

Lease No. DACA-31-5-XX-XXX

Location:

| | |
|-------------------------------------|------------------------------------|
| U. S. GOVERNMENT | |
| LEASE FOR REAL PROPERTY | TOTAL: _____ sf |
| Lease No. DACA31-5-XX-XXX | |
| TAX ID # (TIN OR SSN): _____ | DUNS # (per SAM.gov): _____ |

THIS LEASE made and entered into the effective date above, by and between:

NAME
 whose address is: ADDRESS
 CITY/STATE/ZIP

POC Name _____ **Phone #** _____ **EMAIL** _____

and whose interest in the property hereinafter described is that of owner (as certified), for itself, its successors, and assigns, hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. PREMISES: The Lessor hereby leases to the Government the following described premises: Exclusive use of approximately _____ square feet of space (as measured by BOMA Standard Measurements) designated as the Armed Forces Career Center, _____ as more particularly shown on Exhibit "A", Floor Plan, attached hereto and made a part hereof, to be used for Government purposes. It is also understood and agreed that the Premises shall contain adequate parking for Government vehicles, in unassigned spaces, both during the day and overnight.

2. LEASE TERM, COMMENCEMENT OF RENTAL DATE : TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning _____ thru _____, subject to termination and renewal rights as may be hereinafter set forth. The Government's obligation and legal liability for performance of this lease beyond 30 September _____ is contingent upon the availability of annually appropriated funds. Nothing in this lease shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States or considered as implying that the Congress will appropriate additional funds.

3. RENTAL: The Government shall pay the Lessor annual rent of _____ at the rate of \$ _____ per calendar month in arrears. Consideration for a lesser period shall be prorated. All payments by the Government under the terms of this lease shall be made payable to _____ via _____

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Electronic Funds Transfer (reference General Clause 20 hereof) by the USACE Finance Center, 5722 Integrity Drive, Millington, Tennessee 38054-5005.

The fund cite for payments is: **RENT:** _____

4. TERMINATION: The Government may terminate this lease in whole or in part at any time on or after the first full year by giving at least 90 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said 60 day period shall be computed commencing with the day after the date of delivery of notice (reference General Clause 1m hereof).

5. RENEWAL: This lease may be renewed at the option of the Government, from the following period and at the following terms:

This lease shall be automatically renewed from year to year without further notice unless and until the Government shall give notice of termination in accordance with Clause 4, provided that adequate appropriations are available from year to year for rental payment; provided further that the lease shall in no event extend beyond _____.

6. THE LESSOR SHALL FURNISH TO THE GOVERNMENT, as part of the rental consideration, the following:

a. Tenantable premises that comply with applicable building codes and standards; including fire alarm and safety equipment.

b. (i) Provide utilities and communications connections to demarcation point within the leased premises including:

| | |
|---|--|
| <input checked="" type="checkbox"/> electricity/gas | <input type="checkbox"/> heating oil |
| <input checked="" type="checkbox"/> water | <input checked="" type="checkbox"/> power to adequately light recruiting signs |
| <input checked="" type="checkbox"/> sanitary sewer | <input type="checkbox"/> high speed internet |
| <input type="checkbox"/> phone service | <input checked="" type="checkbox"/> trash removal <input type="checkbox"/> other |

c. Payment for the following utilities (to be provided 24 hours per day, 7 days per week) including:

| | |
|---|---|
| <input checked="" type="checkbox"/> electricity/gas | <input checked="" type="checkbox"/> trash removal |
| <input checked="" type="checkbox"/> water | <input type="checkbox"/> heating oil |
| <input checked="" type="checkbox"/> other | |

d. Maintenance of premises and common areas and related insurance, including:

Common area maintenance per General Clause 16 hereof;

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e. Heating, ventilation and air conditioning (HVAC) systems capable of maintaining a minimum temperature of 70 degrees Fahrenheit during the heating season and a maximum temperature of 78 degrees Fahrenheit during the cooling season, including replacement of air filters as needed.

f. Provide means for mail delivery (i.e. cluster box within the center's property). An individual box is required for each Branch of the service.

7. LESSOR/GOVERNMENT RESPONSIBILITIES: The Lessor shall be responsible for all utilities to include gas, electric, water, sewer and janitorial services. The Lessor shall obtain and pay for all snow and ice removal, landscaping, interior and exterior building maintenance and other related items to include maintaining and repairing those systems, equipment, fixtures and appurtenances necessary for the provision and use of said services. It is also expressly understood and agreed that the real estate taxes and insurance will be furnished and paid for by the Lessor.

8. NOTICES: Any notice under the terms of this Lease is to be given in writing and delivered by "Certified Mail, Return Receipt Requested" or registered mail, Express Mail or comparable service, or delivered by hand and delivery, whether accepted or refused, attempted delivery, or marked undeliverable, shall be deemed notice under the terms of this Lease. Any notice given by the Lessor to the Government shall be addressed to: Baltimore District, District Commander, U.S. Army Engineer District, 2 Hopkins Plaza, 5th Floor, ATTN: Chief, Leasing Section, Baltimore, Maryland 21201 with reference to the Lease number. Any notice given by the Government to the Lessor or his agent shall be addressed to:

_____. For emergency and maintenance purposes call: _____.

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9. ATTACHMENTS: The following are attached and made a part hereof:

- a. General Clauses **(1-41)**
- b. Exhibit "A", Floor Plan

THIS LEASE IS NOT SUBJECT TO TITLE 10, UNITED STATES CODE, SECTION 2662.

| | | | |
|---------------------------------|--|---|--|
| LESSOR: | | TAX ID NO: _____ | |
| SIGNATURE: | | DATE: | |
| NAME OF SIGNER (PLEASE PRINT) | | TITLE OF SIGNER: | |
| UNITED STATES OF AMERICA | | | |
| SIGNATURE: | | DATE: | |
| | | Real Estate Contracting Officer Baltimore District, Corps of Engineers | |

GENERAL CLAUSES (1-41)

1. DEFINITIONS (SEP 1999) (VARIATION) – 552.270-4:

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) "Casualty" means, but is not limited to, acts of nature, such as fire, lightning, earthquakes, floods, or severe weather and acts of war or terrorism.

(b) "Commencement Date" means the first day of the term.

(c) "Common area" means "that part of the Shopping Center provided, designated, and maintained by the Lessor for the common use of all tenants; including but not limited to, private streets and driveways, curbs, parking areas, service alleys, loading areas, retaining walls, sidewalks, landscaping, lighting, hallways, restrooms, stairwells, and elevators."

(d) "Contract" and "Contractor" means "Lease" and "Lessor," respectively.

(e) "Contracting Officer" or "Government" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Government acting within the limits of their authority as delegated by the Government.

(f) "Delivery Date" means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(g) "Delivery Time" means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.

(h) "Effective Date" means the date on which the lease is signed by the Government.

(i) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:

(1) acts of God or of the public enemy,

(2) acts of the United States of America in either its sovereign or contractual capacity,

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(3) acts of another contractor in the performance of a contract with the Government,

(4) fires,

(5) floods,

(6) epidemics,

(7) quarantine restrictions,

(8) strikes,

(9) freight embargoes,

(10) unusually severe weather, or

(11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(j) "Lessee" means "Government."

(k) "Lessor" means "Owner" or the sub-Lessor if this lease is a sublease.

(l) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's Expense.

(m) "Notice". Unless otherwise stated or in case of an emergency or threat to health, safety, and security, "Notice" means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused, attempted delivery or marked "undeliverable."

(n) "Premises" means the space described on the U.S. Government Lease for Real Property lease form.

(o) "Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

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(p) "Usable square feet" means the usable office area or the area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."

(q) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

2. ALTERATIONS: The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions or signs subject to Lessor's prior approval in or upon the premises hereby leased. *Upon Government request*, the Lessor shall be required to obtain bids for the said work and to provide the bids to the Government. Any work to be performed through the Lessor will be implemented by supplemental agreement. The Government's portion of the expense will be paid on a reimbursable basis. Such fixtures or additions shall be and remain the property of the Government, and may be removed prior to the expiration or termination of this lease or otherwise disposed of by the Government.

3. DAMAGES: The Government shall be liable only for damages resulting from negligence or misconduct of Government personnel. The Government shall not be liable for any loss, destruction or damages to the premises beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of nature, such as fire, lightning, earthquakes, floods, or severe weather and acts of war or terrorism. The parties agree that settlement of damages by the Government, if any, shall be done at termination of the lease. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Lessor may have to make a claim under applicable laws for any other damages than provided herein.

4. WARRANTY: The Lessor certifies the mechanical equipment building systems, and the utilities to be in good serviceable and operating condition.

5. HAZARDOUS TOXIC WASTES:

a. The site, building, and building space which are being leased to the Government, to the best of his or her knowledge, are not properties or structures with known or potential environmental contamination including asbestos, radon, or hazardous or toxic materials/substances/wastes and such substances have not been used on the said premises. This certification is a material representation of fact upon which the Government relies when entering into the lease. If it is later determined that environmental contamination is present, the Government reserves the right to require the Lessor, at no cost to the Government to (1) remove such properties and structures or contaminated materials, substances, or wastes contained therein and restore the premise to the satisfaction of the Government, or (2) to take the necessary action to mitigate the hazardous or toxic waste condition or other environmental contamination, in

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accordance with local, state, and Federal laws, or (3) in the alternative, the Government, at its option, may terminate the lease effective upon notification without any penalty whatsoever. In addition to the rights under (1), (2), and (3) above, if it is determined that the Lessor has made a willful misrepresentation, the Lessor shall also be responsible for all costs and expenses of relocating to another location in the event the Government in its discretion determines it necessary to relocate to other premises.

In the event that Hazardous Substances which are required by Environmental Law to be removed or remediated and which were introduced by a party other than the Government, its agents, employees, contractors or invitees, are discovered on the premises, Lessor shall: (a) pursue the party or parties responsible for such contamination in an effort to compel them to remediate the contamination in accordance with Environmental Law, or (b) in the event that Lessor caused such contamination, Lessor shall proceed to remove or remediate it as and to the extent required by Environmental Law. In no event shall the Government be liable for any release of Hazardous Substances or any violation of Environmental Laws which was caused by other tenants at the Premises and which the Government did not cause, contribute to or create.

“Hazardous Substances” shall mean (i) hazardous or toxic substances, wastes, materials, pollutants and contaminants which are included in or regulated by any federal, state or local law, regulation, rule or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, as any of the foregoing may be amended from time to time, and (ii) petroleum products, (iii) halogenated and non-halogenated solvents, and (iv) all other regulated chemicals, materials and solutions.

“Environmental Law” or “Environmental Laws” shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. Section 6901 et seq.), as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended; (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.), as amended; (vi) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. Section 300F et seq.), as amended; (x) any state, municipal or local statutes, laws or ordinances similar or analogous to the federal statutes listed in parts (i)-(ix) of this provision; (xi) any amendments to the statutes, laws or ordinances listed in part's (i)-(x) of this provision, regardless of whether in existence on the date hereof; (xii) any rules, regulations, guidelines, directive, orders or the like adopted pursuant to or implementing the statutes, laws, ordinances and amendments listed in parts (i)-(xi) of this provision; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline,

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directive, order or the like in effect now or in the future relating to environmental, health or safety matters.

b. The Lessor and the Government shall immediately notify the other party of any hazardous or toxic conditions or other environmental contamination in any part of the leased premises upon obtaining knowledge of the same.

6. CHANGE OF OWNERSHIP:

a. If, during the term of this lease, including any renewals or extensions, title to this property is transferred to another party either by sale, foreclosure, condemnation, assignment, or other transaction, the Lessor (transferor) shall promptly notify the Government of said transfer. The following information shall accompany such notification:

(1) A copy of the deed or other appropriate instrument transferring title or sufficient interest to lease to the property from the transferor to the new owner.

(2) The new owner's tax identification or social security number.

b. The foregoing information must be received not later than forty-five (45) days after the effective date of transfer of title. In any instance, failure to submit the documentation required for a transfer of title will result in a suspension of rental payments until such time as all documentation is received by the Government.

c. When the title to premises leased to the Government is transferred, a supplemental agreement shall be entered into by the old and new owners and the Government to reflect such change of ownership.

7. CONDITION REPORTS: Upon expiration or termination of the lease, a final inspection shall be conducted by representatives of both the Lessor and the Government.

8. CHANGES (SEP 1999) (VARIATION) - 552.270-14

a. The Government may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services; or

(3) Facilities or space layout.

b. If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Government shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date.

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(2) An equitable adjustment in the rental rate;

(3) A lump sum equitable adjustment; or

(4) An equitable adjustment of the annual operating costs per the square feet specified in this lease.

c. The Lessor shall assert its right to an adjustment under this clause within 60 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Lessor from proceeding with the change as directed.

d. Absent such written change order, the Government shall not be liable to Lessor under this clause.

9. INVOICE REQUIREMENTS (SEP 1999) (VARIATION) - 552.232-70

(This clause applies to payments other than rent.)

Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this lease or order, including the lease number and address of the leased premises.

10. DELIVERY AND CONDITION (SEP 1999) - 552.270-17

a. Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

b. If the premises do not in every respect comply with the provisions of this lease the Government may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

11. DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP 1999) (VARIATION) - 552.270-18

a. With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement

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premises for a term (including all option terms) in excess of this term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

b. Damages to which the Government is entitled to under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Government specifying such damages.

c. Delivery by Lessor of less than the square footage shown on the floor plan attached as **Exhibit "A"** to this lease shall in no event be construed as substantial completion, except as the Government permits.

d. The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Government) provides notice to the Government of the causes of delay. The Government shall ascertain the facts and the extent of delay. If the facts warrant, the Government shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

12. PROGRESSIVE OCCUPANCY (SEP 1999) - 552.270-19

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

13. ACCEPTANCE OF SPACE (SEP 1999) - 552.270-29

a. When the Lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the Lessor shall notify the Government. The Government's designated representative shall promptly inspect the space.

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b. The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required square footage as indicated in the floor plan attached as Exhibit "A".

14. EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP 1999) - 552.270-21

Neither the Government's acceptance of the premises for occupancy or the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

15. MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (SEP 1999) - 552.270-6

a. Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor, its agents, representatives, contractors and assigns may at reasonable times (within 24 hours notice) enter the premises with the approval of and accompanied by the authorized Government representative in charge.

b. **Emergency Maintenance and Repairs.** The Government will notify the Lessor of any emergency and request the Lessor to perform the necessary work. All emergency maintenance and repairs performed by the Lessor will be started within 48 hours from the time of notification and completion thereof diligently pursued. Emergency maintenance and repairs include but are not limited to:

- (1) failure of heating/cooling system to maintain specific temperature
- (2) failure of water system, including hot water
- (3) inadequate or no water pressure
- (4) leaking water pipes
- (5) blocked or leaking drains
- (6) electrical failure
- (7) sewage system malfunction

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- (8) failure of security and fire protection systems, including alarms and sprinklers
- (9) repair/replace exterior windows and doors including plate glass if applicable
- (10) replacing faulty or non-operative bulbs or ballasts.

In the event the Lessor shall fail to commence emergency maintenance and repairs within 48 hours or to perform non-emergency maintenance and repairs within 5 days from the date notice is given by the Government, the Government may immediately perform or have performed such maintenance and repairs and deduct all costs thereof from the rental or other charges due or to become due under the terms of this lease.

16. FIRE AND CASUALTY DAMAGE (SEP 1999) - 552.270-7

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as reasonably determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

17. COMPLIANCE WITH APPLICABLE LAW (SEP 1999) - 552.270-8

a. Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof. To the extent required by work performed by Lessor in the Shopping Center or premises, Lessor will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

b. SECURITY. Exit signs, emergency lighting, portable fire extinguishers, and fire protection systems, such as sprinkler systems and alarms, which meet fire protection standards established by applicable state statutes, fire regulations, building codes, or local ordinances, shall be provided and maintained by the Lessor. This includes, but is not limited to, the recharging of fire extinguishers and replacement of long life batteries (lithium) in smoke detectors. Equipment, services or utilities furnished shall be free of safety, health, and fire hazards.

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18. FAILURE IN PERFORMANCE (SEP 1999) - 552.270-10

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement to the premises required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the premises, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payments under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

19. DEFAULT BY LESSOR DURING THE TERM (SEP 1999) - 552.270-22

a. Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Government or an authorized representative, provided said 30 day period shall be extended as reasonably necessary if Landlord shall have commenced said performance and is diligently pursuing same.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

b. If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

20. ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000) (VARIATION) - 552.232-76

a. The Government will make payments under this lease by electronic funds transfer (EFT), unless otherwise waived (*for hardship or tracking reasons of the lessor*). The Lessor must, no later than 30 days before the first payment:

(1) Designate a financial institution for receipt of EFT payments.

(2) Submit this designation to the Government or other Government official, as directed.

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b. The Lessor must provide the following information:

(1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds is to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Lessor is a new enrollee to the EFT system, the Lessor must complete and submit UFC-DISB-4 (Direct Deposit Authorization Form), before payment can be processed.

c. If the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment, the appropriate Government official must receive notice of such change and the required information specified above no later than 30 days before the date such change is to become effective.

d. The documents furnishing the information required in this clause must be dated and contain the:

(1) Signature, title, and telephone number of the Lessor or the Lessor's authorized representative.

(2) Lessor's name.

(3) Lease number.

e. Lessor's failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

21. PROMPT PAYMENT (SEP 1999) - 552.232-75

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

a. *Payment due date.*

(1) Rental payments. Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due

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on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) Other payments. The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

b. Invoice and inspection requirements for payments other than rent.

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at

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the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

c. Interest Penalty.

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

22. SUBLETTING AND ASSIGNMENT (SEP 1999) – 552.270.5

The Government may sublet any part of the premises for the same permitted use hereunder but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease for the same permitted use hereunder, and be relieved from all obligations to the Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment or sublease shall be subject to prior written consent of the Lessor, which shall not be unreasonably withheld.

23. SUBSTITUTION OF TENANT AGENCY (SEP 1999) - 552.270-25

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies.

24. ASSIGNMENT OF CLAIMS (JAN 1986) - 52.232-23

a. The Lessor, under the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

b. Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

c. The Lessor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Government authorizes such action in writing.

25. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP 1999) - 552.270-23

a. Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Government's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

b. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include for any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other

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security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Government promptly upon demand.

c. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Government and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

d. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

26. NO WAIVER (SEP 1999) - 552.270-26

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

27. STATEMENT OF LEASE (SEP 1999) - 552.270-24

a. The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

b. Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

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(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

28. MUTUALITY OF OBLIGATION (SEP 1999) - 552.270-28

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No set off pursuant to this clause shall constitute a breach by the Government of this lease.

29. SUCCESSORS BOUND (SEP 1999) - 552.270-11

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

30. INTEGRATED AGREEMENT (SEP 1999) - 552.270-27

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

31. DISPUTES (JUL 2002) - 52.233-1

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

b. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Lessor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

d. (1) A claim by the Lessor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Government for a written decision. A claim by the Government against the Lessor shall be subject to a written decision by the Government.

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(2) (i) The Lessor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount

requested accurately reflect the contract adjustment for which the Lessor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessor."

(3) The certification may be executed by any person duly authorized to bind the Lessor with respect to the claim.

e. For Lessor claims of \$100,000 or less, the Government must, if requested in writing by the Lessor, render a decision within 60 days of the request. For Lessor-certified claims over \$100,000, the Government must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.

f. The Government's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.

g. If the claim by the Lessor is submitted to the Government or a claim by the Government is presented to the Lessor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Lessor refuses an offer for ADR, the Lessor shall inform the Government, in writing, of the Lessor's specific reasons for rejecting the offer.

h. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Government receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Government initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Government receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

i. The Lessor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Government.

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32. EXAMINATION OF RECORDS. The Lessor agrees that any duly authorized Government representative shall have the right, upon sixty (60) days prior written notice, until the expiration of three (3) years after final payment of the agreed rental, to have access to and to examine any directly pertinent books, documents, papers, and records of the Lessor involving transactions related to this lease.

33. GRATUITIES TO GOVERNMENT EMPLOYEES.

a. The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agency or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease, provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph a hereof the Government shall be entitled (1) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor and (2) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three (3) nor more than ten (10) times the cost incurred by the Lessor in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

34. OFFICIALS NOT TO BENEFIT.

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease contract if made with a corporation for its general benefit.

THE FOLLOWING CLAUSES ARE INCORPORATED BY REFERENCE:

35. COVENANT AGAINST CONTINGENT FEES (FEB 1990) – 552.203-5

(Applicable to leases over \$100,000.)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its

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discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

36. ANTI-KICKBACK PROCEDURES (JUL 1995) - 52.203-7

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

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(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

37. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) – 52.222-21

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

38. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005) – 52.209-6

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

39. EQUAL OPPORTUNITY (APR 2002) – 52.222-26

(a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

(i) Employment;

(ii) Upgrading;

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(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100, (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of paragraphs (b)(1)

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through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

40. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001) – 52.222-35

(a) *Definitions.* As used in this clause—

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management" means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition.

This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization. "Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position

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such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.*

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

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(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.*

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

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(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans. (f) *Noncompliance*. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts*. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

41. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) – 52.222-36

(a) *General*.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings*.

(1) The Contractor agrees to post employment notices stating—

(i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and

(ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees

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and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act. (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action