GENERAL CLAUSES TO EMERGENCY EQUIPMENT RENTAL AGREEMENT FORM OF-294

(DELETE ALL THE CLAUSES ON THE REVERSE SIDE OF THE OF-294 AND REPLACE WITH THE FOLLOWING)

Since the equipment needs of the Government and availability of Contractor's equipment during an emergency cannot be determined in advance, it is mutually agreed that, upon request of the Government, the Contractor shall furnish the equipment listed herein to the extent the Contractor is willing and able at the time of order. At time of dispatch, a resource order number will be assigned. Contractor shall furnish this number upon arrival and check in at the incident. Equipment hired under this agreement may be used on unimproved roads; steep, hilly, rocky terrain; and subject to extreme heat, dust, and smoky conditions. When such equipment is furnished to the Government, the following clauses shall apply:

CLAUSE 1. Condition of Equipment - All equipment furnished under this agreement shall be in acceptable condition. The Government reserves the right to reject equipment that is not in safe and operable condition. The Government may allow the Contractor to correct deficiencies within 24 hours. No payment for travel to an incident or return to the point of hire will be made for equipment that does not pass inspection at the incident. No payment will be made for time that the equipment was not available.

CLAUSE 2. The time under hire shall start at the time the equipment begins traveling to the incident after being ordered by the Government, and end at the estimated time of arrival back to the point of hire after being released, except as provided in Clause 8 of these General Clauses

CLAUSE 3. *ON-SHIFT: Includes time worked, time that equipment is held or directed to be in a state of readiness, and compensable travel that has a specific start and ending time.*

CLAUSE 4. Operating Supplies - As identified in Block 6, operating supplies include fuel, oil, filters, lube/oil changes. Even though Block 6 may specify that all operating supplies are to be furnished by the Contractor *(wet)*, the Government may, at its option, elect to furnish such supplies when necessary to keep the equipment operating. The cost of such supplies will be determined by the Government and deducted from payment to the Contractor.

CLAUSE 5. Repairs - Repairs to equipment shall be made and paid for by the Contractor. The Government may, at its option, elect to make such repairs when necessary to keep the equipment operating. The cost of such repairs will be determined by the Government and deducted from payment to the Contractor.

CLAUSE 6. Timekeeping - Time will be *verified and* approved by the Government Agent responsible for ordering and/or directing use of each piece of equipment. *Time will be recorded to the nearest quarter hour worked for daily/hourly rate, or whole mile for mileage.*

CLAUSE 7. Payments

a. Rates of Payments - Rates for equipment hired with Contractor Furnished operator(s) includes all operator(s) expenses. Payment will be at rates specified and, except as provided in Clause 8, shall be in accordance with the following:

1. **Work Rates** *(column 11) (hourly or mileage)* shall apply when equipment is under hire as ordered by the Government and on shift, including relocation of equipment under its own power.
2. **Special Rates** *(column 12)* shall apply when specified.
3. **Guarantee**. For each calendar day that equipment is under hire for at least 8 hours, the Government will pay not less than the amount shown in column 13. If equipment is under hire for less than 8 hours during a calendar day, the amount earned for that day will be not less than one-half the amount specified in column 13. The guarantee is not applicable to equipment hired under the Daily rate. Equipment under transport is time under hire and compensated through the Guarantee. If equipment is transported under its own power, it is compensated under the Work rate.
4. **Daily Rate** *(column 11) (Calendar Day – 0001-2400)* - Payment will be made on basis of calendar days

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(0001 – 2400). For fractional days at the beginning and ending of time under hire, payment will be based on 50 percent of the Daily Rate for periods less than 8 hours.

a. *Shift Basis (Portion of Calendar Day)*

i. ***Single Shift*** - (SS) is staffed with one operator or one crew

ii. ***Double Shift*** - (DS) is staffed with two operators or two crews (one per shift). The DS rate will apply any calendar day the DS was under hire, including travel. There will be no compensation for a double shift unless a separate operator(s) and or crew(s) is/are ordered for the second shift.

iii. Agency personnel at the Section Chief Level may, by written order, authorize a second operator or crew (Double Shift), if needed during the assignment.

b. Method of Payment. Lump-sum payment will normally be processed at the end of the emergency. *However, partial payment may be authorized as approved by the incident agency.* Payment for each calendar day will be made for (1) actual units ordered and performed under Work, Daily, *Shift basis,* and/or Special rates or (2) the guarantee earned, whichever is the greatest amount.

CLAUSE 8. Exceptions

a. Daily Rate or Guarantee - No further payment under Clause 7 will accrue during any period that equipment under hire is not in a safe or operable condition or when Contractor furnished operator(s) is not available for the assigned shift or portions of the assigned shift. Payment will be based on the hours the equipment was operational during the assigned shift, as documented on the shift ticket versus the designated shift, as shown on the Incident Action Plan.

b. If the Contractor withdraws equipment and/or operator(s) prior to being released by the Government, no further payment under Clause 7 shall accrue and the Contractor shall bear all costs of returning equipment and/or operator(s) to the point of hire.

c. After inspection and acceptance for use, equipment and/or furnished operator(s) that cannot be replaced or equipment that cannot be repaired at the site of work by the Contractor or by the Government in accordance with Clause 5, within 24 hours, may be considered as being withdrawn by the Contractor in accordance with Paragraph B above, except that the Government will bear all costs of returning equipment and/or operator(s) to the point of hire as promptly as emergency conditions will allow.

d. No payment will accrue under Clause 7 when the contractor is off duty for a day in compliance with the mandatory “Work/Rest” and “Length of Commitment” provisions. As an option to rotating personnel, or taking a mandatory day off, without pay, the contractor may be released from the incident.

CLAUSE 9. When Government subsistence incident camps are available, meals and bedding for Contractor's operator(s) will be furnished without charge. *Government will furnish* meals and lodging without cost if Hotel/Restaurant subsistence is the approved camp for incident personnel. Double occupancy of hotel rooms may be required. Contractors are not paid per diem or *lodging* expenses to and from incidents.

~~**CLAUSE 10.** Loss, Damage, or Destruction –~~

~~(a) For equipment furnished under this *EERA* without operator, the Government will assume liability for any loss, damage or destruction of such equipment, except that no reimbursement will be made for loss, damage or destruction due to (1) normal wear and tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.~~

~~(b) For equipment furnished under this *EERA* with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.~~

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CLAUSE 11. Contractor's Responsibility for Property and Personal Damages - Except as provided in Clause 10, the Contractor will be responsible for all damages to property and to persons, including third parties, that occur as a result of Contractor or Contractor's agents or employee fault or negligence. The term "third parties" is construed to include employees of the Government.

CLAUSE 12. Deductions - Unless specifically stated elsewhere in this agreement the cost of any supplies, materials, or services, including commissary, provided for the Contractor by the Government will be deducted from the payment to the Contractor.

CLAUSE 13. Personal Protective *Clothing and* Equipment – The Government considers operators as fireline personnel who will use and wear specified articles of personal protective equipment.
a. The following mandatory items will be issued by the Government, when not required to be furnished by the Contractor, to operators performing within the scope of this agreement:
1. Clothing: (a) Flame resistant pants and shirts; (b) Gloves *(Either Nomex or chrome tanned leather)*; (c) Hard hat; (d) Goggles or safety glasses.
2. Equipment: (a) Fire shelter; (b) Headlamp; (c) Individual First-Aid Kit;
3. Other items may be issued by the Government.

b. Operators shall wear the items of clothing issued and maintain the issued equipment in a usable and readily available condition. Upon completion of the contract assignment, all issued items of clothing or equipment shall be returned to the Government. Deductions will be made for all Government furnished protective *clothing and* equipment not returned by the Contractor.

CLAUSE 14. Commercial Motor Vehicles: All commercial motor vehicles must meet all DOT requirements. The regulations can be found at the following website:
www.fmcsa.dot.gov

CLAUSE 15. *CLAIMS SETTLEMENT AUTHORITY – For the purpose of settling claims, the successor contracting officer is any contracting officer acting within their delegated warrant authority, under the clauses of this agreement, and limits set by the incident agency.*

CLAUSE 16. CHANGES TO EMERGENCY EQUIPMENT RENTAL AGREEMENTS
Changes to Emergency Equipment Rental Agreements (EERA's), OF294 may only be made by the original signing procurement official. If the original signing procurement official is not available and adjustments are deemed appropriate, a new EERA shall be executed at the incident and shall be applicable for the duration of *that* incident only, *which will include name and location*.

CLAUSE 17. FIREARM – WEAPON PROHIBITION – The possession of firearms or other dangerous weapon (18 USC 930 (f)(2) are prohibited at all times while on Government Property and during performance of services, under this agreement. The term dangerous weapon does not include pocket knives with a blade less than 2 ½ inches in length or a multi purpose tools such as a leatherman.

CLAUSE 18. WORK REST and LENGTH OF ASSIGNMENT – *Current regulations may be found at* www.nwcg.gov

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CLAUSE 19. HARRASSMENT FREE WORKPLACE – Contractors shall abide by "U.S. Code, Title VII, Civil Rights Act of 1964, Executive Order EO-93-05, Secretary's Memorandum 4430-2 Workplace Violence Policy, and Harassment Free Workplace (29 CFR Part 1614*)". Regulations can be found at:* www.gpoaccess.gov/

CLAUSE 20. Definitions - The following definitions for Block 8 of the EERA are added. *Information about business size is collected for tracking purposes only.*

a. SMALL BUSINESS is one that is independently owned and operated and is not dominate in the field for which it is being signed up, subject to the following size standards: (1) Motorcar and Truck Rental Without Operator - average annual receipts for its preceding 3 fiscal years do not exceed 12.5 million, (2) Equipment Rental With Operator - average annual receipts for its preceding 3 fiscal years do not exceed 3.5 million.

b. SMALL DISADVANTAGED OWNED BUSINESS is a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals.

c. WOMEN-OWNED SMALL BUSINESS is one that is at least 51 percent owned, controlled, and operated by a woman or women.

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

e. SERVICE DISABLED VETERAN OWNED SMALL BUSINESS ENTERPRISE is a small business concern-- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

52-213-4 - Terms and Conditions -- Simplified Acquisitions (Other Than Commercial Items) (Apr 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:
(1) The clauses listed below implement provisions of law or Executive order:
(i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
(ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).
(iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
(iv) 52.225-13, Restrictions on Certain Foreign Purchases (Oct 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
(v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
(2) Listed below are additional clauses that apply:
(i) 52.232-1, Payments (Apr 1984).
(ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).
(iii) 52.232-11, Extras (Apr 1984).
(iv) 52.232-25, Prompt Payment (Oct 2003).
(v) 52.233-1, Disputes (July 2002).
(vi) 52.244-6, Subcontracts for Commercial Items (Apr 2003).
(vii) 52.253-1, Computer Generated Forms (Jan 1991).

ADDITIONAL CLAUSES THAT APPLY TO EERA's
52.236-8 Permits and Responsibilities (Apr 1984)
52.243-1 Changes – Fixed Price (Aug 1987)
52.204-7 Central Contractor Registration (Oct 2003)

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52.208-4 Vehicle Lease Payments (Apr 1984)
52.208-5 Condition Of Lease Vehicles (Apr 1984)
52.206-6 Markings Of Leased Vehicles (Apr 1984)

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:
(1) The clauses listed below implement provisions of law or Executive order:
(i) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2004) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)
(ii) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).
(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over $10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)
(v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212) (Applies to contracts of $25,000 or more).
(vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq*.) (Applies to service contracts over $2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).
(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).
(viii) 52.225-1, Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition-
(A) Is set aside for small business concerns; or
(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed $25,000).
(ix) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)
(x) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)
(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)
(2) Listed below are additional clauses that may apply:
(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (July 1995) (Applies to contracts over $25,000).
(ii) 52.211-17, Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supplies).
(iii) 52.247-29, F.o.b. Origin (June 1988) (Applies to supplies if delivery is f.o.b. origin).
(iv) 52.247-34, F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).

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(c) *FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998*). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address: http://www.arnet.gov/far/

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights-

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)