# SECTION 3: CONTINGENT TERMS FOR SERVICE CONTRACTS
# MARCH 12, 2020

***3.1 Federal Certifications and Terms.*** The following terms apply, to the extent applicable by law, when the Contract is funded with any federal funds.

**3.1.1 Certification of Compliance with Pro-Children Act of 1994.** The Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the Deliverables are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where Women, Infants, and Children (WIC) coupons are redeemed.

The Contractor further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to $1,000.00 per day.

**3.1.2 Certification Regarding Drug Free Workplace**
**3.1.2.1 Requirements for Contractors Who are Not Individuals**. If the Contractor is not an individual, the Contractor agrees to provide a drug-free workplace by:

**3.1.2.1.1** Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

**3.1.2.1.2** Establishing a drug-free awareness program to inform employees about:
- The dangers of drug abuse in the workplace;
- The Contractor's policy of maintaining a drug- free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations;

**3.1.2.1.3** Making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by Subsection 3.1.2.1.1;

**3.1.2.1.4** Notifying the employee in the statement required by Subsection 3.1.2.1.1 that as a condition of employment on such contract, the employee will:
- Abide by the terms of the statement; and
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

**3.1.2.1.5** Notifying the contracting agency within ten (10) days after receiving notice under the second unnumbered bullet of Subsection 3.1.2.1.4 from an employee or otherwise receiving actual notice of such conviction;

**3.1.2.1.6** Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 8104; and

**3.1.2.1.7** Making a good faith effort to continue to maintain a drug-free workplace through implementation of this subsection.

**3.1.2.2 Requirement for Individuals.** If the Contractor is an individual, by signing the Contract, the Contractor agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the Contract.

**3.1.2.3 Notification Requirement.** The Contractor shall, within thirty (30) days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 8102(a)(1)(D)(ii) or 41 U.S.C. § 8103(a)(1)(D)(ii)**:**

**3.1.2.3.1** Take appropriate personnel action against such employee up to and including termination; or

**3.1.2.3.2** Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

**3.1.3 Equal Employment Opportunity.** If this Contract is a "federally assisted construction contract" as defined in 41 C.F.R. part 60-1.3, and except as otherwise may be provided under 41 C.F.R. part 60, this Contract includes, by reference, the equal opportunity clause provided under 41 C.F.R. 60–1.4(b) in accordance with Executive Order 11246, Equal Employment Opportunity (30 C.F.R 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339) as amended by Executive Order 11375 amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. part 60.

**3.1.4 Davis-Bacon Act, as amended.** When required by federal program legislation, the Contractor (and its subcontractors) for prime construction contracts in excess of $2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5). In accordance with the statute, among other things, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor and are required to pay wages not less than once a week.

**3.1.5 Copeland "Anti-Kickback" Act.** If applicable, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**3.1.6 Contract Work Hours and Safety Standards Act.** Where applicable, if this Contract is in excess of $100,000 and involves the employment of mechanics or laborers, the Contractor shall comply with 40 U.S.C. §§ 3702 and 3704 as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702, each contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to

construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**3.1.7 Rights to Inventions Made Under a Contract or Agreement.** If this Contract is funded by a federal "funding agreement" as defined under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the federal awarding agency.

**3.1.8 Clean Air Act.** If this Contract is in excess of $150,000, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

**3.1.9 Debarment and Suspension.**
**3.1.9.1 Contract Award.** A "contract award" (see 2 C.F.R. § 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**3.1.9.2 Certification Related to Debarment and Suspension.** If this is a covered transaction, the Contractor certifies to the best of its knowledge and belief that it and its principals and subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.

This certification is a material representation of fact upon which reliance was placed when the Agency determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the Agency may terminate this Contract.

The Contractor shall provide immediate written notice to the Agency if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency. The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this section, have the meanings set out in 2 C.F.R. part 180.

The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts.

**3.1.10 Restriction on Lobbying.**
The Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), sets conditions on the use of Federal funds supporting this Contract. The Contractor shall comply with all requirements of 45 C.F.R. part 93, which are incorporated herein as if fully set forth. No appropriated funds supporting this Contract may be expended by the Contractor for payment of any person for influencing or attempting to influence an

officer or employee of any agency (as defined in 5 U.S.C. § 552(f)), a member of Congress in connection with the award of this Contract, the making of any federal funding grant award connected to this Contract, the making of any Federal loan connected to this Contract, the entering into any cooperative agreement connected to this Contract, and the extension, continuation, or modification of this Contract.

**3.1.10.1** Contractors that apply or bid for an award exceeding $100,000 shall file with the Agency a certification form, set forth in Appendix A of 45 C.F.R. part 93, certifying the Contractor, including any subcontractor(s) at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) have not made, and will not make, any payment prohibited under 45 C.F.R. § 93.100.

**3.1.10.2** The Contractor shall file with the Agency a disclosure form, set forth in Appendix B of 45 C.F.R. part 93, in the event the Contractor or subcontractor(s) at any tier (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) has made or has agreed to make any payment using non-appropriated funds, including profits from any covered Federal action, which would be prohibited under 45 C.F.R. § 93.100 if paid for with appropriated funds. All disclosure forms shall be forwarded from tier to tier until received by the Contractor and shall be treated as a material representation of fact upon which all receiving tiers shall rely.

**3.1.10.3** The Contractor shall file with the Agency subsequent disclosure forms at the end of each calendar quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any disclosure form previously filed. Such events include:

**3.1.10.3.1** A cumulative increase of $25,000 or more in the amount paid or expected to be paid to influence a covered Federal action;

**3.1.10.3.2** A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; and

**3.1.10.3.3** A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

**3.1.10.3.4** The Contractor may be subject to civil penalties if the Contractor fails to comply with the requirements of 45 C.F.R. part 93. An imposition of a civil penalty does not prevent the Agency from taking appropriate enforcement actions which may include, but not necessarily be limited to, termination of the Contract.

**3.1.10.4** To fulfill the certification requirement in 45 C.F.R. part 93, the Contractor certifies to the following by entering into this Contract:

**3.1.10.4.1** Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ‘‘Disclosure Form to Report Lobbying,’’ in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 1 for each such failure.

**3.1.10.4.2** Statement for Loan Guarantees and Loan Insurance
The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ‘‘Disclosure Form to Report Lobbying,’’ in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**3.1.11 Procurement of Recovered Materials**. The Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**3.1.12 Federal Licenses.**
**3.1.12.1 Licensing.** If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the federal government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the federal awarding agency reserves certain rights including, without limitation, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

**3.1.12.2 Software Ownership Rights and Federal License.** The Contractor shall ensure that the Agency has all ownership rights in software or modifications thereof and associated documentation designed, developed or installed pursuant to the Contract. The federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to

use for federal government purposes, software and associated documentation designed, developed or installed in whole or in part with federal funds pursuant to this Contract.

**3.1.13 Audits of Federally-Funded Contracts: Audit of Non-Federal Entity.** Non-federal entities, as that term is defined in 45 C.F.R. § 75.2, that expend $750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after the Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing material findings, if provided by the auditor, promptly following receipt by Contractor. The Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after the Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.

When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

**3.1.14 Food and Nutrition Services Funded Contract.** If applicable, the Contractor shall comply with the requirements of the USDA's regulation regarding nondiscrimination (7 C.F.R. parts 15, 15b), Title VI of the Civil Rights Act of 1964 (Public Law 83-352), section 11(c) of the Food Stamp Act of 1977, as amended, the Food Stamp Act of 1977, as amended, the Age Discrimination, Act of 1975 (Public Law 95-135) and the Rehabilitation Act of 1973 (Public Law 93-112, section 504) and all requirements imposed by regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

***3.2 Business Associate Agreement.*** If the Contractor acts as the Agency's Business Associate and performs certain services on behalf of or for the Agency pursuant to this Contract that involves information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended, and the federal regulations published at 45 C.F.R. part 160 and 164, then the Contractor is the Agency's Business Associate. By signing this Contract, the Business Associate certifies it will comply with the Business Associate Agreement Addendum ("BAA"), and any amendments thereof, as posted to the Agency's website: http://dhs.iowa.gov/HIPAA/baa. This BAA, and any amendments thereof, is incorporated into the Contract by reference.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. Notwithstanding anything to the contrary in the Contract, the Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: http://dhs.iowa.gov/HIPAA/baa, and providing the Business Associate electronic notice of the amended

BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer.

If there is a conflict between the BAA and provisions in Section 2.8, Ownership and Security of Agency Information, the provisions in the BAA shall control.

***3.3 Qualified Service Organization.*** If the Contractor is or will be receiving, storing, processing, or otherwise dealing with confidential patient records from programs covered by 42 C.F.R. part 2, the Contractor is a Qualified Service Organization and the Contractor acknowledges that it is fully bound by those regulations. The Contractor will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 C.F.R. part 2. "Qualified Service Organization" as used in this Contract has the same meaning as the definition set forth in 42 C.F.R. § 2.11.

***3.4 Certification Regarding Iowa Code Chapter 8F.*** If the Contractor is or becomes subject to Iowa Code chapter 8F during the term of this Contract, which includes any extensions or renewals thereof, the Contractor shall comply with the following:

**3.4.1.** As a condition of entering into this Contract, the Contractor shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.

**3.4.2** The Contractor agrees that it will provide the information described in this section to the Agency or the Legislative Services Agency upon request. The Contractor shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.

**3.4.3** Pursuant to Iowa Code § 8F.4, the Contractor shall file an annual report with the Agency and the Legislative Services Agency within ten (10) months following the end of the Contractor's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:

**3.4.3.1** Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

**3.4.3.2** Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted services.

**3.4.3.3** Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the Contractor covering the preceding year.

**3.4.3.4** Corrective action taken or planned by the Contractor in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

**3.4.3.5** Any changes in the information submitted in accordance with Iowa Code § 8F.3

**3.4.3.6** A certification signed by an officer and director, two directors, or the sole proprietor of the Contractor, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.

**3.4.3.7** In addition, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

***3.5 Software Contracts.***

**3.5.1 Software Funded with Federal Funds.** All software or modifications thereof and associated documentation designed, developed, or installed using federal funds is subject to 45 C.F.R. § 95.617.

**3.5.2 Change Order Procedure.** The Agency may at any time request a modification to Deliverables related to software using a change order. The following procedures for a change order shall be followed:

**3.5.2.1 Written Request.** The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

**3.5.2.2 The Contractor's Response.** The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) Business Days of receiving the change order request.

**3.5.2.3 Acceptance of the Contractor Estimate.** If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified Deliverables shall be governed by the terms and conditions of this Contract.

**3.5.2.4 Adjustment to Compensation.** The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

**3.5.3 Acceptance of Software Deliverables.** Except as otherwise specified in the Scope of Work, all Deliverables pertaining to software and related hardware components ("Software Deliverables") shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Scope of Work. Upon completion of all work to be performed by the Contractor with respect to any Software Deliverable, the Contractor shall deliver a written notice to the Agency certifying that the Software Deliverable meets and conforms to applicable Specifications and is ready for the Agency to conduct Acceptance Testing; provided, however, that the Contractor shall pretest the Software Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, the Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide the Contractor with written notice of Acceptance or Non-acceptance with respect to each Software Deliverable that was evaluated during such Acceptance Testing. In the event the Agency provides notice of Non-acceptance to the Contractor with respect to any Software Deliverable, the Contractor shall correct and repair such Software Deliverable and submit it to the Agency within ten (10) days of the Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests.

In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Software Deliverable that the Contractor has attempted to correct or repair pursuant to this section, that such Software Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing

right, at its sole option, to: (1) require the Contractor to correct and repair such Software Deliverable within such period of time as the Agency may specify in a written notice to the Contractor; (2) refuse to accept such Software Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Software Deliverable (or receive a refund of any fees or amounts already paid with respect to such Software Deliverable); (3) accept such Software Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Software Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or (4) terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 2.5.1, Termination for Cause by the Agency, of this Contract, the Agency may terminate this Contract pursuant to this section without providing the Contractor with any notice or opportunity to cure provided for in the termination provisions of this Contract. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided the Contractor with written notice of Final Acceptance.

**3.5.4 Notice of Acceptance and Future Deficiencies.** The Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in the event the Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable.