

LEASE

This lease is entered into by _____, the owner of the premises described in Paragraph 1 (LANDLORD), and the State of North Dakota, _____ (STATE).

1) SCOPE OF LEASE

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises situated in the city of _____, county of _____ and state of North Dakota:

2) TERM OF LEASE

The term of this lease is for a period of _____ months, commencing on the ____ day of _____, 20__, and terminating on the ____ day of _____, 20__.

3) RENTAL PAYMENTS

STATE will pay rent for the premises, consisting of _____ square feet, at \$_____ per square foot per annum, or \$_____ per annum. Rent will be paid in advance by the 10th day of each month in a monthly amount of \$_____, which is 1/12 of the annual amount, commencing on the ____ day of _____, 20__, and continuing monthly thereafter for the term of this lease. Rent is payable at the address of LANDLORD, which is _____, unless STATE is notified otherwise in writing by LANDLORD.

4) LANDLORD'S OBLIGATIONS. LANDLORD agrees:

- a) To pay all water, sewer, heat, electricity, air conditioning, garbage collection, and all other utility fees (except telephone) charged against the premises.
- b) To perform all required maintenance for the premises, including all janitorial services, which will be done on a daily basis, including furnishing of related supplies.
- c) To keep the walkways and parking areas of the premises free of accumulations of snow and ice and to cut and care for the grass, shrubbery, plants and trees on the premises.

- d) That if other portions of the building are leased to other parties, LANDLORD shall not permit any activity to be conducted in other portions of the building or grounds that will materially interfere with STATE'S use and enjoyment of the premises.
- e) That STATE may install items that it deems necessary for maximum and optimum utilization of the premises. STATE may, at any time, remove from the premises all fixtures and other equipment owned by STATE, provided the removal is completed by termination of this lease or any renewal or extension. STATE agrees to repair any damages that may be done to the premises resulting from the removal of the items.
- f) STATE may place decorations, wall hangings, signs and directories upon entrance doors, in hallways leading to its premises, or doors and walls within the premises.
- g) To furnish _____ automobile parking stalls for use by STATE, its agents or designees, in the lot provided for use by the building tenants.
- h) To comply at its own expense with all federal, state, county, and city laws and ordinances and all lawful rules, regulations, or orders of any duly constituted authority, present or future, affecting the premises.

5) **STATE'S OBLIGATIONS.**

For the term of this lease, and any renewals or extensions, STATE agrees:

- a) To pay the rent when due.
- b) To pay for its own telephone service.
- c) To keep the premises in reasonable condition the same as at the commencement of the term or as it may be put by LANDLORD, except for reasonable use and wear, and damage by fire and unavoidable casualty.
- d) Not to make any unlawful, improper, or offensive use of the premises, and to observe all the laws of the State of North Dakota and the ordinances of the city of _____ in force from time to time relating to the leased premises.
- e) To permit LANDLORD at all reasonable times to enter and examine the premises and to make necessary repairs for the protection of the premises.
- f) To surrender the premises to LANDLORD at the end of the term; and, in default of the payment of rent due or failure to perform its obligations under this lease, to surrender the premises upon demand made by LANDLORD.
- g) To maintain at its own expense and assume responsibility for all office equipment, furniture, and fixtures installed by STATE.

6) TERMINATION OF LEASE

It is expressly understood and agreed that STATE has no obligation under this lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this lease by providing 30- days written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the term of this lease. During the term of this lease or any renewal or extension, STATE may terminate this lease by providing 30-days written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this lease, or if STATE determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

7) TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES

If the leased premises are destroyed or damaged by fire or the elements to the extent they become untenable, then this lease immediately terminates, unless LANDLORD, within 20 days of the happening of the event, gives written notice of intention to restore the building and fully restores the premises within a reasonable time. During the term between destruction and restoration of the premises rent will not be due.

8) HOLDING OVER

If STATE remains in possession of the premises after the lease expires, and LANDLORD accepts rent from it, the lease will be deemed renewed on a month-to-month basis.

9) MERGER

This lease is the entire agreement between the parties, and no modification of it will be binding unless evidenced by written agreement signed by the parties.

10) SEVERABILITY

If any term of this lease is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms will not be affected, and the rights and obligations of the parties will be construed and enforced as if the lease did not contain that term.

11) ASSIGNMENT

This lease must not be assigned or subleased by STATE unless LANDLORD endorses its written consent to the assignment or sublease. This lease must not terminate by reason of any sale of the premises by LANDLORD to third parties, but must continue throughout the entire term.

12) NOTICE

Whenever the term “written notice” or “in writing” is used in this lease, mailing of the notice must be by certified mail sent to:

_____ or _____

Notice provided under this provision does not meet the notice requirements at N.D.C.C. § 32-12.2-04(1)

13) APPLICABLE LAW

This lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this lease must be brought and solely litigated in the District Court of Burleigh County, North Dakota

14) SPOLIATION – NOTICE OF POTENTIAL CLAIMS

LANDLORD agrees to promptly notify STATE of all potential claims that arise from or result from this lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

15) INDEMNITY

Landlord agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State’s contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Landlord to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Landlord also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Landlord in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

16) INSURANCE

LANDLORD shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages, (if applicable) with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Property insurance insuring the full and true value of all Landlord's (or tenant's) real and personal property located on or in the building in which the leased premises are located for all losses.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation under the policies is the sole responsibility of LANDLORD.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies shall be in form and terms approved by State.
- 3) The duty to indemnify State under this agreement must not be limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State shall have all the benefits, rights and coverages as an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - (a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against State;
 - (b) a provision that the policy and endorsements may not be canceled or modified without 30-days prior written notice to the undersigned State representative;
 - (c) a provision that any attorney who represents State under this policy must first qualify as, and be appointed by, the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;

- (d) a provision that LANDLORD's insurance coverage will be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by State and that any insurance, self-insurance or self-retention maintained by State must be in excess of LANDLORD's insurance and shall not contribute with it;
- (e) cross liability/severability of interest for all policies and endorsements;
- (f) The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.
- (g) The insolvency or bankruptcy of the insured Landlord shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Landlord from meeting the retention limit under the policy.
- 6) LANDLORD shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately

17) EFFECTIVENESS OF LEASE

This lease is not binding on STATE until it is reviewed by the Office of Attorney General and approved by the Facility Management Division, Office of Management and Budget, as required in N.D.C.C. § 54-21-24.1.

LANDLORD

BY: _____

ITS: _____

STATE OF NORTH DAKOTA

BY: _____

ITS: _____

FORM APPROVED BY ATTORNEY GENERAL:

BY: _____ DATE: _____

APPROVED BY FACILITY MANAGEMENT:

BY: _____ DATE: _____

Updated: March 2008