

OFFICE LEASE EXCLUSIVE BROKERAGE AGREEMENT

[Letterhead of Landlord]

[Date]

[Name of Brokerage Company
address]

Re: [all of the ___th floor at the][a portion of the ___ th floor known as Suite ___at
the][the entire] (the "**Premises**") building known
as _____ (the "Building")

To Whom It May Concern:

This letter (this "**Agreement**") shall constitute our agreement that Landlord and Broker hereby agree as follows:

[Comment: *In New York, absent a written agreement to the contrary between a landlord and a broker, a broker has earned a commission when the broker brings a tenant ready, willing and able to rent a space. Therefore, a broker should not be permitted to show space in a building and a lease should not be executed unless and until a brokerage agreement is fully executed to clarify commissions payable, term, etc.]*

1. _____ ("**Broker**") is hereby appointed as the exclusive broker by _____ ("**Landlord**") to lease the Premises in accordance with and subject to the terms of this Agreement. _____ [and _____] shall be the principal broker[s] and/or agent[s] for the Premises [and same shall not be replaced without Landlord's prior written consent].

[Comment: *Landlord may want to name the individual brokers/agents authorized to work in the building and reserve the right to approve substitutions.]*

2. The term (the "**Term**") of this Agreement shall commence on the date hereof (the "**Effective Date**") and shall expire on the day immediately preceding the [____ (____)] anniversary of the Effective Date, unless earlier terminated pursuant to the terms hereof. Landlord shall have the right to terminate this Agreement (a) in the event that Broker defaults hereunder, by giving Broker not less than three (3) business days' prior written notice, and (b) for any or no reason, at any time after the date that is [____ (____)] days after the Effective Date, by giving Broker not less than ten (10) business days' prior written notice.

[Comment: *The Term, Landlord's termination rights and time periods are negotiable. The Term should be sufficient to enable the parties to accomplish the purposes of the engagement. Landlord needs rights to terminate since*

Landlord is relying on Broker to keep the building rented. If Landlord terminates other than for cause prior to a set date, Broker might request Landlord's contribution to all or a portion of the Broker's external marketing costs.]

3. (a) Broker shall use Broker's best efforts and the full resources of Broker's firm, to secure [a] potential tenant(s) (a "PT" or "PTs") satisfactory to Landlord, in Landlord's sole judgment, for the Premises, and Broker shall solicit the cooperation of other real estate brokers licensed by the State of New York (each, an "**Outside Broker**") in connection therewith. Broker shall, at Broker's expense, promptly develop and implement a marketing plan for the Premises, including, without limitation, utilizing industry standard print and digital services, preparing plans, signs, brochures and/or circular matter and/or other forms of advertising, subject to Landlord's prior written approval.

[Comment: *The parties may negotiate Landlord's contribution to marketing costs. If Broker is engaged to lease up the entire building or multiple floors, then Broker will be dealing with multiple PTs.]*

(b) Broker shall prepare and deliver to Landlord [*weekly, bi-weekly or monthly*] status reports of all inquiries, tours of the Building and/or the Premises, negotiations, tenants in the market and leasing activity at comparable buildings, and shall advise Landlord of Broker's strategy for leasing the Premises.

4. (a) During the Term Landlord shall advise _____ [*individual at Broker's office*] in writing, of all inquiries, proposals and offers received by Landlord with respect to the Premises and Broker shall follow up on such inquiries and use Broker's best efforts to consummate such transactions.

(b) Attached as **Exhibit A** is a list of all PT's with whom Landlord and/or the former listing agent for the Premises have dealt with respect to a lease of all or a portion of the Premises. In no event shall Broker be entitled to a brokerage commission or any compensation with respect to a lease for all or a portion of the Premises consummated between Landlord and a PT on Exhibit A.

[Comment: *Landlord should check the exclusive period in its agreement with the prior exclusive broker/agent for the Building, if any, to make sure that Landlord will not be obligated to pay two commissions for the same lease. If Landlord negotiated or is negotiating directly with a PT, Landlord should either complete those negotiations before entering this Agreement, turn-over those negotiations to Broker who will then be entitled to a commission or exclude that PT from this Agreement by listing it on **Exhibit A**. This should be negotiated with Broker.]*

5. (a) Broker hereby agrees that, notwithstanding any express or implied agreement, rule of law or custom to the contrary, no compensation shall be earned by or due or payable to Broker for any service rendered by Broker in connection with this Agreement or any lease of all or a portion of the Premises, unless and until all of the

following conditions (“**Conditions**”) shall have been satisfied: (i) a lease, acceptable to Landlord in its sole discretion (the “**Lease**”) for all or a portion of the Premises shall have been fully executed and delivered by Landlord and a PT satisfactory to Landlord (hereafter, “**Tenant**”), (ii) all required third party consents and approvals to the Lease shall have been obtained, (iii) the first (1st) months’ rent and the security deposit payable thereunder shall have been paid to Landlord, and (iv) all the conditions precedent for the Lease to be in full force and effect shall be fully satisfied.

***[Comment:** If no Landlord work is to be done in the Premises, then add as a Condition, “and (v) Tenant shall have taken possession of the Premises which includes commencement of Tenant’s work.][In some instances the first month’s rent payable under the lease could be paid in installments.]*

(b) In the event that Broker shall be the sole procuring cause of a Lease for all or any portion of the Premises with a PT satisfactory to Landlord, and all of the Conditions with respect to such Lease shall be satisfied, then Landlord shall pay Broker and Broker shall have earned and agrees to accept, as compensation in full for its services rendered in connection with the [initial] term of such Lease, a commission (the “**Commission**”) in an amount equal to one hundred percent (100%) of one (1) full commission computed upon the rental amount defined in and payable pursuant to the Lease at the rates and in accordance with the terms set forth on **Exhibit B** attached hereto and made a part hereof.

(c) In the event that an Outside Broker shall be the procuring cause of a Lease for all or any portion of the Premises and all of the Conditions with respect to such Lease shall be satisfied either (i) during the Term, or (ii) within ___ (__) days after the expiration of or earlier termination of the Term, then [*select either option*]

[Landlord shall pay Broker one hundred fifty percent (150%) of one (1) full Commission computed in accordance with **Exhibit B** and Broker shall have earned and agrees to accept, as compensation in full for its services rendered in connection with the [initial] term of such Lease, a Commission in an amount of fifty percent (50%) of one (1) full Commission computed in accordance with the terms set forth on **Exhibit B**, and Broker shall pay to the Outside Broker and such Outside Broker shall have earned as compensation in full for its services rendered in connection with the [initial] term of such Lease, a Commission in an amount equal to one (1) full Commission computed in accordance with the terms set forth on **Exhibit B** pursuant to a separate agreement between Broker and the Outside Broker. Broker shall be solely responsible for all brokerage fees, commissions and/or other compensation, if any, due to such Outside Broker(s) with whom Broker has dealt who has or have participated on a cooperating basis in procuring a Lease for all or any portion of the Premises, and Landlord shall have no obligation with respect thereto.]

OR

[[Landlord shall pay Broker fifty percent (50%) of one (1) full Commission computed in accordance with **Exhibit B** and Broker shall have earned and agrees to accept, as compensation in full for its services rendered in connection with the [initial] term of such Lease, a Commission in an amount of fifty percent (50%) of one (1) full Commission computed in accordance with the terms set forth on **Exhibit B** and Landlord shall pay to such Outside Broker and such Outside Broker shall have earned as compensation in full for its services rendered in connection with the [initial] term of such Lease, a Commission in an amount equal to one (1) full Commission computed in accordance with the terms set forth on **Exhibit B** pursuant to a separate agreement between Landlord and the Outside Broker.]

*[**Comment:** If there is more than one Outside Broker the Commission earned by and payable to the individual Outside Brokers will have to be negotiated and appropriate modifications to this Agreement inserted.]*

(d) The acceptance of the Commission by Broker hereunder shall be and be deemed to be a representation and warranty by Broker for the benefit of Landlord that Broker dealt with no other broker, finder or like agent, other than any Outside Broker with whom Broker has dealt with respect to the Lease, if any, and that no other person, corporation or other entity of any kind, other than Broker and any Outside Broker with whom Broker has dealt, if any, has been in any way, involved as a broker or finder or in a similar capacity with respect to the Lease.

*[**Comment:** Parties sometimes agree to pay more than a single “full commission” when an Outside Broker is involved with amounts varying depending on market conditions. It might be helpful to define an Outside Broker. For example, some brokerage firms may want to include themselves in the definition of Outside Broker when they are representing both Landlord and Tenant. Some agreements give Broker broad discretion on the split of the total Commission paid by Landlord; however some Landlords may want to make sure that an Outside Broker shares reasonably in the Commission so that all parties are properly incentivized to work on the deal. Some agreements provide that Outside Broker(s) shall be paid by Landlord pursuant to a separate agreement between Landlord and the Outside Broker; rather than having Broker pay the Outside Broker out of the Commission paid to Broker.]*

(e) If, in accordance with and pursuant to the terms of its Lease, a Tenant shall exercise (i) an option to extend of the term of such Lease; or (ii) an option for additional space in the Building; or (iii) an option or right of a “first refusal” to purchase the Building or space therein, then in any such event, Broker shall be entitled to a Commission with respect thereto in accordance with the terms of this Agreement.

*[**Comment:** The Agreement should state if Broker is entitled to a Commission if Tenant exercises any options specifically set forth in the Lease, and if so, how it is calculated. If the option is for additional space, it may be a full commission as if a new lease were executed. If the option is for an extension of the term, it may*

be calculated based on Exhibit B as if it were added to the initial term of the Lease. Since many times a Tenant will exercise the option, but will negotiate terms that are NOT the terms in the original lease option, and the transaction was the result of Landlord's efforts alone or with a different broker, most Landlords do not want to pay a commission to the Broker when the option is exercised. If the term is extended or renewed, or additional or other space in the Building is leased by a Tenant, and it is not pursuant to a specific provision in the Lease, Landlord may not want to give the Broker a commission..]

(f) All Commissions earned pursuant to this Agreement shall be paid to Broker [and/or the Outside Broker, if any,] as follows: *[Insert date of payment, or condition of payment or method of installment payments]* with the first payment payable upon the satisfaction of the Conditions set forth in Paragraph 5(a) above.

[Comment: *Payment of a Commission can be in installments over a period of time or paid in full upon satisfaction of the Conditions, depending upon the term of the Lease, market conditions, relationship between Landlord and Broker and the relationship with any Outside Broker. Landlords prefer to pay Commissions in installments coinciding with rental payments; however, Brokers prefer to receive Commissions upon Lease execution. If the Commission is payable in installments, Landlord may agree to pay it in full if the Building is sold.]*

(g) Notwithstanding anything to the contrary set forth in this Agreement, each installment of the Commission shall be earned and become due and payable only if, at the time such installment would have otherwise become due and payable, Tenant shall not be in default [of any monetary obligation] under the Lease, after the giving of notice and expiration of applicable grace periods set forth in the Lease, and if such default is not cured and persists, then the Broker and any Outside Broker shall not be entitled to any remaining installments of the Commission.

[Comment: *The Agreement should state whether a full Commission is earned if Tenant defaults under the Lease before the full Commission is paid.]*

6. Broker hereby agrees to defend, indemnify and hold Landlord harmless from and against any and all losses, damages, claims and/or expenses (including, but not limited to, reasonable attorneys' fees and expenses) in connection with and/or arising out of any representation by Broker in this Agreement which is or is claimed to be false and/or any claim by any other real estate broker or other party, including, without limitation, an Outside Broker, for a commission or other compensation with respect to a transaction contemplated by or related to this Agreement, arising or accruing during the Term[; provided, however, that Broker's maximum liability hereunder shall be limited to the amount of the Commission actually paid to Broker in connection with such transaction]. This shall provision shall survive the expiration or earlier termination of the Term.

Comment: *Landlord wants a broad indemnity protecting Landlord from claims for brokerage fees or other related payments from any source. Brokers want to limit their liability under the indemnity to the amount of Commission paid to Broker on a particular transaction. This is negotiable.]*

In the event of a claim or suit to which the foregoing indemnification and hold harmless applies, Landlord shall:

- (i) give Broker prompt written notice thereof;
- (ii) permit Broker to defend such claim or suit with counsel of Broker's choice, subject to Landlord's approval, which approval shall not be unreasonably withheld, denied or delayed;
- (iii) not settle such claim or suit without Broker's prior written consent, which consent shall not be unreasonably withheld, denied or delayed; and
- (iv) cooperate with Broker in the defense of such claim or suit.

Broker hereby agrees not to settle any such claim or suit without Landlord's prior written consent, which consent shall not be unreasonably withheld, denied or delayed.

7. Broker shall be an independent contractor and shall not be considered Landlord's agent or employee for any purpose. Broker is not granted any right or authority to undertake or otherwise create any obligation, liability, or to make any representation, warranty or agreement (express or implied) on Landlord's behalf or to bind Landlord in any manner whatsoever. Broker shall not accept or maintain any funds, by deposit or otherwise, paid by any PT, Tenant or any other party.

8. Broker shall not make any public announcement or arrange any other publicity with respect to the leasing or proposed leasing of all or a portion of the Premises without Landlord's prior written approval. Except as required by law, Broker shall not disclose any information received from Landlord with respect to Landlord, the Premises and the Building except as required for the purposes of this Agreement.

9. (a) At the expiration or earlier termination of the Term, Broker shall promptly deliver to Landlord all files, records, and documents in Broker's possession relating the Building, as well as a list of all pending negotiations.

(b) Within ten (10) business days after the expiration or earlier termination of the Term, Broker shall furnish Landlord with a list (the "**Pending List**") of all PT's which, during the Term (a) toured the Premises virtually or in person, or (b) made an offer to lease all or a portion of the Premises, including a copy of the document containing the respective offer, and/or (c) were introduced to the Premises by Broker and/or any Outside Broker. The Pending List shall identify the PT's, the terms of the

proposed leases and include a description of materials given to such PT's about the Premises and the dates on which Broker communicated with or showed the Premises to such PT.

(c) If, within ____ (___) month(s) after the expiration or earlier termination of the Term, the Conditions set forth in Paragraph 5(a) hereof shall be satisfied with respect to any PT on the Pending List, on the terms set forth on the Pending List, Broker and/or the Outside Broker, if any, shall be entitled to a Commission with respect to such Lease pursuant to the terms of this Agreement.

[Comment: *Landlord may want to limit the Pending List to pending negotiations, require Broker to prepare a memorandum detailing all pending negotiations, limit the number of "pending negotiations" to be included, and agree to pay a Commission only if Broker is the sole procuring cause of a Lease with a PT on the Pending List. Landlord should resist a Broker's broad list of pending negotiations as it could hamper Landlord's ability to retain a new broker and it could create ambiguity for the new broker. This might incentivize a leaving Broker to finalize pending transaction.]*

10. This Agreement, Broker's obligations hereunder, and any payments due to Broker pursuant hereto, may not be assigned by Broker and any purported assignment shall be void.

11. In the event that the Building shall be sold or otherwise transferred, Landlord shall cause the purchaser or transferee to assume, in writing, Landlord's obligations hereunder arising on or after the closing of such sale or transfer of the Building, and shall deliver such written assumption agreement to Broker, whereupon Landlord shall be released from all obligations to Broker or any Outside Broker, as the case may be, hereunder arising on and after the closing of such sale or transfer. Landlord shall provide Broker with the name and address of the intended purchaser or transferee of the Building at least ten (10) business days prior to the scheduled closing as set forth in an executed purchase and sale agreement for the Building.

[Comment: *Without this provision, Landlord, as seller of the Building would remain liable for payment of Commissions due hereunder after such sale or transfer, as these agreements do not generally run with the land. Landlord and/or Broker may want the right to terminate this Agreement if the Building is sold.]*

12. Broker hereby agrees to waive trial by jury in any action or other proceeding (and all claims therein) arising out of or in connection with this Agreement or the transactions to which it relates. In the enforcement of Broker's rights hereunder, Broker shall not seek or obtain a money judgment or exercise any other right or remedy against any of Landlord's attorneys, employees, representatives, partners, members, shareholders, officers, directors and/or principals, disclosed or undisclosed, who shall have no personal liability under or in connection with this Agreement. Broker shall look only to Landlord's interest in the Building for the satisfaction of Broker's remedies or to

collect any judgment requiring the payment of money by Landlord under or in connection with this Agreement, and no other assets of Landlord or such persons shall be subject to lien, levy, execution or other enforcement procedure for the satisfaction of Broker's remedies or the collection of any judgment under or in connection with this Agreement. If Broker acquires a lien on such other property or assets by judgment or otherwise, Broker shall promptly release that lien by signing, acknowledging and delivering to Landlord any instrument, prepared by Landlord, required for the lien to be released.

13. Broker hereby represents and warrant to Landlord that (a) Broker is a duly licensed real estate broker in good standing in the State of New York, (b) the person executing this Agreement on behalf of Broker has the authority to bind Broker and to execute this Agreement and (c) upon execution, this Agreement will be binding upon Broker and all of Broker's employees, agents and officers and enforceable in accordance with its terms.

14. This Agreement and attached **Exhibits A and B** contain a complete statement of all the agreements between Broker and Landlord with respect to the subject matter hereof, and supersedes any prior agreements or understandings between Landlord and Broker with respect thereto. There are no representations, agreements, or understandings, oral or written, between Broker and Landlord, relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

15. This Agreement (a) shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part thereof to be drafted, (b) cannot be changed orally or in any manner other than by a written agreement executed by both parties hereto, (c) shall be governed by New York law, (d) may be signed in multiple, separate counterparts, each of which shall constitute an original, and all of which together shall constitute a fully executed agreement, and (e) facsimile, pdf signatures or docusign signatures shall have the same validity and effect as original signatures.

16. (a) Landlord shall have the unqualified right, in Landlord's sole and absolute discretion, to refuse to enter into any lease with respect to all or any portion of the Premises for any reason whatsoever or no reason without incurring any liability to Broker or to any Outside Broker arising out of this Agreement or otherwise for the payment of a Commission or other amount. If a proposed lease with a PT for all or any portion of the Premises is not entered into for any reason whatsoever or no reason (including, without limitation, Landlord's or the PT's arbitrary refusal to enter into a proposed lease, or any of the Conditions are not satisfied with respect to an executed Lease), Landlord shall have no liability to Broker or to any Outside Broker arising out of this Agreement or otherwise for the payment of a Commission or other amount with respect thereto.

(b) If a Lease is executed and delivered by the parties thereto, in no event whatsoever shall Landlord be under any obligation to Broker or to any Outside

Broker to institute any legal or other proceedings to satisfy any Condition or to enforce the Lease in the event that Tenant defaults thereunder.

17. All notices, requests or consents which are required to be or are given pursuant to this Agreement (each, a "**Notice**") shall be in writing, sent by overnight mail by a reputable carrier, sent by US mail or sent by hand by a reputable courier or sent by electronic mail, to the parties to the addresses below. Notices mailed shall be deemed given on the third (3rd) business day after mailing postage paid. Notices sent by hand or electronic mail shall be deemed given on the date given to the courier or sent by electronic mail. Notices sent by overnight mail shall be deemed given on the next business day after given to the overnight courier.

Notices sent shall be sent as follows:

If to Landlord, to:

Attn: _____

Email: _____

With a copy to:

If to Broker, to:

Attn: _____

Email: _____

18. If any controversy shall arise out of, or in connection with this Agreement, it shall be resolved by the American Arbitration Association in accordance with the then prevailing rules of that Association by an arbitration panel of not less than three (3) arbitrators, one of whom must be an attorney of law who has been actively engaged in real estate practice in New York City for not less than ten (10) years. The arbitrators shall have no power to vary or modify the terms of this Agreement and their jurisdiction shall be limited accordingly. Judgment upon the award may be entered in any court having jurisdiction.

[Comment: *Arbitration is optional but the benefits should be measured by Landlord and Broker.*]

19. Broker and Landlord each agree that it will comply with all applicable non-discrimination laws

[Comment: Although commercial brokerage agreements are not presently including any reference to the Fair Housing Disclosure from referenced in Reg. 175.28(c), and the text of the disclosure form itself seems inapplicable to commercial transactions, there is a technical argument that brokers should give such a disclosure form to landlords, potential and actual tenants.]

Please acknowledge your agreement to the foregoing by signing this letter in the space provided below and returning a pdf copy to Landlord.

Thank you.

LANDLORD:

By: _____ [Landlord's authorized signatory]

Name:

Title:

AGREED TO AND ACCEPTED BY:

BROKER:

[Name of Brokerage Firm]

By: _____ [Broker's authorized signatory]

Name:

Title:

EXHIBIT A

LIST OF POTENTIAL TENANTS WITH WHOM LANDLORD HAS DEALT AND ARE EXCLUDED FROM THIS AGREEMENT

EXHIBIT B

***[NOTE:** All terms in Exhibit B are negotiable. Amounts listed herein are for illustrative purposes only and not suggested terms.]*

OFFICE LEASES

Commissions to be calculated on the Base Rent (as defined below) for all or any fraction of the following years using the percentages below:

First Lease Year:	_____ %
Second Lease Year:	_____ %
Third Lease Year:	_____ %
Fourth Lease Year:	_____ %
Fifth Lease Year:	_____ %
Sixth Lease Year:	_____ %
Seventh Lease Year:	_____ %
Eighth Lease Year:	_____ %
Ninth Lease Year:	_____ %
Tenth Lease Year:	_____ %

***[Comment:** Commission rates for office leases are generally higher in the boroughs outside of Manhattan and may follow a different lease year schedule. This is negotiable.]*

SPECIAL CONDITIONS

1. The term "**Lease Year**" shall mean the first twelve (12) months of the term of the Lease commencing on _____ [the commencement date/rent commencement date].
2. Commissions shall be calculated upon the base or fixed annual rent including fixed increases ("**Base Rent**") payable by Tenant under the Lease (and upon real estate

taxes and operating expenses paid by a net lessee under a net lease) however in no event shall the following be included in Base Rent for the purposes of calculating Commissions: (a) electric charges, (b) escalation charges allocated to increases in real estate taxes, fuel, operating expenses, labor, wages, utilities, or the cost of living, or any addition to or substitution therefor, (c) rental abatements (“**Rent Abatement**”), (d) allowances for alterations or construction, (e) payments by Landlord to another landlord or other entity on Tenant’s behalf, or (f) the cost of construction or alterations paid for by Landlord on Tenant’s behalf[, and (g) any renewals or extensions of the initial term of the Lease or rights for additional space in the Building or otherwise].

[Comment. *Commissions on renewals, extensions or additional space are all negotiable. See comment in Agreement, Paragraph 5(e).]*

If a Lease provides for a Rent Abatement, for the purposes of calculating the Commission, the Rent Abatement shall be ratably spread over the entire term of the Lease and the Commission calculated on the Base Rent for each year less the ratable portion of the Rent Abatement for such lease year.

[Comment. *If base years are used in a net lease, base year amounts, but not future increases, may be included in “Base Rent” for the purpose of calculating a Commission. If base year amounts are not yet known, an estimated or negotiated amount may be substituted. All the foregoing is negotiable.]*

3. Notwithstanding the commission rates herein, in the event that the term of a Lease shall be ____ (__) years or less, the Commission shall be [__] percent (___%) of the aggregate Base Rent.

4. (a) Notwithstanding anything to the contrary set forth herein, if Tenant has an option to terminate a Lease, the Commission shall be calculated and paid only allocable to the term of the Lease that is not subject to such termination option and the Commission with respect to the term of the Lease that is subject to such termination shall only be paid to Broker in the event that Tenant either waives or does not exercise the option to terminate; provided, however, that if such Lease provides for a cancellation penalty or payment which includes an amount sufficient to cover the portion of the Commission allocable to the terminated portion of the term of the Lease, the Commission shall be calculated and paid based upon the entire term of the Lease, as if such termination option did not exist.

(b) Broker shall be paid a full Commission calculated based upon the entire term of the Lease even if the Lease contains an option for Landlord to terminate.

5. If a Tenant exercises an option in a Lease to purchase the Building, Landlord shall pay Broker a commission in an amount equal to _____percent (___%) of the sale price, subject to standard brokerage provisions.