

**IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES
(HHS)
SECTION 3: CONTINGENT TERMS FOR SERVICE
CONTRACTS
August 1, 2023**

3.1 Federal Funds. HHS receives federal funding. As a recipient of federal funds, HHS and its subrecipients, contracting partners, and subcontractors must adhere to federal legislation passed by Congress, as well as codified regulations implemented through administrative requirements, executive orders, and other federal law when executing the funding and contract scope of work. Any revisions to applicable provisions of federal or state law and implementing regulations, and policy issuances and instructions, except as otherwise specified in this Contract, apply as of their effective date. If any terms of this Contract are determined to be inconsistent with rule or law, the applicable rule or law provision shall govern.

3.1.1 Federal Terms. 2 C.F.R. Part 200. Specific to the Code of Federal Regulations (C.F.R.) Title 2 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, specific language must be included in agreement articles, such as this Contract. Detailed in 2 C.F.R. Part 200, Appendix II, in addition to other provisions required by federal law, including but not limited to 45 C.F.R. Part 75, all contracts made by a non-federal entity under the federal awards must contain provisions covering the following, as applicable. The below provisions attempt to satisfy the requirements of 2 C.F.R. Part 200. This Contract does not encompass every federal law, regulation, or requirement that may apply to this Contract. By signing this Contract, the Contractor agrees to all applicable terms contained within 2 C.F.R. Part 200 and any other applicable federal requirement. If the Contractor or its Subcontractors violate this or any law, they may be subject to civil and/or criminal penalties, etc. as stated therein.

3.1.1.1 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. By signing the Contract, the Contractor certifies, to the best of its knowledge, understanding, and belief, that:

3.1.1.1.1 No Federal Funds Used. No federal appropriated funds have been paid or will be paid in what the undersigned believes to be a violation of 31 U.S.C. 1352, 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, the modification of any federal contract, grant, loan, or cooperative agreement, or in any activity designed to influence legislation or appropriations pending before Congress.

3.1.1.1.2 Other Funds Used. 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.

3.1.1.1.3 Certification. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and will require that all sub-recipients certify and disclose accordingly. This certification is a material representation of facts 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 31 U.S.C. 1352. 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 for each such failure.

3.1.1.2 Clean Air Act (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall comply with all applicable standards, orders, or requirements issued under 306 of the Clean Air Act (42 U.S.C. 1857(h)), 508 of the Clean Water Act (33 U.S.C. 1368), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15).

3.1.1.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance 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 of the Act, each contractor must be required to 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. The Contractor shall comply with the Contract Work Hours and Safety Act, as applicable.

3.1.1.4 Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited 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. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The Contractor shall comply with the Copeland "Anti-Kickback" Act, as applicable. If the Contractor or its Subcontractors violate this law, they may be subject to criminal penalties, etc. as stated therein.

3.1.1.5 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.

3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to 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. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The Contractor shall comply with the Davis-Bacon Act, as applicable.

3.1.1.6 Debarment and Suspension (Executive Orders 12549 and 12689). 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. 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. By signing this Contract, the Contractor certifies 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.

3.1.1.7 Domestic preferences for procurements. As appropriate and to the extent consistent with law, as provided in 2 C.F.R. 200.322, Domestic Preference for Procurements, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. The Contractor shall comply with 2 C.F.R. 200.322, to the extent applicable.

3.1.1.8 Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41

C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, 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, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The Contractor shall comply with Equal Employment Opportunity, to the extent applicable.

3.1.1.9 Procurement of Recovered Materials. In the performance of this Contract, in accordance with 2 C.F.R. 200.323, Procurement of Recovered Materials, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

3.1.1.10 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Recipients and subrecipients, in accordance with 2 C.F.R. 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor certifies that it will comply with 2 C.F.R. 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, to the extent applicable.

3.1.1.11 Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" 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 the requirements of 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 awarding agency. The Contractor certifies that it will comply with 37 C.F.R. Part 401, to the extent applicable to this Contract.

3.1.2 Federal Financial Assistance Acknowledgment. The Contractor acknowledges that federal financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, federal awarding policies, procedures, and directives.

The Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the federal awarding agency may reserve 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.

In accordance with, but not limiting to, 45 C.F.R. 95.617, 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.

3.1.3 Federal Law Contractor Certifications. By signing this Contract, the Contractor certifies its compliance, to the extent applicable, with the following:

- The Constitution of the United States.
- Medicaid Laws. Title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.), applicable provisions of 42 C.F.R. 431.200 et. seq. and 42 C.F.R. part 438; waivers or variances approved by CMS; and the Rehabilitation Act of 1973.
- Pro-Children Act of 1994.
- Drug-Free Workplace Act of 1988, and implemented at 28 C.F.R. Part 67, subpart F, for programs, as defined at 28 C.F.R. Part 67 sections 67.615 and 67.620.
- 2 C.F.R. 200 Subpart F—Audits of Federally-Funded Contracts: Audit of Non-Federal Entity.
- 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, religion, age (except as provided by law), sex, marital status, sexual orientation, political affiliation, national origin, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

3.1.4 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 2 C.F.R. § 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.

3.1.5 Contractor Employee Whistleblower Protections. The Contractor must comply with 41 U.S.C. 4712 which provides "employees of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal" for "whistleblowing." In addition, whistleblowing protections cannot be waived by any agreement, policy, form or condition of employment.

3.1.5.1 Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant;
- A gross waste of federal funds;
- An abuse of authority relating to a federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of a law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract) or grant.

3.1.5.2 To qualify under the statute, the employee's disclosure must be made to:

- A member of Congress, or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice, or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

The requirement to comply with and inform all employees of the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is in effect for all grants, contracts, subgrants, and subcontracts.

3.2 Business Associate Agreement. If the Contractor performs certain services on behalf of or for a designated HIPAA-covered component of the Agency and meets the definition of business associate in 45 CFR 160.103, then the Contractor is a business associate of the Agency for purposes of 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. 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://hhs.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://hhs.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 Nonacceptance 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.