

# **SOUTH DOT**



## **AGENCY AGREEMENT**

**AQUILANO INSURANCE PCC LTD**

**AGENT OR AGENCY AGREEMENT**

This Agreement ("Agreement") dated January 15<sup>th</sup>, 2020, ("Effective Date") between **South Dot Inc.** (SD)("Agent" or "Agency") and **AQUILANO RE (Reinsurance)** ("Company"), sets forth the terms and conditions under which "Agent" and "Agency" shall perform certain services for the Company. The designations "Agent" and "Agency" shall be interchangeable based upon the contracting party designated by the signature below. Agent and Company may also be referred to individually as a "party" and together as the "parties."

**1. APPOINTMENT**

- 1.1. The Company hereby appoints Agent (and any of its Producers/Sub-brokers if Agent is an Agency) to solicit, at its own expense, new and renewal applications for insurance contracts ("Policy" or "Policies") as listed in **Schedule A**, as amended from time to time.

**2. DUTIES OF AGENT**

- 2.1. If Agent is Agency, then it shall be responsible for assuring that all of its Producers comply with the following duties as well as the Agent.
- 2.2. Agent will comply with all laws and regulations which relate to this Agreement and shall indemnify and hold the Company harmless for its failure to do so. Agent shall maintain in good standing, at its own cost, licenses required by all applicable statutes and regulations. Agent shall provide a copy(ies) of its current license(s) to the Company. Upon Agent's loss or failure to procure and maintain such licenses as may be required by law, this Agreement shall terminate automatically by paragraph 7.3. Agent shall comply with all appointment requirements of the underwriters of any of the products set forth on **Schedule A**. If Agent is a business entity, Agent shall ensure all of its employees who sell Company's products are properly licensed and appointed, including appointments to Company's underwriters, a State Department of Insurance, a supervising agent, or any other person or entity as required by applicable law or statute.
- 2.3. Agent may not waive any provision of the Company's underwriting standards or the insurers' underwriting standards without the Company's express prior written authorization. Any questions about the Company's underwriting standards shall be referred to the Company.
- 2.4. Agent will comply with the Company's rules and regulations relating to the preparation of proposals and the completion and submission of applications. As a material part of the consideration for the making of this Agreement by the Company, Agent agrees that there will be made no representations whatsoever concerning the nature or scope of the benefits of the Policies sold except through and using the written material either prepared and furnished to Agent for that purpose by the Company or approved in writing by the Company before its use. Agent shall have no authority and will not make any oral or written alteration, modification, or waiver of any of the terms or conditions of any Policy whatsoever.
- 2.5. Agent warrants that Agent will diligently and to the best of its ability ensure that the facts set forth by any applicant in any application it solicits are true and correct.

- 2.6. Agent will conduct itself so as not to affect adversely the business, good standing, and reputation of the Company.
- 2.7. Agent agrees not to employ or make use of any advertisement in which the Company's (or its affiliate's) name or its registered trademarks are employed without the prior written approval and consent of the Company. Upon request of Agent during the term of this Agreement, the Company shall make available for Agent's use, standard advertising prepared for the Company. The agent may add, at Agent's expense, to the standard advertising only its business name, business address, agent number, and telephone number, as provided for in the advertising. No deletions or changes in the advertising copy are permissible. Company may furnish Agent a URL link(s) to Company's products that shall display Agent's name and contact information and shall be embedded with the unique identification number Company has assigned to Agent. The agent may post this URL link(s) on its proprietary Web pages that are designed for offering, disseminating, and selling insurance/AQUILANO RE products. The agent may not send said URL link(s) to any third party, or otherwise, facilitate said URL link(s) being posted on a third party's Web page, or post said URL link(s) on any proprietary Web page of Agent not designed for offering, disseminating, or selling insurance/AQUILANO RE products, without the written consent of Company. Agent shall act solely as an independent contractor, and as such, shall control in all matters its time and effort in the placement of the Policies offered hereunder. Nothing herein contained shall be construed to create the relationship of employer and employee between Agent and Company.
- 2.8. Agent shall indemnify and hold the Company and its officers, agents, and employees harmless from all expenses, costs, causes of action, claims, demands, liabilities, and damages, including reasonable attorney's fees, resulting from or growing out of any unauthorized act or transaction or any negligent act, omission or transaction by Agent or employees of Agent.
- 2.9. Agent shall maintain in force insurance coverage against wrongful acts and errors and omissions of Agent, its agents, and employees concerning the services performed hereunder. Such insurance coverage shall be for at least \$250,000 for the sale of the products listed in **Schedule A**.
- 2.10. Agent shall promptly prepare and transmit to the Company, in a format acceptable to the Company, such reports (format agreed upfront) as the Company may reasonably require from time to time, including reports of all information necessary for the Company to comply with all applicable laws, rules, and regulations or to manage its business.
- 2.11. Whenever any activity under this Agreement would cause a producer to be considered an Agent as defined in *Insurance Law – ISC§ 2103, Insurance Agents; licensing*, the following restriction in conjunction with any additional statutory requirement will apply to all uses and disclosures of all Protected Client Information.
- 2.11.1. Business Associate shall not use or further disclose Protected client Information other than as permitted or required by this Agreement or as Required by Law. Business Associate shall not sell Client's Protected Information. Business Associate shall not use or disclose Genetic Information except as permitted by *45 C.F.R. § 164.502(a)(5)(i)*.

**3. DUTIES OF THE COMPANY**

3.1. The duties of the Company shall vary depending upon the specific product being sold by Agent. For all products, the Company will provide approved brochures and other approved marketing materials for sales campaigns. The Company will deliver to the customer all insurance policies, certificates, and related correspondence or similar documents, by Company procedures. The Company shall Agreement (all products) *12/2021* respond in a reasonable and timely manner to inquiries and questions about the product. The Company shall maintain reasonable accounting, administrative, and statistical records by prudent standards of insurance record keeping, including premium, sale or effective date, and any other records needed to verify coverage, pay claims or underwrite the company insurance products, of any insured participant covered under the policies.

**4. RESERVATION OF RIGHTS**

- 4.1. Company reserves the right to reject any applications for its Policies submitted by Agent.
- 4.2. The Company reserves the right to discontinue writing or offering any of the Policies which are or become subject to this Agreement upon ninety (90) days' notice to Agent (or the number of days required by law in the Agent's state of domicile-New York-).

**5. MAINTENANCE OF RECORDS**

- 5.1. Company and Agent each shall maintain at their respective principal office, for the duration of this Agreement and three (3) years thereafter, a system of files containing this Agreement and books and records of all transactions relating to this Agreement, including records of transactions with individual insureds. These books and records shall be maintained following prudent standards of insurance record keeping.
- 5.2. The Company, its employees, or authorized representatives may have unrestricted access to records for the Policies, and may audit, inspect and examine at reasonable times, upon reasonable notice, and during regular business hours at Agent's place of business, all books, and records, and may obtain copies of such books and records at its own expense. Company and Agent acknowledge that each shall accept automated files instead of hard copy files as permitted by law.
- 5.3. Agent shall fully cooperate with any audit or examination by any Department of Insurance or other authorized agencies and shall allow access to books and records maintained by either of them under this Agreement. Each shall notify the other within five [5] business days of any such audit or examination.
- 5.4. All information related to policies underwritten by Insurers and persons covered by those policies, including, but not limited to, lists of insureds' names, addresses, other relevant information, applications, master policies, files, documents, and correspondence are the property of the Company subject at all times to its control. Sales literature, computer software, and other property, tangible and intangible, which the Company furnishes to Agent, are the property of the Company subject at all times to its control. Any materials prepared by the Company which relates to Policies underwritten by an Insurer shall be subject to the Company's control. All property of the Company shall be returned to or provided to it upon its written request. If Agent's ability to perform under this Agreement shall be affected by the return of the such property, then it shall not be held in breach for its failure to perform resulting from such return. Except as provided in

paragraph 5.5, Agent may not duplicate the Company's materials or use them in any way other than as authorized by the Company and shall secure the Company's approval before releasing any information contained in this property to parties outside this Agreement.

- 5.5. During the term of the Agreement, any extensions of it, and for three (3) years thereafter, the Company shall keep strictly secret and confidential any Confidential Information about Agent, and Agent shall keep strictly secret and confidential any Confidential Information about the Company. "Confidential Information" shall include information, written or unwritten, which pertains in any way to financial or accounting matters, business production, methods of business operations, marketing, strategic planning, or proprietary information of any kind or nature whatsoever, including trade secrets or know-how. Confidential Information does not include information that: (i) is already known to the recipient at the time of disclosure to it; (ii) is in the public domain or subsequently becomes publicly available; (iii) is provided to the recipient by a third party who is under no such obligation of confidentiality; or (iv) is independently developed by the recipient. Each party shall take necessary and reasonable precautions to prevent unauthorized disclosure of Confidential Information and shall require all of its officers, employees, and other personnel to whom it is necessary to disclose the same, or to whom the same has been disclosed, to keep this Confidential Information secret and confidential. It is understood, however, that certain "Confidential Information" may be required to be filed with State and Federal regulatory agencies by their reporting requirements. Neither party shall make use of the name or service mark(s) of the other, including the use of the name or service mark(s) of any marketing, enrollment, or other public relations material without the prior written approval of the other party.
- 5.6. Agent recognizes that in the performance of its obligations under this Agreement, it may be a party to confidential information about individuals covered by Policies underwritten by an Insurer. Information that identifies an individual covered by the Policy is confidential. During the time confidential information is in Agent's custody or control, it shall take all reasonable precautions to prevent the disclosure or use of the information for a purpose unrelated to the administration of insurance benefits. The agent may disclose confidential information only:
- 5.6.1. In response to a court order;
  - 5.6.2. For an examination conducted by the Commissioner of Insurance;
  - 5.6.3. To the other party; or
  - 5.6.4. With the written consent of the identified individual or his or her legal representative.

## 6. COMPENSATION

- 6.1. Compensation for each policy written hereunder shall be made by the Company to Agent following **Schedule A**, attached hereto and incorporated herein by reference. The Company shall not be liable for any payments due to agents of Agent during the term of this Agreement or thereafter.
- 6.2. Compensation due under this Agreement shall be paid to Agent within 15 days from the end of each calendar month in which the Company receives a premium concerning its policies or as may otherwise be agreed upon in writing.
- 6.3. A party shall have a lien and right of offset on all sums payable hereunder or otherwise for any debt due from the other party or the other party's agents. Indebtedness under this Agreement or any other agreement between the parties shall constitute a general indebtedness to survive the

termination of this Agreement. A party shall not be limited to recovery of the payment of this indebtedness from sums payable under this Agreement.

6.4. Under all circumstances, the Company shall have the right to offset overpayments to Agent against amounts due to Agent.

**7. EFFECTIVE DATE, TERM, AND TERMINATION**

7.1. This Agreement shall commence on the effective date first stated above and shall continue in force until terminated under this Article.

7.2. Except as otherwise provided herein, this Agreement will begin on the effective date and terminate twelve (12) months thereafter, at which time it will be extended for a subsequent three (3) months period unless either party gives written notice a least ninety (60) days before the termination date or unless termination as otherwise provided herein. The parties expressly agree that subject to the provisions of paragraphs 7.3 and 7.4, any termination of this Agreement will not in any fashion terminate the obligations of the parties concerning business written during the term of this Agreement. Subject to the above, the obligations of the parties concerning such business shall remain in full force and effect until the cancellation or termination date of any such policy.

Notice, as provided herein, is to be sent to:

**If to the Company:**

**AQUILANO RE (Reinsurance)** .....

If to the Agent:

Agent or Agency Name: SOUTH Dot Inc.  
Address: 305 Park Ridge Ln,  
City, State, ZIP: White Plains, New York, 10603  
Contact Name: Valoy Chaudary  
Phone Number: +1 (914) 437 8872  
Fax Number: \_\_\_\_\_  
Email: valoy.chaudary@southdotuw.com  
Website (if applicable): www.southdotuw.com

Other Information:

Checks Payable To: VALOY CHUADARY  
(Corresponding to name as reflected on attached W-9 and license)

All notices given under this Agreement must be in writing and sent via a verifiable method to the party receiving notice at the address indicated above or such address as may have been communicated most recently in writing to the sending party.

7.3. This Agreement will terminate automatically upon the occurrence of any of the following events, and upon such occurrence, the parties shall be obligated to make only those payments the right to which accrued to the date of termination:

- 7.3.1. Suspension or revocation of a party's license(s) in any state(s) in which both parties are working together;
  - 7.3.2. Conviction of a felony by Agent and/or its employees;
  - 7.3.3. Sale or transfer, or other substantial changes are made in the ownership of Agent's Agency;
  - 7.3.4. Cancellation or expiration of Errors and Omissions insurance required (if so) of Agent by this Agreement;
  - 7.3.5. Misappropriation (or failure to remit) any funds or property due to the Company from Agent;
  - 7.3.6. Determination that Agent is not in compliance with Company underwriting guidelines or the terms of this Agreement and Agent has failed to correct the problem within 10 days of the Company providing written notice of same;
  - 7.3.7. The filing of a petition in bankruptcy by a party or commencement of any voluntary insolvency proceeding;
  - 7.3.8. The filing of an involuntary petition in bankruptcy or commencement of any involuntary insolvency proceeding not cured by dismissal by the party within sixty (60) days of filing.
- 7.4. In the event of a material breach by a party to this Agreement, the non-breaching party may terminate this Agreement after providing thirty (30) days written notice to the breaching party to cure such breach. Upon such occurrence, a party shall be obligated to make only those payments the right which accrued to the date of termination.

## **8. GENERAL PROVISIONS**

- 8.1. Failure of either party to insist upon the performance of any of the terms of this Agreement or to declare a forfeiture or termination in the event of non-performance by the other party shall not constitute a waiver of performance required hereunder.
- 8.2. The Agent or Agency will not be in charge of premiums, premiums amend, loss charges, or any other amount of money except fees regarding the Agent or Agency job or premiums, loss charges, or any amount of money agreed by the Company as contingent operation.**
- 8.3. The Agent or Agency will not issue a slip/policy/contract to the policyholder/client/insured without two (2) Authorized signs: one (1) from the Agency/Agent and one (1) from the Company. The document signed is valid for transfer risk from a client to the insurance/AQUILANO RE company using the Agent/Agency.**
- 8.4. No assignment, transfer, or disposal of any interest that a party may have under this Agreement shall be made at any time without the prior written approval of the other party. Notwithstanding

the foregoing, Company may assign any interests under this Agreement to a parent or affiliate, or due to merger or acquisition without the consent of the Agent.

- 8.5. This Agreement shall be binding upon the administrators and executors, successors, and permitted assignees of the parties hereto.
- 8.6. No Amendment or modification of this Agreement shall be valid, or of any force or effect, unless the same be in writing and acknowledged and signed by the Company and Agent subject to the Notice provisions as set out in paragraph 7.2.
- 8.7. Any disputes, claims, or counterclaims arising from or relating to this Agreement shall be subject to and shall finally and exclusively be resolved by binding arbitration under the rules of conciliation and arbitration of the American Arbitration Association. Each party shall appoint an arbitrator, and the two arbitrators thus selected shall designate a third. If either party fails to appoint an arbitrator within thirty (30) days after receipt of notice of the appointment by the other party of its arbitrator, or if the arbitrators selected by the parties fail to appoint a third within thirty (30) days after both have been appointed, then the American Arbitration Association shall have the power, on the request of either party, to make the appointments which have not been made as contemplated above. The costs of arbitration shall be borne equally by the parties.
- 8.8. This Agreement shall be construed for all purposes and shall be interpreted and enforced by the laws of New York. The parties agree the site of this contract is the city of New York. Each chooses the city of New York as its choice of forum for any suit or other action which may be filed to enforce all or any part of this Agreement or for damages arising directly or indirectly from it.
- 8.9. The terms and provisions of this Agreement shall be severable. If any provision of this Agreement shall be adjudged invalid or unenforceable under applicable law, such part may be reformed by a court of competent jurisdiction sitting in equity. The parties shall continue to abide by all other or remaining terms of this Agreement, and if the court declines to revise the offending provision, the parties shall strive to deal with each other fairly and reasonably.
- 8.10. If applicable, the requirements of *41 CFR §§ 60-1.4(a), 60-250.5 (a), 60-300.5(a), 60-741.5(a), and 29 CFR Part 471*, Appendix A to Subpart A, are incorporated herein by reference.

This Agreement constitutes the entire agreement between the parties concerning its matter.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have executed this Agreement.

**AQUILANO RE COMPANY**

**SOUTH DOT, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name: **VALOY CHAUDARY**

Title: **PRESIDENT**

Title: **CHIEF OPERATION OFFICER**

Date: **December 15<sup>th</sup>. 2021**

Date: **December 15<sup>th</sup>. 2021**



## AGENT OR AGENCY AGREEMENT

## SCHEDULE A

## Product Compensation Schedule

**Requirements**

The agent will also be required to furnish upon the Company's request copies of State licenses for those States where products are to be marketed, negotiated, and sold.

**Compensation**

The compensation stated below will be paid on Gross Collected Premium received from or through the Agent:

DESCRIPCION	COMMISSIONS %
PROPERTY DAMAGE (All Risk, Named Risks, Stand Alone, Nat Cat)	5 - 10
BUSINESS INTERRUPTION (LOPI; BI; EE)	5 - 7.5
CONSTRUCTION/ERECTION (All Risk, Name risks, Stand Alone, ALOP)	10 - 12,5
CASUALTY (Political Risks; Terrorism, Fidelity, Surety)	5 - 10
MACHINERY BREAKDOWN (Defects, Faults, Bad Workmanship, Explosion)	10 -15
UPSTREAM ENERGY PACKAGE	12.5 - 15
SPECIAL RISKS/ILS/OTHERS	15 - 20

## 41 CFR 60-1.4 - Equal opportunity clause.

**(a) Government contracts.** Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

**(1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

**(2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(3)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(4)** The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24,

1965, and shall post copies of the notice in conspicuous places available to [employees](#) and [applicants](#) for employment.

(5) The [contractor](#) will comply with all provisions [of Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the [Secretary](#) of Labor.

(6) The [contractor](#) will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by the rules, regulations, and orders of the [Secretary](#) of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the [contracting agency](#) and the [Secretary](#) of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the [contractor](#)'s non-compliance with the nondiscrimination clauses of this [contract](#) or with any of such rules, regulations, or orders, this [contract](#) may be canceled, terminated, or suspended in whole or in part and the [contractor](#) may be declared ineligible for further [Government contracts](#) by procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the [Secretary](#) of Labor, or as otherwise provided by law.

(8) The [contractor](#) will include the provisions of paragraphs (1) through (8) in every [subcontract](#) or purchase order unless exempted by rules, regulations, or orders of the [Secretary](#) of Labor issued under section 204 [of Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each [subcontractor](#) or vendor. The [contractor](#) will take such action concerning any [subcontract](#) or purchase order as may be directed by the [Secretary](#) of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the [contractor](#) becomes involved in, or is threatened with, litigation with a [subcontractor](#) or vendor as a result of such direction, the [contractor](#) may request the [United States](#) to enter into such litigation to protect the interests of the [United States](#).

## Sec. 60-250.5 Equal opportunity clause.

**(a)Government contracts.** Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and Other Protected Veterans.

**(1)** The contractor will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or other protected veteran regarding any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran, a veteran of the Vietnam era, a recently separated veteran, or other protected veteran in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by employment, whether or not administered by the contractor;
- vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the contractor including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

**(2)** The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at the establishment of the contract or other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Further, listing employment openings with the state workforce agency job bank where the opening occurs or with the local

employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service office.

- (3)** Listing of employment openings with the local employment service office under this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- (4)** Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of these clauses, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: Provided, that this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. The contractor may advise the state agency when it is no longer bound by this contract clause
- (5)** The provisions of paragraphs 2 and 3 of these clauses do not apply to the listing of employment openings that occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (6)** As used in this clause:
- i. All employment openings include all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
  - ii. Executive and top management means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given

- particular weight, and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6. ii.; Provided, that (e) of this paragraph 6. ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.
- iii. Positions that will be filled from within the contractor's organization means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her organization.
- (7)** The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Act.
- (8)** In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken by the rules, regulations, and relevant orders of the Secretary of Labor issued under the Act.
- (9)** The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other protected veterans. The contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- (10)** The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to taking affirmative action to employ and advance in employment

qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans and other protected veterans.

**(11)** The contractor will include the provisions of this clause in every subcontract or purchase order of \$25,000 or more unless exempted by the rules, regulations, or orders of the Secretary issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action concerning any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance may direct to enforce such provisions, including an action for noncompliance.

- (a) Subcontracts. Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.
- (b) Adaption of language. Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.
- (c) Inclusion of the equal opportunity clause in the contract. The equal opportunity clause doesn't need to be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60-250.5(a).
- (d) Incorporation by operation of the Act. By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.
- (e) Duties of contracting agencies. Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include ensuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are outlined in Sec. 60-250.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

[70 FR 72151, Dec. 1, 2005, as amended at 73 FR 18715, Apr. 7, 2008]

## 60-300.5 Equal opportunity clause.

**(a) Government contracts.** Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

### EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS 3

The definitions outlined in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

**(1)** The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, Active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veteran(s)") regarding any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures.
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.
- iii. Rates of pay or any other form of compensation and changes in compensation.
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- v. Leaves of absence, sick leave, or any other leave.
- vi. Fringe benefits available by employment, whether or not administered by the contractor.
- vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue the training.
- viii. Activities sponsored by the contractor including social or recreational programs.
- ix. Any other term, condition, or privilege of employment.

**(2)** The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at the establishment of the contract or other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the



local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. To satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

- (3) Listing of employment openings with the appropriate employment service delivery system under this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- (4) Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor so that the employment service delivery systems can identify them as such, and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information outlined in the job listing and receive priority referrals from employment service delivery systems. If the contractor uses an external job search organization to assist in its hiring, the contractor shall also provide to the employment service delivery system with the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so

advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.

- (5) The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings that occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
- (6) As used in this clause: i. All employment openings include all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
- i. Executive and senior management means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
- ii. Positions that will be filled from within the contractor's organization means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her organization.
- (7) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Act.
- (8) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken by the rules, regulations, and relevant orders of the Secretary of Labor issued under the Act.

- (9) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). Concerning employees who do not work at the physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise can access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
- (10) The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to taking affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
- (11) The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more unless exempted by the rules, regulations, or orders of the Secretary issued under VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action concerning any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including an action for noncompliance.
- (12) The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.
- (a) Subcontracts. Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

- (b) Adaptation of language. Such necessary changes in language may be made to the equal opportunity clause as must be appropriate to identify properly the parties and their undertakings.
- (c) Inclusion of the equal opportunity clause in the contract. It is not necessary to include the equal opportunity clause verbatim in the contract. The clause shall be made a part of the contract by citation to 41 CFR 60-300.5(a) and inclusion of the following language, in bold text, after the citation: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans."
- (d) Incorporation by operation of the Act. By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.
- (e) Duties of contracting agencies. Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include ensuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are outlined in § 60-300.66 as may be ordered by the Secretary or the Director.

## §60-741.5 Equal opportunity clause.

**(a) Government contracts.** Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

**(1)** The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability regarding any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination based on their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by employment, whether or not administered by the contractor;
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the contractor including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

**(2)** The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the act.

**(3)** In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken by the rules, regulations, and relevant orders of the Secretary of Labor issued under the act.

**(4)** The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance

in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). Concerning employees who do not work at the physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise can access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

- (5)** The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to taking affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.
- (6)** The contractor will include the provisions of this clause in every subcontract or purchase order over \$10,000 unless exempted by the rules, regulations, or orders of the Secretary issued under section 503 of the act, as amended so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action concerning any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including an action for noncompliance.
- (7)** The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against based on disability.

- (a) Subcontracts. Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.
- (b) Adaption of language. Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.
- (c) Inclusion of the equal opportunity clause in the contract. It is not necessary to include the equal opportunity clause verbatim in the contract. The clause shall be made a part of the contract by citation to 41 CFR 60-741.5(a) and inclusion of the following language, in bold text, after the citation: "This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals based on disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."
- (d) Incorporation by operation of the act. By operation of the act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.
- (e) Duties of contracting agencies. Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the act. Such cooperation shall include ensuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are outlined in §60-741.66 as may be ordered by the Secretary or the Director.