



THE CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY

GENERAL PROVISIONS (GPs) FOR:
REAL ESTATE LEASE AGREEMENT
(located at: <https://acquisition.jpl.nasa.gov/tc/>)

GOVERNMENT LEASE
<i>This Lease Agreement is entered into by the Jet Propulsion Laboratory (JPL) and the Lessor in support of a U.S. Government Contract. JPL is a Federally-Funded Research & Development Center (FFRDC) per FAR 35.017, and is an operating division of the California Institute of Technology ("Caltech"), a private nonprofit educational institution.</i> <i>As used in the clauses referenced below and throughout this Lease:</i> <i>• The term "JPL Subcontracts Manager" means a person with the authority to enter into, administer and/or terminate Leases and Leases and make related determinations and findings.</i> <i>• The following terms shall have the meaning set forth in FAR 2.101: "Agency head" (or "head of agency"), "commercial component," "component," "commercial item," and "nondevelopmental item."</i> <i>The Subcontractor shall comply with all applicable laws.</i>

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ANTI-KICKBACK PROCEDURES

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Lessor, Lessor employee, lower-tier lessor, or lower-tier lessor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Lease or in connection with a lower-tier lease relating to a Lease.

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

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

"Lessor" as used in this clause, means a person who has entered into a Lease with JPL.

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

"Lower-tier lease," as used in this clause, means a Lease or contractual action entered into by a Lessor or lower-tier lessor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a Lease.

"Lower-tier lessor," as used in this clause, (1) means any person, other than the Lessor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Lease or a lower-tier lease entered into in connection with such Lease, and (2) includes any person who offers to furnish or furnishes general supplies to the Lessor or a higher-tier Lessor.

"Lower-tier lessor employee," as used in this clause, means any officer, partner, employee, or agent of a lower-tier lessor.

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

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Lease price charged by a Lessor to JPL or in the lower-tier lease price charged by a lower-tier lessor to the Lessor or higher-tier Lessor.

(c)

- (1) The Lessor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Lessor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Lessor shall promptly report in writing the possible violation. Such reports shall be made through JPL to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Lessor shall cooperate fully with JPL or any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The JPL Subcontracts Manager may (i) offset the amount of the kickback against any monies owed JPL the United States under the JPL Lease and/or (ii) direct that the JPL Lessor withhold from sums owed a lower-tier lessor under the JPL Lease the amount of the kickback. The JPL Subcontracts Manager may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to JPL unless JPL has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the JPL Lessor shall notify the JPL Subcontracts Manager when the monies are withheld.
- (5) The Lessor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all lower-tier leases under this Lease which exceed \$150,000.

ASSIGNMENT OF RIGHTS

- (a) The Lessor may assign its rights to be paid amounts due or to become due because of this Lease to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment shall cover all amounts payable under this Lease, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) Two copies of the notice of assignment, signed by the Lessor, shall be furnished to JPL, Attn: (i) Travel and Invoice Management Section, and (ii) JPL Subcontracts Manager.
 - (3) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is made to the claimed assignee, JPL may withhold any payments due and payable under the Lease until JPL is furnished with either (i) verification or denial of assignment from the Lessor or (ii) reasonable proof that the assignment has been made.

AUDITS AND RECORDS - NEGOTIATION

- (a) Definition. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Cost or Pricing Data. If the Lessor has been required to submit cost or pricing data in connection with pricing action relating to this Lease, the Subcontracts Manager, or an authorized representative of the Subcontracts Manager, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Lessor's records, including computations and projections, related to:
 - (1) The proposal for the Lease, Lease or modification;
 - (2) The discussions conducted in the proposal(s), including those related to negotiating;
 - (3) Pricing of the Lease, Lease or modification; or
 - (4) Performance of the Lease, Lease, or modification.
- (c) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Lessor's directly pertinent records involving transactions related to this Lease or a Lease thereunder.
 - (2) This paragraph may not be construed to require the Lessor to create or maintain any record that the Lessor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (d) Availability. The Lessor shall make available at its office at all reasonable times the records, materials and other evidence described in paragraphs (b)(1), (3) and (4) of this clause, for examination, audit, or reproduction, until three years after final payment under this Lease, or for any shorter period specified in subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other clauses of this Lease. In addition:
 - (1) If this Lease is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Lease contains a "Disputes" clause, to appeals under such clause, or to litigation or the settlement of claims arising under or relating to this Lease, shall be made available until such appeals, litigation, or claims are finally resolved.

AUTHORITY OF JPL REPRESENTATIVES

No request, notice, authorization, direction, release of liability or order received by the Lessor under this Lease shall be binding upon JPL unless issued or ratified in writing by the JPL Subcontracts Manager, the JPL Acquisition Division Manager or by representative(s) designated in writing by either of them.

ENVIRONMENTAL, SAFETY AND HEALTH COMPLIANCE

Lessor shall provide written assurances that the leased premises are compliant with applicable federal, state, and local environmental, safety and health laws and regulations and related permits or licenses. With regards to environmental compliance, this includes obtaining, maintenance of and compliance with pertinent air, water, and hazardous waste permits. In addition, Lessor shall provide all written information known to the Lessor that discloses the environmental condition of the premises, including the existence of contamination and the cleanup status of past or present onsite environmental contamination. This information is to be provided regardless of whether the Lessor, any current or previous tenants, or any previous property owner(s), are responsible for said contamination. With regards to safety compliance, this includes written proof of compliance with electrical and fire codes, if available.

EQUAL OPPORTUNITY AND SMALL BUSINESS CLAUSES

The FAR clauses listed below are incorporated into this Lease subject to suitable revisions to identify the contracting and other parties to address the proper intent of the clause. As an exception to the above, the terms "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or Contracting Officer or his/her duly-authorized representative. Unless otherwise noted below, the following terms are to remain unchanged: "U.S.," "United States," "U.S. Government," "United States Government," "Federal," and "Federal Government."

The following Federal Acquisition Regulation (FAR) Equal Opportunity and Small Business clauses are incorporated by reference:

52.222-35, Equal Opportunity for Veterans (OCT 2015) (Applies if Lease is greater than \$150,000)

52.222-36, Affirmative Action for Workers with Disabilities (JULY 2014) (Applies if Lease is greater \$15,000)

52.222-37, Employment Reports on Veterans (FEB 2016) (Applies if Lease is greater than \$150,000)

52.219-8, Utilization of Small Business Concerns (NOV 2016) (Applies if the contract amount is expected to exceed the simplified acquisition threshold)

LESSOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(This clause is applicable if either the basic Lease or any modification exceeds \$2,000,000)

(a) Lessor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Lease, or the negotiated price of any change, or other modification to this Lease is expected to exceed \$2,000,000, the Lessor agrees to furnish JPL certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Lease is for a commercial item). Whenever certified cost or pricing data are required, the Lessor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Leases. In lieu of submitting cost or pricing data for the basic Lease, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.

- (ii) Lease Modifications. In lieu of submitting cost or pricing data for modifications under this Lease, for price adjustments expected to exceed \$2,000,000 on the date of the agreement on price or the date of the award, whichever is later, the Lessor may submit a written request for exception by submitting the information described under paragraph (B), below.
 - (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
 - (B) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (C) The Lessor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Lessor's determination of the prices to be offered in the catalog or marketplace.
- (b) Price Reduction for Defective Cost or Pricing Data.
- (1) If any price, including profit or fee, negotiated in connection with this Lease, or any cost reimbursable under this Lease, was increased by any significant amount because the Lessor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data.
 - (2)
 - (A) If the Contracting Officer determines under paragraph (1) of this clause that a price or cost reduction should be made, the Lessor agrees not to raise the following matters as a defense:
 - (i) The Lessor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Lease would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) JPL should have known that the cost or pricing data in issue were defective even though the Lessor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Lease was based on an agreement about the total cost of the Lease and there was no agreement about the cost of each item procured under the Lease.
 - (iv) The Lessor did not submit a Certificate of Current Cost or Pricing Data.
 - (B)
 - (i) Except as prohibited by subdivision (b)(2)(B)(ii) of this clause, an offset in an amount determined appropriate by the JPL Subcontracts Manager based upon the facts shall be allowed against the amount of a Lease price reduction if:
 - a. The Lessor certifies to the JPL Subcontracts Manager that, to the best of the Lessor's knowledge and belief, the Lessor is entitled to the offset in the amount requested; and
 - b. The Lessor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if:
 - a. The understated data was known by the Lessor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. JPL proves that the facts demonstrate that the Lease price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

- (3) In the event of a disagreement between the JPL Subcontracts Manager and the Lessor with respect to a question of fact involved in the JPL Subcontracts Manager's determination to reduce the price of this Lease, the Lessor may, subject to the prior approval of JPL, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (c) If any reduction in the Lease price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Lessor shall be liable to and shall indemnify JPL for costs incurred by JPL involved in repayments to JPL resulting from the Lessor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Lessor to the date JPL repaid by JPL at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Lessor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

NOTICE OF POTENTIAL TAX WITHHOLDING

JPL is legally obligated to withhold federal and/or state income tax from certain subcontractor and consultant payments when required by law. Withholding may be required under the following circumstances:

(a) Nonresident Independent Subcontractor/Consultant State Source Income Tax

Pursuant to CA Revenue and Taxation Code 18662 and CA Franchise Tax Board FTB Pub. 1023, Payments made to California nonresident subcontractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

(b) Nonresident (and Resident) Alien Federal Income Tax

Pursuant to Internal Revenue Code 1441, payments made to nonresident alien subcontractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number(TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number – can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

(c) Federal or State Tax Liens or Levies

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against subcontractors or consultants by cognizant tax or judicial authorities.

Disclaimer: *JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts that have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the subcontractor.*