

## **General Provisions for Bachelor Quarters (BQ) Leases**

### GENERAL CLAUSES

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<b>Clause No.</b>	<b>Clause Title</b>
1	Definitions
2	Administration
3	Payment Due
4	Interest on Overdue Payments
5	Availability of Funds
6	Government Expenditure
7	Lessor Rental Covenant
8	Applicable Codes and Ordinances
9	Insurance
10	Damage by Fire or Other Casualty
11	Joint Inspections and Condition Reports
12	Maintenance of Premises, Household Furnishings, Cleaning and Painting Actions
13	Inspection Upon Surrender of the Leased Premises
14	Damage to Any or All Household Items and Window or Door Screens
15	Delivery and Condition
16	Time Extensions
17	Termination for Default of Occupancy Readiness
18	Inspection of Premises
19	Subletting and Assignment
20	Failure in Performance
21	Disputes
22	Examination of Records by Comptroller General
23	Examination of Records by U.S. Navy
24	Gratuities

25	Covenant Against Contingent Fees
26	Assignment of Claims
27	Equal Opportunity
28	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
29	Utilization of Women-Owned Small Businesses
30	Equal Opportunity for Veterans
31	Employment Reports on Veterans
32	Equal Opportunity for Workers with Disabilities
33	Anti-Kickback Procedures
34	Notification of PCB Hazardous Condition
35	Crimes, Debarments, Suspensions, and Defaults
36	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
37	Statement of Lease
38	Warranty of Space
39	Termination – Erroneous Representation Concerning Polychlorinated Biphenyls (PCBs) and/or Hazardous Waste Management
40	Drug-Free Workplace
41	Price Adjustment for Illegal or Improper Activity
42	Display Advertising
43	Housing Non-Discrimination
44	Movement for Convenience of Lessor
45	Payment by Electronic Funds Transfer – System for Award Management
46	System for Award Management Maintenance
47	Prohibition of Segregated Facilities
48	No Waiver
49	Successors Bound

## ***GENERAL CLAUSES***

### **1. DEFINITIONS**

- a. The terms “offer” and “Offeror,” and “contract” and “Contractor” shall mean “Lease” and “Lessor”, respectively.
- b. If the lease is a sublease, the term “Lessor” means the sublessor.
- c. The term “Lessor shall provide” means the Lessor shall furnish and install.
- d. The term “occupant(s)” shall mean the individual(s) assigned by a Navy ship or submarine to reside in or an individual dwelling unit(s), Long-stay hotel room(s) within the lease.
- e. The term “general cleaning” means cleaning toilets, sinks, tub/showers, floors, stoves, microwaves (if applicable), dishwashers, and refrigerator in order to make unit ready for new check-in.
- f. Except as expressly otherwise noted, the term “Real Estate Contracting Officer ” as used herein includes the Government’s Real Estate Contracting Officer (RECO).

### **2. ADMINISTRATION – Notices to the Government shall be sent to the following:**

- a. The Government’s Real Estate Contracting Officer:

Commander,  
Naval Facilities Engineering Systems Command, Atlantic  
ATTN: Code RE-DES  
6506 Hampton Boulevard  
Norfolk, Virginia 23508-1278  
Telephone (757) 322-4910

- b. The Local Representative of the Government:

Supervisor of Shipbuilding, Conversion and Repair, USN  
ATTN: Huntington Hall Housing  
3100 Huntington Avenue  
Newport News, Virginia 23607  
Telephone (757) 688-3275

- c. Correspondence about Rent Payment shall be addressed to the above and to:

Supervisor of Shipbuilding, Conversion and Repair, USN  
4101 Washington Avenue Bldg. 2  
Newport News, Virginia 23607  
Telephone (757) 688-1739

### **3. PAYMENT DUE**

The initial monthly rental payment under this lease shall become due on the first workday of the month following the month in which the occupancy of space is effective. As provided for by the lease, subsequent rent shall be paid in arrears, and will be due on the first workday of each successive month.

### **4. INTEREST ON OVERDUE PAYMENTS**

The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 3901 et seq.) is applicable to payments under this contract and requires the payment to Contractors of interest on overdue payments and improperly taken discounts. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

### **5. AVAILABILITY OF FUNDS**

All payments by the Government due under this lease cannot exceed the amount of appropriations available at the time such payments are due hereunder. Additionally, nothing contained in this lease shall be considered as implying that the Congress of the United States of America will, at any later date, appropriate sufficient funds to meet any deficiencies hereunder.

### **6. GOVERNMENT EXPENDITURE**

The total maximum annual expenditure by the Government hereunder, including rental and the cost of utilities, maintenance, services, and operation, whether obtained by the Government through this lease or independently of this lease may not exceed the statutory ceiling established by the Congress of the United States for each year of this lease or any renewal thereof.

### **7. LESSOR RENTAL COVENANT**

Lessor expressly covenants that the rental payment amounts stipulated in Clauses 3 and 5 of this lease constitute the entire consideration for the lease and that the Lessor has not and shall not enter into any separate agreement with the occupant of the leased premises for any financial obligation of one to the other arising out of occupancy of the premises hereunder.

### **8. APPLICABLE CODES AND ORDINANCES**

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, and 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. The lease shall be governed by Federal law.

## **9. INSURANCE**

The Lessor shall maintain fire and extended coverage insurance on the premises, in such reasonable amounts as Lessor may desire, and at Lessor's expense. Each policy of insurance maintained by the Lessor, as required hereunder, shall contain an endorsement reading substantially as follows: "The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."

## **10. DAMAGE BY FIRE OR OTHER CASUALTY**

If fire or other casualty destroys the said premises, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within fifteen (15) calendar days thereafter; 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 by the willful or negligent act or omission of Lessor.

## **11. JOINT INSPECTIONS AND CONDITION REPORTS**

A joint physical inspection and condition report of the leased premises including all equipment, fixtures, and appurtenances furnished by the Lessor shall be made as of the effective date of this lease and at the expiration or early termination of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto. Both a Lessor Representative and a Government Representative shall be present at both scheduled inspections.

The Government shall keep, and at the expiration or termination of this lease, deliver up the premises in as good order and condition as the same are now, reasonable wear and tear and damages by accidental fire excepted. Accidental fire is intended to include all fires not caused by the intentional acts of the Government's agents or employees.

Neither the Government's acceptance of the premises for occupancy, nor 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.

## **12. MAINTENANCE OF PREMISES, HOUSEHOLD FURNISHINGS, CLEANING AND PAINTING ACTIONS**

The Lessor shall maintain the demised premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease in good repair and tenantable condition, in accordance with the specifications outlined in Exhibit "B", except in case of damage arising from the act or the negligence of the Government's agents, employees, or occupants. For the purpose of so maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the Real Estate Real Estate Contracting Officer or his/her authorized representative, enter and inspect the same

and make any necessary repairs thereto. Should the Lessor fail to perform, the Government shall have the right of recourse identified in Clause 20 of this Lease.

Following the inspection made as of the effective date of this lease, the Lessor hereby agrees, upon request by the Government, to replace and/or restock at no additional cost to the Government or any occupant, any damaged or missing household furnishings, identified with quantities specified, in Exhibit "C" of this Lease. The Lessor agrees to replace and/or recharge, at no additional cost to the Government, any fire extinguisher(s) supplied under the terms of this lease if found to be discharged or expired.

The Lessor hereby agrees to perform, upon request by the Government and at no additional cost to the Government, a general cleaning including appliances, furnishings, and professional steam cleaning of all carpeted areas upon termination of a leased unit and/or at a change in assigned occupancy resulting in unit vacancy. Said general cleaning shall occur no more frequently than once per year. Repainting and/or general cleaning shall not be performed upon request of occupants nor without the approval of the Real Estate Real Estate Contracting Officer.

### **13. INSPECTION UPON SURRENDER OF THE LEASED PREMISES**

It is understood and agreed herein that the Government may terminate this lease IN WHOLE OR IN PART at any time by giving at least thirty (30) days' notice in writing to the LESSOR, notice being effective the date of mailing, electronic mailing or facsimile transmission and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing. Upon receipt of a termination notice, or during the final month of this lease, Lessor shall:

- a. Pre-inspect the unit after tenant has vacated;
- b. Schedule a joint inspection, as required under Clause 11, with the Government's Real Estate Real Estate Contracting Officer to document condition of vacated unit; and

*NOTE: Lessor shall not make any repairs, changes, or modifications to a unit before the joint inspection with the Government.*

- c. Submit any damage claims, at the fair/depreciated value along with proof of payment and pertinent supporting documentation (cleaning expenses, repairs, carpet replacement, and/or excessive removal of abandoned belongings), to the Real Estate Real Estate Contracting Officer with copy to the Government's authorized local representative within thirty (30) days of the joint inspection.

At the termination or expiration of this lease, the Government and Lessor shall execute a "Settlement and Special Release Agreement" reflecting the final resolution of all conditions under this lease.

### **14. DAMAGE TO ANY OR ALL HOUSEHOLD ITEMS AND WINDOW OR DOOR SCREENS**

It is understood and agreed herein that the Government shall not be liable for loss or damage to window and door screens, or any of the household items listed Clause 12, above, and the Government shall be held harmless and free of liability for any such loss or damaged incurred.

## **15. DELIVERY AND CONDITION**

The space shall be delivered ready for occupancy as a complete unit.

All furniture, appliances, household furnishings, and other items identified in Exhibits "B" and "C" to this lease shall be assembled and ready for use. Lessor shall remove from the premises, all packaging materials prior to the Government's acceptance and occupancy.

The Government shall pay rent only when the entire premises or suitable dwelling units are ready for occupancy. The Government shall appropriately prorate the rent in the event of a delayed acceptance of any dwelling unit or in the event of an identified deficiency under the requirements of Exhibits "B" or "C" to this lease that causes an occupancy delay.

## **16. TIME EXTENSIONS**

The lease shall not be terminated, nor the Lessor charged with resulting damage, if delays arise from unforeseeable causes beyond the control of the Lessor and/or his contractors, subcontractors, suppliers, or another Government contractor; however, the Lessor shall notify the Real Estate Real Estate Contracting Officer, in writing, of any delay within ten (10) calendar days after it begins. The Real Estate Real Estate Contracting Officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

## **17. TERMINATION FOR DEFAULT OF OCCUPANCY READINESS**

If the Lessor fails to prosecute the work required to deliver the leased premises ready for occupancy by the Government with such diligence as will ensure delivery of the leased premises within the time required by the lease, or any extension of the specified time, or if the Lessor fails to complete said work within such time, the Government may, by written notice to the Lessor, terminate the lease agreement. Regardless of whether the lease is terminated, the Lessor and his/her sureties shall be liable for any damage to the Government resulting from Lessor's failure to deliver the premises ready for occupancy within the specified time.

## **18. INSPECTION OF PREMISES**

It is understood and agreed herein that the premises, building, and/or any parts thereof, must be accessible for inspection by the Real Estate Real Estate Contracting Officer and his/her designated representatives at all times after receipt of offers, before/after acceptance of offers, and/ or during construction, remodeling, or renovation, the premises and the building and/or any parts thereof, upon reasonable and proper notice to the Lessor.

Periodic review, tests, and inspections by the Government shall not be construed to represent approval of Lessor's progress. The Lessor shall remain solely responsible for designing, constructing, operating, and maintaining the leased premises in full accordance with the requirements of the solicitation and lease.

The Government reserves the right, upon reasonable notice, to:

- a. Inspect and perform bulk sampling and analysis of suspected asbestos containing materials;
- b. Monitor the air for asbestos fibers in the space under lease as well as other areas of the building deemed necessary by the Real Estate Contracting Officer;
- c. Inspect the premises for leaks, spills, or other potentially hazardous conditions, which may involve tenant exposure to hazardous or toxic substances (e.g. polychlorinated biphenyls); and
- d. Inspect the site upon which the space is offered for any current or past hazardous waste operations, and ensure that appropriate mitigating actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State, and local regulations.

## **19. SUBLETTING AND ASSIGNMENT**

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

## **20. FAILURE IN PERFORMANCE**

The covenant to pay rent and the covenant to provide any service, utility, maintenance, replacement or repair required under this lease are interdependent. In the event of failure by the Lessor to provide any of these items, at the Government's option, the Government may:

- a. relocate the occupants assigned to the leased unit, at the expense of the Lessor;
- b. perform the service, maintenance, utility, replacement, or repair by contract or otherwise, and charge Lessor any cost incurred by the Government related to the performance of such service, maintenance, utility, or repair including any administrative costs, and deduct such cost from any rental payments. 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 building, access to which is necessary to perform any such requirement, and the Lessor shall provide and facilitate such access. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease;
- c. reduce rental payments by the corresponding value of the lease requirement not performed, as determined by the Real Estate Real Estate Contracting Officer;
- d. terminate the lease agreement by written notice to the Lessor.

These remedies are not exclusive and are in addition to any other remedies, which may be available under this contract or in the law.

## 21. DISPUTES

- a. This lease contract is subject to the Contract Disputes Act of 1978 (41 USC 7101-7109) (the Act).
- b. Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.
- c. "Claim," as used in this clause, means a written demand or written assertion by the Lessor or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. 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 as required by subparagraph (d) below. 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. A claim by the Lessor shall be made in writing and submitted to the Real Estate Real Estate Contracting Officer for a written decision within 6 years after the claim arises. A claim by the Government against the Lessor shall be subject to a written decision by the Real Estate Real Estate Contracting Officer.
  - (1) The Lessor shall provide the certification specified in subparagraph d (3) of this clause when submitting any claim--
    - i. Exceeding \$100,000; or
    - ii. Regardless of the amount claimed, when using--
      - 1. Arbitration conducted pursuant to 5 U.S.C. 575-580; or
      - 2. Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
  - (2) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
  - (3) 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 reflects 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."

- (4) 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 Real Estate Real Estate Contracting Officer 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 Real Estate Real Estate Contracting Officer must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.
- f. The Real Estate Real Estate Contracting Officer's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.
- g. At the time a claim by the Lessor is submitted to the Real Estate Real Estate Contracting Officer or a claim by the Government is presented to the Lessor, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph d (3) of this clause, and executed in accordance with subparagraph d (4) of this clause.
- h. The Government shall pay interest on the amount found due and unpaid by the Government from:
  - (1) The date the Real Estate Real Estate Contracting Officer receives the claim (property certified, if required); or
  - (2) The date 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 Real Estate Real Estate Contracting Officer 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 Real Estate Real Estate Contracting Officer 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 the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the Real Estate Real Estate Contracting Officer.

## **22. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL**

- a. This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.
- b. The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.

- c. The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, paper, or other records involving transaction related to the subcontract. "Subcontract," as used in this clause, excludes:
  - (1) Purchase orders not exceeding \$10,000; and
  - (2) Subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- d. The periods of access and examination in paragraphs (b) and (c) above for records relating to:
  - (1) Appeals under the Disputes clause;
  - (2) Litigation or settlement of claims arising from the performance of this contract: or
  - (3) Costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

## **23. EXAMINATION OF RECORDS BY U.S. NAVY**

The Contractor agrees that the U.S. Navy or any of its duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, paper, and records of the Contractor involving transactions related to this contract or compliance with any clauses there under. The Contractor further agrees to include in all his subcontractors hereunder a provision to the effect that the subcontractor agrees that the Secretary of the Navy or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract or compliance with any clauses there under. The term "subcontract" as used in this clause exclude (a) purchase orders not exceeding \$10,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

## **24. GRATUITIES**

- a. The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative:

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- b. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- c. If this contract is terminated under paragraph (a) above, the Government is entitled:
  - (1) To pursue the same remedies as in a breach of the contract; and
  - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee.
- d. 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 contract.

## **25. COVENANT AGAINST CONTINGENT FEES**

- a. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the rental-price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this lease, may be considered as bona fide employees or agencies within the exception contained in this clause.)
- b. "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.
- c. "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.

- d. "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.
- e. "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.

## **26. ASSIGNMENT OF CLAIMS**

- a. The Contractor, under the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 6305 (hereafter referred to as "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 Contractor 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 Real Estate Contracting Officer authorizes such action in writing.

## **27. EQUAL OPPORTUNITY**

- a. Definitions. As used in this clause -

"Compensation" means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

"Compensation information" means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

"Essential job functions" means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if –

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

“Gender identity” has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“Sexual orientation” has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“United States” 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. Applicability:

- (1) 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 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. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices that explain this clause.
- (2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities ( 41 CFR 60-1.5).

c. During performance of this contract, the contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:
  - i. Employment;
  - ii. Upgrading;
  - 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 Real Estate 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, sexual orientation, gender identity, or national origin.
- 5.
- i. The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
  - ii. The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by
    - 1. Incorporation into existing employee manuals or handbooks; and
    - 2. Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

6. 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 Real Estate 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.
7. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
8. 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.
9. 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.
10. 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.
11. The Contractor shall include the terms and conditions 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.
12. The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCC 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.

- d. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1

## **28. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

- a. Definitions. As used in this contract –

"HUBZone small business concern" means a small business concern, certified by the Small Business Administration that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern" -

- (1) Means a small business concern –

- i. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- ii. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

- (2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that-

- (1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-
  - i. One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

- ii. Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

- (2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1) (i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern –

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern –

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- b. It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
  - c. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

d. Representations.

- (1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.
- (2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if –
  - i. The subcontractor is registered in SAM; and
  - ii. The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.
- (3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.
- (4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.
- (5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
  - i. HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;
  - ii. In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
  - iii. The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

**29. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES**

- a. "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the

business. "Control," as used in this clause, means exercising the power to make policy decisions. "Operate," as used in this clause, means being actively involved in the day-to-day management of the business. "Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

- b. It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.
- c. The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontract it awards to the fullest extent consistent with the efficient performance of its contract.
- d. The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

### **30. EQUAL OPPORTUNITY FOR VETERANS**

- a. Definitions: "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.
- b. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.
- c. Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **31. EMPLOYMENT REPORTS ON VETERANS**

- a. Definitions as used in this clause –  
  
"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.
- b. Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on –

- (1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);
  - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and
  - (3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.
- c. The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).
  - d. The Contractor shall file VETS-4212 Reports no later than September 30 of each year.
  - e. The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date –
    - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
    - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
  - f. The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veteran's status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.
  - g. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

### **32. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES**

- a. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

- b. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **33. ANTI-KICKBACK PROCEDURES**

- 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.

- b. The Anti-Kickback Act of 1986 (41 U.S.C. chapter 87) (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. The Contractor agrees as follows:
- (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) Regardless of the contract tier at which a kickback was provided, accepted, or charged under the contract in violation of paragraph (b) of this clause, the Real Estate Contracting Officer may:
    - i. Offset the amount of the kickback against any monies owed by the United States under this contract; and/or
    - ii. Direct that the Contractor withhold from sums owed the subcontractor, the amount of the kickback. The Real Estate 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 the latter case, the Contractor shall notify the Real Estate Contracting Officer when the monies are withheld.
  - (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

#### **34. NOTIFICATION OF PCB HAZARDOUS CONDITION**

The Lessor shall promptly notify the Real Estate Contracting Officer and the tenant agency official of any leaks, spills, or other hazardous conditions, which involve polychlorinated biphenyls in any area of the building.

#### **35. CRIMES, DEBARMENTS, SUSPENSIONS, AND DEFAULTS**

By signature on this lease, the Lessor certifies that he (and, if Lessor is a corporation, its officers) and principal employees have not been indicted or convicted, within the last three years, of: a criminal offense incident to obtaining, trying to obtain, or performing a contract; a violation of the Organized Crime Control Act of 1970; a violation of Federal or State Antitrust statutes; embezzlement, theft, forgery, bribery, falsification or destruction of records, tax fraud or receiving stolen property. By signature on this lease, the Lessor further certifies that he (and, if Lessor is a corporation, its officers) has not been debarred or suspended from the award of public contracts nor has had a public contract terminated for default. This certification is a material representation of fact upon which the Government relies. If it is later determined that the certification was erroneous, in addition to other remedies available to the Government, the Government reserves the right to terminate for default.

The Lessor agrees to notify the Real Estate Contracting Officer, in writing, of any change to the certification.

The knowledge of the person who executes this lease is not required to exceed the knowledge, which that person can reasonably be expected to possess.

#### **36. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

a. Definition. "Commercially available off-the-shelf (COTS) item," as used in this clause:

(1) Means any item of supply (including construction material) that is -

- i. A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
- ii. Sold in substantial quantities in the commercial marketplace; and
- iii. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

b. The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

- c. The Contractor shall require each proposed subcontractor whose subcontract will exceed \$35,000, other than a subcontractor providing a commercially available off-the-shelf item, 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.
- d. A corporate officer or a designee of the Contractor shall notify the Real Estate Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:
  - (1) The name of the subcontractor.
  - (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
  - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
  - (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.
- e. Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that –
  - (1) Exceed \$35,000 in value; and
  - (2) Is not a subcontract for commercially available off-the-shelf items.

### **37. STATEMENT OF LEASE**

- a. The Real Estate Contracting Officer will, within forty-five (45) days next following the Real Estate 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 Real Estate 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 Real Estate Real Estate Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and
  - (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 pre-purchase and pre-commitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.
- c. The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns

### **38. WARRANTY OF SPACE**

- a. Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Lessor warrants that all space leased to the Government under this contract, spaces above suspended ceilings in the leased space, air plenums elsewhere in the building which service the leased space, engineering spaces in the same ventilation zone as the leased space, public spaces and common use space (e.g., lobbies, hallways) will, at the time of acceptance and during the term of the lease contract, comply with the asbestos requirements of this contract. The Real Estate Contracting Officer shall notify the Lessor in writing, within 30 days after the discovery, of any failure to comply with the asbestos requirements.
- b. If the Lessor fails, after receipt of notice, to make correction within the specified period of time, the Government shall have the right to make correction and charge to the Lessor the costs occasioned to the Government or terminate the lease agreement at no cost of the Government.
- c. The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law and under this contract.
- d. Definitions
  - (1) "Acceptance", as used in this clause means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, the leased premises as ready for occupancy or approves a portion of the premises for occupancy in accordance with the provisions of this lease contract.
  - (2) "Correction", as used in this clause, means:
    - i. The removal, encapsulation or enclosure of any friable asbestos materials found in the space leased to the Government, spaces above suspended ceilings in the leased space, air plenums elsewhere in the building which service the leased space, public

spaces, engineering spaces in the same ventilation zone as the leased space and common use space (e.g., lobbies, hallways). Following such abatement actions, the Lessor shall adhere to the Government's required post-asbestos-abatement air monitoring program; and

- ii. With regard to non-friable asbestos materials in good condition, it means the establishment and execution of a special operations and maintenance program and an abatement plan, approved by the Government, to be implemented from the time the materials are discovered through the remainder of the lease term.

### **39. TERMINATION - ERRONEOUS REPRESENTATION CONCERNING POLYCHLORINATED BIPHENYLS (PCBs) AND/OR HAZARDOUS WASTE MANAGEMENT**

- a. The certification regarding PCBs contained in the representation and certification provision of the Lessor's offer is a material representation of fact upon which the Government relies when making award. If it is later determined that the presence of PCBs has been misrepresented, the Government reserves the right to require the Lessor, at no cost to the Government, to remove or retrofit any PCB equipment present in the building, in accordance with EPA regulations, or alternatively the Government may terminate the lease. This is in addition to other remedies available to the Government.
- b. The certification regarding hazardous waste management contained in the representation and certification provision of the Lessor's offer is a material representation of fact upon which the Government relies when making award. If it is later determined that the presence of hazardous waste, or inappropriate handling thereof, has been misrepresented, the Government reserves the right to require the Lessor, at no cost to the Government, to take the necessary action to mitigate the hazardous waste condition, in accordance with local, state and Federal laws, or alternatively the Government may terminate the lease. This is in addition to other remedies available to the Government.

### **40. DRUG-FREE WORKPLACE**

- a. Definitions as used in this clause –

"Controlled substance" means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statutes" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. Directly engaged is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

- b. The Contractor, if other than an individual, shall within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible, for contracts of less than 30 calendar days performance duration:
  - (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - (2) Establish an ongoing drug-free awareness program to inform such employees about:
    - i. The dangers of drug abuse in the workplace;
    - ii. The contractor's policy of maintaining drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the contract with a copy of a statement required by subparagraph (b)(1) of this clause;
  - (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause, that as a condition of continued employment on this contract, the employee will:
    - i. Abide by the terms of the statement; and
    - ii. Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

- (5) Notify the Real Estate Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace;
  - i. Taking appropriate personnel action against such employee, up to and including termination; or
  - ii. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health law enforcement, or other appropriate agency;
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraph (b)(1) through (b)(6) of this clause.
- c. The Contractor, if an individual agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful, manufacture, distribution, dispensing, possession, or sale of a controlled substance in the performance of this contract.
- d. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs b or c of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

#### **41. PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY**

- a. If the agency head or designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the Federal Acquisition Regulation, the government, at its election, may:
  - (1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;
  - (2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or
  - (3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

- b. Prior to making a determination as set forth above, the agency head or designee shall provide to the Lessor a written notice of the action being considered and the basis therefore. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.
- c. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

#### **42. DISPLAY ADVERTISING**

No advertising matter shall be constructed on or over the premises, unless authorized by the Real Estate Real Estate Contracting Officer.

#### **43. HOUSING NON-DISCRIMINATION**

It is understood and agreed that the Government will assign the demised premises to military personnel, in accordance with Executive Order No. 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed or national origin.

#### **44. MOVEMENT FOR CONVENIENCE OF LESSOR**

In the event a dwelling unit leased by the Government becomes uninhabitable through no fault of the Government, and the occupant(s) are moved for the convenience of the Lessor to a comparable unit subject to Government approval, the Lessor will fully reimburse any costs incurred by the occupant(s) resulting from performance of the move such as cable, utilities, telephone and other similar fees and charges.

#### **45. PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT**

- a. Method of payment.
  - (1) All payments by the Government under this contract, shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
  - (2) In the event the Government is unable to release one or more payments by EFT, the Lessor agrees to either--
    - i. Accept payment by check or some other mutually agreeable method of payment;
    - or

- ii. Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- b. Lessor's EFT information. The Government shall make payment to the Lessor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Lessor shall be responsible for providing the updated information to the SAM database.
- c. Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.
- d. Suspension of payment. If the Lessor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Lessor under this contract until correct EFT information is entered into the SAM database; and any invoice or lease financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this lease. The prompt payment terms of the lease regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- e. Lessor EFT arrangements. If the Lessor has identified multiple payment receiving points (i.e. more than one remittance address and/or EFT information set) in the SAM database, and the Lessor has not notified the Government of the payment receiving point applicable to this lease, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) Listed in the SAM database.
- f. Liability for uncompleted or erroneous transfers.
  - (1) If an uncompleted or erroneous transfer occurs because the Government used the Lessor's EFT information incorrectly, the Government remains responsible for--
    - i. Making a correct payment;
    - ii. Paying any prompt payment penalty due; and
    - iii. Recovering any erroneously directed funds.
  - (2) If an uncompleted or erroneous transfer occurs because the Lessor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and:
    - i. If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Lessor is responsible for recovery of any erroneously directed funds; or

- ii. If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- g. EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this lease if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- h. EFT and assignment of claims. If the Lessor assigns the proceeds of this lease as provided for in the assignment of claims terms of this lease, the Lessor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this lease, payment to an ultimate recipient other than the Lessor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Lessor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- i. Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Lessor's financial agent.
- j. Payment information. The payment or disbursing office shall forward to the Lessor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Lessor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM database.

#### **46. SYSTEM FOR AWARD MANAGEMENT MAINTENANCE**

- a. Definitions. As used in this clause -

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see FAR subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM) database," means that--

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see FAR subpart 4.14) into the SAM database;
- (2) The Offeror has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record “Active.”

“System for Award Management” (SAM) means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes –

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

- b. The Offeror shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Offeror is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Offeror is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- c. The offeror hereby agrees as follows:
  - (1) Change in business name.
    - i. If an Offeror has legally [changed](#) its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [subpart 42.12](#), the

Offeror shall provide the responsible Real Estate Contracting Officer a minimum of one business day's written notification of its intention to –

1. Change the name SAM;
  2. Comply with the requirements of subpart 42.12 of the FAR; and
  3. Agree in writing to the timeline and procedures specified by the responsible Real Estate Contracting Officer. The Offeror shall provide with the notification sufficient documentation to support the legally changed name.
- ii. If the Contractor fails to comply with the requirements of paragraph c(1)(i) of this clause, or fails to perform the agreement at paragraph c(1)(i)(3) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.
- (2) The Offeror shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in SAM. Information provided to the Offeror's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Offeror will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.
- (3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Real Estate Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.
- d. Offerors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

#### **47. PROHIBITION OF SEGREGATED FACILITIES**

- a. Definitions. As used in this clause

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“Segregated facilities,” 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, sexual orientation, gender identity, 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.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

- 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.

#### **48. NO WAIVER**

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.

#### **49. SUCCESSORS BOUND**

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