

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

DEPARTMENT OF THE *DEPARTMENT NAME*  
LEASE OF INDUSTRIAL FACILITIES  
*INSTALLATION*

THIS LEASE, made on behalf of the United States, between the Secretary of the *Military Department*, hereinafter referred to as the Secretary, and *Company* a corporation duly organized and existing under and by virtue of the laws of the state of *Name* hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by the authority of Title 10, United States Code, Section 2667, having determined that the property hereby leased is not excess property as defined by Section 3 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472), is not for the time needed for public use and the leasing hereof will be advantageous to the United States and in the public interest, and for the consideration set forth, hereby leases to the Lessee the property shown and/or described on Exhibits A and B, attached hereto and made a part hereof, hereinafter referred to as the premises, for industrial, commercial or government purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

This lease is granted for a term of *number* years, beginning the latter of *specific date* or the date of contract award under Request For Proposal (RFP), No. \_\_\_\_\_, and ending *specific date* or *number* years from the date of RFP award, but revocable as hereinafter provided.

2. CONSIDERATION

a. The Lessee shall pay annual rent to the United States in the amount of *value* dollars (*\$number*) payable in quarterly installments in advance to \_\_\_\_\_. Such cash rental may be offset by the value of work items which are accomplished by the Lessee 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 leased premises. 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 the Lessee 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 which are the obligations of the Lessee addressed in the Condition 10, PROTECTION OF

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PROPERTY, or addressed in Exhibit C attached hereto and made a part hereof. This lease may be amended by Supplemental Agreement to provide for future rent credit in the case of lease term extension and/or to provide for refund of paid rental consideration upon completion and approval of rental offset work items.

b. All rent and other payments due under the terms of this lease 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 United States; 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 United States 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.

(2) In addition to the charges set forth above, the United States 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.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to \_\_\_\_\_ or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a facility regularly maintained by the United States Postal Service, or sent by an alternate commercial carrier.

### 4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to “Secretary” or “Installation Commander” shall include their duly authorized representatives. Any reference to “Lessee” shall include any sub lessees, assignees, transferees, successors and their duly authorized representatives.

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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, *Installation*, hereafter referred to as Installation Commander, and to such rules, regulations and directions as may be prescribed or issued from time to time by the Installation Commander.

6. APPLICABLE LAWS AND REGULATIONS

The Lessee shall comply with all applicable Federal, State, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto except as required to maintain equipment or systems as defined in Exhibit C attached hereto and made a part hereof.

b. As of the date of this lease, an inventory and condition report and a videotaped report of all personal property and improvements of the United States included in this lease shall be made by the Installation Commander and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit D 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 lease. Upon the expiration, revocation or termination of this lease, another inventory and condition report and a videotaped report shall be similarly prepared and will constitute the basis for settlement by the Lessee with the Installation Commander for any leased property shown to be lost, damaged or destroyed. Any such property must be either replaced or restored to the condition required by Condition 10, PROTECTION OF PROPERTY.

8. TRANSFERS AND ASSIGNMENTS

Without prior written approval of the Installation Commander, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Such approval will not be unreasonably withheld or delayed. Failure to comply with this Condition shall constitute a noncompliance for which the lease may be revoked immediately by the Installation Commander.

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9. COST OF UTILITIES

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. Payment shall be made in the manner prescribed in Exhibit C.

10. PROTECTION OF PROPERTY

a. The Lessee shall keep the premises in good order and in a clean, safe condition. The Lessee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to the Installation Commander, or at the election of the Installation Commander, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property.

b. Portions of the leased premises used and maintained by the Lessee shall at all times be maintained, at the expense of the Lessee, to meet established industrial practice standards.

c. The Lessee shall comply with all government security requirements. The Lessee 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 F, attached hereto and made a part hereof. The Installation Commander may revise Exhibit F as necessary to meet *Service* mission requirements without preparation of a supplemental agreement to this lease.

d. If classified material is to be processed by the Lessee, the *Installation's* Industrial Security Section shall establish a Security Agreement with the Lessee as soon as the Lessee occupies the leased property. Said Security Agreement shall be included as a part of Exhibit F addressed in paragraph c. above.

11. INSURANCE

a. At the commencement of this lease, the Lessee will obtain and maintain for the duration of this lease from a reputable insurance company a contract of liability insurance. The insurance shall provide an amount not less than that which is prudent,

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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 the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the Installation Commander a copy of the policy or policies or a certificate of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall be a comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the Installation Commander thirty (30) days written notice of any cancellation or change in such insurance. The Installation Commander may require closure of any or all of the premises during any period for which the Lessee has no insurance coverage.

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof, less Lessee's standard deductible amount for which Lessee shall be responsible. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee 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 United States. If the United States 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 the Lessee for the purposes herein above set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee 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 the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

## 12. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees 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 the Lessee, and/or to make any other use of the lease premises as may be necessary in connection with Government purposes, and absent government fault or negligence, the Lessee shall have no claim for damages on account thereof against the

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United States or any officer, agent, or employee thereof.

**13. INDEMNITY**

The United States shall not be responsible to the Lessee for damages to property or injuries which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee'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, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors on the premises.

**14. RESTORATION**

On or before the expiration date of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to the condition the premises were in at the time when Lessee first occupied the premises, except for reasonable fair wear and tear, and as configured in drawings approved by the Government in accordance with Condition 20 hereof, or 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 Installation Commander. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such reasonable time as Installation Commander may designate or as otherwise specified by the provisions of the Condition 19, RENTAL ADJUSTMENT. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, within a reasonable time after receiving a written demand, then, at the option of the Installation Commander, the property shall either become the property of the United States without compensation therefor, or the Installation Commander may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States in restoring the premises after the expiration, revocation, or termination of this lease.

**15. NON-DISCRIMINATION**

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

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16. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the Installation Commander, interfere with the use of the premises by the Lessee.

17. SUBJECT TO MINERAL INTERESTS

NOT APPLICABLE

18. TERMINATION

a. This lease may be terminated by the Lessee at any time by giving the Installation Commander at least ninety (90) days notice in writing provided that no refund by the United States of any rental previously paid shall be made, and provided further, that any quarterly rental payment due after termination notice is received by the Installation Commander shall be prorated to cover the remaining term up to termination date.

b. Should Lessee not be able to secure Secretary of *Military Department* approval as required in Condition 23, paragraph b., the lease will be terminated and Lessee shall be entitled to a refund of any paid rental.

19. RENTAL ADJUSTMENT

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental 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 the Lessee with any of the terms and conditions of this lease

20. PROHIBITED USES AND CONSTRUCTION APPROVAL

a. The Lessee 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. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

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b. The Lessee is only authorized to use and occupy the leased premises for industrial, commercial and/or governmental purposes. The Lessee shall not construct or place any structure, improvement, or advertising sign, or allow or permit construction or renovation without prior written approval of the Installation Commander.

c. The Lessee will not disturb or alter the facility structures, equipment, or appurtenances which contain or might contain asbestos or lead-based paint, without prior coordination with the *Installation* point of contact.

21. NATURAL RESOURCES

NOT APPLICABLE

22. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payments that are not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the Installation Commander for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Installation Commander.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that—

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

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(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by –

(i) a senior company official in charge of the Lessee’s location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee’s affairs.

d. For Lessee claims of \$50,000 or less, the Installation Commander must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the Installation Commander must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The Installation Commander’s decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the Installation Commander or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in subparagraph c.(2) of this clause, and executed in accordance with subparagraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Installation Commander received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Installation Commander receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in Condition 2, CONSIDERATION.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the Installation Commander.

**23. ENVIRONMENTAL PROTECTION**

a. The Lessee shall not release or discharge air emissions, waste, effluent, hazardous substances or contaminants from the leased property in such a manner that such release or

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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 Lessee's operations will be solely the responsibility of the Lessee. The Lessee shall, without cost or expense to the Government, comply with all federal, state, and local laws and regulations, and all *Military 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 lease; provided, however, that this Section shall not be construed as abridging the right of the Lessee to contest the validity or enjoin the applicability of any such regulations, conditions or instructions, and provided further that contamination or pollution caused by prior operations of others shall not be the responsibility of the Lessee.

b. The Lessee shall be solely responsible for obtaining or modifying at its cost and expense any environmental permits, licenses, or other authorizing documents required for its operations under the Lease. The Lessee must obtain the approval of the Secretary of the *Military Department* to store Hazardous Materials and/or Hazardous Wastes at the property pursuant to 10 U.S.C. 2692.

c. Except as set forth in paragraph g. below, the Lessee shall fully reimburse and indemnify the Government and shall hold the Government harmless for any claim, including equitable claims, arising out of the Lessee's or its agent's use of the property and any court or legal expenses incurred by the Government. The Lessee must also pay fines or penalties imposed upon the Government which are related to or caused by release or discharge by the Lessee or its agents of emissions, waste or effluent, hazardous substances, or contaminants from the Leased Property. Said claims and expenses shall include, but not be limited to, damages, fines or penalties, and court costs or legal expenses incurred by or assessed against the Government.

d. The Lessee shall 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 the Lessee, 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. This provision shall survive the expiration or termination of

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the Lease, and the Lessee's obligations hereunder shall apply whenever the Government incurs costs or liabilities for the Lessee'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 Leased premises from parties responsible for any contamination occurring from, at, on or near the Leased premises.

e. In accordance with Condition 12, RIGHT TO ENTER, herein, the Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased 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 the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased premises unless it determines immediate entry is required for safety, environmental, operations, or security proposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

f. The Government is not responsible for any removal of asbestos or responsible for maintaining the containment of asbestos. If any activity requires the removal of asbestos, an asbestos disposal plan must be submitted concurrently with the plans related to the activity. The asbestos disposal plan will identify the proposed disposal site for the asbestos. All asbestos disposal will be subject to paragraph d. above. The expense of asbestos disposal may qualify to be offset against payment of rent in accordance with the Condition 2, CONSIDERATION.

g. Except for those releases caused by the Lessee, or its agents, the Lessee does not hereby assume any liability or responsibility for environmental impacts and damage caused by any prior use or activity occurring on the Leased Property, or the presence or use of toxic or hazardous wastes, substances or materials at any location on the Leased Property prior to the beginning date of this Lease. Further, the Lessee has no obligation under this Lease to undertake environmental response, remediation, or cleanup relating to prior uses or releases. 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 release.

h. The Lessee agrees that the Government assumes no liability to the Lessee should hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or *Military Service* or Department of Defense, interfere with the Lessee's use of the Leased premises. The Lessee shall have no claim on account of any such interference against the

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United States 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 United States Government, nor does it affect, restrict, or enlarge any defense that the United States Government may assert under other contracts with *Company*.

i. The Lessee 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. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and any licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable federal, state, and local occupational safety and health regulations. This Condition shall not affect, restrict, or enlarge any remedy that *Company* may pursue under other contracts with the United States Government, nor does it affect, restrict, or enlarge any defense that the United States Government may assert under other contracts with *Company*.

j. The Lessee must comply with all federal, state, and local laws and regulations, and all *Military Service* requirements relating to the handling and storage of hazardous materials and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. The Lessee will coordinate with *Installation's* Environmental Management Directorate on all aspects of hazardous waste treatment, storage and disposal. Management of Lessee's hazardous waste will be in accordance with *Installation's* Hazardous Waste Management Plan (HWMP), Exhibit G.

k. Disposal of the Lessee's hazardous waste will be through *Installation* Environmental Management Directorate using *Installation* Generator ID, *number*, in accordance with *Installation* HWMP. The Lessee's hazardous waste will be disposed of through a disposal contract administered by DRMO *DRMO Name*. Lessee is responsible for all costs associated with its hazardous waste operations, including but not limited to sampling and disposal costs. Lessee's hazardous waste costs will be handled in accordance with Exhibit C. Records, inspection logs and manifests will be maintained in accordance with *Installation* HWMP. The Government reserves the right to inspect the facility, and Lessee 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. This Condition shall not affect, restrict, or enlarge any remedy that *Company* may pursue under other contracts with the United States Government, nor does it affect, restrict, or enlarge any defense that the United States Government may assert under other contracts with *Company*. In the event of any discharge or release into the environment of a hazardous substance, Lessee shall immediately notify the

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emergency response team at 911.

l. The Lessee must notify the Government of Lessee's intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations, of Lessee's intent to possess, use, or store radium; and of Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation, at least sixty (60) days prior to the entry of such materials or equipment upon the Leased premises. Upon notification, the Government may impose such requirements, including prohibition of possession, use, or storage, as it deems necessary to adequately protect health and the human environment. Thereafter, the Lessee must notify the Government of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation, provided, however, that the Lessee need not make either of the above notifications to the Government with respect to source and byproducts material which is exempt from regulation under the Atomic Energy Act. Lessee shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the Leased Property.

m. The Lessee acknowledges that lead-based paint may be present in and on facilities and equipment within the leased area. The Government may conduct surveys to determine the existence and extent of any possible lead-based paint. The Lessee will be notified if the Government determines there is lead-based paint in or on the leased facilities or equipment. Prior to beginning any alteration or modification, the Lessee must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If the paint is lead-based, the Lessee is required to handle it in accordance with all applicable federal, state, and local laws and regulations at its own expense. The Lessee is required to ensure that any lead-based paint is maintained in good condition.

n. The Lessee shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of *Installation* Environmental Management Directorate. 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. Normal turnaround time for request approval is established as 15 calendar days.

o. In the event it becomes necessary to determine the Parties' respective responsibilities under environmental laws, and with specific regard to any activity on the leased premises conducted by, or authorized by, the Lessee during the term of this Lease, *Company* will be considered the operator and the *Military Department* will be considered owner of the leased premises.

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p. Within a minimum of ten days prior to the beginning date of the Lease term, the Lessee shall provide the government a list of hazardous material to be used on the lease premises and provide the government a description of the processes to be accomplished on the lease premises. The Lessee shall furnish full details in writing to the Installation Commander thirty (30) days in advance of any change in hazardous materials to be used on the lease 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 lease premises.

**24. ENVIRONMENTAL BASELINE SURVEY (EBS)**

The environmental screening including records review, interviews, and lease site inspections in accordance with applicable regulation and instructions and the examination of the proposed leased premises indicates this leased premises qualifies for a waiver of the requirement to perform an EBS. This information is attached hereto and made a part hereof as Exhibit E. Upon expiration, revocation or termination of this lease another environmental screening, in accordance with applicable regulations and instructions, will be accomplished which will document the environmental condition of the lease premises at that time. A comparison of the two assessments will assist the Installation Commander in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the Condition 14, RESTORATION.

**25. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the Installation Commander and protect the site and the material from further disturbance until the Installation Commander gives clearance to proceed.

**26. SOIL AND WATER CONSERVATION**

NOT APPLICABLE

**27. TAXES**

Any and all taxes imposed by the State or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. 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 lease shall be renegotiated.

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**28. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**29. OFFICIALS NOT TO BENEFIT**

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

**30. SEVERAL LESSEES**

If more than one Lessee is named in this lease, the obligations of said Lessees herein contained shall be joint and several obligations.

**31. MODIFICATIONS**

This lease 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 lease.

**32. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Waters Act (33 U.S.C. 1344).

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33. TERMINATION BY GOVERNMENT

a. The Government may terminate this lease at any time by giving thirty (30) days written notice by the Installation Commander to the Lessee under any of the following circumstances:

(1) In the event of a national emergency as declared by the President or the Congress of the United States.

(2) If the Lessee fails to comply with any of the terms and conditions of this lease and continues and persists therein for ten (10) days after notice thereof in writing by the Installation Commander.

(3) In the interest of national defense.

b. The Government may terminate this lease at any time by giving 60 days written notice by the Installation Commander to the Lessee under any of the following circumstances:

(1) If *Installation* closes or is scheduled to be closed or a major portion of the reservation becomes excess to the needs of the *Military Service*.

(2) If *Installation* is deactivated or substantially realigned.

(3) If the contract for *Product/Service Name* between *Company* and the *Military Service* is terminated.

c. In any of the above events, Lessee shall be entitled to a refund of any unused rental consideration except for termination under subparagraph a.(2) above, and the provisions of the Condition 14, RESTORATION, hereof shall apply.

d. In any of the above events, the Lessee, shall not be entitled to any compensation for the value of rental offset credit remaining to be applied to rental consideration.

34. 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 lease 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 Lease with respect to such future performance shall continue in full force and effect.

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**35. PROTECTION AGAINST GRATUITIES**

The Government may, by written notice to the Lessee, terminate this Lease if it is found after notice and hearing, by the Secretary of the *Military Department* or his/her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the Lessee, or any agent or representative of the Lessee, to any officer or employee of the Government with a view toward securing this lease 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 *Military Department* 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 Lease is so terminated, the Government shall be entitled (a) to pursue the same remedies against the Lessee as it could pursue in the event of a breach of this Lease by the Lessee; 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 *Military Department* 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 the Lessee in providing any such gratuities to any such officer to 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 Lease.

**36. LEASE SUBJECT TO CONTRACT**

This lease becomes null and void in the event that a *Product Name* repair contract is not awarded to *Company* by the *Military Service* on or before *date*.

**37. UTILITY DISTRIBUTION LINES**

The government reserves the right to operate and maintain existing utility distribution lines across the leased premises. The Lessee shall maintain at its expense the load specific utility distribution lines on the lease premises. A description of these utility systems and the exact points of separation are identified in Exhibit C attached hereto and made a part hereof.

**38. EXPANSION OF LEASE PREMISES**

The Lessee may request approval to expand the Leased premises to include additional floor space adjacent to the Leased premises. If the government approves the request, the additional floor space will be added to the Leased premises by supplemental agreement to this lease and the Lessee shall pay rental consideration equal to the fair market appraised value as determined by government appraisal.

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39. ASBESTOS

The Lessee accepts this lease with acknowledgment of the presence of non-friable asbestos-containing materials (ACM) on the lease premises. The non-friable ACM exist within the floor tile, and mastic on the floor tile, also non-friable ACM exist in mud fittings on a steam line and in a cloth wrapping on chill water pipe above the ceiling. All construction, alterations, or renovations to the lease premises will take into account the presence of the AMC and be approved in accordance with Condition 20 hereof.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the *Military Department* this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*Military Rank*  
*Title*

Witness:

\_\_\_\_\_  
Notary Public

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*Title*

Witness:

\_\_\_\_\_  
Notary Public