to any other contract. Payments will be made after services are provided based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required OR Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)

*__Reimbursement Method:__ (Select from the following) Actual Cost Reimbursement; Final Negotiated Rate; Fixed Rate; Scheduled Reimbursement.

**__Payment Limitations:__ (Select from the following) Quarterly Cumulative; Monthly Cumulative; None.

***__Matching Requirements:__ Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter "None" in the corresponding box above.

Type(s) of Match: The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply:

1. **Cash Match:** Cash will be obtained by Contractor and will be applied against allowable costs covered by this agreement.
2. **Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable DHS policy. These values will be used as matching of the payments.
3. **Third Party In-Kind Contributions:** Property, goods, or services have been donated by a non-federal agency for the programs(s) covered by this agreement without charge to Contractor. 45 C.F.R. Part 74, Subpart G shall be used to establish the basis of valuation.
4. **Funds Transfer:** Match funds will be submitted by a third party to DHS by check or money order under the terms of this agreement. Matching funds are to be received by DHS in an amount sufficient to match billing before Contractor will be reimbursed for services.

Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to DHS, have been specifically listed as a source above.

Contractor certifies that the matching arrangements comply with requirements established in 45 C.F.R. Part 74, Subpart G (Cost Sharing or Matching) and all applicable DHS policies.

C. Invoicing and Payment

1. Invoices must be sent to the "Invoice To" point shown on the purchase order and will be paid in accordance with applicable State accounting procedures. Contractor shall be paid upon completion

of all of the following:

a. Submission of an original and the specified number of copies of a properly itemized invoice in a format approved by DHS;
b. Delivery and DHS acceptance of the commodity, goods, or services; and
c. Proper and legal processing of the invoice by all necessary State agencies.

2. Contractor shall submit all billing invoices as required by the Contract and must not withhold invoicing due to ongoing dispute(s) with DHS. Any payments withheld by DHS due to unacceptable or insufficient performance shall **not** be subject to late payment penalties, interest, or any other liability associated with late payment. Additionally, any Corrective Action Plan (CAP) that is related to the dispute(s) will remain in place until all assessed penalties are received by DHS. However, DHS may, at its sole discretion, release CAP(s) prior to receiving assessed penalties if it determines release to be in the best interest of the State.

3. The Contractor shall submit all final billing invoices within sixty (60) days of contract expiration. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety (90) days of the end of the fiscal year will not be paid.

4. Payments for completed services or deliverables satisfactorily delivered to and approved by DHS shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by DHS shall be at a price mutually agreed upon by the Contractor and DHS.

D. TIME IS OF THE ESSENCE.

Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the State. If the Contractor is not able to or does not provide the Deliverables to the State or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.

E. CONTRACT REMEDIES. (NON-NEGOTIABLE)

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's Default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with self-performance or acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's Default.

2. **Liquidated Damages**. If actual and direct damages are uncertain or difficult to determine, or are otherwise not addressed in the Contract, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the Default, for every day that the Default is not cured by the Contractor. Any liquidated damages agreed upon in the Performance Standards attachment shall apply and the State will not invoke duplicative damages.

3. **Right to Withhold or Offset.** The State may withhold payment or set off the amount of any liquidated damages, other damages, or any other obligation of the Contractor or its subsidiaries to the State, including any amounts the Contractor owes to the State under this Contract, against any payments due to the Contractor under this Contract.

F. Termination or Expiration of Contract (NON-NEGOTIABLE)

1. **Termination**
   a. For Convenience: DHS may cancel this Contract unilaterally at any time, for any reason, by giving the Contractor written notice of such cancellation sixty (60) calendar days prior to the date of cancellation.
   b. For Cause: DHS may cancel this Contract for cause when Contractor fails to perform its obligations under it by giving Contractor written notice of such cancellation at least thirty (30) calendar days prior to the date of proposed cancellation. In any written notice of cancellation for cause, DHS will advise Contractor in writing of the reasons why the State is considering

cancelling the Contract and may provide Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may agree to reasonable contract modifications to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.

c. If upon cancellation, Contractor has provided commodities that DHS is unable to return in normal condition or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, Contractor may file a claim with the Arkansas State Claims Commission under the laws and regulations governing the filing of such claims. NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.

d. Non-Appropriation Clause**.** Pursuant to Ark. Code Ann. § 19-67-206 in the event the State fails to appropriate funds or make monies available for any biennial period covered by the term of this contract for the services to be provided by the Contractor, this Contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purposes. This provision shall not be construed to abridge any other right of termination the agency may have. Availability of funds will be determined at the sole discretion of DHS.

2. **Procedure Upon Expiration or Termination.** Upon delivery by electronic mail or certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:
    a. Stop work under the contract on the date and to the extent specified in the Notice of Termination which may or may not be the same date as contract termination.
    b. Place no further orders or enter into any additional subcontracts for services.
    c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
    d. Assign to DHS in the manner and to the extent directed by the DHS representative all of the rights, title, and interest of the Contractor in the orders or subcontracts so terminated. DHS shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts;
    e. With the approval or ratification of the DHS representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
    f. Transfer title to DHS and deliver in the manner, at the time, and extent directed by the DHS representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
    g. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination or date of stop work order.
    h. Take such action as may be necessary, or as the DHS representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the DHS has or may acquire an interest.
    i. Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

3. **Termination Claims**
    a. After receipt of a Notice of Termination, the Contractor shall submit to DHS all outstanding claims within ten (10) working days. The Contractor and DHS may agree upon the amounts to be paid to Contractor by reason of the total or partial termination of work as described in this section.
    b. In the event of Contractor and DHS's failure to agree, in whole or in part, on the amount to be paid to Contractor in connection with the total or partial termination of work as described in this section, DHS shall determine, on the basis of information available, the amount, if any, due to Contractor by reason of termination and shall pay to the Contractor the amount so determined.

G. Contractor

1. It is expressly agreed that the Contractor, its officers, and employees of the Contractor or Sub-Contractor, in the performance of this contract shall act in an independent capacity and not as officers or employees of DHS. It is further expressly agreed that DHS shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and DHS or the State of Arkansas.

2. The Contractor hereby represents and warrants to DHS that as of the execution date of this Contract:
   a. The Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with the power, authority, and legal right to enter into this Contract.
   b. There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency, or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations hereunder, or the validity or enforceability of this Contract.
   c. All approvals, authorizations, consents, orders, or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.
   d. The Contractor and the executive officers of the Contractor have not been the subject of any proceedings under the United States Bankruptcy Code.

H. Subcontracts

1. The Contractor is fully responsible for all work performed under the contract. The Contractor may, with the prior written consent of DHS, enter into written subcontract(s) for performance of certain of its functions under the contract. No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties. The Contractor agrees that all subcontracts shall adhere to DHS policies.

2. The Contractor shall give DHS immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or DHS.

I. Force Majeure

The Contractor will not be liable for delay in performing under the contract if the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.

J. Confidentiality of Information

In connection with this contract, Contractor may receive certain Confidential Information relating to DHS clients and business operations. For purposes of this contract, any information furnished or made available to the Contractor relating to DHS clients, the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers including, but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". Contractor shall comply with all DHS policies governing privacy and security of Confidential Information, including the contracting division's designation of the Confidential Information as required by the Arkansas Data and System Security Classification Standards, and shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information as required by Ark. Code Ann. § 4-110-104, the Personal Information Protection Act ("the Act"). In addition, Contractor shall comply with the Business Associate Agreement (BAA) between the parties, which is nonnegotiable as presented by DHS and incorporated herein by reference, and shall disclose any breaches of privacy or security by contacting the Information Technology Security Officer within one (1) business day of the breach by notification to the following e-mail address: dhs-it-security@arkansas.gov.

The Contractor shall treat all Confidential Information obtained through its performance under the contract as Confidential Information as required by state and federal law and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefore. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

The Contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and shall comply with 45 CFR Parts 160 and 164 and shall restrict access to and disclosure of such information in compliance with federal and state laws and regulations.

K. Public Disclosure

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann. § 25-19-101 et seq.

L. Inspection of Work Performed

The State of Arkansas, along with other agencies with audit authority, and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

M. Audit Requirement:

Contractor shall comply with DHS audit requirements as outlined in “Arkansas Department of Human Services Audit Guidelines.” Copies may be obtained from:

Arkansas Department of Human Services
Office of Payment Integrity Audit Coordination
P.O. Box 1437 – Slot S270
Little Rock, Arkansas 72203-1437

N. Indemnification (NON-NEGOTIABLE)

1. **General Indemnity.** The Contractor must indemnify the State for all liability and expense arising out of the performance of this Contract, provided that such liability or expense is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

2. **Security Incident Indemnity.** Contractor must indemnify the State for all third party liability and expense resulting from a Security Incident (defined in DHS Business Associate Agreement) arising from Contractor’s performance under this Contract and involving data. Damages resulting from the Security Incident will be considered direct damages under this Contract and include the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against the State; (iv) costs to the State for investigations, audits or forensic services as applicable related to the Security Incident; (v) mitigation measures, including 12 months of credit monitoring and identity theft protection for individuals impacted by the Security Incident; (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure; and (vii) other such expenses incurred by the State as a result of the Security Incident involving Contract Data. Regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year’s identity theft protection compromised while it is in the Contractor’s possession. Contractor’s indemnification obligations under this paragraph apply whether the expenses or costs incurred by the State are performed by State employees or hired contractors. Contractor must also work with the State to directly notify impacted individuals or persons as required by State law or otherwise directed by the State.

3. **Infringement Indemnity.** The Contractor must indemnify, release, protect, and hold the State harmless from any third party claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one of the following four actions within an acceptable timeframe:

    a. Modify the Deliverable so that the Deliverable is no longer infringing;
    b. Replace the Deliverable with an equivalent or better item;
    c. Acquire the right for the State to use the infringing Deliverable as intended; or
    d. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

4. **Indemnity Procedure.** For the Contractor's indemnification obligations in this section, the State agrees to: (i) give the Contractor notice of any claim under this section as soon as reasonably practicable; (ii) give the Contractor the authority to settle or otherwise defend any such claim only upon consultation with and approval by the State; and (iii) assist with and cooperate in such defense or settlement as reasonably necessary and at Contractor's expense. The State has the right to participate in the defense or settlement or any claim at its own expense.

O. Limitation of Liability (NON-NEGOTIABLE)

1. DHS will demonstrate reasonable care but will not be liable in the event of loss, destruction, or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. Contractor shall retain total liability for equipment, software and technical and business or operations literature. DHS shall not at any time be responsible for or accept liability for any Contractor-owned items.

2. All limitations provisions in this Contract are only to the extent such limitations do not impose an unlawful indemnification on the State

3. Notwithstanding any other limitation provisions, the Contractor is liable for any other direct loss or damage to the State caused by the gross negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.

4. Notwithstanding any other limitation provisions, Contractor is liable for any direct loss to the State for bodily injury, death, or damage to property of the State caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.

5. Notwithstanding any other limitation provisions, Contractor is liable for any penalties, sanctions, and disallowances assessed against DHS by Federal authorities of noncompliance with Federal regulations and standards as a result of conduct of Contractor or Contractor's employees or agents during its performance under this Contract.

6. Contractor's liability for damages to DHS shall be limited to the value of the Contract or $5,000,000, whichever is higher.
    a. The foregoing limitation of liability shall not apply to claims for: 1) infringement of United States patent, copyright, trademarks, or trade secrets; 2) to claims for personal injury or damage to property caused by Contractor's gross negligence or willful misconduct; 3) to claims covered by other specific provisions of the Contract calling for damages; 4) to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract; or 5) Any penalties, sanctions, or disallowances assessed against the State by Federal authorities due to Contractor's or its subcontractors' noncompliance with

Federal laws, regulations, or standards.

7. Contractor and DHS shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages.

8. Attorney's Fees**.** In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and DHS prevails, Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

9.

P. Assignments (NON-NEGOTIABLE)

The Contractor shall not assign the contract in whole or in part, or any payment arising therefrom, without the prior written consent of the authorized DHS representative.

Q. Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and under-takings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

R. DHS Property and Software (NON-NEGOTIABLE)

1. Data and Property
   a. Ownership of Documentation. All documents and deliverables prepared by Contractor and accepted by DHS shall become the property of DHS and shall not be used for any other purpose by Contractor without DHS's specific written consent.

   b. Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder shall remain property of the State, shall be kept confidential, shall be used only as expressly authorized, and shall be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor shall properly identify items being returned.

   c. Property, including intellectual property, acquired or created by Contractor as a Contract deliverable or as a result of its performance of contract services, is the property of DHS that shall be kept used only as expressly authorized and kept confidential as permitted or required by law. Contractor shall be responsible for the proper custody and care of all DHS owned property, including DHS owned property used in connection with the performance of this contract, and Contractor agrees to reimburse DHS for its loss or damage due to negligence, theft, vandalism, or Acts of God.

   d. In accordance with Ark. Code Ann. § 19-60-106, any data received or stored by a Contractor for storage services, software services, or any other Contract service is the property of DHS. For the purposes of this section, “Data” means recorded information, regardless of form or characteristic. DHS reserves the right to request that Contractor provide a detailed data transition plan and/or return its data at any time, for any purpose. Contractor shall provide a transition plan or return DHS data within thirty (30) calendar days of the date of the request. DHS must pre-approve the format and delivery method of all data. All transition activity shall be included in the contract price and DHS reserves the right to request re-submission of any data deemed unacceptable after the Contractor’s initial transfer.

2. Use and Ownership of Software

   a. Contractor will have access to all applications software that DHS requires Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing DHS to incur additional costs for either hardware or software upgrades or both.

   b. DHS retains ownership of any code, algorithm, or methodology that is created for DHS, used in the development of a Contract deliverable. Any applications software developed by Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

   c. DHS will own any software that is designed, developed, installed, or enhanced with Federal funding per Federal Financial Participation (FFP) (45 CFR 95.617).

   d. DHS will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for federal and state government purposes software, modifications to software, and documentation that is designed, developed, installed, or enhanced with Federal funding FFP (42 CFR 433.112).

S. Price Escalation (NON-NEGOTIABLE)

1. Contract price increases may be considered at the time of contract renewal, but any request for an increase in rates must be submitted to DHS six (6) months prior to renewal with accompanying justification. Contractor must provide to DHS and its Office of Procurement (OP) a written request for the price increase. The request must include supporting documentation demonstrating that the increase in contract price is based on an increase in bid price including detailed information related to unforeseen circumstances not considered within the initial submitted bid price. DHS shall have the right to require additional information pertaining to the requested increase.

2. Increases shall not be considered to increase profit or margins.

3. DHS shall have the right to approve or deny the request.

4. Medicaid Enrolled Provider Rates. For any contractors who are also enrolled Medicaid providers, such rates and any changes thereto are governed by statutory approval protocols. As such, DHS cannot unilaterally increase approved said Medicaid rates through a contract amendment. See Ark. Code Ann. §§ 20-76-112 and 20-77-110.

T. Records Retention

Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation, or other action involving these records is initiated before the end of the five (5) year period, Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later. Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

U. Access to Contractor's Records

Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers, or records of the Contractor which are related to any services performed under the contract. Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed

access to the records of subcontractors.

V. State and Federal Laws (NON-NEGOTIABLE)

The parties must comply with applicable State and federal laws, regulations, and policies in the performance of the contract services. If a newly enacted statute, regulation, or policy requires a change to the contract or any attachment thereof, the parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date. The parties will subsequently cooperate in good faith to amend the contract to comply as mandated through either a change order or amendment, whichever is deemed necessary under applicable laws and/or rules.

W. TECHNOLOGY ACCESS:

Accessibility Act 1227 of 1999

When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Ark. Code Ann. § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the State's policy to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, CONTRACTOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2019 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2019 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

1. Providing, to the extent required by Ark. Code Ann. § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
4. Providing effective, interactive control, and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
6. Integrating into networks used to share communications among employees, program participants, and the public; and
7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered by Contractor does not completely meet these standards, Contractor must provide an explanation within the VPAT detailing the deviation from these standards. State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meets some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product.

For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute

reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

BB. Employee Background Requirements

Contractor shall comply with Ark. Code Ann. § 21-15-101 *et seq*., and any amendments thereto, which requires all employees of state agencies in designated positions (including those providing care, supervision, treatment, or any other services to the elderly, intellectually or developmentally disabled persons, individuals with mental illnesses, or children who reside in any state-operated facility) or a position in which the applicant or employee will have direct contact with a child, to submit to specified background and registry checks. Should an applicant or employee be found to have been convicted of a crime listed in Ark. Code Ann. § 21-15-101 *et seq*., that employee or applicant shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility. Should an applicant or employee be found to have been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/ Employment Clearance Registry, the applicant or employee shall be immediately disqualified.

CC. Prohibition Against Contingent Fees

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

DD. Compliance with DHS Policy Issuances

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all policies, manuals and other official issuances of the State of Arkansas and DHS promulgated through the Administrative Procedures Act.

EE. Relinquishment

The failure of DHS to insist upon the performance of any of the conditions in any one or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

FF. Entire Contract and Order of Precedence

1. The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

2. This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

3. Accordingly, the provisions of this Contract should be read as being consistent therewith and supplementary thereto to the extent reasonably possible. However, in the event of a conflict between the provisions of this Contract, such conflict shall be resolved by giving priority to the documents in the order listed below, including but not limited to conflicting order of precedence provisions.

a. This Contract, as may be amended in writing by the parties; *General Terms and Conditions for Non-State Entity* shall have priority over Office of State Procurement *Form SRV-1* in case of conflict between terms.
b. The purchase order, scope of work, or solicitation, including all Addenda; and
c. Contractor's response to the solicitation.

GG. Survival of Rights and Obligations

The rights and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

HH. Notices

1. Contractor shall identify a person of contact for this Contract. All demands, notices, and communications hereunder shall be in writing and shall be deemed to have been duly given by DHS if delivered by email or certified mail, to the person of contact identified in Paragraph 2. All demands, notices, and communications delivered by email will be deemed to have been received when sent.

2. Contractor must notify DHS of a change in Contractor's contact information within seven (7) days of the effective date of the change.

_____

(mailing address and email)

_____

Attention: _____

(Name of contractor contact person or such other name or address as may hereafter be furnished to DHS in writing by the Contractor)

3. Contractor shall:
   a. Immediately notify DHS of any proceedings or investigations, pending or threatened, before any court, regulatory body, administrative agency, or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations hereunder, or the validity or enforceability of this Contract.
   b. Notify DHS of any adverse action made by a state or federal entity against Contractor. Contractor must provide written notice to DHS within thirty (30) days of the imposition of the adverse action including but not limited to the following: placement on a Corrective Action Plan (CAP), imposition of penalties or damages, filing a below standard Vendor Performance Report (VPR), or placement on the Medicaid exclusion list,
   c. Provide to the Office of Procurement and contract management team at least ninety (90) days advance written notice of any change to Contractor's Taxpayer Identification Number (TIN), Employer Identification Number (EIN), or Tax-Exempt Status Conversion. Vendor information must be updated within the Arkansas Office of State Procurement Vendor portal. The agency does not receive notifications of any such changes to vendor information without vendor providing direct notice to the agency.

4. <u>Notices to DHS should be mailed to:</u>
   DHS Office of Procurement
   Attention: Chief Procurement Officer
   700 Main Street, PO Box 1437, Slot W304
   Little Rock, AR 72203-1437

II. Severability of Provisions

If any one or more of the covenants, agreements, provisions or terms of this Contract is declared or

found to be illegal, unenforceable, or void,, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract. If the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and must be fully performed.

JJ. Certification Regarding Lobbying:

Contractor will comply with Public Law 101-121, section 319 (31 U.S.C. § 1352) for an award in excess of $100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan, or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

KK. Certification Regarding Debarment

1. Contractor, as a lower tier recipient of $25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions). By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 C.F.R. Part 76, certifies to the best of its knowledge and belief that it and its principals:
   a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
   b. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

2. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions* without modification in all lower tier covered transactions.

3. Contractor certifies that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):

LL. Certification Regarding Employment Practices

In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, a Contractor agrees that: (a) the Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor shall state that all qualified applicants shall receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor shall include the provisions of above items (a) through (d) in every subcontract so that such provisions shall be binding upon such subcontractor or Contractor.