**DOMAIN NAME LEASE AGREEMENT WITH OPTION TO PURCHASE**

**FOR**

**[DOMAIN NAME]**

THIS LEASE AGREEMENT (the “Agreement”) dated [DATE] between [NAME OF OWNER], the owner of the Domain Name, [DOMAIN NAME], of [OWNERS ADDRESS] (the “Lessor”), and **[LESSEE]**, of [LESSEE’S ADDRESS], the party wishing to obtain the use of the Domain Name (the “Lessee”).

Parties: The parties should be identified and verified through corporate searches and/or photo identification. The Lessor should be the recorded registrant as per Whois. If domain name is privacy protected, privacy should be revealed in order to ascertain identity of Lessor/registrant. The Lessee, if a company, should be a valid company in good standing.

**THE LESSOR AND THE LESSEE HEREBY AGREE** as follows:

## 1. Lease

The Lessor shall lease to the Lessee and the Lessee shall lease from the Lessor the domain names as identified in APPENDIX 1, [DOMAIN NAME] (“the Domain Name”) on the terms and conditions contained in this Lease.

If more than one domain name, can be identified in this section, or included in an attached Schedule.

The lease of the domain name implies exclusivity, i.e. Lessor is bound for the Term.

Can Lessor use similar domain name after this deal?

## 2. Term and Use of the Domain Name

Subject to receipt of the Set-up Fee (as defined below at Paragraph 3) and subject to Paragraph 4, below, the term (the “Term”) of this Lease shall be for a period of [TERM], commencing on (the “Effective Date”) and expiring ( ) months thereafter, namely on (the “Expiration Date”).

Set up fees, although optional, are often a good idea to cover initial costs such as legal fees, and to ensure that Lessee is sufficiently financially committed. Sometimes they are called “deposits” and are equal to first and last months’ rent.

The Effective Date should provide for enough time to receive initial payment from Lessee.

The length of the Term is to be negotiated, having regard to the value, use, rent, option price, and other terms. Generally, shorter is better. Sometimes, the Term subject to optional extensions.

Throughout the Term, so long as the Lessee’s obligations under this Agreement are in good standing, the Lessee shall have the right to use the Domain Name in accordance with the terms and conditions contained herein.

One of the most important issues in domain name leasing, is who hold the domain name during the Term; the Lessor, the Lessee, or an escrow agent. If it is to be in escrow, then

provisions need to be included for that, including for setting DNS and procedures for release of the domain.

Upon Expiry of the Term, this Lease Agreement shall be immediately terminated, except for the indemnification provisions arising out of the Lessee’s use of the Domain Name, as set out at Paragraph 8, below, which shall survive the termination of this Agreement, and subject to the option to purchase.

The survival of the indemnification provisions can be an important term to include so that upon termination of the Agreement, these provisions remain in effect.

## 3. Payments

The Lessee shall pay to the Lessor, a non-refundable Set-up Fee, in the amount of US $ (the “Set-up Fee”) payable by .

Ensure that the desired currency is clearly stated throughout.

On the first of each successive month of the [XX]-month Term, commencing on , the Lessee shall pay to the Lessor a monthly rental price of US$ , for the use of Domain Name, inclusive of all applicable taxes and without any deduction or set-off (“Rent”).

The Set-up Fee and Rent are collectively referred to herein as “Payments”.

Applicable taxes should be considered, depending on the location of the parties, and tax counsel obtained.

Often, the amount of Rent is variable and increases as the Term progresses.

It is usually desirable to use the first of the month as the due date, for the sake of simplicity, but if not, care should be taken to clearly identify dates, particularly when the Term continues for many years.

## 4. Option to Purchase

Provided that the Lessee’s obligations hereunder are in good standing, at any time during the Term and not subsequent to two (2) months prior to the Expiration Date, the Lessee may notify the Lessor in writing that it intends to exercise its option (the “Option”) to purchase the Domain Name by paying all of the remaining Rent otherwise payable through until the end of the Term, plus the sum of US$ (the “Option Purchase Price”).

Sometimes there is an obligation rather than an option to purchase.

Sometimes lease payments are deducted from the Purchase Price.

A notice period prior to exercising the option to purchase if often desirable so that Lessor can plan for the period post-Term.

The Option Purchase Price is the value that the parties agree on, which can be go up as the Term progresses. Sometimes, by exercising the Option, remaining Rent is waived.

As a condition of the Option, the Option Purchase Price must be paid no later than ten (10) days subsequent to the notice of exercise of the Option, and shall be paid to the Lessor via Wire Transfer or as otherwise instructed by the Lessor.

It is important to clearly identify all due dates for payment of the Option Price and any grace periods.

Upon payment of the Option Purchase Price as aforesaid, the Domain Name shall be transferred to the Lessee and this Lease Agreement shall thereafter be immediately terminated, except for the indemnification provisions arising out of the Lessee’s use of the Domain Name, at Paragraph 8, below, which shall survive the termination of this Agreement.

The “transfer” of the domain name may involve transfer by an escrow agent, and that could involve an escrow agreement, escrow fees, etc.

## 5. Place of Payment

The Lessee shall pay the Set Up Fee via wire transfer as instructed by the Lessor. The Lessee shall make all Rent payments to the Lessor via PayPal unless otherwise instructed by the Lessor. The Option Purchase Price shall be paid via wire transfer, or as instructed by the Lessor.

Specify the means of payment. Generally for smaller monthly rents, PayPal is commonly used. For larger payments, wire is generally used. Account details can be included as well.

## 6. Ownership of Domain Name

1. The Lessor retains full title to the Domain Name notwithstanding the Lease of the same to the Lessee subject only to the right only to use the Domain Name in accordance with the terms of this Lease, and subject to any valid exercise of the Option.

 The domain name continues to be owned by the Lessor. Lessee only gets to “rent/use” it.

1. The Domain Name shall remain registered to the Lessor throughout the Term of this Lease. The Lessee shall be entitled to direct the Lessor to set the DNS settings for the Domain Name from time to time.

Subject to escrow provisions, if applicable. Frequency of DNS changes and how quickly to be effected to be agreed upon.

1. Lessee acknowledges that no option provided or representation, either express or implied, written or oral has been made by or on behalf of the Lessor to the Lessee that the Domain Name may be purchased from the Lessor by the Lessee or by any nominee of the Lessee at any time, except in strict accordance with the terms of the Option, as set out above.

## 7. Lessee’s Compliance

The Lessee, in its use of the Domain Name, shall comply with all applicable laws whether state, provincial, federal, national or international which apply to the use by the Lessee of the Domain Name. The Lessee shall use the Domain Name only for a website and associated email related to the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Lessee shall promptly notify the Lessor of any claim, demand, threat, or legal proceeding, arising in any way from the Lessee’s use of the Domain Name or the Lessor’s registration of the Domain Name. The Lessor retains the right to terminate this Lease Agreement upon five (5) business days’ notice, if the Lessee uses the Domain Name in any manner is not in compliance with any laws or regulations, worldwide, subject to the Lessee’s right to cure any such misconduct if such cure is curable, during the aforementioned five (5) day curative period.

Identifying purpose and use of domain name by Lessee can often be critical.

Often this section is much more detailed and sets out prohibited uses of the Domain Name. Lessor should continually monitor use. Trademark, copyright, counterfeiting, illegal sales, etc., are all concerns.

Lessor’s Whois details can become relevant in the case of misuse, for the purposes of receiving third party notifications.

Provisions relating to obligation to defend the domain name and liability for its use or loss can become very complex. Often it is tied to whose fault it is.

Sometimes there is an agreed cap on damages and indemnification provisions regarding legal costs for defense.

## 8. Indemnity

The Lessee shall indemnify and save harmless the Lessor against all damages, losses or liabilities which may arise in respect of the Lessee’s use and operation of the Domain Name.

 This section often gets more detailed. Indemnity is only as good as the indemnifier’s means.

## 9. Default

1. The Lessor and the Lessee agree that each of the following events amounts to a default by the Lessee under this Lease:
2. if the Lessee fails to pay any Payment payable under this Lease on the due date for payment, subject to a seven (7) day grace period;
3. the Lessee fails to perform or observe any of the covenants or provisions of this Lease on the part of the Lessee to be performed or observed;

This is a general catch-all

1. if a writ of execution is issued against the Lessee’s property under a judgment in any court of competent jurisdiction;
2. if a distress warrant is issued against the Lessee’s property under a judgment in any court of competent jurisdiction;
3. If the Lessee becomes bankrupt or if the Lessee makes an assignment or composition with the Lessee’s creditors or if the Lessee is a body corporate and a resolution is passed or a petition filed for the winding up of the Lessee other than for the purposes of reconstruction or amalgamation or if the Lessee becomes subject to the appointment of a receiver.
4. In the event default occurs, the Lessor may immediately or at any time thereafter without giving any notice to the Lessee reset the DNS setting for the Domain Name and terminate this Lease Agreement but without releasing the Lessee from any liability in respect of any breach or non-observance of any of the provisions contained or implied in this Lease and without prejudice to the Lessor’s right to retain all money paid to the Lessor pursuant to this Lease and the Lessor’s right to claim damages pursuant to subparagraph (c) below.

Often a Lessee will insist upon notice prior to any reset of DNS settings. Sometimes, a Lessor will insist upon being able to terminate and reset immediately without any curative period, in some severe situations.

1. If this Lease is terminated for any reason other than its due fulfillment by the Lessee, or other than as a result of Early Termination, or other than with the express consent of the Lessor in writing, then without prejudice to its other rights at law or in equity the Lessor may at any time demand immediate payment of all of the following:
2. All arrears of Rent and other money then due and/or payable by the Lessee under the Lease.
3. The Lessor’s loss on the Lease to be notified by the Lessor to the Lessee.
4. All costs and expenses incurred by the Lessor enforcing this agreement.
5. Interest on all money payable under this provision from the date of termination, the date of payment at the rate of 5% per year calculated monthly.

Often a Lessee will want to be able to simply stop paying and walk away without liability for ongoing payments.

Sometimes a Lessee can terminate upon notice or breakup fee.

**10. Invalidity or Severability**

If any Article, Section, paragraph or provision of this Agreement is determined to be void or unenforceable in whole or in part, it shall not affect or impair the validity or enforcement of any other provision of this Agreement. Any provisions of this Agreement which are or may be rendered invalid, unenforceable or illegal, shall be ineffective only to the extent of such invalidity, unenforceability or illegality, without affecting the validity, enforceability or legality of the remaining provisions of this Agreement, it being the intent and purpose that this Agreement should survive and be valid to the maximum extent permitted by applicable law. For greater certainty, this Agreement shall be read as if the invalid, unenforceable or illegal provision had never formed part hereof, and a “provision” for these purposes shall include the smallest severable portion of sections, paragraphs or clauses, or sentences contained therein, and not, unless the context absolutely requires, the whole thereof.

## 11. Waiver

No party to this Agreement shall be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is expressly set forth in writing. No consent or waiver, express or implied, by a party of any breach or default by the other party in the performance of such other party of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations under this Agreement of such other party. Failure on the part of a party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first mentioned party of its rights under this Agreement.

## 12. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of [STATE/PROVINCE/COUNTRY] and the parties hereby exclusively attorn to the jurisdiction of the courts of [CITY/STATE/PROVINCE/COUNTRY].

Discussion and agreement of the most suitable forum for disputes is required to be negotiated, given the value of the deal and the nature of the Lessee’s business. Generally each party wants jurisdiction at home. A third party jurisdiction or arbitration can also be selected.

## 13. Notices

All notices required or permitted to be given pursuant to this Agreement shall be delivered by hand to the party for which it is intended, or sent by telex, fax, telegram, electronic email or other form of transmitted or electronic message or sent by prepaid courier directly to such party at the following addresses, respectively;

If to Lessor:

[ADDRESS]

[fax number / email address]

If to Lessee:

[ADDRESS]

[fax number / email address]

Often some consideration of means of effecting proper notice is required. Email is preferable but not always reliable.

or at such other address as either party may stipulate by notice to the other. Any notice delivered by hand or prepaid courier or sent by facsimile or electronic email shall be deemed to be received on the date of actual delivery thereof. Any notice so sent by telex, telegram or similar form of transmitted message shall be deemed to have been received on the next day following transmission.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the date first above written.

**[LESSOR] [LESSEE]**

**Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name: Name:

Title: President Title:

Other considerations:

1. Lessor’s representations and warranties as to any prior disputes, claims, notices, trademark issues, and other representations as to title, etc.

2. Preventing Lessee from acquiring goodwill / intellectual property rights in domain name without exercising option to purchase.

3. Provisions for email continuation or gradual migration.

4. Web content / SEO.

5. Bill of Sale.

6. Brokers Fees.

7. Assignability.

8. Option for Lessor to break lease.