

**Example of Facility Use Terms and Conditions Used for  
— Depot Maintenance PPP Agreements —**

ATTACHMENT TO DIRECT SALES AGREEMENT

A. REAL PROPERTY ASSIGNMENT

*Depot* will provide *Company* access to the \_\_\_\_\_ facilities to conduct final inspections in support of the production of \_\_\_\_\_. *Company* personnel shall strictly adhere to *Depot instruction number*, dated *date*, entitled “Operation of \_\_\_\_\_.”

*Depot* also authorizes *Company* to use approximately *number* square feet of bay space located in Building *number* in support of this contract. The *Depot* currently provides this space to *Company* under direct sales contract *number* in support of the *Partnership Name* and under Support Agreement *number* with PM *Program Name* in support of the \_\_\_\_\_ program. *Company* and PM *Program Name* have the responsibility for coordinating workload requirements within the shared space and for initiating action to adjust costs of any existing support agreements or contracts. No completed \_\_\_\_\_ worked under this contract will be stored at *Depot*. The facility usage provided under this contract will be on a non-interference basis with *Depot* workload.

The fixed price facility usage costs under this direct sales contract are a prorated share of the total cost of the space and services provided. The prorated share is based on the number of vehicles per program each fiscal year. In the event either Direct Sales Contract *number* or Support Agreement *number* is terminated, *Company* may be responsible for an increased amount of facility usage costs associated with Building *number* and the *Company* personnel. Those costs will be incorporated by modification into this direct sales contract as negotiated at that time.

The fixed price facility usage portion includes the following services: Protocol and Public Affairs Support, Disaster Preparedness, Basic Environmental and Safety Support, Fire Protection and EMT Support, Security, Custodial Services, Routine Real Property Maintenance and Repair of the facilities, Pest Control, Non-hazardous Refuse Collection, Utilities, and one (1) Class A-5 telephone line. Class A-5 telephone service provides installation and local area exchange capability. This service is also subject to voice minimization exercises conducted as part of DoD requirements and the Buyer agrees not to hold the Seller responsible for any resulting downtime.

Other non-recurring facility related services, e.g., cleanup of environmental spills or requested building modifications, will be billed on an actual cost basis. Any emergency non-recurring facility related costs will be billed to *Company* when service is complete with payment due 45 calendar days from billing date. Funds to cover the actual costs, as accrued, are subtracted from the contract advance funding received from *Company*. When payment for actual non-recurring facility related costs is received from *Company*, *Depot* will reimburse the advance funding account. Non-emergency support will be separately funded prior to services being provided.

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If a decision is later made by the *Depot* that this *Company* assigned space is needed for other *Depot* workload, and *Depot* therefore requires *Company* to relocate into other buildings, the logistics to accomplish the move and the cost thereof will be the responsibility of *Company*. A requirement to relocate *Company* operations would be predicated only on a major defense decision by the Department of Defense, the Department of the \_\_\_\_\_, HQ \_\_\_\_\_ Command, or other Defense Component which would deem the *Company* operations to interfere, for any reason, with the performance of work by *Depot* on other national defense manufacturing/re-manufacturing projects, assignments, contractual obligations or otherwise inhibit the overall efficiency of *Depot* operations. Should a decision be made by the Government requiring *Company* to relocate its operations to another assigned area of *Depot*, the Government agrees to provide at least a one hundred and eighty (180) day notice of the required move.

### **B. REAL PROPERTY MODIFICATION/ALTERATIONS**

1) *Company* will be responsible for performing alterations, modifications, and construction to assigned facilities necessary for support. Cost incurred for alterations, modifications and construction to assigned facilities will be borne by *Company*. Removal of equipment or fixtures (not necessary for *Company* operations), necessary actions to be taken to ensure proper storage (packing, etc.) of said equipment or fixtures, and movement of said equipment or fixtures to the designated storage site will be accomplished by *Depot* with the cost being borne by *Company*. *Depot* will coordinate all such actions with *Company* prior to commencement of work.

2) Prior to initiation of any alterations, modifications and construction activities, *Company* will coordinate with the PM \_\_\_\_\_ to ensure non-interference with their workload in Bldg \_\_\_\_ and to determine funding responsibilities for the alterations, modifications, and construction activities. Along with complete plans and specifications to include drawing package, *Company* will submit a copy of written concurrence from PM \_\_\_\_\_ to the *Depot* \_\_\_\_\_ manager. All plans and specifications must be approved by *Depot* and comply with applicable construction, security, environmental and safety requirements. *Depot* is responsible for obtaining necessary approvals through the chain of command or appropriate regulatory officials. At the time of *Depot* approval of alterations, modifications, and construction activities, *Depot* will determine the alteration, modification, or construction to be either 1) a permanent change to the facility which, at the termination of this contract, will become the property of the U.S. government, or 2) a temporary change to the facility which, at the termination of this contract, *Depot* may require *Company* to return the building to its original condition (see Paragraph D below).

### **C. REAL PROPERTY MAINTENANCE**

1) *Depot* will perform the routine day-to-day maintenance of assigned facilities. *Company* will reimburse *Depot* based on square feet of assigned facilities or as otherwise determined by the *Depot* Contracting Officer.

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2) *Depot* will program, fund, and accomplish all major routine maintenance and repair (e.g., building re-roofing, total interior and exterior painting, and replacement of end items, such as heating and air conditioning systems). *Company* will reimburse *Depot* based on a cost per square feet of assigned facilities or as otherwise determined by the *Depot* Contracting Officer.

3) Real property maintenance and repair requested by *Company*, which is over and above the routine support reflected in this contract, will require prior written approval by *Depot* and direct funding from *Company*.

4) All work requests to *Depot* from *Company* will be integrated into the *Depot* priority system. *Company* work requests will receive priority assignments in the same manner as comparable work requests from other depot elements.

5) Prior to contracting for any routine maintenance that cannot be accomplished within *Depot's* priority system, *Company* will submit such work requests to DPW for approval. Cost incurred for contracted routine maintenance and repair to assigned facilities will be borne by *Company*.

**D. RETURN OF ASSIGNED REAL PROPERTY**

At the termination or expiration of this agreement or upon *Company's* relocation to a different site during the term of this contract, *Company* agrees to return the assigned real property and improvements therein to *Depot* in substantially the same condition, less ordinary wear and tear, as said property was in at the time of the original assignment. This will include the reinstallation of any equipment removed by *Depot* as specified in Paragraph B.1) above, if required by *Depot*. An inspection will be performed by *Depot* personnel with *Company's* input prior to turn over of facilities to *Company*.

**E. COST REIMBURSEMENT/INSURANCE/ DAMAGE TO PROPERTY**

1) Property Damage. Buyer/*Company* will reimburse the Seller/*Depot* for loss of or damage to property of the Government in accordance with FAR 52.245.8, Liability for Facilities. Buyer/*Company* shall provide Seller/*Depot* proof of insurance for replacement value of \$\_\_\_\_\_ for the government furnished property within 30 calendar days after date of this contract. The Seller/*Depot* shall be identified as the exclusive beneficiary of such insurance proceeds, and any payment under such an insurance contract shall be issued pursuant to the direction of the Seller's/*Depot's* Contracting Officer. In the alternative, the Seller/*Depot* may require Buyer/*Company* to replace in kind any building and/or equipment that may be damaged or destroyed during the term of this agreement using the insurance proceeds required herein.

2) Insurance. Buyer/*Company* will provide Seller/*Depot* proof of their insurance in the amounts prescribed by FAR 28.307.2, Liability, as follows:

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Workers' Compensation and Employers' Liability on Non-Governmental Employees	\$ 100,000
General Liability, Bodily Injury Liability	\$ 500,000 per occurrence
Automobile Liability	\$ 200,000 per person
▪ Bodily Injury	\$ 500,000 per occurrence
▪ Property Damage	\$ 20,000 per occurrence
Replacement Value of Facilities	Bldg ____: \$ _____

3) Environmental Costs. The Buyer/*Company* agrees to fully reimburse the Seller/*Depot* or the United States Government for all costs associated with any emission, spill, release, or improper discharge, etc resulting from the Buyer/*Company* and/or its subcontractors or agents' acts or omissions in the utilization of a facility and/or equipment at *Depot* to include the Seller's test track, fording pond and bay space. Reimbursement shall include the initial cleanup and disposal of waste from spills as well as the cost of remedial actions or projects required by state or federal environmental agencies to abate and/or correct the effects of an environmental release and/or to remediate residual contamination resulting from the Buyer's operations. Buyer/*Company* will not be responsible for pre-existing environmental conditions. The determination of the pro-rata share from any incident involving joint liability for an emission, spill, or release shall be determined through investigation and negotiation by the Parties.

4) Safety Costs. The Buyer/*Company* will pay all cost associated with any safety violation from *Company* operations that results from *Company's* acts or omissions while utilizing a facility and equipment at *Depot*, including the costs of related remedial or corrective actions determined to be necessary or appropriate in accordance with the regulations of the Occupational Safety and Health Administration. The Buyer/*Company* will not be held responsible for costs resulting from pre-existing conditions in the building and/or of the equipment such as presence of asbestos, etc.

5) Damage Investigations. Action to reconcile damage to Government property which is believed to be proximately caused through negligence or intentional misconduct by the Buyer/*Company*, its subcontractors other than the *Depot*, and agents will be initiated by the Seller/*Depot's* accountable officer and referred to the appropriate Buyer/*Company's* Contracting Officer or his/her designated representative for investigation and resolution. The action will be memorialized using the report of survey process established under the provisions of \_\_\_\_\_ or like procedures under the FAR. Whatever procedure is utilized, the Seller/*Depot* accountable officer will be notified expeditiously of the status of the Contracting Officer's investigation and the action on the damage or loss.

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6) Damage In-Transit. It is understood that shipment of vehicles is the sole responsibility of the Buyer/*Company* or its Customer and that any loss or damage incurred in transit is not the responsibility of the *Depot*.

**F. CONSEQUENTIAL DAMAGES RESULTING FROM LOSS OF PRODUCTION TIME**

In the event *Depot* operations are interrupted and production downtime is experienced, and such is caused solely by *Company*, its contractors, subcontractors (other than the *Depot*), employees, or agents, while utilizing or occupying a facility and/or equipment at *Depot*, *Company* agrees to fully reimburse *Depot* for all consequential damages resulting from such lost production time. The amount of such consequential damages shall be computed using the current work center costing rates at the time of the incident. In the event *Depot* operations are disrupted and production downtime occurs, and a joint investigation by the parties determines that such occurred as a result of the joint fault or negligence of the parties (*Depot* and *Company*), their contractors, subcontractors, employees, or agents, then negotiations shall be undertaken by the parties to establish a pro-rata formula by which to assess the distribution of such consequential damages incurred by the parties.

**G. SAFETY AND ACCIDENT PREVENTION**

*Company* will assure that they comply with the provisions of *Service regulation(s) number(s)* and 29 CFR 1910, as well as other safety and occupational health requirements (copies are filed in the *Depot* Safety Office); and that *Company* provide *Depot* with its Safety Accident Prevention Plan.

**H. INSTALLATION SECURITY**

*Depot* is currently operating on a heightened state of security awareness and enforcement due to possible terrorist threats. Due to this heightened state of security, it is imperative that no unauthorized materials of any type be brought onto or left unattended on the installation. For this reason the Contractor must have a process in place to receive and store materials and have visibility of the location of those materials at all times while on *Depot*. This includes construction materials, equipment, and miscellaneous items. This visibility/accountability of materials applies to the Contractor, its subcontractors, and its material suppliers.

Further, all Contractor, subcontractor, and material supplier employees are prohibited from bringing personal belongings of any nature onto the installation if such items are to be left unattended at any time.

The Contractor is further required to have a plan of action for implementing these procedures and must submit it to the Contracting Officer upon request. This plan of action must include a provision for informing all employees and subcontractors of these

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procedures. The plan of action must also address monitoring and procedures the Contractor has in place to ensure compliance with this contractual provision.

Should the Contractor fail to comply with this mandatory contractual provision, the Contractor may be held responsible for all direct and indirect cost incurred by the Government in identifying, securing, segregating, removing, and otherwise properly disposing of improper or abandoned materials/equipment.

I. ENVIRONMENTAL RESPONSIBILITIES

See Environmental Annex (Attachment \_\_).