

TERMS AND CONDITIONS OF LEASE AGREEMENT

1. Lease

This transaction is an operating lease and not a sale. Customer does not acquire through this Lease or by payment of rental under this Lease any right, title or interest in or to the Equipment, except the right to possess and use the Equipment so long as Customer is not in default under this Lease.

2. Rental and Other Payments

(a) The start of the lease term is the date on which ModSpace substantially completes its scope of work for installation, unless otherwise agreed to among the parties. Monthly rental will accrue through and including the month in which the later of the Return Date or End of the Term occurs. The "Return Date" is the date on which the Equipment is returned to ModSpace in accordance with the terms of this Lease. The "End of the Term" is the date on which the term of this Lease is to expire, either originally, under a renewal term or under month-to-month renewals as contemplated by this Lease. Rental and such other charges will be prorated on a daily basis where necessary. Unless otherwise specified in this Lease, charges for delivery and installation, initial month's rent and any applicable initial charges for the Optional Insurance Program and Damage Waiver will be due and payable at the start of the lease term, and charges for teardown and return will be due and payable at the earlier of the Return Date or the End of Term. After payment of the initial month's rent, each month's rent thereafter is due and payable without demand and in advance (i) at the end of each thirty (30) day period following the commencement of the lease term, if a rental month is defined on the first page of this Lease as a thirty-day period or (ii) on the first of each month immediately following the month in which this lease commences, if a rental month is defined on the first page of this Lease as a calendar month. All other sums payable by Customer under this Lease are due and payable when invoiced. Unless agreed otherwise, all payments made under this Lease will be made by Customer's check drawn on its regular bank checking account or such other form of payment as is acceptable to ModSpace. All payments by Customer will be made without setoff or deduction of any kind.

(b) Customer will pay or reimburse ModSpace for any and all sales, goods and services, use, personal property expenses and other taxes, fees or assessments related directly or indirectly to the Equipment, its use or value, excluding taxes relating to income ("Taxes"). In the event a proper tax exemption certificate is approved by ModSpace, Customer will not be charged for sales, goods and services and use taxes, but will remain liable for personal property expenses and other taxes, fees or assessments related directly or indirectly to the Equipment, its use or value.. Customer's obligations under this Subsection will survive the termination of this Lease.

(c) For Customer's convenience, ModSpace intends to issue invoices for amounts due under this Lease. If Customer fails to pay any amount due within twenty (20) days of the due date, ModSpace may impose a charge on such amount at one and one-half percent (1-1/2%) per month or the highest rate permitted by law, whichever is lower, from the due date until payment in full is received by ModSpace.

(d) When the Lease term exceeds eleven (11) months, the rental charge may, at ModSpace's option, be adjusted upward, based upon the Consumer Price Index, All Urban Consumers, 1996 classification, monthly all-items indices, cities ("CPI") (International Monetary Fund's Dissemination Standards Bulletin Board or such other index as may succeed the CPI), as follows: For each change of one percent (1%) in the CPI from the CPI as available immediately prior to the start date of this Lease, the rental rate will be adjusted by a factor of one percent (1%). Any adjustments will take effect at six (6) months following the start date of this Lease and will be further adjusted each six (6) months thereafter. The adjustment will be based on the most recent CPI indices available prior to the invoice in which an adjustment is made.

(e) From time to time, at ModSpace's option, ModSpace may add additional costs and expenses, including but not limited to increases in fuel costs and/or other operating costs and expenses ("Additional Operating Costs") to the rental charges and other payments that Customer must pay to ModSpace under this Lease, said Additional Operating Costs will be calculated by ModSpace, in its sole discretion, as a result of increases in ModSpace's costs and expenses.

3. Delivery, Installation and Return Delivery

(a) Customer will provide free and clear access for delivery of the Equipment by standard mobile transport vehicles. Customer will be solely responsible, at its cost, for preparation of the site on which the Equipment is to be used (the "Site"), including any required structural or grade alterations and identification of utility lines. Customer will provide firm and level ground on no more than a six-inch (6") slope from one end to the other for safe and unobstructed installation for the Equipment. Site selection is the sole responsibility of Customer. **MODSPACE ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF, OR THE UTILITIES AVAILABLE AT THE SITE.**

(b) Customer will have sole responsibility, at Customer's cost, to obtain any and all licenses, titles, building and other permits and any other approvals and certificates as may be required by law or otherwise for the installation and placement of the Equipment and Customer's lawful operation, possession or occupancy of the Equipment. Customer agrees that all certificates of title or registration applicable to the Equipment will reflect ModSpace's ownership of the Equipment.

(c) ModSpace's delivery of the Equipment is subject to delays in manufacturing, modification, delivery or installation due to fire, flood, windstorm, riot, civil disobedience, strike or other labor actions, acts of God, or any circumstances beyond ModSpace's control (including but not limited to breaches by ModSpace's sub-contractors or manufacturers) which delay the manufacture or modification of products or the making of deliveries in the normal course of business.

(d) The prices for delivery, installation, teardown, return delivery and other "one-time" charges, the due dates of such charges, the start date of this Lease, and the scheduled date for and completion of Equipment demobilization and return delivery assume accuracy of the information given to ModSpace with respect to Site conditions and locations and are subject to adjustment to the extent that the timing of or physical nature of access to the Site is or becomes limited, the Site does not have adequate load bearing or topographic qualities or is otherwise not properly prepared, snow or water is not removed, utilities are not correctly located or properly disconnected, appendices are not disconnected and removed, provision of utilities is not timely or applicable licenses or permits are not provided in a timely manner or Customer otherwise delays ModSpace's seamless completion of its scope of work ("Customer Delay"). Customer will be liable for all applicable charges and additional costs incurred by ModSpace to the extent caused by such Customer Delay.

(e) ModSpace may suspend work at the Site if ModSpace deems the Site to be unsafe.

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(a) Customer will not move or in any way modify the Equipment without written consent of ModSpace. Notwithstanding ModSpace's consent to Customer's modification of the Equipment, Customer is liable for the cost of the removal of such modification or restoration of the Equipment upon the termination of this Lease for the modified Equipment. ModSpace may place its name on the Equipment, and Customer will assure that such name is not removed or concealed in whole or in part.

(b) Customer, at Customer's sole cost, will keep the Equipment at all times until the Return Date in good repair and operating condition, subject to ordinary wear and tear, and free of any and all liens and encumbrances. ModSpace will have the right to inspect the Equipment from time to time until the Return Date and if ModSpace believes the Equipment to be misused, abused or neglected, ModSpace may summarily remove and repossess the Equipment at Customer's cost.

(c) Customer will perform, execute and comply with all Laws which in any way affect the use, operation, maintenance, or storage of the Equipment. "Laws" means all laws, rules, regulations or orders of any governmental agency or instrumentality of the United States, Canada, any state, province, municipality or other local government and all orders, writs and decrees of any court, tribunal or administrative agency, in any case which now exist or hereafter arise (including but not limited to laws governing Hazardous Substances and other environmental risks and the Americans with Disabilities Act). Customer will not make or permit any unlawful use or handling of the Equipment.

(d) HAZARDOUS SUBSTANCES. (i) "Hazardous Substances" means hazardous, toxic, radioactive or bio-hazardous substances or petroleum products. (ii) Customer will not use or store Hazardous Substances in the Equipment, except such substances and in such quantities as would be normal in the operation of a commercial office. Customer will not locate the Equipment at a remediation or nuclear site or use the Equipment for medical laboratory testing. (iii) Ordinary wear and tear does not include contamination by Hazardous Substances. If any returned Equipment is found to have been contaminated by Hazardous Substances during Customer's possession, ModSpace may charge Customer for the clean up or may require Customer to purchase the Equipment at the then current market price charged for an uncontaminated unit.

(e) Customer agrees that the Equipment leased hereunder will not be occupied by any person other than Customer or its agents, employees or invitees. The Equipment will not be used for residential or dormitory purposes.

5. NO WARRANTY FOR MERCHANTABILITY OR FITNESS

THERE ARE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND ALL REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND, INCLUDING ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE ARE HEREBY EXCLUDED BOTH AS TO THE EQUIPMENT AND AS TO ANY INSTALLATION, MAINTENANCE OR REPAIR WORK PERFORMED BY MODSPACE ON THE EQUIPMENT.

6. Limitation of Damages

Customer does hereby expressly waive any and all claims and demands for loss of profits or other alleged consequential, incidental or punitive damages arising out of or in connection with this Lease. ModSpace is not liable for any loss or damage to any property stored, located or transported in, upon, under or around any Equipment and Customer does hereby waive any and all claims and demands for any such loss or damage.

7. End of Lease

(a) Unless specified otherwise, Customer must give ModSpace sixty (60) days' prior written notice of the date on which the Equipment is to be returned.

(b) If Customer, without any further written agreement, continues to possess or occupy the Equipment after the expiration of the initial and any renewal term of Lease, with or without consent of ModSpace, Customer will then be deemed to have renewed this Lease on a month-to-month basis subject to such rate as ModSpace declares to be in effect (and in the absence of such declaration at the last monthly rate applicable to the Equipment), and ModSpace may terminate such month-to-month extensions at any time.

(c) If, at any time after the initial or any renewal term (or at ModSpace's request at any time this Lease is on a month-to-month basis), ModSpace requests the return of the Equipment, Customer will return the Equipment to ModSpace, within five (5) days, at ModSpace's designated address, at Customer's sole cost. Missing accessories, attachments or other items, repairs of any kind and restoration to original specifications whether due to Customer alterations or otherwise will remain the sole responsibility of Customer, normal wear and tear excepted.

(d) Customer may terminate this Lease prior to the expiration of the Minimum Lease Period, subject to all terms and conditions of this Lease, and the Customer will pay (in addition to tear-down and return charges) the following termination charges:

- i) If Customer is the first user of the Equipment: the remaining unpaid rental charges for the Minimum Lease Period;
- ii) If Customer is not the first user: (A) if the Minimum Lease Period ("MLP") is less than three (3) rental months, four (4) times the Adjusted Weekly Lease Charge ("AWLC"); (B) if the MLP is between three (3) rental months and six (6) rental months, inclusive, eight (8) times the AWLC; if the MLP is more than six (6) rental months but one (1) year or less, twelve (12) times the AWLC; if the MLP exceeds one (1) year, fourteen (14) times the AWLC for each year, or portion thereof, of the portion of the MLP cancelled.
- iii) The "Adjusted Weekly Lease Charge" or "AWLC" means the Weekly Lease Charge less that portion representing amortization of any delivery, set-up, teardown, return or similar one-time charges and customer-requested modifications not provided as a separate charge under the terms of this Lease (the "Amortized One-Time Costs") In addition, Customer will pay in full the unpaid Amortized One-Time Costs. In no case will the termination charges be in excess of the rental charge for the remainder of MLP.

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8. Indemnification

Customer hereby specifically indemnifies, agrees to defend and holds harmless ModSpace, its employees and agents from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys' fees and investigative costs) (collectively "Losses") that may arise from or in connection with:

- (a) The loss of or damage to the Equipment prior to the Return Date because of collision, fire, lightning or theft, flood, windstorm or explosion, civil disturbance or riot or any other peril or casualty;
- (b) The death of or injury to, including but not limited to, damage to the property of, any person (other than the Equipment) as a result of, in whole or in part, the use or condition prior to the Return Date of the Equipment;
- (c) Any act or omission of Customer in violation of this Lease;
- (d) The actual or alleged storage, maintenance, use, handling, repair, or operation of the Equipment, prior to the Return Date, including but not limited to any failure to use anchor straps, any work done on, or any materials supplied to or in connection with the operation, maintenance, possession or storage of the Equipment and any loss or damage to anything stored in any of the Equipment; and
- (e) Any damage to Customer's property or the property of any third parties incurred during or in connection with the fulfillment of Customer's obligations by or on behalf of ModSpace or the repossession or return of Equipment by ModSpace in accordance with the terms of this Lease.

The obligations contained in this Section 8 will survive expiration or termination of the term of this Lease and the Return Date. The indemnifications contained in this Section 8 will apply to any Losses whether they are asserted before or after the Return Date.

9. Insurance

(a) Customer, at Customer's sole cost, will procure and keep in full force and effect, from the initial delivery date until the return of all Equipment the following policies of insurance satisfactory to ModSpace as to the insurer and as to the form and amount of coverage, with premiums prepaid:

i) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence, written on an occurrence form, including coverage for premises, operations, contractual liability, broad form property damage, independent contractors and personal injury liability, naming ModSpace Financial Services Canada Ltd as an additional insured. ii) Commercial Property Insurance protecting against all loss and damages, at full replacement cost, sustained or suffered due to the loss of or damage to the Equipment as a result of collision, fire, lightning, theft, flood, windstorm, explosion or any other casualty, naming ModSpace Financial Services Canada Ltd and Bank of America NA as loss payee.

(b) Customer will deliver certificates evidencing all such insurance to ModSpace within fourteen (14) days after delivery of the Equipment to Customer's site, time being of the essence; except that, if Customer elects to accept the Liability Waiver Option or the Damage Waiver Option, Customer will not have to deliver certificates of insurance to ModSpace for the type of risks covered by the Liability Waiver Option or Damage Waiver Option as elected by Customer. Each certificate will state that such insurance will not terminate or be materially changed without thirty (30) days prior written notice to ModSpace.

(c) If Customer fails to deliver the insurance certificate as required by paragraph (b) on the date required, Customer will be in default under this Lease. In addition to all the other remedies for default under this Lease, ModSpace may (i) impose upon Customer a one-time fee for insurance processing of One Hundred Dollars (\$100) and (ii) assess as additional rent an uninsured lessee fee of ten percent (10%) of the monthly rental from the start of the lease term until the required insurance certificate is delivered to ModSpace.

(d) Obtaining insurance as described above will not affect Customer's obligations and indemnities under this Lease, and the loss, damage to, or destruction of any of the Equipment will neither terminate this Lease nor, except to the extent that ModSpace is actually compensated by insurance paid for by Customer, relieve Customer of any of Customer's liability under this Lease.

10. Liability Waiver and Damage Waiver Options

(a) In certain circumstances, Customer may choose (i) to accept a Liability Waiver to cover general liability risks (the "Liability Waiver Option") or (ii) to accept a Damage Waiver Option to cover damage to the Equipment (the "Damage Waiver Option") or (iii) to elect both options. If the Liability Waiver Option or the Damage Waiver Option is available and Customer, in writing prior to delivery of the Equipment to the site, elects to accept the Liability Waiver Option or the Damage Waiver Option, then, Section 10(b) will apply if Customer elects to accept the Liability Waiver Option and Section 10(c) will apply if Customer accepts the Damage Waiver Option.

(b) If the Liability Waiver Option is properly elected, so long as Customer timely pays the additional fee specified for such Liability Waiver Option and is in compliance with the Lease, Customer's liabilities to ModSpace for the occurrence of death, bodily injury or property damages as described in Section 9(a)(i) will be limited as follows: to such amounts in excess of a maximum combined amount of \$150,000 per occurrence, subject to a \$5,000 deductible claim. If Customer properly elects to accept the Liability Waiver Option, Customer will not be required, under this Lease, to carry additional commercial liability insurance as required by Section 9(a)(i). **THE LIABILITY WAIVER OPTION IS NOT INSURANCE COVERAGE.**

(c) If the Damage Waiver Option is properly elected and so long as Customer timely pays the additional fee specified for such Damage Waiver Option, Customer will not be required, under the terms of this Lease, to carry any additional commercial property insurance as required by Section 9(a)(ii) and Customer will not be liable to ModSpace in excess of \$500 per unit of Equipment for loss or damage specified in Section 8(a), except Customer will not be relieved of liability if Customer violates any other provision of this Lease. **THE DAMAGE WAIVER IS NOT INSURANCE COVERAGE.**

(d) Customer's acceptance of the Liability Waiver Option or the Damage Waiver Option may be cancelled by either party and charges for either the Liability Waiver Option or the Damage Waiver Option may be changed upon thirty (30) days' prior written notice. If the Liability Waiver Option is, for any reason, cancelled, Customer will provide to ModSpace evidence of policies of insurance as set forth in Sections 9(a)(i) or 9(a)(ii), as appropriate, within ten (10) days prior to the effective date of such cancellation.

(e) The waivers provided by the Liability Waiver Option and the limitation of liability under the Damage Waiver Option does not extend to the transportation of Equipment or its contents and, only extends to Equipment installed on ground level.

(f) Neither the Liability Waiver Option nor the Damage Waiver Option will be binding upon ModSpace unless any loss, damage, injury or claim is reported to ModSpace in writing within seventy-two (72) hours of the occurrence of any such event. Customer will also provide any information in regard to such event that ModSpace reasonably requests.

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The occurrence of one or more of the following in clauses (a) - (e) below will constitute an Event of Default under this Lease:

- (a) Customer fails to pay when due any rental payment or any other payment due under this Lease or fails to perform its obligations under Section 9 of this Lease;
- (b) Customer fails to perform or observe any other term or condition under this Lease and such failure remains unremedied for more than ten (10) days after such failure to perform or observe;
- (c) Customer or any person or entity which controls more than fifty percent (50%) of Customer's equity (a "Control Person") or any guarantor of any of Customer's obligations hereunder (a "Guarantor") (i) becomes insolvent, (ii) becomes subject to any voluntary or involuntary bankruptcy or reorganization proceedings, (iii) commits an act of bankruptcy, (iv) makes an assignment for the benefit of creditors, (v) appoints or submits to the appointment of a receiver for all or any of its assets, (vi) admits in writing its inability to pay its debts as they become due or (vii) enters into any type of voluntary or involuntary liquidation or dissolution;
- (d) Customer, any Control Person or any Guarantor defaults under any other agreement with ModSpace or any affiliate of ModSpace; and
- (e) Any letter of credit, guaranty or other security given to secure the performance of Customer's obligations under this Lease expires, terminates or in the reasonable opinion of ModSpace becomes worthless.

Upon the occurrence of an Event of Default, ModSpace will have the option to declare the entire balance of rent for the remainder of the stated lease term immediately due and payable and to accelerate and make immediately due and payable any other amounts owing under this Lease. ModSpace will also have the option to retake and retain any or all of the Equipment free of all rights of Customer without any further liability or obligation to redeliver any of the Equipment to Customer, and Customer hereby grants ModSpace the right to enter upon any premises where all or any of the Equipment is located in order to take possession of and remove such Equipment. (Notwithstanding the foregoing, if an Event of Default occurs under clause (c) above, such accelerations will occur automatically without the need for declaration.) Customer will pay to ModSpace on demand all fees, costs and expenses incurred by ModSpace in enforcing its rights under this Lease, including without limitation reasonable attorneys' fees. The remedies provided in favor of ModSpace will be cumulative and in addition to all other remedies provided in this Lease or existing at law or in equity. No action taken by ModSpace pursuant to this Section 11 or Section 13 will release Customer from Customer's covenants, obligations and indemnities provided under this Lease, including but not limited to Customer's obligation for the payment of rentals provided in this Lease.

If ModSpace retakes possession of the Equipment or any part of the Equipment and there is at the time of such retaking, in, upon or attached to such repossessed Equipment, any other property, goods or things of value owned by Customer or in the custody or control of Customer, ModSpace is authorized to take possession of such other property, goods or things and hold the same for Customer, at Customer's sole cost, either in ModSpace's possession or in public storage, at ModSpace's sole discretion.

12. ModSpace's Right To Cure

If Customer defaults in any of its obligations under this Lease, whether or not an Event of Default then exists, ModSpace may pay all amounts or perform or cause to be performed all obligations required to be paid or performed by Customer under this Lease and recover from Customer as additional rent all amounts so paid or the reasonable value of all services so performed.

13. Set-Off

Without limiting any other provision of this Lease, upon the occurrence of an Event of Default, ModSpace will have the immediate right, without notice, demand or other action, to set-off against Customer any amounts ModSpace may hold as prepayments or deposits for ModSpace liabilities to Customer whether or not then due to Customer. Unless otherwise prohibited by law, ModSpace will be deemed to have exercised such right to set-off and to have made a charge against any such sums immediately upon the occurrence of any Event of Default by Customer.

14. Assignment, Amendment, Modification, Miscellaneous

(a) Customer will not have the right to assign this Lease or to sublet, rent or otherwise hire out or transfer possession of any of the Equipment to any person or entity other than ModSpace, without the prior written consent of ModSpace. ModSpace may assign this Lease and the rentals reserved under this Lease. If ModSpace makes such an assignment, the assignee will acquire all rights and remedies possessed by or available to ModSpace under this Lease.

(b) This Lease contains the entire agreement between the parties pertaining to the subject matter of this Lease. No agreements, representation or understandings not specifically contained in this Lease will be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby.

Any amendment, modification or addendum to this Lease will not be binding on ModSpace unless signed by an authorized officer of ModSpace. This Lease will be governed as to its construction, interpretation and effect by the laws of the Province of Ontario without regard to principles of choice of laws.