

-- Louisville Lite --
Proposed Model Indemnification Lease Language

Personal
Injury &
Property
Damage
Claims:
Section 330
Protections

PROPOSED MODEL INDEMNIFICATION LEASE LANGUAGE

(a)(1) Pursuant to Section 330 of P.L. 102-484, as amended, and subject to the provisions of this Paragraph 14 of the lease, Government shall hold harmless, defend and indemnify, in full, the _____ Redevelopment Authority; any other person or entity that acquires ownership or control from the _____; or any successor, assignee, transferee, lender, or lessee of the _____, including but not limited to _____ (collectively and individually "Indemnitee(s)"), from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on _____, as a result of Department of Defense activities at _____.

(2) In any case in which Government determines that it may be required to indemnify an Indemnitee(s) for any suit, claim, demand, action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage, Government may settle or defend on behalf of that Indemnitee(s), the claim for personal injury or property damage.

(3) If any Indemnitee(s) does not allow Government to settle or defend the claim, such Indemnitee(s) will not be afforded indemnification with respect to that claim.

(4) Government will not indemnify the Indemnitee(s) unless such Indemnitee(s):

(A) Notifies Government in writing within 90 days after such an indemnification claim accrues. If Indemnitee(s) is served with a complaint or written notice of a claim by federal, state or local regulators, Indemnitee(s) will provide Government with a copy of such document no later than 15 days following service of the complaint. A claim for indemnification accrues when the Indemnitee(s) receives written notice of any suit, claim, demand, action, liability, judgment, cost or other fee, which relates to personal injury or property damage, that the Indemnitee(s) knows or may be deemed reasonably to have known, may have been caused or contributed to by Department of Defense activities. Indemnitee(s) right to indemnification shall not expire due to late notice unless Government's ability to defend or to settle is materially and adversely affected;

Personal
Injury &
Property
Damage
Claims:

(B) Furnishes Government copies of pertinent papers the Indemnitee(s) receives; and

(C) Furnishes, to the extent it is in the possession or control of Indemnitee(s),

Section 330 evidence or proof of any claim, loss, or damage covered by subparagraph (a);
Protections and

CERCLA
Response (D) Provides, upon request of Government, reasonable access to the records and
Claims: personnel of the Indemnitee(s) for purposes of defending or settling the claim or
Section 120h claims.
Protections

(5) Government will not indemnify an Indemnitee(s) to the extent such Indemnitee(s) caused or contributed to any release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on _____. Government is entitled to contribution from Indemnitee(s) to the extent Government shows that such Indemnitee(s) caused or contributed to any release. However, the availability of contribution shall not affect the requirement of Government to defend an Indemnitee(s), unless such Indemnitee(s) is solely responsible for the release or threatened release giving rise to the claim for indemnity, in which case the Government's duty to defend will not exist as to that claim.

(b)(1) Pursuant to Section 42 USC Section 9620(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, and the CERCLA lead agent authority of the Department of Defense created by 42 USC Section 9604 and Section 9615 of CERCLA, Section 2.d. of Executive Order 12580 (52 FR 2923; Jan. 29, 1987), and the National Contingency Plan (40 CFR Section 300.5), and subject to the provisions of this Paragraph 14 of the lease, Government, in consultation with U.S. EPA, has determined that _____ is suitable for lease, that the uses contemplated for the lease of _____ are consistent with protection of human health and the environment, and that there are adequate assurances that Government will take all response actions necessary to protect human health and the environment that have not been taken as of the date of this lease.

Further, Government herein provides assurances that, in accordance with and to the extent required at _____ by applicable federal, state and local laws, Government will timely:

(A) assess, inspect, investigate, study, and remove or remediate, as appropriate, the release or threatened release of a hazardous substance, pollutant or contaminant, from or on _____; and

(B) settle or defend any claim, demand, or order made by federal, state or local regulators or third parties in connection with any release or threatened release of a hazardous substance, pollutant or contaminant, from or on _____.

Petroleum
Release
Claims:
Contract

(2) The Lessee and any Sublessee(s) shall:

Protections (A) Notify Government in writing within 90 days after learning of any previously unidentified condition at NOSL that suggests a response action is necessary, or, within 90 days after receiving notice of a claim by federal, state or local regulators, or other third parties, of the existence of any condition at _____ that suggests a response action is necessary. If Lessee or any Sublessee is served with a complaint or written notice of a claim by federal, state or local regulators, the served party shall provide Government with a copy of such document no later than 15 days following service of such document;

(B) Furnish Government copies of pertinent papers the Lessee and any Sublessee(s) receives; and

(C) Provide, upon request of Government, reasonable access to the records and personnel of the Lessee and any Sublessee(s) for purposes of defending or resolving the need for additional response action.

(3) For purposes of 42 USC Section 9620(h)(3), the Lessee's and any Sublessee(s)'s status as an operator during the lease term will not make it a potentially responsible party or relieve Government of its obligations under Subsection (b) of this Paragraph 14 and 42 USC Section 9620(h).

(c)(1) In accordance with and to the extent required by applicable federal, state and local laws, Government will timely:

(A) assess, inspect, investigate, study, and remove or remediate, as appropriate, the release or threatened release of petroleum or a petroleum derivative, from or on _____, caused by Department of Defense activities at _____; and

(B) settle or defend any claim, demand, or order made by federal, state or local regulators or third parties in connection with a release or threatened release of petroleum or a petroleum derivative, from or on _____, caused by Department of Defense activities at _____.

(2) The Lessee and any Sublessee(s), upon learning of any previously unidentified release or threatened release of petroleum or petroleum derivative from or on _____, that may have been caused by Department of Defense activities at _____, will notify Government by following the notification procedures set forth in subparagraph (b)(2) above.

Definitions (d) For the purpose of the provisions of this Paragraph 14, the following terms have the meanings indicated below:

General Provisions

(1) "release", "threatened release", "hazardous substance", "pollutant", "contaminant", "removal," "remedial action", and "response" have the meanings given such terms under CERCLA and U.S. Environmental Protection Agency regulations implementing CERCLA.

(2) "Department of Defense activities" means the Department of Defense's: construction, installation, placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and equipment and land at _____; or failure to satisfy any otherwise legally applicable obligation to investigate or remediate any environmental conditions existing at _____. "Department of Defense activities" does not mean the release or threatened release of a hazardous substance, pollutant, contaminant, petroleum or a petroleum derivative, to the extent that Government shows that the release or threatened release is caused or contributed to by the Indemnitee(s).

(3) "Action . . . arising out of any claim for . . . property damage" includes, but is not limited to, any judicial, administrative or private cost recovery proceeding brought against an Indemnitee(s) (i) for response costs arising under CERCLA, (ii) for costs incurred to enjoin or abate the presence or migration of contamination from or on _____ under RCRA, or (iii) for costs incurred to comply with the requirements of similar federal or state laws and regulations (or the laws of any political subdivision of the state) which arise from the environmental conditions at _____.

(4) "Environmental condition(s)" means any hazardous substance, pollutant or contaminant, including hazardous waste or hazardous constituent, petroleum or petroleum derivative disposed of, released or existing in environmental media such as soil, subsurface soil, air, groundwater, surface water or subsurface geological formations at levels above background.

(e) Nothing in these provisions shall diminish or waive any rights which parties might otherwise have under common law or any federal or state law or regulation, with the exception of subparagraph (a) of this Paragraph 14 including applicable references in subparagraphs (d), which shall be deemed to fully set forth the parties', including the Sublessee(s'), statutory rights under Section 330 of P.L. 102-484, and subparagraph (b) of this Paragraph 14 including applicable references in subparagraphs (d), which shall be deemed to fully set forth the parties', including any Sublessee(s'), statutory rights under 42 USC Section 9620(h)(3); provided that nothing in this lease shall limit the right, if any, that an Indemnitee, Lessee or Sublessee may have to enforce, in a federal district court proceeding, statutory rights under Section 330 of P.L. 102-484 and 42 USC Section 9620(h)(3).

(f) Any Indemnitee may implement or enforce the terms of this Paragraph 14 in its own right at its own discretion without obtaining permission from or joining any of the other Indemnitees.

(g) The provisions of this Paragraph 14 shall survive expiration or termination of the lease only to the extent a claim is made during or after the lease period by an Indemnitee(s) or by the Lessee or Sublessee(s) under the terms of this Paragraph 14.

(h) Prior to taking any action or reaching any final settlement under this Paragraph 14 that could adversely impact Lessee's or Sublessee(s)'s use of the leased premises, Government shall consult with Lessee and Sublessee(s) to minimize any such impact.

(i) Nothing in this Paragraph 14 creates rights of any kind in any person or entity other than: (i) the Government and (ii) Indemnitees, Lessee and Sublessees.