

## **Real Estate Guidance - (7/2014)**

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[1.2 Land Clause Matrix](#) Revised 4/2014

[1.2.1 Outgrant Clause Matrix](#) Revised 4/2012

[1.2.2 Easement Clause Matrix](#) Added 4/2013

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## 1.2 Land Clause Matrix Revised 4/2014

### Legend:

**Mandatory (M)** – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	ON AIRPORT	OFF AIRPORT	MEMORANDUM OF AGREEMENT (MOA)	PRESCRIPTION
Anti-Kickback	Oct-96	M	M	M	Insert in all leases IAW 41 U.S.C. 51-58. In the MOA incorporated by reference.
Assignment of Claims	Oct-96	N/A	R	N/A	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Cancellation	Aug-02	M	M	M	Insert in all leases and MOAs to preserve the Governments rights to terminate for our convenience. In the MOA this clause is inserted in the Terms and Condition clause.

Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property	Jan-13	M	M	N/A	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note: If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause
Certification of Registration in System for Award Management (SAM)	Jan-13	M	M	N/A	Required on all cost contracts, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Contractor Payment Information – Non-SAM	Jan-13	M*	M*	N/A	*Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Consideration (Cost)	Aug-02	M	M	N/A	Insert in all leases where we pay money for a lease term. This clause is required by the basic contracting principle that all leases must have clearly defined consideration. The dollar amount represents only the firm term portion of this lease.

Consideration (No Cost)	Aug-02	M	M	M	Insert in all leases where we do not pay money for a lease term or for MOAs. This clause is required by the basic contracting principle that all leases must have clearly defined consideration.
Contract Disputes	Nov-03	M	M	N/A	Insert in all leases to establish the FAA

					regulations regarding Protests and Disputes under the AMS.
Covenant Against Contingent Fees	Oct-96	M	M	M	Insert in all leases IAW 41 USC 254. For MOA incorporated by reference.
Day-to-Day Lease Extension	Aug-02	O	O	N/A	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a lease where cost is the consideration or part of the consideration, the total term of the lease, <u>including the total NTE days included in this clause</u> must not exceed the twenty year FAA leasing authority (49 USC 40110). No cost leases can be executed for the expected life of the system supported by the land lease.
Examination of Records	Aug-02	M	M	M	Insert in all leases.
FAA Facilities	Oct-05	N/A	N/A	M	This clause must be inserted in all MOAs. It references the most recent Airport Layout Plan (ALP) and defines the list of facilities placed under this agreement.
Funding Responsibility For Government Facilities	Oct-96	M	N/A	M	This clause must be inserted in all on airport leases. It ensures that the sponsor will pay for the relocation, replacement and/or modification of Government equipment unless the change is specifically requested in writing by the Government.
Hazardous Substance	May-00	M*	N/A	M	Insert in all <b>on airport</b> leases and MOAs. This

Contamination					clause requires the lessor to hold the Government harmless for environmental contamination found in the property that is not associated with Government activity. Having this clause may allow the requiring office to waive the requirement to conduct an environmental due diligence audit (EDDA) prior to the property transaction (see FAA Order 1050.19B). If the lessor does not agree to this clause, an approved EDDA (or EDDA waiver) must be obtained prior to the real estate transaction.
Interest For Late Payments	Aug-02	N/A	O	N/A	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the lessor when negotiating an off airport lease. Since airports have an inherent benefit from installed FAA equipment, an added incentive is not needed for on airport leases.
Interference with Government Operations	Oct-96	M	N/A	M	Insert in all <u>on airport</u> leases and MOAs. This clause ensures that the sponsor will conform to the approved airport layout Plan (ALP). The clause does not relieve the RECO of the requirement to obtain real property rights for the technical clear zone.
Lease Succession	Aug-02	M	M	M	Insert in follow-on contracts to track

					continuity of data.
Non-Restoration	Oct-96	M	M	M	<p>Insert in all leases in order to make the Government's intention of not restoring the premises and abandoning the equipment. This clause is needed to clearly convey the Governments intentions and the agreement between the parties upon termination or expiration of the lease. It is the policy of the FAA not to restore.</p> <p>This clause is mandatory for a MOA; however the RECO can remain silent on this clause if the airport sponsor will agree.</p>
Notification of Change in Land Title	Aug-02	M	M	N/A	Insert in all leases. This clause protects the lease rights of the Government in case of change in ownership of the property.
Notices	Oct-96	M	M	M	Insert in all leases and MOAs. This information is needed for contract administration; all contractual communication should be done through these contacts. A change in this information requires a contract modification.
Officials Not to Benefit	Oct-96	M	M	M	Insert in all leases IAW 41 U.S.C. 22
Payment by Electronic Fund Transfer	Jan-13	M	M	N/A	Insert in all "cost" leases IAW 31 U.S.C. 333.
Premises	Aug-02	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle that all leases must clearly define the leased premises. This should

					include a description of the leased air rights.
Purpose	Oct-05	N/A	N/A	M	Insert in all MOAs to define the FAA air traffic activities with airport sponsor.
Protest	Nov-03	M	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Quiet Enjoyment	Oct-96	M	M	N/A	Insert in all leases. This clause is required by the basic contracting principle to protect the FAA's full rights to the property.
Renewal Options	Jul-07	M	M	N/A	Insert in all leases that have Options in order to comply with basic contracting principle that all options must be clearly defined. RECO can modify the clause to reflect the correct number of lease options. NOTE: This clause requires the RECO to provide the lessor 60 days notice of the Government's intent to exercise the option or its intent to vacate the premises at the end of the current lease term. It also requires the RECO to send the lessor written documentation of the option exercise; it is our policy that a contract modification would be issued to document that the option has been exercised.
Restoration Clause – Alternate A	Jan-07	O	N/A	O	This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on

					a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Restoration Clause – Alternate B	Jan-07	N/A	O	N/A	This is an alternate restoration clause to be used for Off-Airport leases. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Signature Block	Aug-02	M	M	M	Insert in all leases and MOAs in order to comply with the basic contracting principle that all leases must be signed by authorized parties to the agreement. This clause must be modified to comply with recording requirements of the local jurisdiction, i.e. the local recording office may require the signature to be notarized.
Subordination, Nondisturbance and Attornment	Jan-14	M	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management - Real Property	Jan-13	M	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management

					(SAM)".
Term	Aug-02	M	M	M	<p>Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term.</p> <p>1. <u>This clause is used in all firm term leases that will be incrementally funded; this is the preferred type of lease.</u> 2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is <u>only</u> the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, <u>may not exceed 20 years</u> (including all option periods and the Day-to-Day Lease Extension period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for On-Airport is a no cost lease.</p> <p>Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.</p>
Title to Improvements	Oct-05	N/A	N/A	M	Insert in all MOAs to define title to improvements.
FORMS List of Facilities	Oct-05	N/A	N/A	M	Any modifications or additions to this list must be signed by the lessor and the FAA.

**1.2.1 Outgrant Clause Matrix** Revised 4/2012

<b>CLAUSE TITLE</b>	<b>DATE OF CLAUSE</b>	<b>OUTGRANT LICENSE for Non-Feds</b>	<b>OUTGRANT PERMIT for FEDS</b>	<b>PRESCRIPTION</b>
Anti-Kickback	Jan-07	M	O	Insert in all Outgrant License.
Assignment of Outgrant	Jan-07		M	The Outgrant Permit is not assignable to a third party.
Breach of Contract (Otherwise known as Cancellation)	Jan-07	M	M	The Outgrant Permit can be terminated or cancelled by the FAA.
Consideration (Cost)	Jan-07	M	M	Insert in all outgrants where “fee for use” is received. If outgrant (license or permit) need to put reimbursable number in parenthesis.
Consideration (No Cost)	Jan-07	M	M	Insert in all outgrants where we do receive “fee for use”.
Compliance	Jan-07	M	O	For clauses A5 and B1 in Outgrant License, licensee is required to comply with all conditions or restrictions.
Covenant Against Contingent Fees	Jan-07	M	O	Insert in all Outgrant License.
Damage	Jan-07	M	M	No FAA property shall be damaged by the outgrant licensee or permittee.
Environmental Liability (Permit) or (License)	Apr-12	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit. In the past, FAA has been held financially responsible for environmental clean-up of sites due to the deliberate acts of Permittees/Licensees on FAA controlled property. Consequently, FAA has determined that it is in the best interests of the Agency to require inclusion of this clause.
Governing Law	Jan-07	M	M	The Outgrant License and Permit shall be governed by Federal Law.
Indemnification	Jan-07	M	O	Outgrant Licensee and Permittee agrees to hold harmless the FAA, its officers, agents and employees.
Interference with Government	Jan-07	M	M	This clause in Outgrant License is referred to “common impact to a FAA facility” (clause A6) and clause #4 for

Operations				Outgrant Permit.
Laws and Ordinances	Jan-07	M	O	In the Outgrant License, the licensee shall comply with all applicable State, municipal and local laws, and the rules, orders, regulations and requirements of Federal governmental departments and bureaus.
Hazardous Substances (Permit) or (License)	Apr-12	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit.
Maintenance	Jan-07	M	M	The Outgrant License and Permit, the licensee and permittee is required to maintain the demised premises and shall schedule with the government representative any proposed installation or maintenance.
Notices	Jan-07	M	M	Insert in all outgrants. This information is needed for contract administration; all contractual communication should be done through these contacts. Changes in this information require a contract modification.
Officials Not to Benefit	Jan-07	M	O	Insert in all outgrant license.
Operations	Jan-07	M	M	The outgrant licensee and permittee shall confine activities or construction to the facility stated in the outgrant as stated in the license and permit.
Premises	Jan-07	M	M	In Outgrant License and Permit known as description of premises.
Purpose	Jan-07	M	M	Insert in all outgrants to define the FAA asset.
Contract Disputes	Jan-07	M	M	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Restoration – Outgrant	Jan-07	M	O	Required for all Outgrant Licenses, the licensee shall restore the demised premises.
Security of Premises	Jan-07	M	M	In the Outgrant License and Permit, the licensee and the permittee is required to provide adequate security for the demised premises (clause A8).
Signature Block	Jan-07	M	M	All outgrants must be signed by authorized parties to the agreement.

Term	Jan-07	M	M	All outgrants must have a clearly defined term.
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### 1.2.2 Easement Clause Matrix Added 4/2013

#### Legend:

**Mandatory (M)** – When applicable these clauses shall be included in agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

**Recommended (R)** – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

**Optional (O)** – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	PERPETUAL EASEMENT	RESTRICTIVE AERIAL EASEMENT	PRESCRIPTION
Binding Effect	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Cancellation	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Clauses by Reference	Jul-12	M	M	Insert in all easements.
Compatible Uses by Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Consideration	Jul-12	M	M	Insert in all easements. The RECO must check the box of the consideration clause that applies to the lease and delete the other non-applicable clause.
Certificate of Acknowledgement w/Notary	Jul-12	M	M	Insert in all easements.
Deed of Easement	Jul-12	M	M	Insert in all easements. Referred to as “Restrictive Aerial Easement

				Agreement” for restrictive aerial easements.
Disputes	Jul-12	M	M	Insert in all easements.
Drawings	Jul-12	M	M	Insert in all easements.
Duties & Obligations of the Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Easement Property	Jul-12	M	M	Insert in all easements. Included in the “Description of the Easement Area” clause in the Perpetual Easement.
Easement Purpose	Jul-12	M	M	Insert in all easements. Referred to as “Purpose(s)” in the perpetual easement.
General Provisions	Jul-12	M	N/A	Insert in all perpetual easements.
Grant of Easement	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Holdover	Jul-12	M	M	Insert in all easements.
Legal Authorities	Jul-12	M	M	Insert in all easements.
Notices	Jul-12	M	M	Insert in all easements.
Rights of the Government	Jul-12	M	N/A	Insert in all perpetual easements.
Rights of the Government and Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Rights Reserved in the Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Scope of Easement	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Signature Blocks	Jul-12	M	M	Insert in all easements.
Term of Easement	Jul-12	M	M	Insert in all easements.
Witnesseth	Jul-12	M	M	Insert in all easements.