

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

PUBLIC-PRIVATE PARTNERSHIP
USE OF INDUSTRIAL FACILITIES
INSTALLATION

THIS PUBLIC-PRIVATE PARTNERSHIP is a cooperative arrangement made between the *Service*, the *Depot* located on *Installation, State* (hereinafter “Government”) and *Corporate Name*, a corporation duly organized and existing under and by virtue of the laws of the State of *specify*, (hereinafter “*Company*”).

WITNESSETH:

That the Secretary of the *Service* has designated the depot-level activity at *Installation* as a Center of Industrial and Technical Excellence in the recognized core competencies of the Center. The Center serves as a recognized leader in its core competencies throughout the Department of Defense by reengineering industrial processes and adopting best-business practices in connection with the Center’s core competency requirements.

That the *Installation* Commander (“Commander”), by the authority of Title 10, United States Code, Section 2474, having determined that the facilities and equipment hereby provided at the Center are not presently fully utilized for the *Service*’s own production or maintenance requirements; that the proposed use of the facilities and/or equipment herein described by *Company* will not have a significant adverse effect on the readiness of the Armed Forces; and, that this action is consistent with the needs of the Department of Defense and will be advantageous to the United States and in the public interest; and for the consideration set forth, hereby provides to *Company* the property shown and/or described in Exhibits A and B, attached hereto and made a part hereof, hereinafter referred to as the Premises, for industrial, commercial or government purposes. The Government and the *Company* may be referred to jointly as the “Parties” and each separately as a “Party.”

That *Company* will perform with its personnel the following Government contract work related to the core competencies of this Center, including but not limited to *insert description*.

THIS PUBLIC-PRIVATE PARTNERSHIP for the use of the described facilities (hereinafter, the “Partnership”) is entered into subject to the following conditions:

1. TERM

This Partnership is granted for a term beginning upon the execution of this document (“Term Beginning Date”), and ending *number* years from the effective date, unless sooner terminated in accordance with the provisions of this Partnership. By proper

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notice of both Parties, the term of this Partnership may be extended by means of a duly signed Supplemental Agreement.

2. CONSIDERATION

a. *Company* shall pay annual rent to the Government in the amount of *value* dollars (*\$number*) payable in quarterly installments in advance to the order of the U.S. Treasury and submit the payments to *Installation Organization*. *Installation Organization* shall forward such payments to *DFAS-Operating Location*. Such cash rental may be offset by the value of work items, which are accomplished by *Company* and approved in advance in writing by the Government. Said work items are limited to work items that are a benefit to the Government and are for repair, restoration, and/or improvement of the Premises, or other work directly related to the core competencies and the mission of the Center. Credit for reduction in rental consideration for approved rental offsets will be accomplished by Supplemental Agreement in writing. It is further understood and agreed that *Company* shall furnish the Government within thirty (30) days after completion of rental offset work item, certification documentation of work item cost, the sufficiency of which shall be to the complete satisfaction of the Government. Rental offset will not be approved for accomplishing work items that are the obligations of *Company* addressed in paragraph 10, PROTECTION OF PROPERTY, or addressed in Exhibit C, Facilities Description and Maintenance Responsibilities, attached hereto and made a part hereof. This Partnership may be amended by Supplemental Agreement to provide for future rent credit in the case of Partnership term extension and/or to provide for refund of paid rental consideration upon completion and approval of rental offset work items.

b. The foregoing consideration has been determined by the *Service* to be not less than fair market value of the Premises, and will fully reimburse the Center for the direct and indirect costs that are attributable to *Company's* use of the equipment and facilities which are the subject of this Partnership arrangement.

c. All rent and other payments due under the terms of this Partnership must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982 (31 U.S.C. 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the Government; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) If interest charges are applicable, the Government will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Said interest would accrue from the due date. An administrative charge to cover the cost of processing and handling each payment will also be imposed.

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(2) In addition to the charges set forth above, the Government will impose a penalty charge of *value* percent (*number* %) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

d. *Company* shall pay to the Government within thirty (30) days after written notice of any sum which may have to be expended by the Government after the expiration or termination of this Partnership in restoring the premises to the condition required by paragraph 27, SURRENDER AND RESTORATION OF PREMISES. Compensation in such case shall be made payable to the Treasurer of the Government of America and forwarded by *Company* to the Commander, *Installation*.

3. NOTICES

a. Whenever the Government or *Company* shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Partnership or with respect to the Premises, each such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication shall be in writing and shall not be effective for any purpose unless same shall be given and served by personal delivery to the party or parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication is directed or by mailing the same to such Party or Parties by certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight, courier service, addressed as follows:

If to *Company*: _____

If to the Government: _____

Or at such other address or addresses as the Government or *Company* may from time to time designate by notice given by certified mail or by a nationally recognized overnight courier service.

b. Every notice, demand, order, direction, determination, requirement, consent or approval, request or communication hereunder sent by mail shall be deemed to have been given or served as of the second business day following the day of such mailing.

c. Notice shall be deemed duly given if and when enclosed in a properly sealed envelop, or wrapper, addressed as aforesaid, and deposited postage prepaid in a facility

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regularly maintained by the United States Postal Service, or sent by an alternate commercial carrier.

4. AUTHORIZED REPRESENTATIVES

The Commander, *Installation* has been duly authorized pursuant to 10 U.S.C. 2474 to execute and administer this Partnership. Except as otherwise specifically provided, any reference herein to “Commander” shall include the installation commander’s duly appointed successors and authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval of the Commander and to such rules, regulations and directions as may be prescribed or issued from time to time by the Commander.

6. APPLICABLE LAWS AND REGULATIONS

Company shall comply with all applicable Federal, State, county and municipal laws, ordinances and regulations wherein the Premises are located.

7. CONDITION OF PREMISES

a. *Company* shall provide to *Installation Organization* engineering drawings showing all proposed changes to the area identified in this Partnership. All changes shall be approved by *Installation Organization*, said approval not to be unreasonably withheld or delayed.

b. *Company* acknowledges that it has inspected the premises, knows its condition, and accepts the condition and state of repair of the Premises. It is understood and agreed that they are in an “as is,” “where is” condition without any representation or warranty by the Government concerning their condition and without obligation on the part of the Government to make any alterations, repairs or additions. The Government shall not be liable for any latent or patent defects in the Premises. *Company* acknowledges that the Government has made no representation or warranty concerning the condition and state of repair of the Premises, nor any agreement or promise to alter, improve, adapt, or repair them which has not been fully set forth in this Partnership.

c. Notwithstanding sub-paragraph b. above, the Government retains any and all obligations and liabilities associated with environmental contamination existing at the Premises prior to the date of this Partnership, as described in Paragraph 19, ENVIRONMENTAL BASELINE SURVEY, of this Agreement, and/or any other environmental contamination existing at the Premises prior to the date of this Partnership.

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d. As of the date of this Partnership, an inventory and condition report of all personal property and improvements of the Government included in this Partnership shall be made by the Commander and *Company* to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit D, Inventory and Condition Report, and made a part hereof. There shall be added to said inventory and condition report from time to time such additional Government facilities and fixtures as are furnished by, or at the expense of, the Government, or to which title vests in the Government pursuant to the conditions of this Partnership. Upon the expiration, revocation or termination of this Partnership, another inventory and condition report shall be similarly prepared and will constitute the basis for settlement by *Company* with the Commander for any property shown to be lost, damaged or destroyed. Any such property must be either replaced or restored to the condition required by paragraph 10, PROTECTION OF PROPERTY, except to the extent of ordinary wear and tear.

8. TRANSFERS AND ASSIGNMENTS

Company shall neither transfer nor assign this Partnership or any interest therein or any property on the Premises, nor sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Partnership.

9. UTILITIES AND OTHER SERVICES

a. *Company* shall meter all utilities that will be used in their processes. The submitted drawings, as required by subparagraph 7.a. of this Partnership, shall show the location and types of all meters.

b. *Company* shall be responsible for payment of utilities as described in Exhibit C, janitorial services, and routine building maintenance for the Premises, without cost to the Government. Utilities services shall be provided through meters, if practicable. *Company* shall purchase, install, and maintain all such meters at its own cost and without cost and expense to the Government. The charges and the method of payment for each utility or service shall be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations on such basis as the appropriate supplier of the utility or service may establish (e.g., Department of Defense rates). The Parties understand and agree that the Government in no way warrants the continued maintenance or adequacy of any utilities or services it may furnish to *Company*. Any sale of a utility service by the Government shall be in accordance with 10 U.S.C. 2481 and *Service regulation number and title*, as it may be amended from time to time or any successor instruction or regulation. Payment shall be made in the manner prescribed in Exhibit C.

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c. The Government reserves the right to operate and maintain existing utility distribution lines across the Premises. *Company* shall maintain at its expense the load specific utility distribution lines on the Premises.

10. PROTECTION OF PROPERTY

a. *Company*, at its expense, shall at all times protect, preserve, maintain and effect routine repairs of the Premises. Based upon the approved *Company* engineering drawings, the Government will be able to delineate the responsibility for existing utility systems, including, all improvements located thereon. *Company* shall at all times exercise due diligence in protecting the Premises, including the improvements thereon, against damage or destruction by fire and other causes. *Company* shall at all times maintain the Premises in a decent, safe, and sanitary condition and keep all walk areas free of debris and obstructions of any kind. *Company* shall be responsible for any damage that may be caused to the property of the Government by the activities of *Company* under this Partnership. Portions of the Premises used and maintained by *Company* shall at all times be maintained at the expense of *Company*, to meet established industrial practice standards. It is further agreed that “emergency” maintenance response (immediate, but not less than two hours) by base personnel shall be transferred to *Company* personnel as soon as possible/reasonable. Said repairs or response actions (time and materials) shall be billed to *Company*. *Company* shall record and report to the designated Government representative all available facts relating to each instance of accidental damage to Government or *Company* property. *Company* shall secure the scene of any such damage until released by the investigative authority. If the Government elects to conduct an investigation of the incident, *Company* shall cooperate fully and assist the Government personnel until the investigation is complete. The Government shall be responsible for any damage to *Company* property that is found to be attributable to the Government.

b. Any real or personal property of the Government damaged or destroyed by *Company* incident to its use and occupation of the Premises shall be promptly repaired or replaced by *Company* to substantially the condition which existed prior to such damage or destruction, to include any and all improvements made as part of this Partnership, except to the extent of ordinary wear and tear. In lieu of such repair or replacement, *Company* shall, if so required by the Commander, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property.

c. *Company* shall comply with all Government security requirements. *Company* shall be responsible for all costs incurred with respect to its internal security requirements. Security shall be provided by the Government as set forth in Exhibit E, Security, attached hereto and made a part hereof. The Commander may revise Exhibit E as necessary to meet *Service* mission requirements without preparation of a Supplemental

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Agreement to this Partnership.

d. If classified material is to be possessed by *Company*, the *Installation Security Organization* shall establish a Security Agreement with *Company* as soon as *Company* occupies the Premises. Said Security Agreement shall be included as a part of Exhibit E addressed in subparagraph c. above.

11. INSURANCE

a. *Company* shall in any event and without prejudice to any other rights of the Government, bear all risk of loss or damage or destruction to the Premises, including any improvements, fixtures or other property thereon, arising from *Company's* use of the Premises. At the commencement of this Partnership, *Company* shall obtain and maintain at its expense for the duration of this Partnership from a reputable insurance company a contract of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both suffered or alleged to have been suffered by any person or persons resulting from the operations of *Company* under the terms and conditions of this Partnership, and *Company* shall require its insurance company to furnish to the Commander a certificate of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Insurance shall include special perils coverage; commercial general liability coverage for bodily injury, death and property damage insurance; automobile liability insurance coverage for owner, hired and non-owned automobiles, for any loss damage, personal injury or death caused by or occurring by reason of or incident to the possession and/or use of the Premises or as a consequence of the conduct of activities or performance of responsibilities under this Partnership; and if and to the extent required by law, workers' compensation and employer's liability or similar in form and amounts required by law. *Company* shall require that the insurance company give the Commander thirty (30) days written notice of any cancellation or material change in such insurance. The Commander may require closure of any or all off the Premises during any period for which *Company* has no insurance coverage or suitable self-insurance.

c. As to those structures and improvements on the Premises constructed by or owned by the Government, for such periods as *Company* is in possession of the Premises pursuant to the terms and conditions of this Partnership, *Company* shall procure and maintain at *Company's* cost a standard fire and extended coverage insurance policy or policies on the Premises to the full insurable value thereof less *Company's* standard deductible amount for which *Company* shall be responsible. *Company* shall procure such

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insurance from a reputable company or companies.

d. All policies or certificates issued by the respective insurers shall name the Government as an additional insured, provide that any losses shall be payable notwithstanding, any act or failure to act or negligence of *Company* or the Government or any other person; provide that the insurer shall have no right of subrogation against the Government; and be reasonably satisfactory to the Government in all other respects. In no circumstances will *Company* be entitled to assign to any third party rights of action that *Company* may have against the Government. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the Government, shall be payable to *Company* to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not used for such repair, restoration, or replacement shall be paid to the Government. If the Government does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to *Company* for the purposes herein above set forth, then such proceeds shall be paid to the Government, provided however that the insurer, after payment of any proceeds to *Company* in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by *Company*. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore or replace the Premises or any part thereof.

e. Notwithstanding any other provision of the Partnership, *Company* may self-insure, in whole or in part, the risk of loss borne by *Company* under subparagraphs a. and b. of this Section.

12. RIGHT TO ENTER (ACCESS AND INSPECTION)

The right is reserved to the Government, its officers, agents, employees, and contractors to enter upon the Premises at any time and for any purpose necessary or convenient in connection with Government purposes, to make inspections, to remove material, except property of *Company*, and/or to make any other use of the Premises as may be necessary in connection with Government purposes. The Government normally will enter the Premises during regular business hours and give *Company* at least twenty-four (24) hours prior notice of its intention to do so unless it determines the entry is required for safety, environmental, operations, or security purposes. Absent Government fault or negligence, *Company* shall have no claim for damages on account of any entries against the Government or any officer, agent, employee, or contractor thereof.

13. INDEMNITY

a. As set forth in Paragraph 7.b, above, *Company* acknowledges that it accepts the condition and state of repair of the Premises in an “as is”, “where is” condition. The

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Government shall not be responsible for damages to property or injuries or death to persons which may arise from the use of the Premises, or for damages to the property of *Company*, or for damages to the property or injuries or death to the person of *Company's* officers, agents, servants or employees or others who may be on the Premises at their invitation or the invitation of any one of them. The Government shall be solely liable for any claims and expenses resulting from the Government's failure to disclose known environmental conditions, existing as of the date of this agreement, to *Company*.

b. In accordance with the statutory requirements set forth in 10 U.S.C. 2474 (e)(2)(B)(i) and (ii), *Company* agrees to assume all risks of loss or damage to property and injury or death to persons arising out of the use of the Premises, or activities conducted by *Company* under the Partnership. *Company* expressly waives all claims against the Government for any such loss, damage, personal injury or death arising out of such use of the Premises, or the conduct of activities, or the performance of responsibilities under this Partnership. *Company* further agrees to the extent permitted by applicable law to indemnify, save, and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon personal injury, death or property damage arising out of the use of the Premises or any activities conducted, or services furnished, in connection with or pursuant to this Partnership. *Company* agrees to hold harmless and indemnify the Government from any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary of the *Service* or the Secretary of Defense to suspend or terminate the use of equipment or facilities during a war or national emergency. The agreements contained in the preceding sentences do not extend to claims and damages caused by the gross negligence or willful misconduct of officers, employees or agents of the Government, except to the extent of any contributory fault on the part of *Company*, its officers, agents and employees. The Government will give *Company* notice of any claim against it covered by this indemnity as soon after learning of it as practicable.

14. NON-DISCRIMINATION

Company shall not discriminate against any person or persons or exclude any person or persons from participation in the *Company's* operations, programs or activities conducted on the Premises, because of race, color, religion, sex, age, handicap or national origin.

15. RENTAL ADJUSTMENT

In the event the Government revokes this Partnership or in any other manner materially reduces the Premises area or materially affects its use by *Company* prior to the expiration date, to the extent permitted under this Agreement an equitable adjustment will be made in the rental paid or to be paid under this Partnership. Such adjustment of rental

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shall be evidenced by a Supplemental Agreement in writing; PROVIDED however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by *Company* with any of the terms and conditions of this Partnership.

16. PROHIBITED USES AND CONSTRUCTION/ALTERATIONS APPROVAL

a. *Company* shall not permit gambling on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Premises any activity which would constitute a nuisance. *Company* shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Premises.

b. *Company* is only authorized to use and occupy the Premises for the Governmental purpose (work) which is the subject of this Partnership arrangement. *Company* shall not construct or place any structure, improvement, or advertising sign(s) or modify or alter the Premises in any way, or allow or permit construction or renovation without prior review and approval of the *Installation Engineering Organization* and written approval of the Commander. All plans for any construction, installations, modifications, alterations, or additions (collectively, "Alterations") by *Company* must be approved in writing by the Commander before starting any construction or construction-related activities. Such approval shall not be unreasonably withheld or delayed. In addition, all designs for *Company* connections to any Government utilities will comply with Department of Defense and *Service* ("DoD/*Service*") construction standards and be subject to Government review and approval. DoD/*Service* construction standards are available through the Commander.

c. The Government review process for any Alterations or utility connections will be completed within thirty (30) days of receipt of plans and specifications. In the event problems are detected during the review, immediate notice will be provided by telephone to *Company* or its representative designated for the purpose. Approval will not be unreasonably withheld or delayed.

d. All construction shall be in accordance with approved designs and plans and without cost or expense to the Government. *Company* shall not proceed with construction until it receives written notice from the Commander that such designs and plans are acceptable to the Government. *Company* shall make all Alterations in compliance with all applicable Governmental laws, regulations, codes, standards or other requirements and provisions of this Partnership.

e. All matters of ingress, egress, contractor haul routes, construction activity and disposition of material in connection with the Partnership shall be coordinated with the Commander. All construction activity shall be accomplished during periods (including

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hours of the day) acceptable to the Commander.

17. EXPANSION OF PARTNERSHIP PREMISES

Company may request approval from the Commander to expand the Premises to adjacent floor space. If the Commander approves the request, the Partnership shall be amended by Supplemental Agreement and *Company* shall pay rental consideration equal to the fair market appraised value of the increased areas as determined by government appraisal. *Company* shall occupy the additional floor space effective as of a day to be specified in the Supplemental Agreement.

18. ENVIRONMENTAL PROTECTION

a. *Company* shall, without cost or expense to the Government, comply with all Federal, state, local laws and regulations, and all *Service* requirements, present or future, controlling the quality of the environment, including, but not limited to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. 1251, et seq.), the Clean Air Act as amended in 1990 (42 U.S.C. 7401, et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.), the Toxic Substances Control Act (15 U.S.C. 2601, et. seq.), and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (Public Law 96-510, 94 Stat. 2767), including all regulations promulgated under these laws and all applicable federal or local equivalents of these laws and regulations. Such regulations, conditions and instructions are hereby incorporated by reference into, this Partnership; provided, however, that this Section shall not be construed as abridging the right of *Company* to contest the validity or enjoin the applicability of any such regulations, conditions or instructions.

b. *Company* shall not release or discharge air emissions, waste, effluent, hazardous substances or contaminants from the Premises in such a manner that such release or discharge will unlawfully pollute or contaminate air, ground (including sub-surface strata), water (including, ground water), or become a public nuisance. Any treatment, testing, or control of releases or discharges including monitoring or mitigation measures required as a result of *Company's* operations will be solely *Company's* responsibility.

c. Except as set forth in subparagraph g. of this Section, *Company* shall fully reimburse and indemnify the Government and shall hold the Government harmless for any claim, including equitable claims, arising out of *Company's* or its agent's use of the property and any court or legal expenses incurred by the Government. *Company* must also pay fines or penalties imposed upon the Government which are related to or caused by release or discharge by *Company* or its agents of emissions, waste or effluent hazardous substances, or contaminants from the Premises except to the extent of any

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contributory willful conduct or gross negligence on the part of the Government. Said claims and expenses shall include not be limited to, damages, fines or penalties, and court costs or legal expenses incurred by or assessed against the Government.

d. *Company* shall save, indemnify and hold harmless the Government from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by *Company*, its officers, agents, employees, contractors, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Federal, state or local environmental laws except to the extent of any contributory willful conduct or gross negligence on the part of the Government. This provision shall survive the expiration or termination of the Partnership, and *Company's* obligations hereunder shall apply whenever the Government incurs costs or liabilities for *Company's* actions of the types described in this Section. Nothing herein shall limit, in any manner, the Government's right to seek contribution and or cost sharing, under any applicable environmental law, for costs the Government may incur in connection with inspections, investigations, studies, design, construction, remediation or operations or maintenance of remedial activities from, at, on or near the Premises from parties responsible for any contamination occurring from, at, on or near the Premises.

e. In accordance with paragraph 12, RIGHT TO ENTER, herein, the Government's rights under this Partnership specifically include the right for Government officials to inspect upon reasonable notice the Premises for compliance with environmental safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. With the exception of RCRA compliance inspections, the Government will give *Company* twenty-four (24) hours prior notice of its intention to enter the Premises unless it determines immediate entry is required for safety, environmental, operations, or security purposes. *Company* shall have no claim on account of any entries against the Government or any officer, agent, employee, or contractor thereof. The Government will provide *Company* with the results of any inspections.

f. Except for those releases caused by *Company*, or its agents, *Company* does not hereby assume any liability or responsibility for environmental impacts and damage caused by any prior use or activity occurring on the Premises, prior to the beginning date of this Partnership. Further, *Company* has no obligation under this Partnership to undertake environmental response, remediation, or cleanup relating to prior uses or releases. The Government shall be solely liable for any claims and expenses resulting from the Government's failure to disclose known environmental conditions, existing as of the date of this agreement, to *Company*. For the purposes of this Section, "defense" or "environmental response, remediation, or cleanup" includes liability and responsibility for the costs of damage, penalties, legal and investigative services relating to such use or

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release.

g. *Company* agrees that the Government assumes no liability to *Company* should hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or *Service* or Department of Defense, interfere with *Company's* use of the Premises. The Government will endeavor to perform such cleanup in a manner which reasonably minimizes interference or disruption to *Company's* use and enjoyment of the Premises. *Company* shall have no claim on account of any such interference against the Government or any officer, agent, employee or contractor thereof. This Condition shall not affect, restrict, or enlarge any remedy that *Company* may pursue under other contracts with the Government, nor does it affect, restrict, or enlarge any defense that the Government may assert under other contracts with *Company*.

h. *Company* agrees to comply with the provisions of any health or safety plan in effect under the Installation Restoration Program (IRP) or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. If the response or remedial actions are performed by the Government, the Government agrees to provide said documents to *Company*. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by *Company*. *Company* and any licensees, or invitees shall have no claim on account of such entries against the Government or any officer, agent, employee, contractor, or subcontractor thereof. In addition, *Company* shall comply with all applicable Federal, state, and local occupational safety and health regulations. This shall not affect, restrict, or enlarge any remedy that *Company* may pursue under other contracts with the Government, nor does it affect, restrict, or enlarge any defense that the Government may assert under other contracts with *Company*.

i. *Company* must comply with all applicable Federal, state, and local laws and regulations and all *Service* or Department of Defense requirements relating to the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. *Company* will coordinate with *Environmental Management Organization* on all aspects of hazardous waste treatment, storage and disposal and that shall be in accordance with *Installation's* Hazardous Waste Management Plan (HWMP). *Company* shall have a completed and approved Site Specific Spill Plan (SSSP) prior to commencement of operations for responding to hazardous waste, fuel, and other chemical spills. The SSSP shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements. The SSSP shall be independent of Government spill prevention and response plans, although as appropriate, the SSSP may incorporate or reference any portion or all of Government spill prevention and response plans. Except for initial fire response and/or spill containment, *Company* shall not rely on use of *Installation* personnel or equipment in execution of its SSSP. *Company* shall file a copy of the

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approved SSSP and approved amendments thereto with the Commander within fifteen (15) days of *Environmental Management Organization's* approval. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of *Company* or because *Company* was not, in the opinion of the Government, conducting timely cleanup actions, *Company* agrees to reimburse the Government for its reasonable costs in accordance with all applicable laws and regulations.

j. Disposal of *Company's* hazardous waste will be through *Environmental Management Organization* using *EPA Generator ID number* and via a disposal contract administered by *DRMO Name*. *Company* is responsible for all costs associated with its hazardous waste operations, including but not limited to sampling and disposal costs, and said costs will be handled in accordance with Exhibit C. Records inspection logs and manifests will be maintained in accordance with *Installation's* HWMP. The Government reserves the right to inspect the facility and *Company's* records for compliance with Federal, state, and local laws, regulations, and other requirements relating to the generation handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the Government to appropriate regulatory agencies, as required by law. The Government will notify *Company* within a reasonable time of any such reporting. *Company* will be liable for the payment of any fines and penalties that may accrue as a result of the actions of *Company*. This shall not affect, restrict, or enlarge any remedy that *Company* may pursue under other contracts with the Government, nor does it affect, restrict, or enlarge any defense that the Government may assert under other contracts with *Company*. In the event of any discharge or release into the environment of a hazardous substance, *Company* shall immediately notify the emergency response team at 911.

k. *Company* shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without obtaining a digging permit from the *Installation Engineering Organization* and the prior written approval of *Environmental Management Organization*. Requests to conduct any subsurface work shall include project description, scope and a map delineating the area of concern specifically including depth of excavation, digging, or drilling. Turnaround time for request approval is established as fifteen (15) calendar days.

l. In the event it becomes necessary to determine the Parties' respective responsibilities under environmental laws, and with specific regard to any activity on the Premises conducted by, or authorized by, *Company* during the term of this Partnership, *Company* will be considered the operator and the Government will be considered owner of the Premises.

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m. Within a minimum of ten (10) calendar days prior to the beginning date of the term of this Partnership, *Company* shall provide the Government a list of hazardous material to be used on the Premises and provide the Government a description of the processes to be accomplished on the Premises. Unless otherwise mandated by federal or state law, the handling and storage of hazardous materials by *Company* shall be in compliance with *Installation's* hazardous material regulations and plans, to include use of the Hazardous Material Management System (HMMS) and maintenance of proper Material Safety Data Sheets (MSDS). *Company* shall furnish full details in writing to *Environmental Management Organization* thirty (30) days in advance of any change in hazardous materials to be used on the Premises or any change to hazardous waste procedures scheduled to be accomplished or any change to the description of the processes to be accomplished on the Premises.

n. *Company* will use all reasonable means available to protect the environment and natural resources. Where damage to natural resources nonetheless occurs from activities of *Company*, then *Company* shall be liable to restore the damaged natural resources, as required by law, to the extent of the damage caused by the activities of *Company*.

19. ENVIRONMENTAL BASELINE SURVEY

The Government performed environmental screening including records review, interviews, and Premises site inspections in accordance with applicable regulations and instructions. The Government's examination of the proposed Premises indicates that the Premises *insert specifics*. This information is attached hereto and made a part hereof as Exhibit F Environmental Baseline Survey, dated *date*, and provided to *Company* on or about *date*. Upon expiration, revocation or termination of this Partnership, another environmental screening, in accordance with applicable regulations and instructions, will be accomplished by the Government which will document the environmental condition of the Premises at that time. A comparison of the two assessments will assist the Commander in evaluating any environmental restoration requirements. *Company* in accordance with paragraph 27, SURRENDER AND RESTORATION OF PREMISES, will complete any such requirements.

20. HISTORIC PRESERVATION

The Premises are located within Building *number*, a proposed National Historical Site. Any proposed changes or modifications to the exterior of this facility shall be coordinated with the *State Historic Preservation Office* in accordance with applicable laws and regulations.

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21. TAXES

Any and all taxes imposed by the State or its political subdivisions upon the property or interest of *Company* in the Premises shall be paid promptly by *Company*. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the Partnership shall be renegotiated.

22. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Partnership or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Partnership is for the general benefit of such corporation or company.

23. PROTECTION AGAINST GRATUITIES

The Government may, by written notice to *Company*, terminate this Partnership if, it is found after notice and hearing, by the Secretary of the *Service* or his/her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by *Company*, or any agent or representative of *Company*, to any officer or employee of the Government with a view toward securing this Partnership or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this agreement, provided that the existence of the facts upon which the Secretary of the *Service* or his/her duly authorized representative makes such finding shall be an issue and may be reviewed in any competent court. In the event this Partnership is so terminated, the Government shall be entitled (a) to pursue the same remedies against *Company* as it could pursue in the event of a breach of this Partnership by *Company*; and (b) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the *Service* or his/her duly authorized representative) which shall be not less than three (3) or no more than ten (10) times the costs incurred by *Company* in providing any such gratuities to any such officer or employee. The rights and remedies of the Government provided in this condition shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Partnership.

24. MODIFICATIONS

This Partnership contains the entire agreement between the Parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the Parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this Partnership.

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25. DISPUTES

a. Governing Law. All disputes arising under or relating to this Partnership shall be resolved under this clause. Both Parties shall proceed diligently with the performance of the Partnership pending final resolution of any request for relief, claim, or action arising under the Partnership and comply with the decision of the Commander. The rights of the Parties are defined by the terms and conditions of this Disputes Clause. Particularly, these rights shall include that neither party shall have the right to claim for incidental and consequential damage;

(i) Neither does this Disputes Clause provide, nor may it be construed to provide, any right to Terminate For Default.

(ii) Claims shall be limited to those arising under the Partnership. A claim arising under the Partnership is a claim that can be resolved under a clause of the Partnership that provides for the relief sought by the claimant. Claims by *Company* shall be made in writing and submitted to the Commander for a written decision. Claims by the Government against *Company* shall be subject to a written decision by the Commander.

(iii) For *Company* claims, *Company* shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of *Company*'s knowledge and belief; and the amount requested accurately reflects the Partnership adjustment for which *Company* believes the Government is liable.

b. Disputes Prevention. Both *Company* and the Government are committed to a disputes prevention atmosphere during the performance of this Partnership. The Parties agree that their best efforts will be made to settle all controversies through direct negotiations between principals acting for each party.

c. Disputes Valued at Less Than \$100,000. Any dispute between *Company* and the Government arising under or related to this Partnership, which the Parties are unable to resolve by negotiation and in which \$100,000 or less is at issue, shall be decided by the Commander, or the Commander's designee. The Commander or Commander's designee shall reduce a decision to writing and mail or otherwise furnish a copy to *Company*. With respect to any such dispute, both parties agree that the decision of the Commander shall be final and conclusive, and shall not be appealable or otherwise subject to challenge.

d. Disputes Valued at More Than \$100,000. *Company* and the Government hereby agree that the following procedures constitute the administrative procedures that must be exhausted before *Company* or the Government may pursue any other remedy, which is available to it under the law. Any dispute between *Company* and the Government arising

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under or related to this Partnership which the Parties are unable to resolve by negotiation and in which more than \$100,000 is at issue shall be decided by the Commander. The Commander shall reduce his decision to writing and mail or otherwise furnish a copy to *Company*. The decision of the Commander (the decision) shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the decision, *Company* furnishes the Commander, by certified mail a written appeal of the decision addressed to the Commander of the *Service Command*. The *Service Command* Commander shall render a decision by a date mutually agreed upon by the Parties. The decision of the *Service Command* Commander, or his or her authorized representative, shall be final unless appealed to a court of competent jurisdiction in a timely manner, consistent with paragraph e. of this Section. In connection with any appeal to the *Service Command* Commander, *Company* shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

e. Judicial Review. *Company* or the Government, after exhausting the administrative remedies specified in paragraph d. of this Section, may:

(i) Pursue any remedy which is available to it under the law; or

(ii) Before or in conjunction with pursuing any remedy which is available to it under law, by mutual agreement, submit the dispute to alternative dispute resolution procedure as described in subparagraph f. of this Section, and as authorized by the Administrative Dispute Resolution Act of 1996, Public Law 104-320.

f. Alternate Disputes Resolution. The Parties may enter into an Alternative Disputes Resolution (ADR) process, which may be defined in greater detail by such further agreement of the Parties as may be necessary from time-to-time. ADR between the Parties shall be conducted expeditiously, and in accordance with a written ADR Agreement describing the particular process agreed to, and shall generally:

(i) Involve further investigation and negotiation by a disinterested principal selected by each Party; and,

(ii) Be directed/facilitated by a disinterested mediator selected by the Parties; and,

(iii) The expenses of participating in the ADR process shall be borne by the Party incurring them, with the expenses of the facilitator shared by the Parties equally; and,

(iv) The resolution of the dispute shall be by mutual agreement of the Parties, reduced to writing and signed by each Party, and shall be effective to accomplish all proper purposes.

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g. Waiver and Severability. Any action or inaction by either Party or the failure of either Party, on any occasion, to enforce any right or provision of this Partnership shall not be construed to be a waiver by either Party of its rights hereunder, and shall not prevent either Party from enforcing such provision or right on any future occasion. A determination that any portion of this Partnership is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions of this Partnership.

h. Availability of Funds. The Parties understand and agree that the Government's obligation to make any payment pursuant to this Partnership is contingent upon the availability of appropriated funds proper for such payment.

26. DEFAULT AND TERMINATION

a. The following shall constitute a default and breach of this Partnership by *Company*: The failure to comply with any provision of this Partnership, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Commander to *Company*. If, however, the time required to return to compliance exceeds the thirty (30) day period, *Company* shall not be deemed to be in default if *Company* within such period shall begin the actions necessary to bring it into compliance with the Partnership in accordance with a reasonable compliance schedule acceptable to the Government.

b. This Partnership may be terminated by the Commander at any time after expiration of the corrective period, provided in subparagraph a. of this Section, upon written notice of the termination ("Termination Notice of Default") to *Company*. The Termination Notice for Default shall be effective as of a day to be specified therein, which shall be at least five (5) business days after its receipt by *Company*. Such termination will not result in any refund by the Government of any rental previously paid or any prorated portion of the remaining term of the Partnership up to the termination date. *Company* shall not be entitled to any compensation for the value of rental offset credit remaining to be applied to rental consideration.

c. This Partnership may be terminated for convenience by the Government or *Company* (subject to paragraph 27, SURRENDER AND RESTORATION OF PREMISES) at any time upon written notice of the termination ("Termination Notice for Convenience") to the other Party. The Termination Notice for Convenience shall be effective as of a day to be specified therein, which shall be at least ninety (90) days after its receipt by the other Party. Such termination will not result in any refund by the Government of any rental previously paid, and provided further, that any quarterly rental payment due after termination notice is received by the Commander shall be prorated to cover the remaining term up to termination date. *Company* shall not be entitled to any compensation for the value of rental offset credit remaining to be applied to rental consideration.

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27. SURRENDER AND RESTORATION OF PREMISES

a. On or before the date of expiration of this Partnership or its termination by *Company*, *Company* shall forthwith terminate its operations on and vacate the Premises. Within ninety (90) days after the date of expiration or the effective date of any Termination Notice, as the case may (or such longer period of time as shall be mutually agreed upon by the Parties). *Company* shall remove, its personal property from the Premises. Any and all improvements in the Premises shall transfer to the Government at no additional cost, including improvements approved by the Government for rental offsets, or as mutually agreed by the Parties as an item that will not be restored to the satisfaction of the Commander, and surrender possession of them to the Government. If, however, this Partnership is terminated by the Government, *Company* shall vacate the Premises and remove said personal property within such reasonable time as the Commander may designate or as otherwise specified by the provisions of paragraph 15, RENTAL ADJUSTMENT. During such period, and prior to surrender, all obligations of *Company* under this Partnership shall remain in full force and effect. If *Company* shall fail, refuse, neglect to remove its personal property within the appointed time, then at the option of the Commander, and after notice to *Company*, the personal property shall either become the property of the Government without compensation therefore, or the Commander may cause the property to be removed and/or destroyed at the expense of *Company* and no claim for damages against the Government or its officers or agents shall be created by or made on account of such removal and/or destruction. *Company* shall also pay the Government on demand any sum that may be expended by the Government on account of such removal and/or destruction.

b. All remedial action found to be necessary with respect to any environmental contamination on the Premises caused by, or resulting from or incident to any acts or omissions of *Company*, or its officers, agents, employees, contractors, invitees, or others who may have been or may be on the Premises at their invitation or the invitation of any one of them, shall be conducted by and at the sole expense of *Company*. Such remediation shall be in compliance with all applicable local, state and Federal laws, rules and regulations. *Company* hereby agrees and promises to perform and complete all environmental remediation necessitated as a result of *Company's* use, occupation and activities on the Premises during the term of this Partnership, except to the extent of any contributory willful conduct or gross negligence on the part of the Government.

28. FULL FORCE AND EFFECT

The failure of either Party to insist in any one or more instances, upon strict performance of any of the terms, covenants or conditions of this Partnership shall not be construed as a waiver or relinquishment of its right to the future performance of any such items, covenants or conditions but the obligations pursuant to this Partnership with

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respect to such future performance shall continue in full force and effect.

29. GENERAL PROVISIONS

a. No Joint Venture or Statutory Partnership. Nothing contained in this Partnership arrangement will make, or will be construed to make, the Parties joint venturers with each other; nor shall this arrangement be construed as a General Partnership or Limited Partnership as defined by the Uniform Partnership laws of the State of *name* or any other jurisdiction. It being understood and agreed that nothing in this Partnership shall render, or be construed to render, either of the Parties hereto liable to any third party for the debts or obligations of the other Party hereto.

b. Remedies Cumulative; Failure of Government to Insist on Compliance. The specified remedies to which the Government may resort under the terms of the Partnership are distinct, separate and cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by *Company* of any provisions of this Partnership. The failure of the Government to insist in any one or more instances, upon strict performance of any of the terms, covenants or conditions of this Partnership shall not be construed as a waiver or a relinquishment of the Government's rights to the future performance of any such terms, covenants or conditions, but the obligations of *Company* with respect to such future performance shall continue in full force and effect. No waiver by the Government of any provisions of this Partnership shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the Government.

c. Headings or Titles. The brief headings or titles preceding each condition are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Partnership.

d. Personal Pronouns. All personal pronouns used in the Partnership, whether used in the masculine, feminine or neuter gender, will include all other genders.

e. Mission Priority. *Company* recognizes the Premises are on an operating military installation, and that the Government's military mission has priority and primacy over any other operations, including, those conducted on the Premises. *Company* understands and accepts that its use and activities on the Premises must be consistent with national security concerns and not interfere with the Government's mission and operations. *Company* hereby agrees that in case of any conflict between the Government's mission and operations and *Company's* use and activities on the Premises, as determined by the Commander, in the Commander's sole and absolute discretion, *Company* will, if the Commander so directs, delay, modify or otherwise interrupt its activities to accommodate the Government's mission and operations.

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IN WITNESS WHEREOF I have hereunto set my hand by the authority of the Secretary of the *Service* pursuant to 10 U.S.C. 2474(a) this _____ day of _____ 20nn.

NAME

Rank

Commander

IN WITNESS WHEREOF *Company* also executes THIS PARTNERSHIP this _____ day of _____ 20nn.

NAME

Title

Company