**INSTRUCTIONS FOR USING THE RESTRICTIVE AERIAL EASEMENT TEMPLATE**

This template is designed to guide you through drafting a Real Estate Contract for a restrictive aerial easement only. If your project is for land rights/access road, you should use a land lease. If your project is for perpetual easement rights, use the perpetual easement.

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| **This document includes the following formatting elements:**  All instructions for creating these documents are typed in blue hidden text. You should create the documents with the hidden text showing, **it will not print.** Click on File > Print to see a preview of the document WITHOUT the hidden text.  The following formatting elements are found within this template:  BLUE HIDDEN TEXT- INSTRUCTIONS TO AUTHOR(S)  RED TEXT- FILL IN FOR YOUR ACTION | **How to turn hidden text on:**  Click on the File Tab  Click on Options  Click on Display  Under “Always show these formatting marks on the screen”- make sure the box for “Hidden Text” is checked.  Click OK |

An easement is considered a contract for the acquisition of real property. For purposes of this document, the term grantor is interchangeable with contractor and easement is interchangeable with contract.

The template assumes the contractor owns the property. However, if there are any unusual site-control issues, such as subleases, ground leases, etc., please consult with Real Estate Contracting Division subject matter experts and/or legal counsel, as needed.

All clauses are listed in their AMS approved form as of the date of publication in the footer. If you require specific changes to a clause, legal coordination is required as described in AMS Policy 3.13.2.1. Similarly, if you cannot find a template that meets your specific scenario, please consult with Real Estate Contracting Division subject matter experts and/or legal counsel as needed.

**PLEASE CHANGE ALL FONT TO BLACK AND DELETE THESE INSTRUCTIONS PRIOR TO SENDING THE CONTRACT FOR EXECUTION.**

**RESTRICTIVE AERIAL EASEMENT**

**Between**

**THE UNITED STATES OF AMERICA**

**DEPARTMENT OF TRANSPORTATION**

**FEDERAL AVIATION ADMINISTRATION**

**And**

**[INSERT CONTRACTOR NAME]**

**FAA CONTRACT NO: [XXXXX-XX-X-XXXXX]**

**ATID/FACILITY TYPE: [INSERT ATID AND FACILITY NAME/ABBREVIATION]**

**LOCATION: [CITY/STATE]**

1. **Preamble (09/2021) 6.1.1** *Insert in all real estate contracts. Edit fill-ins based on contract type.* This Choose an item. for real property is hereby entered into by and between <Insert Other Party's Legal Name>, hereinafter referred to as the Choose an item. and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the FAA.
2. **Definitions (09/2021) 6.1.1-1** *Insert in all real estate contracts except outgrants and standard space leases.* For purposes of this document, the following definitions apply;  
     
   Contract- refers to this legal instrument used to acquire an interest in real property for the direct benefit or use by the FAA. As used herein, contract denotes the document (for example- lease, easement, memorandum of agreement, or other legally binding agreement) used to implement an agreement between a customer (buyer) and a seller (supplier).   
     
   Contractor- refers to the party(ies) receiving a direct procurement contract from the FAA and who is(are) responsible for performance of contract requirements. For purposes of this document, the contractor may also be called the Lessor, Permittor, Licensor, Grantor, Airport, or Offeror depending on the type of contract or the provision within the contract.   
     
   Government- refers to the United States of America acting by and through the Federal Aviation Administration (FAA). For purposes of this document, Government and FAA are interchangeable.  
     
   Real Estate Contracting Officer (RECO) - is a trained and warranted official who contracts for real property on behalf of the FAA. For purposes of this agreement, RECO is interchangeable with Contracting Officer (CO).

**[INSTRUCTIONS TO RECO: CHOOSE THE APPROPRIATE CLAUSE(S) FOR YOUR SCENARIO AND DELETE THE OTHER OR BOTH IF NOT APPLICABLE]**

1. **Succeeding Contract (09/2021) 6.1.2** *Insert in all contracts when the contract immediately follows an expiring contract or follows an expired contract in holdover status.* This contract succeeds <Insert Contract No. XXXXX-XX-X-XXXXX> and all other previous agreements between the parties for the property described in this document.
2. **Superseding Contract (09/2021) 6.1.2-1** *Insert in all contracts when the contract supersedes an existing contract, prior to the scheduled expiration of the existing contract term.* This contract supersedes <Insert Contract No. XXXXX-XX-X-XXXXX> and all other previous agreements between the parties for the property described in this document.
3. **Witnesseth (Easement) (09/2021) 6.1.3-4** *Insert in all easements.* Purpose(s): The purpose(s) of this Easement is (are) as follows: <insert purpose(s)>  
     
   Now therefore, for such other goods and valuable considerations, the receipt of which is hereby acknowledged and accepted by the Grantor(s), the Grantor(s) hereby grants and conveys, with general warranty of title to the Government and its assigns, such rights, title and interest in the lands comprising the Easement Area described in the legal description and appurtenant rights of access to the Easement Area, but reserving to the Grantor(s) only those rights, title, and interest expressly enumerated in this Easement. This Easement shall constitute a servitude upon the land so encumbered; it shall run with the land for the duration of the easement; and it shall bind the Grantor(s), their heirs, successors, assigns, lessees, and any other person claiming under them. This Easement shall be exclusive to the Government. This easement is subject to all valid rights of record, if any.

**[INSTRUCTIONS TO RECO: THIS CLAUSE WAS CREATED FOR USE IN ALL TYPES OF LAND LEASES AND EASEMENTS. YOU MUST EDIT TO REMOVE ANY PORTIONS THAT ARE NOT APPLICABLE TO YOUR SCENARIO. FOR EXAMPLE, A RESTRICTIVE AERIAL EASEMENT MAY NOT INLCUDE THE FACILITY SITE AND ACCESS ROAD PORTIONS. OR A LAND LEASE MAY OR MAY NOT INCLUDE THE ACCESS ROAD OR RESTRICTIVE AERIAL EASEMENT. IF YOU ARE UNSURE, PLEASE CONSULT WITH REAL ESTATE CONTRACTING DIVISION SUBJECT MATTER EXPERTS AND LEGAL COUNSEL, AS NEEDED.]**

1. **Description of Premises (09/2021) 6.1.4-3** *Insert in all land leases and easements. RECO may edit or remove sections that are not applicable.* This contract covers the following described property, hereinafter referred to as the premises and hereby consisting of:  
   FACILITY SITE [REMOVE IF NOT APPLICABLE]  
   < Insert metes and bounds legal description of the facility site>  
   ACCESS ROAD [REMOVE IF NOT APPLICABLE]   
   < Insert metes and bounds legal description of the access road>  
   A. Together with a right-of-way for ingress to and egress from the premises (for Government employees, their agents and assigns); a right-of-way for establishing and maintaining electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the contractor, and unless herein described otherwise, shall be reasonably determined by the Government as the most convenient route.  
   B. This contract includes the right of grading, conditioning, installing drainage facilities, seeding the soil of the premises, and the removal of all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of Government facilities.  
   C. The Government shall also have the right to make alterations, attach fixtures, erect additions, structures, or signs, in or upon the premises hereby leased. All alterations and additions are and will remain the property of the Government.  
   [INSTRUCTION TO RECO- REMOVE "D" IN OFF AIRPORT LAND LEASES AND EASEMENTS]  
   D. The Government reserves the right to park, without cost, all official and privately owned vehicles used for the maintenance and operation of the air navigational facilities. Parking shall be provided adjacent to the navigational aid facility or as near as possible without interfering with the operation of the Airport.  
   RESTRICTIVE AERIAL EASEMENT [REMOVE IF NOT APPLICABLE]   
   < Insert metes and bounds legal description of the restrictive aerial easement>  
   The Contractor hereby confirms, establishes, grants, and conveys to the Government and its successors and assigns an exclusive Restrictive Aerial Easement in, on, over, and across the property within a <Number of Feet> foot radius from the center of the facility.   
   This contract includes the right to prohibit all obstructions above ground surface and other obstacles (e.g., vegetation structures) that abridge the rights hereby granted as shown on <Insert Name of Document such as “VOR Aerial Easement/Clear-Zone Criteria”> and identified as Exhibit “< >” attached hereto and made a part hereof, together with the right to trim, cut, fell, and remove trees, underbrush, obstructions and other vegetation, structures, or obstacles that abridge the rights hereby granted.   
   The restrictions are subject to the rights of the Contractor, and assigns to use the land for the type and height of the permitted exceptions shown on Exhibit “< >” and further subject to existing structures in place under existing easements for public roads and highways, public utilities, railroads, and pipelines, and any present or future use by lessor and assigns, which does not interfere with or abridge the restrictive rights hereby contracted.   
   Contractor or it's agent is required to go to website https://oeaaa.faa.gov to submit essential data for FAA evaluation prior to any construction or alteration, including any construction activities planned/performed by third parties.
2. **Purpose (09/2021) 6.1.5** *Insert in all real estate contracts except outgrants.* It is understood and agreed that the use of the herein described premises shall be related to FAA’s activities in support of the National Airspace System (NAS).
3. **Legal Authority (09/2021) 6.2.1** *Insert in all real estate contracts.* This contract is entered into under the authority of 49 U.S.C. 106(l)(6) and (n), which authorizes the Administrator of the FAA to enter into contracts, acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.
4. **Scope of Easement (09/2021) 6.2.2** *Insert in all easements.* The easements, covenants, and restrictions contained herein are appurtenant to, run with, and inure to the benefit of all or any portion of the Grantor’s property, whether or not the easement is referenced or described in any conveyance of all or such portion of Grantor’s property. This Easement is exclusive to the Government.

**[INSTRUCTIONS TO RECO: CHOOSE THE CORRECT COMBINATION FOR THE TERM OF THE CONTRACT BASED ON YOUR SCENARIO DEPENDING ON COST/NO COST AND WHETHER OPTIONS ARE INCLUDED. DELETE THOSE THAT ARE NOT APPLICABLE]**

1. **Term (09/2021) 6.2.3** *Insert in all real estate contracts where the FAA pays rent (excluding perpetual easements, purchases, and eminent domain).* To have and to hold, for the term commencing on <Start Date> and continuing through <End Date> inclusive, provided that adequate appropriations are available from year to year for the consideration herein.
2. **Option(s) to Extend Term (09/2021) 6.2.3-4** *May be used in leases and restrictive easements, at the option of the RECO when options are negotiated. Must be used in conjunction with 6.2.5.* The contract may, at the option of the Government, be extended beyond <Fill in End Date as shown in the Term Clause> at the rental rate established in the "Consideration" clause herein. The extension shall be upon the terms and conditions herein specified and no extension shall extend beyond <Fill in Date- not to exceed the date on which the last option expires. Base term plus options must not exceed 20 years>. The Government shall notify the contractor in writing, no later than <insert number of days> before the expiration of the Lease term including all options exercised, of its intent to exercise the option(s) or of its intent to vacate the premises at the end of said term. Any extension exercised by the Government pursuant to this clause shall be subject to the availability of adequate appropriations from year to year for the payment of rentals.

**[INSTRUCTIONS TO RECO: CHOOSE THE CORRECT CONSIDERATION CLAUSE FOR YOUR SCENARIO AND DELETE THE OTHER]**

1. **Consideration (09/2021) 6.2.4** *Insert in all land leases, antenna & equipment space leases, and restrictive easements where the FAA pays rent. The payee information and holdover rent acknowledgements may be removed or edited as needed.*

A. The Government shall pay annual rent, payable in <INSERT MONTHLY, QUARTERLY, ANNUAL, SEMI-ANNUAL> installments in the amount of <$X.XX>.  
B. Payments shall be made in arrears without the submission of invoices or vouchers. Payments are due on the first business day following the end of the payment period and are subject to available appropriations. The payments shall be directly deposited in accordance with the “Payment by Electronic Funds Transfer” clause in this contract. Payments shall be considered paid on the day an electronic funds transfer is made.  
C. [INSTRUCTION TO RECO: CHOOSE THE CORRECT PAYEE STRUCTURE BASED ON SINGLE OR MULTIPLE PAYEES AND DELETE THE OTHER]  
  
[FOR SINGLE PAYEE]  
Payment shall be made in full to: <Insert Payee Name Here>  
  
[FOR FOR MULTIPLE PAYEES]  
Payment shall be made to the parties as provided below:   
<Insert Payee “A” Name Here> in the amount of <$X.XX> and   
<Insert Payee “B” Name Here> in the amount of <$X.XX>  
D.[INSTRUCTION TO RECO: WHEN APPLICABLE, INSERT THE FOLLOWING OPTIONAL LANGUAGE TO AFFIRM THE TOTAL RENT PAID BY THE FAA FOR THE PREMISES DURING A PERIOD OF HOLDOVER. USE OF THIS ADDITIONAL LANGUAGE REQUIRES COORDINATION WITH ACCOUNTING AND THE SERVICE ORGANIZATION AND MUST BE DOCUMENTED IN THE NEGOTIATOR REPORT. DELETE IF NOT APPLICABLE.] The parties acknowledge that the Government has paid rent for the premises under prior Lease No. <\_\_\_\_\_\_\_\_\_\_\_> in the total amount of <$\_\_\_\_\_\_\_> for the time period from <\_\_\_\_\_\_\_\_\_> to <\_\_\_\_\_\_\_\_\_\_\_> while in holdover status.  
  
[INSTRUCTION TO RECO: WHEN APPLICABLE, INSERT THE FOLLOWING OPTIONAL LANGUAGE IF NEGOTIATIONS RESULT IN AN AGREED UPON DIFFERENTIAL AMOUNT BETWEEN HOLDOVER RENT PAID AND AN INCREASE IN RENT FOR AN EXPIRED LEASE. IF NOT APPLICABLE, DELETE. NOTE: THE EFFECTIVE DATE OF THE LEASE MUST BE PRIOR TO THE DATE OF SIGNATURE IF INCLUDING THIS LANGUAGE]The parties acknowledge that the Government owes the Lessor a one-time, lump sum payment, in settlement of any potential disputes or claims which may arise or have arisen in reference to prior lease No. <\_\_\_\_\_\_\_\_\_\_\_> in the total amount of <$\_\_\_\_\_\_\_> for the time period from <\_\_\_\_\_\_\_\_\_> to <\_\_\_\_\_\_\_\_\_\_\_>.

1. **Consideration (No Cost) (09/2021) 6.2.4-4** *Insert in all no-cost real estate contracts.* The Government shall pay the contractor no monetary consideration. It is mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises.
2. **Termination (01/2023) 6.2.5** *Insert in all land leases, restrictive aerial easements, MOAs, and antenna and equipment space leases.* The Government may terminate this contract at any time, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate this contract by delivering a written notice specifying the effective date of the termination. The termination notice shall be delivered at least 30 days before the effective termination date. No costs shall accrue as of the effective date of termination.
3. **Binding Effect (09/2021) 6.2.6** *Insert in all real estate contracts except purchases, eminent domain and outgrants.* The provisions of this contract and the conditions herein shall be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the property or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the contractor under this contract establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the contract had initially been entered into between such succeeding owner and the Government.

**[INSTRUCTION TO RECO: CHOOSE THE CORRECT HOLDOVER CLAUSE BASED ON YOUR SCENARIO AND DELETE THE OTHER]**

1. **Holdover (09/2021) 6.2.12** *Insert in all antenna and equipment space leases, restrictive easements and land lease contracts.  May be included in other real estate contracts in accordance with AMS. REMOVE this clause if 6.2.14-1 Fixed Holdover is used.* If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease at the rate paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.
2. **Fixed Holdover (01/2022) 6.2.12-1** *Insert in all standard space leases, or other real estate contracts, where the FAA pays rent and 6.2.14 Holdover is not used.* If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis for a period not to exceed <insert number of days>. Payment shall be made in accordance with the Consideration clause of the Lease, in arrears on a prorated basis, at the rate paid during the Lease term.
3. **RE Clauses Incorporated by Reference (09/2021) 6.3.0** *Insert in all real estate contracts when clauses are included by reference.* This solicitation or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the RECO will make the full text available, or the full text may be obtained via internet at https://fast.faa.gov/RPF\_Real\_Property\_Clauses.cfm.
4. **Interest (09/2021) 6.3.0-1** *Insert in all real estate contracts where the FAA pays rent or one-time costs (excluding purchases and eminent domain) and has agreed to pay interest for late payment.*
5. **Officials Not To Benefit (09/2021) 6.3.0-2** *Insert in all real estate contracts.*
6. **Assignment of Claims (09/2021) 6.3.0-3** *Insert in all real estate contracts except for outgrants, MOAs, and perpetual easements.*
7. **Contracting Officer's Representative (09/2021) 6.3.0-4** *Insert in all real estate contracts.*
8. **Contingent Fees (09/2021) 6.3.0-5** *Insert in all real estate contracts.*
9. **Anti-Kickback Procedures (09/2021) 6.3.0-6** *Insert in all real estate contracts expected to exceed $150,000.*
10. **Duties and Obligations of the Grantor (09/2021) 6.3.2** *Insert in all easements.* Without otherwise limiting the rights of the Government acquired herein, the Grantor must comply with all terms and conditions of this Easement, including the following:   
      
    A. Noxious Plants and Pests: The Grantor is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws, rules, and regulations. Any plan to control noxious weeds and pest must be approved in writing by the Government prior to implementation by the Grantor.  
    B. Fences: Except for any establishment /construction cost(s) incurred by the Government and replacement cost(s) not due to the Grantor’s negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities, excluding livestock, shall be the responsibility of the Grantor.   
    C. Protection of Water Uses and Water Rights: To the extent applicable, or to the extent required by law, the Grantor shall undertake any and all actions necessary to protect any water rights and water uses for easement purposes.  
    D. Taxes: The Grantor shall pay any and all real property and other taxes and assessments which may be levied against the Easement Area, if any.  
    E. Reporting of Adverse Events/Conditions: The Grantor must report to the Government within twenty-four (24) hours of discovery any conditions or events which may adversely affect the easement area or the Government’s use thereof.  
    F. Interference with Government Operations on Easement Area: The Grantor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature within the boundaries of the Easement Area that may interfere with the Government’s exercise of its rights under this Easement.  
    G. Successors in Interest: The provisions of this easement shall run with the land, and be binding upon, and for the benefit of, the Parties and their heirs, successors and assigns. In the event of any sale or transfer of ownership of the easement area or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the Grantor under this easement establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the easement had initially been entered into between such succeeding owner and the Government.
11. **Compatible Uses by Grantor (09/2021) 6.3.3** *Insert in all easements.* The Government may authorize in writing, and subject to such terms, conditions, and limitations that the Government may prescribe, in its sole discretion, the compatible use of the Easement Area by the Grantor. Contractor or their agent is required to go to website https://oeaaa.faa.gov to submit essential data for FAA evaluation prior to any construction or alteration, including any construction activities planned/performed by third parties.
12. **Funding Responsibility for FAA Facilities (09/2021) 6.3.6** *Insert in all real estate contracts except outgrants.* The Contractor agrees that all Contractor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Contractor improvements or changes will be at the expense of the Contractor. In the event that the Contractor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Contractor will immediately correct the interference issues at the Contractor’s expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Contractor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.
13. **Changes, Modifications (01/2022) 6.3.8-1** *Insert in all outgrants, easements, and MOAs.* The RECO may at any time, by written order via Supplemental Agreement, make changes to this contract. The modification shall cite the subject contract, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this contract.
14. **Failure in Performance (09/2021) 6.3.16** *Insert in all real estate contracts where the FAA pays rent.* In the event the Contractor fails to perform a service, provide an item, or satisfy a requirement under this Contract, the Government may:  
    A. perform the service, provide the item, or satisfy the requirement itself, and abate the rent by its actual costs (including administrative costs) incurred in doing so,  
    B. not correct the Contractor’s performance and abate the rent by an amount reasonably calculated to approximate the decreased value of the Contract arising from the Contractor’s failure to perform, or  
    C. pursue termination of the contract under the “Termination” clause(s) in this Contract.
15. **No Waiver (09/2021) 6.3.17** *Insert in all real estate contracts.* No failure by the Government to insist upon strict performance of any provision of this Contract or failure to exercise any right, or remedy consequent to a breach thereof, will constitute a waiver of any such breach in the future.
16. **Quiet Enjoyment (09/2021) 6.3.25** *Insert in all real estate contracts except outgrants.* The Contractor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government’s use and enjoyment of said premises against third party claims.
17. **Interference (09/2021) 6.3.28** *Insert in all real estate contracts except outgrants, on-airport land leases, and MOAs.* In the event that FAA operations interfere with the Contractor’s facility, the Contractor must immediately notify the RECO. The FAA will begin assessment of interference immediately upon notification.  
    If the Contractor or its facility interferes with the FAA’s equipment and the Contractor either knows of, or is notified by the FAA, of the interference, the Contractor will immediately remediate the interference at its own cost.  
    Notification under this clause must include the following information, if known:  
    A. type of interference,  
    B. the commencement date of the interference, and  
    C. the root cause of the interference.
18. **Hold Harmless (09/2021) 6.3.30** *Insert in all real estate contracts.* In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act, 28 U.S.C. Ch. 17, the Government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.
19. **Compliance with Applicable Laws (01/2023) 6.3.31-1** *Insert in all land leases, MOAs, and easements.* This Contract shall be governed by federal law.  The Contractor shall comply with all applicable federal, state, and local laws.  The Government will comply with all federal, state, and local laws applicable to and enforceable against it, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government.
20. **Examination of Records (09/2021) 6.3.32** *Insert in all real estate contracts where the FAA pays consideration.* The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative of either shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Lessor’s directly pertinent books, documents, paper, or other records involving transactions related to this contract.
21. **Subordination, Nondisturbance and Attornment (09/2021) 6.3.33** *Insert in all real estate contracts where the FAA pays consideration.*

A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.  
B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.  
C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.  
D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

1. **Notification of Change in Ownership or Control of Land (10/2022) 6.3.34** *Insert in all land leases, MOAs, and easements.* If the Contractor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Contractor or Contractor’s heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.
2. **Integrated Agreement (09/2021) 6.3.36** *Insert in all real estate contracts.* This Contract, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Contract.
3. **Unauthorized Negotiating (09/2021) 6.3.37** *Insert in all leases and easements.* In no event shall the Contractor enter into negotiations concerning the premises with anyone other than the RECO or his/her designee.
4. **Contract Disputes (09/2021) 6.3.39** *Insert in all real estate contracts except outgrants and on-airport MOAs.*

A. All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.  
B. The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile, or if permitted by Order of the ODRA, by electronic filing. A contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 am to 5:00 pm Eastern Time.  
C. Contract disputes are to be in writing and shall contain:  
i. The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;  
ii. The contract number and the name of the Contracting Officer;  
iii. A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;  
iv. All information establishing that the contract dispute was timely filed;  
v. A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and terminated checks) attached, broken down by individual claim item and summarized; and  
vi. The signature of a duly authorized representative of the initiating party  
D. Contract disputes shall be filed at the following address:  
i. For filing by hand delivery, courier or other form of in-person delivery:   
  
Office of Dispute Resolution for Acquisition  
Federal Aviation Administration  
600 Independence Avenue SW., Room 2W100   
Washington, DC 20591; or  
  
For filing by U.S. Mail:  
  
Office of Dispute Resolution for Acquisition  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, DC 20591  
[Attention: AGC-70, Wilbur Wright Bldg. Room 2W100]; or  
  
Telephone: (202) 267-3290  
Facsimile: (202) 267-3720  
Alternate Facsimile: (202) 267-1293; or  
ii. Other address as specified in 14 CFR Part 17.  
E. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.  
F. A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.  
G. After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.  
H. The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.  
I. The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.  
J. Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA website at http://www.faa.gov.

1. **Mineral Rights (09/2021) 6.3.40** *This clause is optional for land leases or easements, if mineral rights are requested by the Lessor/Grantor.* The Contractor hereby reserves all mineral rights in, on, and under the premises.  Should the Contractor find it necessary to drill for minerals, consent hereto shall first be secured from the Government in writing.  The Contractor will coordinate with the Government necessary schedules, etc. and agree not to erect or allow to be erected any structure of obstruction that may interfere with the proper operation of the Government’s Facility.  The Contractor’s removal of any minerals shall be only by means of drilling from adjacent or nearby lands.
2. **Clearing/Disposing of Debris (09/2021) 6.3.41** *Insert in all land leases and easements*

A. The Government shall notify the Contractor in writing ten (10) days prior to the start of any clearing of trees and/or brush and tree cuttings.  
  
B. The Contractor grants the Government the right and privilege to enter upon the Contractor’s land in order to cut, trim, tip, shape and maintain any trees situated within the premises and said cutting privilege granted to the Government shall include native grasses, scrub brush, and scrub to trees. Only those trees that are determined by the Government to interfere with the operation and proper function of the Government’s facility will be subject to the Government’s granted privilege. Coordination with the Contractor will be made prior to any cutting of any selected trees.  
  
C. The Government agrees to dispose of all grass, brush, and tree cuttings by the Government’s contractor. All tree logs, limbs, or branches 2 or more inches in diameter and 5 feet in length, shall be stacked in an area selected by the Lessor. The Government’s disposal of debris, grass, branches, etc., shall comply with regulatory requirements.

**[INSTRUCTIONS TO RECO: CHOOSE THE CORRECT CLAUSE FOR YOUR SCENARIO AND DELETE THE OTHER OR DELETE BOTH IF NOT APPLICABLE]**

1. **Road Maintenance Included in Rent (01/2023) 6.3.42** *This clause is optional for use in land leases and easements where multiple users access the road and the Lessor/Grantor agrees to maintain the road as part of rental consideration. NOTE: This clause should be deleted if 6.3.42-1 is used.* The Government does not have exclusive use of the access road, but, shall share the use of the access road with the Contractor and the Contractor’s service providers. Compensation for use of the access road shall be included in the rent. Contractor agrees to maintain the access road to a standard to be determined by the Government.
2. **Road Maintenance (01/2023) 6.3.42-1** *This clause is optional for use in land leases and easements where the FAA reserves the right to maintain the access road. NOTE: This clause should be deleted if 6.3.42 is used.* The Government shall have the right, but not the obligation, to maintain and/or reconstruct the existing access road. All road maintenance/construction shall be of the most economical type that will provide satisfactory and safe transportation of personnel, equipment and material in the type of weather and climatic conditions normally encountered at this location. The Government shall not maintain or contribute to the maintenance of said access road beyond Government standards or requirements.
3. **Organizational Conflict of Interest (01/2023) 6.3.47** *Insert in all leases and easements.*

A. The offeror or Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest (OCI), as defined in the FAA Acquisition Management System, "Organizational Conflicts of Interest (T3.1.7)", or that the Contractor has disclosed all such relevant information.  
  
B. The offeror or Contractor agrees that if an actual or potential OCI is discovered after award, the Contractor must make a full disclosure in writing to the Contracting Officer. The disclosure must include a mitigation plan describing actions the Contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict. Changes in the Contractor's relationships due to mergers, consolidations or any unanticipated circumstances may create an unacceptable organizational conflict of interest which may necessitate disclosure.  
  
C. The FAA reserves the right to review and audit OCI mitigation plans as needed after award, and to reject mitigation plans if the OCI, in the opinion of the Contracting Officer, cannot be avoided, or mitigated.  
  
D. The Contracting Officer may terminate this contract for convenience in whole or in part, if it deems such termination necessary to avoid an OCI. If the Contractor was aware of a potential OCI prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate this contract for default, debar the Contractor from government contracting, or pursue such other remedies as may be permitted by law or this contract.  
  
E. The Contractor further agrees to insert provisions which must conform substantially to the language of this clause including this paragraph (d) in any subcontract or consultant agreement hereunder.

**[INSTRUCTIONS TO RECO: CHOOSE THE APPROPRIATE COMBINATION OF SAM AND EFT CLAUSES FOR YOUR SCENARIO AND DELETE THE OTHERS]**

1. **System for Award Management - Real Property (SAM Waiver) (09/2021) 6.4.1** *Insert in all leases and easements where the FAA has waived the SAM requirements for payment information. Must be used in conjunction with 6.4.2 Payment by Electronic Funds Transfer. NOTE: If the vendor is registered in SAM, use clause 6.4.1-1 “System for Award Management- Real Property” and REMOVE this clause.* The System for Award Management (SAM) is the Government's required method to receive vendor information. However, you have been granted an exception to SAM and therefore must provide your initial payment information and any future changes to your payment information to the RECO on a completed and signed "Vendor Miscellaneous Payment Information" form, together with any other required notice under this lease.
2. **System for Award Management - Real Property (04/2022) 6.4.1-1** *Insert in all leases or easements or supplemental agreements to existing leases or easements unless the FAA has granted a waiver from the use of SAM. Must be used in conjunction with 6.4.2-1 Payment by Electronic Funds Transfer- System for Award Management. NOTE: If the FAA has granted a waiver from the use of SAM, use clause 6.4.1 "System for Award Management (SAM Waiver)" and REMOVE this clause.*    
   (a) Definitions. As used in this clause:  
   "Registered in the SAM database" means that the Contractor has entered all mandatory information, including the Unique Entity Identifier (UEI) or the Electronic Funds Transfer indicator, into the SAM database.   
   "System for Award Management (SAM) Database" means the primary Government repository for Contractor information required for the conduct of business with the Government.  
   “Unique Entity Identifier (UEI)” (also known as the Unique Entity ID) means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing Unique Entity Identifiers.  
   “Electronic Funds Transfer indicator” means a 4-characher suffix to the Unique Entity Identifier. 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 for the same parent concern.   
   “Contractor” is synonymous with “Offeror” “Lessor” or “Grantor” for real property leases, easements, or other contracts.  
      
   (b)(1) By submission of an offer, the Contractor acknowledges the requirement that  
    a prospective awardee will be registered in the SAM database prior to award, during performance, and through final payment of any contract.  
   (2) The Contractor must enter, in the space below, the contractor's UEI that identifies the Contractor's name and address exactly as stated in the offer. The UEI will be used by the RECO to verify that the Contractor is registered in the SAM database.   
   UEI: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   (c) If the Contractor does not have a UEI, it should contact www.sam.gov directly to obtain one.  
   The Contractor should be prepared to provide the following information:  
   (1) Company\* legal business name.  
   (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.  
   (3) Company Physical Street Address, City, State, and Zip Code.  
   (4) Company Mailing Address, City, State and Zip Code (if separate from physical).  
   (5) Company Telephone Number.  
   (6) Date the company was started.  
   (7) Number of employees at your location.  
   (8) Chief executive officer/key manager.  
   (9) Line of business (industry).  
   (10) Company Headquarters name and address (reporting relationship within your entity).  
     
   \* Individual (non-corporate) lessors/grantors of real property that are not normally in the business of leasing real property should consider leasing to the Government as a separate business (usually a sole proprietorship) then provide the pertinent ownership information as a sole proprietor when providing this information to www.sam.gov.  
     
   (d) If the offeror does not become registered in the SAM database in the time prescribed by the RECO, the RECO may proceed to award to the next otherwise successful registered offeror.  
     
   (e) Processing time should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of the solicitation.  
     
   (f) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after initial registration, the Contractor is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.  
     
   (g)(1)(i)If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance, the Contractor must provide the responsible RECO a minimum of one business day's written notification of its intention to:  
     
   (A) Change the name in the SAM database;  
   (B) Comply with the requirements of AMS regarding novation and change-of-name agreements; and   
   (C) Agree in writing to the timeline and procedures specified by the RECO. The Contractor must provide the RECO notification and sufficient documentation to support the legally changed name and then execute the appropriate supplemental agreement provided by the RECO to document the name change.  
     
   (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement/supplemental agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the Payment by Electronic Funds Transfer- System for Award Management clause of this contract.  
     
   (2) The Contractor must not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees must be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the Payment by Electronic Funds Transfer- System for Award Management clause of this contract.  
   (h) Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.sam.gov or by calling 866-606-8220.   
   PRESCRIPTION: Insert in all leases or easements or supplemental agreements to existing leases or easements unless the FAA has granted a waiver from the use of SAM. Must be used in conjunction with 6.4.2-1 Payment by Electronic Funds Transfer- System for Award Management. NOTE: If the FAA has granted a waiver from the use of SAM, use clause 6.4.1 "System for Award Management (SAM Waiver)" and REMOVE this clause.
3. **Payment by Electronic Funds Transfer (09/2021) 6.4.2** *Insert in all leases and easements where the FAA is paying rent or one-time costs and the vendor has been granted a waiver of SAM. Must be used in conjunction with 6.4.1 System for Award Management - Real Property (SAM Waiver). NOTE: If the vendor is registered in SAM, use clause 6.4.2-1 Payment by Electronic Funds Transfer- System for Award Management and REMOVE this clause.* All payments by the Government under this Contract will be made by electronic funds transfer (EFT). The Government will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing federal payments through the ACH are contained in 31 CFR Part 210. The Lessor is responsible for maintaining correct payment information with the Government. If the Lessor’s EFT information is incorrect or outdated, the Government is not required to make payments to the Lessor until correct/current EFT information is submitted to the Government for payment distribution.
4. **Payment by Electronic Funds Transfer- System for Award Management (09/2021) 6.4.2-1** *Insert in all leases or easements or supplemental agreements to existing leases or easements unless the FAA has granted a waiver from the use of SAM. Must be used in conjunction with 6.4.1-1 Payment by Electronic Funds Transfer- System for Award Management. NOTE: If the FAA has granted a waiver from the use of SAM, use clause 6.4.2 Payment by Electronic Funds Transfer and REMOVE this clause.*

A. Method of payment.   
i. Unless waived by the RECO, all payments by the Government under this contract will be made by electronic funds transfer (EFT), except as provided in paragraph (A)(ii) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.   
ii. In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either:   
a. Accept payment by check or some other mutually agreeable method of payment; or   
b. 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 will 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 must 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 will 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.   
i. If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for   
a. Making a correct payment;   
b. Paying any prompt payment penalty due; and   
c. Recovering any erroneously directed funds.   
ii. 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   
a. 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   
b. If the funds remain under the control of the payment office, the Government will not make payment, and the provisions of paragraph (D) of this clause will apply.  
F. EFT and prompt payment. A payment will 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 must require as a condition of any such assignment, that the assignee must register separately in the SAM database and will 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, is not permitted. In all respects, the requirements of this clause will 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 will 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 will mail the payment information to the remittance address contained in the SAM database.

1. **Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (04/2022) 6.9.5** *Insert in all real estate contracts. Must be used prior to placing, extending, or renewing any contract or order. Must be used prior to placing a new, superseding, or succeeding lease or extending or renewing any lease.*

(a) Definitions. As used in this clause--   
   
Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).   
   
Covered foreign country means The People's Republic of China.   
   
Covered telecommunications equipment or services means—   
(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);   
(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);   
(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or   
(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.   
   
Critical technology means—   
(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;   
(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—   
(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or   
(ii) For reasons relating to regional stability or surreptitious listening.   
(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);   
(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);   
(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or   
(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).   
   
Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.   
Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.   
   
Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.   
   
Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.   
   
(b) Prohibition.   
(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13,   
2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A.17.e.   
(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.17.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.   
   
(c) Exceptions. This clause does not prohibit contractors from providing—   
   
(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or   
   
(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.   
   
(d) Reporting requirement.   
   
(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.   
   
(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:   
(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.   
   
(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.   
(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

1. **Covered Telecommunications Equipment or Services- Representations (09/2021) 6.9.5-1** *Insert in all real estate contracts. If the answer to the representation in (c)(1) is “does”, the offeror must also complete the (d)(1) representation under AMS 6.9.5-2 “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment”. If the answer to the representation in (c)(2) is “does”, the offeror must also complete the (d)(2) representation under AMS 6.9.5-2 “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment”.*

(a) Definitions. As used in this provision, “covered telecommunications equipment or services” has the meaning per the "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment” clause in this contract.   
(b) Procedures. The offeror must review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for covered telecommunications equipment or services.   
(c) Representations.   
1. The offeror represents that it \_\_\_\_\_\_\_\_\_ does, \_\_\_\_\_\_\_\_\_ does not **provide** covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.   
2. After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it \_\_\_\_\_\_\_\_\_\_\_\_\_ does, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ does not **use** covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

1. **Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5-2** *Insert in all real estate contracts, including purchases under the micro-purchase threshold. Must be used in conjunction with AMS Real Property Contracts Clause 6.9.5 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.* NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(2).   
      
   PROVISION/CLAUSE:   
   (a) Definitions. As used in this provision--   
   Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.   
      
   (b) Prohibitions.   
      
   (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.   
   Nothing in this prohibition will be construed to—   
      
   (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or   
   (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.   
      
   (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.   
   Nothing in this prohibition will be construed to-   
   (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or   
   (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.   
      
   (c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from Federal awards for covered telecommunications equipment or services.   
      
   (d) Representations.   
      
   (1) The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.   
      
   (2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that that it [ ]does, [ ]does not USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.   
      
   (e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-   
   If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—   
   (1) For covered equipment   
   (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;   
   (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and   
   (iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;   
      
   (2) For covered services-   
   (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable; or   
   (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.   
   Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—   
      
   (3) For covered equipment   
   (i)The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;   
   (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and   
   (iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.   
   (4) For covered services-   
   (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or   
   (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.
2. **Notices (09/2021) 6.10.1** *Insert in all real estate leases, easements, and MOAs.* All notices/correspondence must be in writing, reference the Contract number, and be addressed as follows:  
     
   TO THE CONTRACTOR:   
   <Insert Contractor’s Name>   
   <Insert correspondence address>  
   <Insert City, State, Zip code>   
     
   TO THE GOVERNMENT:  
   Federal Aviation Administration  
   <Real Estate Contracting Division>, <routing symbol> <insert address>  
   <Insert City, State, Zip code>
3. **Signature Block (09/2021) 6.10.3** *Insert in all leases, easements, and MOAs. RECO may adjust as necessary for multiple signees/notary/etc. NOTE: All contracts should have a Notary Acknowledgement for each signee. Contracts with an entity other than a private individual should also have a Certificate of Authorization for the Contractor.* This Contract shall become binding when it is fully executed by both parties. In witness whereof, the parties hereto have subscribed their names as of the date shown below.  
   <ENTER CONTRACTOR’S LEGAL NAME>   
   By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
     
   UNITED STATES OF AMERICA  
   DEPARTMENT OF TRANSPORTATION  
   FEDERAL AVIATION ADMINISTRATION  
   By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
   Title: Real Estate Contracting Officer   
   Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENTS/EXHIBITS:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Number** | **Title** | **Date** | **Number of Pages** |
| **1** |  |  |  |
| **2** |  |  |  |
| **3** |  |  |  |
| **4** |  |  |  |
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