

**GENERAL CLAUSES
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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.

2. ADMINISTRATION – Notices to the Government shall be sent to the Following:

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

Naval Facilities Engineering Command, Southwest
ATTN: Tanya Spent, Code JV10.TS
1220 Pacific Highway, Bldg. 128
San Diego, California 92132
Telephone: (619) 532-2464

- b. The Primary Representative of the Government:
- c. The Local Representative of the Government:

3. PAYMENT DUE

The initial monthly rental payment under this contract 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 1801) 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 for each year of this lease or any renewal thereof, by the Congress of the United States.

7. LESSOR RENTAL COVENANT

Lessor expressly covenants that the rental stipulated in Article No. 3 and 5 of this lease constitutes the entire consideration for the lease and that the Lessor has not and will 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

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.

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. FORCE PROTECTION REQUIREMENTS

Facility shall meet Anti-Terrorism/Force Protection ("ATFP") codes as specified in "Physical Requirements for Child Care Center," prior to building occupancy.

11. 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 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.

12. CONDITION REPORT

A joint physical survey and inspection report of the demised premises will be made as of the effective date of this lease, and at the termination of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto. It is mandatory that a Lessor Representative and both Government Representatives be present at both scheduled inspections.

The Government will 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.

13. 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 Exhibits "B" and "C", 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 authorized Government local (FFSP) representative in charge, 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 No. 21 of this Lease.

Following the inspection made as of the effective date of this lease, the Lessor hereby agrees, upon request of the Government, to replace and/or repair any damaged items not considered normal wear and tear. If the Government requests such replacement or repair of any items, the Government shall reimburse the Lessor for each item, at a mutually agreed upon amount, but at no time shall the rate exceed the actual costs to the Lessor. All such costs shall be subject to availability of funds appropriated for that purpose. The Lessor agrees to replace 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.

14. INSPECTION UPON SURRENDER OF THE LEASED PREMISES

It is understood and agreed herein that the Government has the right to terminate all or part of this lease, and all rental stops on the effective date of such termination. Upon receipt of a termination notice, or during the final month of this lease Lessor is required to:

- a) Pre-inspect the space after tenant has vacated and schedule with the Government's Real Estate point of contact a joint inspection as required under Clause No. 12, so as to document the actual condition of the vacated space, and determine whether there exist any claims for damages beyond normal wear and tear. **NOTE: DO NOT** make any repairs, changes, or modifications to a unit before the Government documents the condition of the premises in a joint inspection with the FFSP and Lessor Representative;
- b) Submit all damage claims, at the fair/depreciated value, provide proof of payment and pertinent supporting documentation (cleaning expenses, repairs, carpet replacement, or excessive removal of abandoned belongings), to the Government's local (FFSP) representative with copy to Real Estate Contracting Officer within 30 days of the joint inspection.

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

15. INTENTIONALLY OMITTED

16. DELIVERY AND CONDITION AND PROGRESSIVE OCCUPANCY

Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. All items identified in Exhibit "C" to this lease are to be ready for use. The Government reserves the right to determine when the space is ready to occupy.

The Government shall pay rent only when the entire space is ready for occupancy. The Government reserves the right to appropriately pro rate or reduce the rent in the event of a partial delivery acceptance or in the event of an identified deficiency under the requirements of Exhibits "B" or "C" to this lease. If the agency occupies the space in partial increments, rent will accrue or be paid on a pro rata basis.

17. TIME EXTENSIONS

The lease will 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 Contracting Officer, in writing, of any delay within 10 calendar days after it begins. The Contracting Officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

18. 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 agreement, 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 sureties shall be liable for any damage to the Government resulting from his failure to deliver the premises ready for occupancy within the specified time.

19. INSPECTION OF PREMISES

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, must be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met.

Periodic review, tests, and inspections by the Government are not to be interpreted as resulting in any approval of the Lessor's apparent progress, but are intended to discover any information, which the Contracting Officer may be able to call to the Lessor's attention to prevent costly misdirection of effort. The Lessor will remain completely responsible for designing, constructing, operating, and maintaining the leased premises in full accordance with the requirements of the solicitation and the resulting 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 Contracting Officer;

c. inspect the premises for any leaks, spills, or other potentially hazardous conditions, which may involve tenant exposure to hazardous or toxic substances (e.g. polychlorinated biphenyls);

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.

20. SUBLETTING THE PREMISES

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.

21. FAILURE IN PERFORMANCE

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. 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 space, at the expense of the Lessor.
- b. By contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance, etc., including any administrative costs, and deduct such cost from any rental payments.
- c. Reduce rental payments by the corresponding value of the contract requirement not performed, as determined by the Contracting Officer.
- d. By written notice to the Lessor, terminate the lease agreement.

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

22. CHANGES

a. The Contracting Officer 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;
- (2) Work or services;
- (3) Amount of space.

b. If any such change causes an increase or decrease in the Lessor's cost of, or the time required for, performance under this contract, whether or not changed by the order, the Contracting Officer shall modify the lease by:

- (1) making an equitable adjustment in the rental rate;
- (2) making a lump sum price adjustment; or
- (3) revising the delivery schedule.

c. If such change causes an increase in costs under this contract, the Lessor shall submit any "proposal for adjustment" (hereafter referred to as proposal) under the clause Proposals for Adjustment.

d. Failure to agree to any adjustment shall be a dispute under the Disputes clause.

e. No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Contracting Officer or a designated representative of the Contracting Officer.

23. PROPOSALS FOR ADJUSTMENT

a. The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

b. If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$25,000. The proposal, including all subcontractor work, will contain at least the following details:

- (1) Material quantities and unit costs;
- (2) Labor costs (identified with specific item or material to be placed or operation to be performed);
- (3) Equipment costs;
- (4) Workmen's compensation and public liability insurance;
- (5) Overhead;
- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

c. The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$100,000 in cost:

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804-2),

(2) The Lessor's representative, all contractors, and subcontractors whose portion of the work exceeds \$100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804-4), and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804-8).

d. Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

e. The following FAR clauses also apply whenever cost or pricing data is required, and have the same effect as if incorporated in this lease in their entirety: 52.215-22 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA and 52.215-22 SUBCONTRACTOR COST OR PRICING DATA.

24. DISPUTES (Jul. 2002)

a. This contract is subject to the Contract Disputes Act of 1978 (41 USC 601-613)(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 Commander, Naval Facilities Engineering Command, Southwest for a written decision. A claim by the Government against the Lessor shall be subject to a written decision by the Commander, Naval Facilities Engineering Command, Southwest.

(1) The Lessor shall provide the certification specified in subparagraph d(3) of this clause when submitting any claim--

(a) Exceeding \$100,000; or

(b) 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 Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest must, within 60 days, decide the claim or notify the Lessor of the date by which the decision will be made.

f. The Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest 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 Commander, Naval Facilities Engineering Command, Southwest.

25. 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.

26. 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.

27. 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.

28. 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.

29. ASSIGNMENT OF CLAIMS

a. The Contractor, under the Assignment of Claims Act, as amended, 31 USC 3727, 41 USC 15 (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 Contracting Officer authorizes such action in writing.

30. EQUAL OPPORTUNITY

a. If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded non-exempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

b. 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, or national origin.

(2) The contractor shall take affirmative action to ensure the 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, (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 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.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation of ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(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, 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 subparagraph (b)(1) 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 agency 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.

31. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

a. It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals 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 system. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amount due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

b. The Contractor hereby agrees to carry out this policy in the awarding of subcontractors 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.

c. As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulation promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans and other minorities, or any other individual found of be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

d. Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

32. 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.

33. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

a. Definitions:

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly establish "recall" lists.

"Opening that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the

Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

“Suitable employment openings,” as used in this clause--

(1) Includes, but is not limited to, openings that occur in jobs categorized as (i) Production and non-production; (ii) Plant and office; (iii) Laborers and mechanics; (iv) Supervisory and non-supervisory; (v) Technical; and (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and--

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

b. General:

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam era veterans without discrimination based upon their disability or veterans' status in all employment practices such as-- (i) Employment; (ii) Upgrading; (iii) Demotion or transfer; (iv) Recruitment; (v) Advertising; (vi) Layoff or termination; (vii) Rates of pay or other forms of compensation; and (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans Readjustment Assistance Act of 1972 (the Act), as amended.

c. Listing Openings

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non- veterans. This listing 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 employment service system, 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 system, it need not

advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(4) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to National security, or (iii) the requirement of listing would not be in the Government's interest.

d. Applicability

The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

e. 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 special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and 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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam era Veterans.

f. Noncompliance

If the Contractor does not comply with the requirements of this clause, appropriate action may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

g. Subcontracts

The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

34. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

a. The contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

b. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment report VETS-100." Computer-generated forms are acceptable, provided that all required information and data are presented in the same format as the VETS-100 form.

c. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

d. The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

e. The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a Contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a Contractor from liability for discrimination under 38 U.S.C. 2012.

f. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

35. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

(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 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 for noncompliance.

36. ANTI-KICKBACK PROCEDURES

a. Definitions

(1) "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.

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

(3) "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.

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

(5) "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.

(6) "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. 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 full 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 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 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 Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this Subparagraph c(5), in all subcontracts under this contract.

37. NOTIFICATION OF PCB HAZARDOUS CONDITION

The Lessor shall promptly notify the 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.

38. 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 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.

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

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

proposed for debarment (see FAR 9.404 for information on the list of Parties Excluded from Procurement Programs), a corporate officer or designee of the Contractor shall notify the Contracting Officer, in writing, before entering into such subcontract. The notice must include the following:

- (1) The name of the subcontractor;
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the list of the Parties Excluded from Procurement Programs;
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and
- (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.

40. LESSOR'S SUCCESSORS

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

41. 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 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. (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.

42. 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 this solicitation 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 this solicitation 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.

43. DRUG-FREE WORKPLACE

a. Definitions

(1) 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.

(2) "Conviction" means a finding of guilt (including a pleas 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.

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

(4) "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.

(5) "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.

(6) "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 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.

44. REMEDIES 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.

45. DISPLAY ADVERTISING

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

46. INTENTIONALLY OMITTED

47. MOVEMENT FOR CONVENIENCE OF LESSOR

In the event the space 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 space 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.

48. FAR 52.232-33 - PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT (Jul. 2013)

(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 Contractor 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) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor 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 Contractor's EFT information in the SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request

shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor'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 Contractor'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 Contractor 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.

(f) *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 contract 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.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor 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 contract, payment to an ultimate recipient other than the Contractor, 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 Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, 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.

(h) *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 Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor 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 Contractor 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.

49. DFARS 252.204-7004 ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (Feb. 2014)

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

“System for Award Management (SAM) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Commercial and Government Entity (CAGE) code” means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, and Contractor and Government Entity (CAGE) code into the SAM database; and

(2) The contractor has completed the Core Data, 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 Contractor will be required to provide consent for TIN validation to the Government as part of the SAM registration process; and

(4) The Government has marked the record “Active.”