

# DELAWARE COMMERCIAL LEASE AGREEMENT

This Delaware Commercial Lease Agreement (the "Agreement") made on \_\_\_\_\_ (mm/dd/yyyy) is by and between:

**Lessor:** \_\_\_\_\_ with a mailing address of \_\_\_\_\_ (the "Lessor") AND

**Lessee:** \_\_\_\_\_ with a mailing address of \_\_\_\_\_ (the "Lessee").

HEREINAFTER, the Lessor and Lessee (the "Parties") agree to enter into an Agreement for the leasing of commercial real estate in accordance with the following terms:

- 1. PREMISES.** The Lessee agrees to rent the property located at:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: Delaware ZIP: \_\_\_\_\_

(the "Premises"), together with the right of ingress and egress and the non-exclusive use of common areas.

- 2. RENTABLE SPACE.** The total rentable space of the Premises consists of \_\_\_\_\_ (#) Square Feet (SF).
- 3. USE(S).** The Lessee shall be allowed to use the Premises for the following:

The above-mentioned use(s) shall be referred to as the "Permitted Use(s)." Any use by the Lessee that does not correspond to the Permitted Use(s) shall be by prior written consent of the Lessor only.

- 4. INITIAL TERM.** This Agreement shall have an initial period of \_\_\_\_\_ (#) months beginning \_\_\_\_\_ (mm/dd/yyyy) and ending on \_\_\_\_\_ (mm/dd/yyyy) (the "Initial Term").

5. **MONTHLY RENT**. The rent amount for the initial period shall be:  
\_\_\_\_\_ Dollars (\$) paid on the \_\_\_\_\_ (#) day of  
every month and: (check one)

- Shall remain the same during the Initial Term.

- Shall increase during the Initial Term as follows:

1<sup>st</sup> Period:

- From \_\_\_\_\_ (mm/dd/yyyy), to \_\_\_\_\_ (mm/dd/yyyy).
- Monthly Rent: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

2<sup>nd</sup> Period:

- From \_\_\_\_\_ (mm/dd/yyyy), to \_\_\_\_\_ (mm/dd/yyyy).
- Monthly Rent: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

6. **SECURITY DEPOSIT**. Under the terms of this Agreement: (check one)

- The Lessee shall be required to pay \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_) as a non-interest-bearing security deposit to secure the performance  
by the Lessee of the provisions and conditions of this Agreement ("Security Deposit"). The  
Lessee shall pay the Security Deposit to the Lessor at the execution of this Agreement. In  
the event the Lessee fails to pay the Rent or otherwise defaults on any provision herein, the  
Lessor may apply the whole or any part of the Security Deposit to the payment of any sum  
in default or any of the Lessee's damages as a result of default. If any portion of the  
Security Deposit is applied, the Lessee, upon demand by the Lessor, shall deposit an  
amount sufficient to return the Security Deposit to its original amount. Should the Lessee  
comply with all of the covenants and conditions of this Agreement, the Security Deposit or  
any balance thereof shall be returned to within \_\_\_\_\_ (#) days of the expiration of the  
Term.

- The Lessee shall not be required to pay a Security Deposit.

7. **LATE FEE**. If any payment or charges due by the Lessee to the Lessor are not made within  
\_\_\_\_\_ (#) calendar days, the Lessor shall: (check one)

- Charge a late fee in the amount of: (check one)

- \$\_\_\_\_\_ for each  day  occurrence Rent is late.

- \_\_\_\_\_% of the balance shall accumulate for each  day  occurrence Rent is late.

- Not charge a late fee.

**8. RENEWAL OPTIONS.** The Lessee shall: (check one)

- Have the option to renew this Agreement by providing at least \_\_\_\_\_ (#) days' notice before any ending termination date. The Lessee shall have \_\_\_\_\_ (#) renewal period(s) as follows:

1<sup>st</sup> Renewal Period:

- From \_\_\_\_\_ (mm/dd/yyyy), to \_\_\_\_\_ (mm/dd/yyyy).
- Monthly Rent: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

2<sup>nd</sup> Renewal Period:

- From \_\_\_\_\_ (mm/dd/yyyy), to \_\_\_\_\_ (mm/dd/yyyy).
- Monthly Rent: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The Initial Term and any renewal periods shall be referred to as the "Term."

- Not have the option to renew this Agreement.

**9. UPFRONT PAYMENT.** Upon the execution of this Agreement, the Lessee shall pay to the Lessor the following: (check one)

- First Month's Rent of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)
- Last Month's Rent of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)
- Security Deposit of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**10. POSSESSION.** Possession shall commence on \_\_\_\_\_ (mm/dd/yyyy), unless otherwise agreed upon. The Lessor shall use due diligence to give possession as nearly as possible at the beginning of the Term. The Rent shall be prorated in consideration of any delay in providing possession, but the Term shall not be extended as a result of such delay. The Lessee shall make no other claim against the Lessor for the delay in obtaining possession of the Premises.

**11. LESSOR INDEMNITY AND LIABILITY INSURANCE.** The Lessee shall indemnify, defend and hold the Lessor harmless from all loss, liability, costs, damages, and expenses that may occur or be claimed with respect to any person or persons, or property on or to the common areas, resulting from any act done or omission by or through the Lessee, its agents, employees, invitees, or any person. The Lessee shall maintain, at all times during the Term, comprehensive general liability insurance with an insurance company licensed to do business in the state in which the Premises is located and satisfactory to the Lessor, properly protecting and indemnifying the Lessor with single limit coverage of not less than:

- a. \$ \_\_\_\_\_ for personal injury,
- b. \$ \_\_\_\_\_ for death of persons, and

c. \$\_\_\_\_\_ for property damage.

**12. PROPORTIONATE SHARE.** If the Premises are a part of a multiple tenancy complex, the responsibility of the Lessee for costs are determined by taking a percentage of the total cost of the expenses based upon the rentable floor space in said complex occupied by the Lessee. It is agreed that the Premises is \_\_\_\_\_% ("Proportionate Share") of the total floor space in the building.

- a. The Lessor may, with notice to the Lessee, elect to perform and provide certain maintenance and services pertaining to the entire building or area of which the Premises are a part, including, but not limited to, landscaping, trash removal, lawn maintenance, common area lighting, watering, paving maintenance, and snow removal. In such event, the Lessee shall reimburse the Lessor for its Proportionate Share of such maintenance services.
- b. Within ninety (90) days following the end of each year during the Term, the Lessor shall furnish the Lessee with a written statement covering the lease year just expired (measured from the Commencement Date), showing in reasonable detail a general breakdown of the total operating costs, the amount of the Lessee's obligation relating thereto, and the total payments made by the Lessee.

The Lessee agrees to conduct its business in a lawful and legal manner and in a way that provides quiet enjoyment to the rest of the Lessees in the complex, including, but not limited to, mitigation and limitation of noise, vibration, odor, trash, or fumes. In the event the Lessor receives complaints from other Lessees in the building or complex and determines, in its sole reasonable judgment, that the Lessee is conducting its operations in a manner so as to be objectionable to other Lessees, the Lessee shall, upon notice from the Lessor, promptly modify its operations to eliminate such objections.

**13. EXPENSES.** The Agreement will be defined as follows with regard to the distribution of expenses:

- GROSS. [Lessee's Initials: \_\_\_\_\_ Lessor's Initials: \_\_\_\_\_]

It is the intention of the Parties that this Lease be considered a "Gross Lease" and as such, the Base Rent is the entirety of the monthly rent. Therefore, the Lessee is not obligated to pay any additional expenses which includes utilities, real estate taxes, insurance (other than on the Lessee's personal property), charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. The Lessor shall be obligated to maintain the general exterior structure of the Premises and shall maintain all major systems such as the heating, plumbing, and electrical. The parking area shall be maintained by the Lessor (including the removal of any snow or environmental hazards) as well as the grounds and lands surrounding the Premises. The Lessor shall maintain at their expense casualty insurance for the Premises against loss by fire which may or may not include any extended coverage. The Lessee will provide and maintain personal liability and property damage insurance as a lessee, at least to the limits of One Million Dollars

(\$1,000,000.00), that will designate the Lessor as an "also named insured" and shall provide the Lessor with a copy of such insurance certification or policy prior to the effective date of this Lease.

- MODIFIED GROSS. [Lessee's Initials: \_\_\_\_\_ Lessor's Initials: \_\_\_\_\_]

It is the intention of the Parties that this Lease shall be considered a "Modified Gross Lease."

In addition to the Base Rent, the Lessee shall be obligated to pay the following monthly expenses:

The Lessor shall pay the following monthly expenses:

- TRIPLE-NET (NNN). [Lessee's Initials: \_\_\_\_\_ Lessor's Initials: \_\_\_\_\_]

It is the intention of the Parties that this Lease shall be considered a "Triple Net Lease."

- a. Operating Expenses. The Lessor shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations, or costs of any kind whatsoever with respect to the Premises. The Lessee hereby agrees to pay one hundred percent (100%) of any and all Operating Expenses as hereafter defined for the entire term of the Lease and any extensions thereof in accordance with specific provisions hereinafter set forth. The term "Operating Expenses" shall include all costs to the Lessor of operating and maintaining the Premises, and shall include, without limitation, real estate and personal property taxes and assessments, management fee(s), heating, air conditioning, HVAC, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, restriping, repairs, repaving, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct costs of operating and maintaining the Premises and related parking areas, unless expressly excluded from operating expenses.
- b. Taxes. The Lessee shall pay, during the term of this Lease, the real estate taxes including any special taxes or assessments (collectively, the "taxes") attributable to the Premises and accruing during such term. The Lessee, at the Lessor's option, shall pay to the Lessor said taxes on a monthly basis, based on one-twelfth (1/12) of the estimated annual amount for taxes. Taxes for any fractional calendar year during the term hereof shall be prorated. In the event the Lessee does not make any tax payment required hereunder, the Lessee shall be in default of this Lease.

c. Property Insurance. In accordance with Section 12, throughout the term of this Lease and any extensions thereof, the Lessee shall obtain and pay for fire and extended coverage casualty insurance for the building and other improvements on the leased Premises, with such comprehensive or so called "all risk" endorsements and in such amounts as the Lessor may, from time to time, deem reasonably necessary, and shall show the Lessee and the Lessor, and the Lessor's lender, if any, as the insured thereon. The Lessee shall at all times keep such insurance in force and provide the Lessor with copies of said policies or certificates evidencing said coverage. The policies shall be in form and content reasonably required by the Lessor and shall be issued by an insurance company approved by the Lessor and shall contain a clause that the insurer will not cancel, materially modify, or fail to renew the insurance without first giving the Lessor thirty (30) days' prior written notice. If the Lessee fails to keep said insurance in effect, the Lessee shall be in default hereunder and the Lessor may, at its option, immediately obtain insurance coverage as provided for herein and charge the Lessee for the cost thereof.

**14. LESSOR'S RIGHT OF ENTRY.** The Lessor or the Lessor's agent may enter at reasonable hours to inspect or show the Premises to prospective lenders and purchasers, and to do anything the Lessor may be required to do hereunder or which the Lessor may deem necessary for the good of the Premises or any building of which they are apart. During the last \_\_\_\_\_ (#) days of the Term, the Lessor may display a "For Rent" sign on the Premises and show the Premises to prospective lessees.

**15. DAMAGE BY CASUALTY.** If during the Term or previous thereto, the Premises shall be destroyed or so damaged by fire or another casualty as to become un-leasable, then, at the option of the Lessor, this Agreement shall terminate from the date of such damage or destruction. The Lessor shall exercise this option to so terminate this Agreement by notice in writing delivered to the Lessee within \_\_\_\_\_ (#) days after such casualty. Upon such notice, the Lessee shall immediately surrender said Premises and all interest therein to the Lessor, and the Lessee shall pay Rent up until the date of casualty. If the Lessor does not elect to terminate this Agreement, this Agreement shall continue in full force and effect, and the Lessor shall expeditiously repair the Premises, placing the same in as good a condition as they were at the time of the damage or destruction. Rent shall be prorated in consideration of the amount of time the Lessee is unable to occupy the Premises. If the Premises are slightly damaged by fire or another casualty but are still leasable, then the Lessor shall expeditiously repair the same with no rent proration. The Lessee may not make a claim for compensation because of any inconvenience or loss of business arising from the necessity of repairing any portion of the building or the Premises.

**16. NOTICES.** Any notice hereunder shall be sufficient if sent by certified mail and addressed to:

Lessee: \_\_\_\_\_

Lessor: \_\_\_\_\_

**17. ASSIGNMENT AND SUBLETTING.** The Lessee shall not assign, transfer, or encumber this Agreement in any way and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without the prior written consent of the Lessor, in each instance. For the purpose of this provision, any transfer of a majority or controlling interest in the Lessee (whether in one or more related or unrelated transactions), whether by transfer of stock, consolidation, merger, transfer of a partnership interest or transfer of any or all of the Lessee's assets or otherwise, or by operation of law, shall be deemed an assignment of this Agreement. Notwithstanding any permitted assignment or subletting, the Lessee shall at all times remain directly, primarily, and wholly responsible and liable for the payment of the Rent herein specified and for compliance with all of its other obligations under the terms and provisions of this Agreement.

**18. SIGNAGE AND ALTERATIONS.** The Lessee shall not place any signs, billboards, or advertisements upon the Premises without the prior written consent of the Lessor. The Lessee is responsible for the costs of any permitted signage. The Lessee shall not make any material or structural alterations or additions in or to the Premises without the prior written consent of the Lessor.

**19. TOXIC OR HAZARDOUS MATERIALS.** The Lessee shall not store, use, or dispose of any toxic or hazardous materials in, on, or about the Premises without the prior written consent of the Lessor. The Lessee shall be solely responsible for and shall defend, indemnify, and hold the Lessor, and its agents and employees, harmless from and against all claims, costs, and liabilities, including attorney's fees and expenses, arising out of or in connection with the Lessee's storage, use, or disposal of any toxic or hazardous material in, on, or about the Premises. The Lessee's obligations under this paragraph shall survive the termination of this Agreement.

**20. CONDITION OF PREMISES.** The Lessee acknowledges that it has inspected the Premises and the Lessee accepts the Premises in its current condition. At the end of the Term, the Lessee, at its expense, shall (i) surrender the Premises in the same condition as existed at the time the commencement of the Term, reasonable wear and tear excepted; (ii) have removed all of the Lessee's property from the Premises; (iii) have repaired any damage to the Premises caused by the removal of Lessee's property; and (iv) leave the Premises free of trash and debris and the building in "broom clean" condition.

**21. PERSONAL PROPERTY.** The Lessor shall not be liable for any loss or damage to any inventory, goods, fixtures, improvements, or personal property of the Lessee on or about the Premises.

**22. APPLICATION OF LAW.** The Lessee shall comply with all laws, ordinances, regulations, and other legal requirements affecting the Premises and the use thereof, and the Lessee shall indemnify, defend, and hold the Lessor harmless from expense or damage resulting from failure to do so.

- 23. FIXTURES.** Except for the Lessee's personal property and trade fixtures, all buildings, repairs, alterations, additions, improvements, installations, and other non-trade fixtures installed or erected on the Premises, whether by or at the expense of the Lessor or the Lessee, shall belong to the Lessor and shall remain on and be surrendered with the Premises at the expiration or termination of this Agreement. However, at the Lessor's option, the Lessee shall remove the Lessee's alterations or improvements prior to the expiration of this Agreement and return the Premises to its original condition.
- 24. EMINENT DOMAIN.** Should all or a part of the Premises be taken under eminent domain so that the Premises are unsuitable, in the Lessee's reasonable opinion, for the Lessee's use, then the term of this Agreement shall terminate as of the date that title shall vest in the acquiring authority and the Rent and other charges shall be adjusted as of the date of such taking. The Lessor shall be entitled to the proceeds of the eminent domain award made to the Lessor. Nothing herein shall be construed to prevent the Lessee from separately pursuing a claim against the requisite authority for the Lessee's independent loss or damages to the extent available, provided, however, that no award to the Lessee shall reduce the award to the Lessor. The Lessee shall have no claim against the Lessor for the value of the unexpired term of this Agreement.
- 25. WAIVER OF SUBROGATION.** The parties will each look to their own insurance for recovery of any loss resulting from fire or another casualty. The Lessor and the Lessee release one another from such claims and waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver shall remain effective despite either party's failure to obtain insurance. If either party fails to obtain insurance, it bears the full risk of its own loss.
- 26. DEFAULT AND REMEDIES.** If: (a) the Lessee fails to comply with any term, provision, condition, or covenant of this Agreement; (b) the Lessee deserts or vacates the Premises; (c) any petition is filed by or against the Lessee under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; (d) the Lessee becomes insolvent or makes a transfer in fraud of creditors; (e) the Lessee makes an assignment for the benefit of creditors; or (f) a receiver is appointed for the Lessee or any of the assets of the Lessee, then in any of such events, the Lessee shall be in default and the Lessor shall have the option to do any one or more of the following: (i) enter the Premises either with or without process of law and to expel, remove and put out the Lessee or any other persons thereon, together with all personal property; (ii) terminate this Agreement; (iii) rent said Premises or any part thereof for such term or terms and at such terms and conditions as the Lessor in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter, and change said Premises. At the option of the Lessor, rents received by the Lessor from such reletting shall be applied in order as follows: to the payment of any indebtedness from the Lessee to the Lessor other than Rent due; to the payment of any costs and expenses of such reletting, including, but not limited to, attorney's fees, advertising fees, and brokerage fees, and to the payment of any repairs, renovation, remodeling, redecorations, alterations, and changes in the Premises; to the payment of Rent and additional Rent due and payable hereunder and interest thereon; and, if after applying said rentals there is

any deficiency in the Rent and additional rent and interest to be paid by the Lessee under this Agreement, the Lessee shall pay any such deficiency to the Lessor and such deficiency shall be calculated and collected by the Lessor on a monthly basis. No such re-entry or taking possession of said Premises shall be construed as an election on the Lessor's part to terminate this Agreement unless a written notice of such intention is given to the Lessee. Notwithstanding any such reletting without termination, the Lessor may at any time terminate this Agreement by reason of any default, in addition to any other remedy it may have.

- 27. WAIVER.** The rights and remedies of the Lessor under this Agreement, as well as those provided by law, shall be cumulative, and none shall be exclusive of any other rights or remedies. A waiver by the Lessor of any breach or default of the Lessee shall not be deemed or construed to be a continuing waiver of such breach or default, nor as a waiver of, or permission expressed or implied for, any subsequent breach or default. It is agreed that the acceptance by the Lessor of any installment of Rent subsequent to the date the same should have been paid shall not alter the covenant and obligation of the Lessee to pay subsequent installments of Rent promptly upon the due date. Receipt by the Lessor of partial payment after the Lessee's default shall not be construed to be or constitute a cure of any such default. No receipt of money by the Lessor before or after the termination of this Agreement shall in any way reinstate, continue, or extend the term above demised.
- 28. SUBORDINATION.** This Agreement shall be subject and subordinate at all times to any existing mortgages and any mortgages hereinafter obtained on the Premises.
- 29. SUCCESSORS.** The provisions, covenants, and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, heirs, successors, and assigns of each of the parties hereto, except that no assignment or subletting by the Lessee without the written consent of the Lessor shall vest any rights in the assignee or sublessee of the Lessee.
- 30. QUIET POSSESSION.** The Lessor agrees, so long as the Lessee fully complies with all of the terms, covenants, and conditions of this Agreement, that the Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term. Such right to quiet enjoyment shall be binding upon the Lessor, its heirs, successors, or assigns, but only during such party's ownership of the Premises.
- 31. AUTHORITY.** The Lessor and the Lessee further covenant and represent that each has full right, title, power, and authority to make, execute, and deliver this Agreement.
- 32. BANKRUPTCY.** Neither this Agreement nor any interest therein nor any estate hereby created shall pass to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors by operation of law or otherwise during the Term or any renewal thereof.
- 33. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties, and no modification of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing signed by the Lessor and the Lessee after the date hereof. If more than one Lessee is named herein, the provisions of this Agreement shall be applicable to and binding upon such Lessees, jointly and severally.

**34. ESTOPPEL CERTIFICATES.** The Lessee shall at any time upon written notice by the Lessor, with notice providing the Lessee no less than ten (10) days, execute, acknowledge, and deliver to the Lessor or to any lender of or purchaser from the Lessor a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification) and the date to which the Rent and other charges are paid in advance, if any, and acknowledging that there are not, to the Lessee's knowledge, any uncured defaults on the part of the Lessor, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises or of the business of the Lessor.

**35. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Delaware.

**36. ADDITIONAL TERMS AND CONDITIONS.**

**37. ATTACHMENTS.** The following Attachments are incorporated herein: (check all that apply)

- Attachment A: \_\_\_\_\_

- Attachment B: \_\_\_\_\_

- Attachment C: \_\_\_\_\_

**38. SIGNATURES.** IN WITNESS WHEREOF, the parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

**Lessor's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Lessee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Agent's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_