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OFFICE LEASING TERM SHEET: SAMPLE TENANT LANGUAGE TO ADD

When a major office tenant negotiates a term sheet, the tenant and its advisers should consider adding some or all of the following provisions to the term sheet, beyond the “obvious” provisions such as rent, base term, and scope of premises. By adding to the term sheet provisions like those below, a tenant can simplify and shorten lease negotiations. If you would like to discuss any of these points, please contact Joshua Stein at (212) 688-3300 or Joshua@joshuastein.com.

Use. Tenant may use as general office premises and customary incidental uses for Tenant and its employees, such as training, duplication, exercise room, food service, child care, and ATM.

TI Allowance. Tenant may apply to any “hard” or “soft” costs of Tenant’s work, including network and other communications cabling. Disburse in installments as construction progresses, not only upon completion. Lien waivers for final disbursement only. Disburse any remaining allowance to Tenant upon completion of work. If Landlord fails to disburse within 90 days after required to do so, Tenant may abate rent (plus interest at prime).

Tenant’s Alterations. No fee for plan review for tenant’s initial build-out. Landlord shall not unreasonably disapprove any Tenant alterations at any time, and shall pre-approve Tenant’s initial build-out, to the extent defined at lease signing. No bonds. Landlord shall promptly sign permit applications. Tenant need not restore at end of term, except unusual and nonstandard installations such as vaults and internal staircases.

Operating Expenses. Limit to actual operating expenses. After any operating year, one-year deadline for Landlord to bill. After receiving Landlord’s final bill for any operating year, Tenant will have 6 months to audit (18 months for base year), using any auditor of Tenant’s choice. If audit discloses an overcharge of 3% or more, Landlord will pay all audit costs.

Insurance. Tenant may satisfy all insurance requirements by delivering appropriate certificates under Tenant's reasonable company-wide insurance program.

Parking. If any other tenant has reserved parking, Tenant will be entitled to reserved parking equivalent in amount, proximity, type (covered or uncovered), and signage, adjusted for relative occupancy.

Signage. Tenant may list (and later update) at least ____ individuals and Tenant affiliates in building directory. If Landlord installs monument signs anywhere, Tenant will have equivalent signage rights, adjusted for relative occupancy. Same for any signage on the exterior of the building. The building will not be named for Tenant or any competitor of Tenant.

Additional Facilities. Tenant may install and use reasonable rooftop communications facilities, such as satellite dishes. Tenant may install backup generators and fuel tanks at a location outside the premises as specified in the lease.

HVAC. Overtime fees must reflect Landlord's actual costs, allocated among multiple simultaneous users. Deadline to order overtime HVAC shall be 3 p.m. on same day. Regular HVAC hours shall be _____.

Assignment and Subletting. No Landlord consent needed for transactions with Tenant affiliates; any merger, consolidation, or other transaction affecting Tenant; or any transfer of Tenant's equity. Landlord shall not unreasonably withhold consent to other transactions. Landlord shall respond within 10 days. No recapture right. No profit share.

Renewal Option. 95% of fair market value with no floor. Exercise deadline shall be 6 months before end of term, provided no uncured Event of Default. Tenant may assign renewal option as part of Lease.

Right of First Offer. Tenant shall have right of first offer for any available space in building. Tenant may assign this right as part of Lease.

Landlord Services. Landlord will provide cleaning, security, maintenance, repairs, utilities, HVAC, freight and passenger elevator, and other services to a standard comparable to similar first-class buildings, for premises and common areas. Landlord will provide [at least __ cardkeys] [cardkeys equal to Tenant parking spaces], and replacements at nominal cost.

Utilities. If space is submetered, Tenant shall reimburse Landlord only for actual cost of submetered power at Landlord's tariff[, plus an administrative fee of 3%]. If Tenant requires additional power, Landlord will arrange it at Tenant's expense. If Tenant requires additional telecommunications service, Tenant may arrange it at Tenant's expense. Landlord will cooperate.

Legal Compliance. Tenant shall comply with all legal requirements triggered by the particular manner of Tenant's use of the Premises. Landlord shall be

responsible for all other legal compliance, including asbestos. Landlord confirms that all asbestos has been abated.

Environmental. Tenant shall have no liability for any environmental matters except arising from Tenant's acts or omissions in violation of law. Landlord will deliver the space [free of any asbestos or ACM] [with all asbestos or ACM abated in compliance with law].

Security Deposit and Default. No security deposit. Cure periods after written notice of default: monetary, 10 days; nonmonetary, 30 days plus due diligence. For first 30 days of any holdover, prorate holdover rent daily at 125% of reserved rent. Damages for Tenant default limited to collecting net present value of above-market component of rent, discounted at 6%, or suing for rent monthly. Tenant also pays costs of collection and attorneys' fees. No liability for consequential damages or loss of next tenant.

Rent Abatement. Tenant will be entitled to abate rent and exercise self-help rights if services are interrupted (or if Landlord's work interferes with Tenant's use and occupancy) for more than 3 business days, or any 10 days in 6 months. Tenant may offset rent if Landlord does not reimburse Tenant's costs within 30 days after receipt of an invoice.

Abatements and Incentives. Before signing, Tenant will need to confirm it qualifies for the _____ incentive program and such other incentives as Tenant shall determine are reasonably available and appropriate. Landlord shall cooperate as Tenant requests. If Tenant's occupancy entitles Landlord to any real estate tax abatements, those shall be passed through exclusively to Tenant.

SNDA. Landlord will deliver SNDA(s) at signing. Any present or future SNDA will not exculpate successor liability for (a) TI allowance; or (b) offsets or abatements accrued under express terms of Lease, provided Tenant gave mortgagee notice of Landlord's default.

Exclusivity. For 45 days, these negotiations shall be exclusive and neither party shall negotiate with any other counterparty.

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