

LAND LEASE- INNOVATION CENTRE

THIS LEASE made as of the 1 day of April, 2014.

BETWEEN:

CITY OF OTTAWA

a body corporate constituted under the *City of Ottawa Act, 1999*, as amended,

(the "**Landlord**")

AND

INNOVATION CENTRE AT BAYVIEW YARDS

a corporation incorporated under the *Canada Business Corporations Act*,

(the "**Tenant**")

WHEREAS the Landlord is the owner of the lands legally described in Schedule "A" known municipally as 7 Bayview Road, in the City of Ottawa in the Province of Ontario, and more particularly shown on the plan attached as Schedule "B" hereto, and referred to in this Lease as the "**Lands**";

AND WHEREAS the City of Ottawa and the Province of Ontario (the "Province") have entered into a Provincial Contribution Agreement (the "**Provincial Contribution Agreement**") dated the 25 day of March, 2013, for the Province to provide up to \$15 million dollars towards the development, construction and renovation of the Innovation Centre (the "**Project**"), conditional upon the City of Ottawa administering the contribution pursuant to the terms and conditions of that Provincial Contribution Agreement and matching the Province's contribution through in-kind support for the Project;

AND WHEREAS the Tenant and Landlord have entered into a Contribution Agreement (the "**Contribution Agreement**") dated the 28 day of March, 2014 for the development, construction, renovation and operation of the Innovation Centre Facility by the Tenant, pursuant to the requirements of Provincial Contribution Agreement (the "**Facility**");

AND WHEREAS the Landlord has agreed to lease to the Tenant the Lands for the purposes of developing, constructing, renovating and operating the Facility, pursuant to the terms hereof and to the terms of the Contribution Agreement between the Landlord and Tenant and the Provincial Contribution Agreement;

NOW THEREFORE permission is hereby given by the Landlord to the Tenant to use the Lands pursuant to the terms of this Lease and of the Contribution Agreement, and the Landlord and the Tenant agree to the following:

ARTICLE 1 DEMISE AND TERM

1.1 Defined Terms

All capitalized terms used in this Lease shall have the meaning ascribed to them in the Contribution Agreement, save and except to the extent that such capitalized terms are defined herein.

1.2 Demise of Lands

The Landlord hereby demises and leases unto the Tenant, and the Tenant hereby leases from the Landlord, the Lands for the Term and subject to the provisions of this Lease and of the conditions of the Contribution Agreement between the Landlord and Tenant.

1.3 Term

The term of this Lease shall be effective commencing on April 1, 2014 (referred to herein as the "**Commencement Date**") and end on such a date that is ninety-nine (99) years following the Commencement Date, unless terminated earlier pursuant to the provisions of this Lease or as a result of the termination of the Contribution Agreement between the Landlord and Tenant (the "**Term**").

1.4 Early Termination

Upon the expiration or termination of the Contribution Agreement (the "**Early Termination Date**"), this Lease shall terminate and the Tenant shall, at the option of the Landlord, avail itself of the Remedies under 12.2 of this Lease and require that the Tenant undertake the Removal and Restoration of the Lands in accordance with Article 7 of this Lease and, subsequently, deliver vacant possession of the Lands to the Landlord. All Rent shall be apportioned and paid to the Early Termination Date.

ARTICLE 2 RENT

2.1 Basic Rent during Term

The Tenant shall pay ONE DOLLAR (\$1.00) per annum, plus HST (the "**Basic Rent**") for the Term of this Lease.

2.2 Operating Costs

The Tenant shall pay all taxes, water and hydro costs and all other costs and expenses relating to the Lands or otherwise resulting from the Tenant's occupancy of the Lands, including costs related to the operation, maintenance and repair of the Innovation Centre Building, whether such costs are direct or indirect, paid, payable or incurred (the "**Operational Costs**").

2.3 Net Lease to Landlord

This Lease and the Basic Rent and Operational Costs (collectively, the "**Rent**") payable hereunder shall be absolutely net and carefree to the Landlord, except as expressly provided herein.

2.4 Deemed Rent

The Landlord shall have all rights against the Tenant for default in payment of Operational Costs or any other amount payable or obligation relating to the Lands that is not expressly declared to be the responsibility of the Landlord, and any such amount will be deemed to be an obligation of the Tenant to be performed by the Tenant, or at the Tenant's sole expense, as for default in the payment of Basic Rent.

2.5 Payment of Rent

The Tenant covenants and agrees to pay, from and after the Commencement Date, to the Landlord, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, the Rent, which shall be payable by the Tenant in equal annual installments in advance, on, and thereafter on the anniversary of, the Commencement Date. If this Lease expires or terminates on a day other than the last day of day of a full year in respect of which any item of Rent is calculated, the amount of Rent payable in respect of the broken period shall be prorated based on a 365 day year.

ARTICLE 3 GENERAL COVENANTS

3.1 Tenant's Covenants

The Tenant covenants with the Landlord:

- (a) to pay Rent; and
- (b) to observe and perform all the covenants and obligations of the Tenant herein and in the Contribution Agreement.

3.2 Landlord's Covenants

The Landlord covenants with the Tenant:

- (a) that the Tenant, in return for paying the Rent herein reserved and performing the covenants in this Lease and in the Contribution Agreement, shall have the right, at all times, to the quiet and peaceable enjoyment of the Lands, in conformity with all the provisions of this Lease and of the Contribution Agreement; and
- (b) to observe and perform all the covenants and obligations of the Landlord herein and in the Contribution Agreement.

ARTICLE 4 USE AND OCCUPANCY OF LANDS

4.1 Use of Lands

- (a) Notwithstanding anything herein to the contrary, the Tenant shall not be permitted to use the Lands for any purpose other than for conducting investigations required in connection with any approval or study contemplated in this Lease until such time as the Tenant has delivered to the Landlord proof of the Insurance required under this Lease.
- (b) Subject to paragraph 4.1(a) above, the Tenant shall use the Lands solely for the development, construction, renovation and operation of the Facility in compliance with the Contribution Agreement, and subject to any restrictions imposed by any Relevant Authority or resulting from any Applicable Law. The Tenant shall not use or permit the Lands to be used for any other purpose, except as otherwise expressly permitted under this Lease or under the Contribution Agreement or by the Landlord, in writing.
- (c) The Tenant shall be responsible for obtaining all necessary approvals, licenses and Permits for its intended use of the Lands.
- (d) The Tenant shall operate the Facility in accordance with the terms of the Contribution Agreement.

4.2 Observance of Law

The Tenant shall, at its expense, promptly comply with and conform to the requirements of all Applicable Law, and shall use and occupy and shall cause the Facilities to be used and occupied in compliance with all Applicable Laws in a safe, careful and proper manner. All aspects of the Project and improvements to the Facilities by the Tenant will be reflective of industry standards, meet all legislative requirements, including the *Ontario Building Code Act* and *Ontario Heritage Act* requirements applicable to the building on the Lands, and the *Accessibility for Ontarians with Disabilities Act, 2005* (“AODA”) requirements which include the City’s Accessibility Design Guidelines attached as Schedule “C” and any other applicable statute and municipal by-law.

The Bayview Station Community Design Plan approved by City Council May 22, 2013 indicates that the Bayview City Works building at 7 Bayview Road is to be designated as a heritage resource and retained for adaptive re-use within a future development. At such time that the Lands are designated as a heritage cultural resource by the City, the Tenant may be required by the City’s planning policies to enter into a heritage easement agreement with the City in respect of the Tenant’s obligations to preserve and maintain the building at 7 Bayview Road and, if so required by the City, the Tenant agrees that it will enter into heritage easement agreement accordingly.

4.3 Municipal Zoning Compliance

Without limiting the generality of Sections 4.1 and 4.2 above, the Tenant acknowledges that the Landlord makes no representation as to the official plan designation and municipal zoning applicable to the Lands and the Tenant agrees that it is solely responsible for ensuring that the applicable official plan designation and municipal zoning supports the Tenant's proposed use of the Lands. In the event that the applicable official plan designation and municipal zoning does not support the Tenant's use of the Lands, the Tenant shall at its sole cost apply for and obtain all necessary official plan and/or zoning by-law amendments and the Landlord shall bear no responsibility whatsoever in this regard.

4.4 Site Plan Approvals Process & Building Improvements

- (a) The Tenant acknowledges the building on the Lands which will be developed and renovated by the Tenant, to operate as the Innovation Centre Facility, is provided "as is" and "where is" and the City makes no representation as to the quality, adequacy, compatibility or sufficiency of the Lands and building provided to the Tenant pursuant to this Lease.
- (b) The Tenant acknowledges that the development of the Lands and the renovation of the building by the Tenant for the purpose of the Innovation Centre Facility will be subject to the City of Ottawa's site plan approvals process and that the Tenant will be responsible for undertaking the required pre-consultation with the City of Ottawa.
- (c) Tenant acknowledges that it will be solely responsible for the construction and renovation of any improvements to Facilities required, including any costs associated with any such improvements.
- (d) Tenant acknowledges that the Landlord and its agents and engineers shall at all times have the right to inspect the work to ascertain whether it conforms with any plans and specifications approved by the Landlord and to protest to the Tenant any default or non-compliance with the construction contract or this Lease, and the Tenant shall forthwith deal with the protest and remedy any default or non-compliance.

4.5 Waste and Nuisance

The Tenant shall not carry on any business or do or suffer any act or thing which may constitute or result in a nuisance, or do or suffer any waste or damage to the Lands or the Facility other than as contemplated by, and in compliance with, the Contribution Agreement.

4.6 Pesticide Policy

The Tenant shall comply with any applicable legislation pertaining to the use and application of pesticides.

4.7 Operations Contained Within the Boundaries of the Lands

The Tenant's operations, including all accessory uses such as parking and snow storage, shall be contained within the boundaries of the Lands.

4.8 Smoking

The Tenant shall not permit smoking in any part of the Facility or Lands.

4.9 Bilingualism

The parties acknowledge that the Facilities will provide services and signage in both English and French.

4.10 Signage

The Landlord may from time to time designate a name or other identification for the Facilities and the Project, in consultation with the Tenant.

ARTICLE 5 IMPROVEMENTS

5.1 Definitions

For the purposes of this Lease, the terms "**Improvements**", "**Initial Improvements**", "**Initial Plans**" and "**Phase 2 Improvements**" shall be defined as follow:

- (a) "**Improvements**" means all buildings located on the lands constructed, altered or renovations to an existing building, including but not limited to the Facility, fixed improvements, structures, utility connections and other installations located on, in or under any portion of the Lands at any time during the Term, including chattels, equipment and machinery owned by the Tenant, and including any additions, substitutions, alterations or replacements thereto or thereof, and includes the Initial Improvements;
- (b) "**Initial Improvements**" means the initial Improvements related to Phase 1 as described in the Tenant's Innovation Centre Business Plan approved by City Council, which includes the renovation of the industrial building containing approximately 45,000 square feet, to be constructed by the Tenant in accordance with the Initial Plans, as amended;
- (c) "**Initial Plans**" means the initial conceptual plans for the Initial Improvements as prepared by the Tenant's architect and approved by the Landlord prior to Commencement of Construction;
- (d) "**Phase 2 Improvements**" means the Improvements related to Phase 2 which will be proposed by the Tenant in a detailed Phase 2 Component Business Plan for

consideration and approval by City Council, for the development of a tower on the Lands by the Tenant. The Parties acknowledge that upon approval by City Council of the Phase 2 Business Plan and requirements, the Parties will negotiate an amendment to this Lease to include the requirements for Phase 2 Improvements.

5.2 Tenant to Construct Improvements

The Tenant shall construct all Improvements:

- (a) expeditiously and in a good and workmanlike manner;
- (b) in accordance with the provisions of this Article, including Initial Plans (for the Initial Improvements), and any additional plans approved by the Landlord; and
- (c) entirely within the boundaries of the Lands, such that the Improvements shall not be connected in any manner to, or be constructed or located partially on, any lands adjoining or abutting the Lands.

5.3 Commencement of Construction of Improvements

Prior to the commencement of any excavation or other work on the Lands for the construction of any Improvements described in this Article ("**Commencement of Construction**"), the Tenant shall have:

- (a) provided proof of the insurance required by Section 5.7 of this Lease as well as the Environmental Impairment Liability insurance and the Broad Form Property Insurance ;
- (b) obtained all Permits and consents as are required prior to construction of the Improvements, including, without limitation, any required zoning by-law amendments, site plan approvals, building permits and applicable Heritage Approvals;
- (c) provided the Landlord with a copy of any and all construction contracts for that part of the construction to be commenced; and
- (d) obtained from the construction contractor the indemnity, insurance and performance bonds required by the said construction contracts.

5.4 Tenant's Duties in Construction

The Tenant shall perform and comply with the following covenants and requirements in the construction of the Improvements:

- (a) all Improvements shall be constructed in all respects in accordance with the approved plans (and, for the Initial Improvements, in accordance with the Initial

Plans) and such other plans as are related thereto, subject to such changes as may be required by governmental authorities;

- (b) all necessary building permits shall be obtained and all municipal by-laws and legal requirements pertaining to the conduct of the work shall be complied with;
- (c) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the terms of this Lease;
- (d) the Tenant shall properly supervise the work;
- (e) any contractor engaged on the work shall be required to observe all provisions of its contract, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract;
- (f) the Landlord and its agents and engineers shall at all times have the right to inspect the work to ascertain whether it conforms with any plans and specifications approved by the Landlord and to protest to the Tenant any default or non-compliance with the construction contract or this Lease, and the Tenant shall forthwith deal with the protest and remedy any default or non-compliance;
- (g) the Landlord, acting reasonably, may require the Tenant, at the Tenant's sole expense, to submit at reasonable intervals certificates of the Tenant's architect as to the status of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any Tenant and the amounts paid or retained by the Tenant on any contract, and the Tenant shall also, whenever requested by the Landlord, acting reasonably, furnish copies of certificates furnished to it by its contractors or by the Tenant's architect in connection with the construction;
- (h) the Tenant shall deliver to the Landlord, from time to time, copies of the following in respect of the Improvements:
 - (i) architects' and development plans and drawings;
 - (ii) consultants' reports;
 - (iii) applications to amend by-laws;
 - (iv) site plan applications and approvals;
 - (v) building permit applications;
 - (vi) issued building permits;
 - (vii) heritage approvals; and

- (viii) all other documents or information pertaining to the development and/or construction of the Improvements and the Facility in the possession or control of the Tenant; and
- (i) the Tenant shall promptly pay when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of the Improvements, but this shall not prevent the Tenant from retaining any amounts claimed due which:
 - (i) the Tenant's architect has not certified as being due, or
 - (ii) are properly and reasonably retained to secure the performance of any work or the correction of any defect, or
 - (iii) in the opinion of the Tenant's architect, are reasonably retained in anticipation of damages arising from any Tenant's default, or
 - (iv) are required to be retained under the provisions of the *Construction Lien Act* (Ontario).

5.5 As Built Plans

On completion of the construction of the Facility in accordance with the Initial Plans, the Tenant shall furnish to the Landlord 'as built' plans as well as any changes to the Facility or Improvements throughout the Term of the Agreement so as to keep the 'as built' plans up to date.

5.6 Liens

- (a) In connection with the making, erection, installation or alteration of any Improvements, trade fixtures and all other work or installations or alterations made by or for the Tenant on the Lands, the Tenant shall comply with every applicable statute, law, by-law, regulation, ordinance and order affecting the same as a result of the actions of the Tenant including, without limitation, the *Construction Lien Act* (Ontario), and any other statutes from time to time applicable thereto (including any provision requiring or enabling the retention by way of holdback of portions of any sums payable) and, except as to any such holdback, shall promptly pay all accounts relating thereto.
- (b) Whenever any construction or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefor shall arise or be filed or any prohibited mortgage, charge, conditional sale agreement or other encumbrance shall attach, the Tenant shall within twenty (20) days after receipt of notice thereof procure and register the discharge thereof, including any certificate of action registered in respect of any lien, by payment or in such other manner as may be required or permitted by law, and failing which the Landlord may make any payments required to procure and register the discharge of any such liens or encumbrances, including any certificate of action registered in respect of any lien, and shall be entitled to be reimbursed by the Tenant, and its right to reimbursement shall not be affected or

impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off or defence.

- (c) The Landlord and the Tenant agree that any work done on the Lands during the Term by or on behalf of the Tenant shall not be done and shall be deemed not to have been done at the request of the Landlord.

5.7 Construction Insurance

The Tenant shall, at its expense, obtain, or shall cause its contractor or contractors to obtain, prior to the Commencement of Construction, appropriate construction insurance as required by the Landlord acting in a commercially reasonable manner. The Landlord's determination as to insurance required pursuant to this Section 5.7, will be informed, in part, by the estimated cost of construction of the Improvements which shall be supplied to the Landlord by the Tenant when such an estimate is available and, in any event, prior to the Commencement of Construction.

ARTICLE 6

MAINTENANCE AND REPAIRS

6.1 Tenant Maintenance and Repairs

- (a) The Tenant shall, at its sole expense and throughout the Term, maintain and keep the Lands, the Improvements, and the equipment and appurtenances thereto in good order, condition and state of repair.
- (b) The Tenant shall also repair damage to the Lands and/or the Improvements and any improvements, alterations and additions thereto, caused by the Tenant or any person for whom the Tenant is at law responsible.
- (c) The Tenant shall give to the Landlord notice promptly upon becoming aware of any damage to or defect in any water pipes, gas pipes, or other utility wires or cable in, on, under, or over the Lands or any part thereof howsoever caused, provided that nothing herein shall be construed so as to require repairs to be made by the Landlord except as expressly provided in this Lease.

6.2 Lifecycle Plans and Reserve

- (a) The Initial Lifecycle Plan as it relates to the Facility means the lifecycle plan for the Facility prepared by a qualified independent engineer, from the time the construction of the Facility is materially complete.
- (b) Within ninety (90) days prior to December 31, 2021 and within ninety (90) days prior

to the expiry of every fifth (5th) year thereafter throughout the term of this Lease, an updated Facility Lifecycle Plan shall be obtained by the Tenant from a qualified independent engineer or inspector approved by the Landlord. The Facility Lifecycle Plan shall be a financial and technical review and update of the prior Facility Lifecycle Plan, and include a recommendation of repairs and replacements required during the following five (5) years, together with a reasonable estimate of the total cost of the required repairs and the annual amount payable on account thereof for the following five (5) years. A copy of such Facility Lifecycle Plan shall be provided to the Landlord.

- (d) The Tenant shall provide the Landlord with an annual report with respect to the implementation of current Facility Lifecycle Plan. The Landlord shall have the right, from time to time, to inspect the Lands and Facility to determine whether the Tenant is in compliance with the Facility Lifecycle Plan.
- (e) In respect of each year of the Term following January 1, 2016, the Tenant shall deposit in a Facility trust account a Facility reserve, in equal consecutive monthly installments on the first day of each calendar month during the year, in the amount confirmed in the Lifecycle Plan. If the Tenant determines that net cash flow is insufficient to meet the current reserve fund contributions, the Tenant's Board of Directors may request that the Landlord provide its approval in writing to authorize the Tenant to defer its contributions to the reserve fund, to the following year, or to such date agreed to by the parties in writing.
- (f) The Tenant covenants at its expense throughout the Term of this Lease to comply with the lifecycle replacement and repair obligations set out in the Facility Lifecycle Plan.

6.3 Fencing of Lands by Tenant

The Tenant shall, at its sole cost, install and maintain fencing along the perimeter of the Lands, as required by the Landlord, to the reasonable satisfaction of the Landlord.

6.4 Changes

Once the Improvements are constructed in accordance with Article 5, the Tenant may make any repairs, additions, alterations, replacements or improvements to or of any part of the Improvements or any other portions of the Lands ("Changes) provided that:

- (a) the Changes are first approved by the City of Ottawa,
- (b) the Changes shall comply with all Applicable Laws, all requirements of all Relevant Authorities, and any requirements of the Tenant's insurance underwriters;
- (c) the Changes shall not weaken or endanger the structure of the Improvements;
- (d) the Changes shall not materially adversely affect the value of the Lands and

Improvements or the environmental condition of the Lands and Improvements.

The Changes shall be constructed by the Tenant, without cost to the Landlord, in a good and workmanlike manner, using first-class materials.

In addition to the foregoing, where the Changes Materially affect the Lands, including but not limited to Changes that may Materially affect stormwater, surface water, groundwater on the Lands or on adjacent lands owned by the Landlord, the Landlord's Certificates of Approval for its operations on adjacent lands, or will Materially affect the structure or size of the Improvements (a "Material Change"), the Tenant shall first obtain the Landlord's written approval, which shall not be unreasonably withheld.

Before requesting (where required) the Landlord's approval of any Material Change, the Tenant shall submit to the Landlord conceptual plans of the proposed Material Change for the Landlord's approval. Within thirty (30) days after receiving such plans from the Tenant, the Landlord shall advise the Tenant in writing whether or not it approves of the Material Change, and if not, request modifications to such plans and other items. Within thirty (30) days after the Tenant receives the Landlord's request, the Tenant shall submit revised plans and other similar material for the Landlord's approval, and the Parties agree to negotiate in good faith to modify the proposed Material Change in order to obtain the Landlord's consent. In the event that such negotiations are in the opinion of either the Landlord or the Tenant, unsuccessful, the matter shall be referred to the Dispute Resolution Procedure.

6.5 Expansion of Facility

Notwithstanding anything in this Lease or in the Contribution Agreement to the contrary, the Landlord shall have no obligation to change or expand the boundaries or dimensions of the Lands. In the event that the Tenant wishes to expand the Facility, such change or expansion shall be at the sole and absolute discretion of the Landlord.

The Parties acknowledge that the Tenant may propose a detailed Phase 2 Component Business Plan for consideration and approval by City Council, for the development of a Tower on the Lands. The Parties acknowledge that upon approval by City Council of the Phase 2 Business Plan and requirements for Phase 2 Improvements, the Parties will negotiate an amendment to this Lease to include the requirements for Phase 2 Improvements.

ARTICLE 7 OWNERSHIP, REMOVAL AND RESTORATION

7.1 Ownership of Improvements and Fixtures

- (a) The Landlord and the Tenant agree that all Improvements are intended to be and become the absolute property of the Landlord upon the expiration or termination of the Lease, and shall be deemed, as between the Landlord and the Tenant during the Term to be the separate property of the Tenant and not of the Landlord.

- (b) The Tenant may from time to time, in the ordinary course of its business or in the event of any Changes or Material Changes made pursuant to this Lease, remove its furniture, chattels and other usual tenants' fixtures not forming any part of the structure of the Facility or any building services.

7.2 Removal and Restoration by Tenant

Upon expiration or termination of this Lease, the Tenant will remove all fixtures and Improvements on the Lands that the Landlord requires the Tenant remove and, at the option of the Landlord the Tenant shall restore the lands to a condition which is the same as the condition of the Lands prior to the commencement of the Term. Such restoration shall include any environmental remediation required by the Landlord related to contaminants brought on the Lands by the Tenant, its sublessees or anyone else permitted on the Lands by the Tenant.

7.3 Abandonment Covenant

Following the termination or expiration of this Lease, in the event the Tenant fails to remove its fixtures in accordance with Section 7.2 of this Lease, the fixtures shall, at the option of the Landlord, be deemed abandoned and shall thereupon become the property of the Landlord and may be removed from the premises and sold or disposed of (by private or public sale) by the Landlord in any manner it sees fit or advisable without notice or obligation to compensate the Tenant or to account therefor whatsoever.

ARTICLE 8-Site Condition

8.1 Baseline Environmental Site Assessment

The Landlord shall provide the Tenant within one hundred and eighty (180) days of the Commencement Date, an environmental site assessment of the Lands (the "**Baseline Environmental Assessment**") which shall:

- (a) determine the existence and extent of any contaminants in, on, or from the Lands and, if relevant to the assessment of contaminants in, on or from the Lands, on any adjoining land (provided such adjoining land is accessible to the Tenant) which predate the Tenant's use and/or occupation of the Lands; and,
- (b) if any governmental authority requires the clean-up of any Contaminants in existence prior to the commencement of construction for Phase 1 Improvements, the Landlord will consult with the Tenant on the appropriate remediation plan and the Landlord shall be responsible for remediation costs related to such remediation, provided that the use of the Lands remains industrial/commercial and is not as a result of a future record of site condition.

The Baseline Environmental Assessment shall constitute *prima facie* evidence of the

existence of any contaminants within, upon, or under the Lands prior to the commencement of the Term.

The Landlord agrees to fund the extra costs for tipping fees associated with disposal of contaminated soil surrounding the building (Phase 1), as determined by the Baseline Environmental Assessment, at a cost of approximately \$210,000. This cost is based on the current plan for exterior landscaping improvements which could change as design plans are finalized, and assumes that the soil will be accepted by the City's Trail Road landfill site as solid, non-hazardous waste at the 2015 rate for impacted soil.

The Landlord also agrees to carry out and fund other environmental work related to the Lands, associated with preparation of the Lands for the Phase 1 site for redevelopment, at an estimated cost of \$150,000.

The Landlord agrees to fund the extra site remediation costs related to the Lands as part of its valuation of the property at \$8 million.

8.2 Exit Environmental Audit

The Tenant shall at its own cost cause an environmental site assessment (the "**Exit Environmental Audit**") of the Lands to be performed as close as reasonably practicable but not earlier than thirty (30) days prior to the expiration of the Term by an independent consultant acceptable to the Landlord and in accordance with terms of reference approved by the Landlord acting reasonably. The Exit Environmental Audit shall:

- (a) be approved by the Landlord, acting reasonably;
- (b) determine the existence and extent of any contaminants in, on, or from the Lands and, if relevant to the assessment of contaminants in, on or from the Lands, on any adjoining land (provided such adjoining land is accessible to the Tenant) present as a result of the use and/or occupation of the Lands by the Tenant;
- (c) establish the estimated cost including the usual contingencies, if any, to restore and return the Lands to a condition which is to be determined by the specific use thereof and which is in compliance with Applicable Law; and
- (d) be addressed to both the Landlord and the Tenant.

The Tenant shall provide the Landlord with a copy of the Exit Environmental Audit promptly after its completion.

8.3 Tenant's Obligation to Remediate

The Tenant covenants and agrees that it shall, at its cost, observe and otherwise comply with, and cause its sublessees, invitees and all other occupants to observe and comply with all applicable Environmental Laws. The Tenant shall immediately notify the Landlord if any contaminants are released or spilled by the Tenant, its sublessees or anyone on the Lands. Should any environmental

site assessment prepared after Baseline Environmental Assessment reveal the presence of contaminants in or from the Lands which exceed levels permitted under Applicable Law and the levels in the Baseline environmental Assessment and which result directly from the use and/or occupancy of the Lands by the Tenant, the Tenant shall at its sole cost and expense, promptly and diligently remove or cause to be removed such contamination in accordance with a remediation action plan satisfactory to the Landlord, acting reasonably, which remediation action plan shall include:

- (a) Details of all proposed remedial action;
- (b) Time frames for completion of remedial activities;
- (c) Cost estimates for implementation of proposed remedial activities; and,
- (d) A commitment to provide post remediation documentation to the reasonable satisfaction of the Landlord.

In the event that the Landlord does not agree with the conclusions of any environmental site assessment prepared in accordance with this Article 8, the Landlord may retain its own consultant(s) to peer review any such environmental site assessment and the Tenant shall cooperate, and shall cause its consultant(s) to cooperate, with any such peer review. For clarity, any Dispute with respect to the matters described in this Article 8 shall be dealt with in accordance with the Dispute Resolution Procedure.

8.4 Tenant's Environmental Indemnity

The Tenant shall indemnify the Landlord in respect of any adverse environmental condition arising as a result of the Tenant's use and/or occupancy of the Lands. For clarity, any Dispute with respect to the matters described in this Article shall be dealt with in accordance with the Dispute Resolution Procedure.

8.5 Landlord's Environmental Indemnity

The Landlord shall indemnify the Tenant for any third party claims against the Tenant in respect of any adverse environmental condition on the Lands existing as of the date hereof or arising as a result of the Landlord's use and/or occupancy of property adjacent to the Lands. For clarity, any Dispute with respect to the matters described in this Article shall be dealt with in accordance with the Dispute Resolution Procedure.

8.6 Monitoring Wells The Landlord shall have the right to enter the Lands to monitor, audit, test and inspect monitoring wells on the Lands at the Landlord's sole cost as required by the long-term monitoring program for Bayview Yards. If the monitoring wells are no longer required, the Landlord will assume the cost to decommission the monitoring wells in accordance with the applicable legislation. In the event that the monitoring wells are damaged or destroyed by the Tenant, any required repair or replacement will be at the cost of the Tenant.

8.7 Impact on the Site

The Tenant acknowledges and agrees that because of the various environmental sensitivities associated with the Lands, the Tenant must take a high level of care to ensure that the Tenant's use of the Lands and Improvements does not negatively impact the Lands and agrees to notify the Landlord immediately of any disturbance causing a negative impact to the Lands.

8.8 Impact on Groundwater, Surface Water and Soil

The Tenant shall ensure that its use of the Lands and/or Improvements does not have a Material or persistent impact on groundwater, surface water or soil on the Lands or within adjacent property that would contravene any requirements imposed by the Ministry of Environment.

8.9 Survival of Tenant's Environmental Responsibilities

The responsibility of the Tenant to the Landlord with respect to the environmental obligations contained herein shall continue to be enforceable by the Landlord notwithstanding the expiry of the Term or earlier termination of this Lease.

8.10 Survival of Landlord's Environmental Responsibilities

The responsibility of the Landlord to the Tenant with respect to the environmental obligations contained herein shall continue to be enforceable by the Tenant notwithstanding the expiry of the Term or earlier termination of this Lease.

ARTICLE 9 INSURANCE AND INDEMNITY

9.1 Tenant's Covenants

- (a) The Tenant hereby covenants and agrees that it shall, at its sole expense, obtain and maintain, throughout the Term of this Lease all insurance required pursuant to the Contribution Agreement and this Lease, satisfactory to the Landlord and adequate to fully protect the Landlord and Tenant from and against all expenses, claims, actions, liability and losses arising out of the subjects covered by said policies of insurance.
- (b) The Landlord, acting reasonably, may from time to time throughout the term of this Lease require an increase in the insurance coverage.

9.2 Tenant's Insurance

In addition to the construction insurance required under section 5.7, the Tenant shall effect and maintain during the Term at its sole cost and expense:

- (a) "all risks" (including sewer back up, flood and earthquake) property insurance upon all property owned by the Tenant or by others and for which property the Tenant is responsible located on the Lands and used in the operation of the Buildings including equipment, furniture, fixtures and Improvements in amounts sufficient to cover, on a full replacement cost basis without deduction for depreciation, all such items;
- (b) if applicable, comprehensive form boiler and machinery insurance on a blanket repair and

replacement basis with limits for each accident in an amount not less than the full replacement cost of all Improvements and all property on the Lands not owned by the Landlord;

- (c) commercial general liability insurance on an occurrence basis, Commercial General Liability Insurance subject to limits of not less than Five Million Dollars (\$5,000,000.00) for bodily injury, death and damage to property including loss of use thereof and naming the Landlord as an additional insured thereunder. This insurance shall be non-contributing and apply as primary and not as excess of any insurance available to the Landlord. The Commercial General Liability Policy shall include insurance for the following:
 - Premises, Property and Operations Liability
 - Products and Completed Operations
 - Personal Injury Liability
 - Occurrence Property Damage
 - Non-Owned Automobile
 - Broad Form Property Damage
 - Employees as Additional Insured
 - Contingent Employer's Liability
 - Owner's and Contractor's Protective Liability
 - Blanket Contractual Liability
 - Cross Liability and Severability of Interest Clause
 - Tenants Legal Liability, Broad Form, insurance coverage to the replacement value of the space occupied
- (d) Tenant's legal liability insurance for the full replacement cost of the Premises/Buildings including loss of the use of the Premises/Buildings;
- (e) business interruption insurance for a minimum period of 24 months in an amount that will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against or attributable to prevention of access to the Premises or the Building as a result of any such perils, including extra expense insurance if applicable;
- (f) if applicable, Motor Vehicle Liability Insurance in respect of owned or leased licensed motor vehicles subject to a limit of not less than two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof; and
- (g) any other form of insurance that the Landlord may reasonably require from time to time in amount form, amounts and for insurance risks acceptable to the Landlord.

Should the Tenant fail to maintain any of the insurance required and should such default continue for two Business Days after Notice to the Tenant, then in addition to any other rights and remedies, the Landlord may, but shall have no obligation to, elect to obtain the required insurance and the Tenant shall upon demand pay to the Landlord, as Rent, the Landlord's cost of obtaining such insurance.

The Tenant shall provide to the Landlord, prior to the Commencement Date and not less than ten days prior to the respective anniversary dates(s) of all applicable policies, certified copies of such policies or certificates of insurance or other evidence satisfactory to the Landlord that the Tenant has obtained all insurance policies required by this Lease and shall provide written evidence of the continuation of such policies not less than ten days prior to their respective expiry dates.

9.3 Release of Landlord by Tenant

Other than as may be contemplated by the Contribution Agreement, the Tenant agrees that neither the Landlord nor its directors, officers, agents, employees or any others for whom the Landlord is at law responsible shall be liable to any extent for any personal injury or death of, or loss or damage to, any property belonging to the Tenant or its employees, invitees or licensees or any other person in, on or about the Lands. In addition, the Tenant releases the Landlord and its directors, officers, agents, employees and any others for whom the Landlord is at law responsible from all claims or liabilities in respect of damage required to be insured against by the Tenant.

9.4 Indemnity of Landlord by Tenant

In addition to any indemnities contemplated by the Contribution Agreement, the Tenant shall indemnify and save harmless the Landlord and its directors officers agents and employees against and from any and all expenses costs damages claims suits, actions or liabilities arising directly or indirectly out of:

- (a) a breach by the Tenant of its obligations under this Lease;
- (b) the negligence of the Tenant or any person for whom the Tenant is at law responsible;
- (c) the Tenant's application for approvals, licences and Permits for the construction and use of the Facility and/or the resulting approvals, licences and/or Permits whether in respect the Lands and/or the Improvements; and/or,
- (d) the use and occupation of the Lands and/or the Improvements by the Tenant or any subtenant or occupant authorized by the Tenant or by any assignee or sublessee thereof or any of their respective servants, agents, assistants, employees, invitees or other persons entering onto the Lands or any part thereof, and from all costs, counsel fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon.

ARTICLE 10 ASSIGNMENT, SUBLETTING

10.1 Assignment and Subletting

The Tenant shall not assign this Lease or sublet all or any part of the Lands and/or the Improvements or in any way charge, mortgage, encumber or pledge this Lease, the Lands or its interest therein except with the written consent of the Landlord.

In the event that the Landlord provides such written consent and this Lease is assigned or assumed by a third party, the Landlord may immediately amend the Basic Rent under this Lease, in its sole and absolute discretion, to charge the current Market Rent Rate which shall be calculated on the basis of the fair market value of the Lands and Buildings, established through an independent appraisal at the applicable lending rate with a 2% increase, reviewable every ten

(10) years for the Term of this Lease “**Market Rental Rate**”.

10.2 Subletting approval

The Tenant shall not enter into any sublease the Innovation Centre, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. The parties acknowledge that the Tenant will operate the Innovation Centre pursuant to the Contribution Agreement and lease out plan approved by the Landlord, which is intended to include sublessees such as Invest Ottawa, as well as other non-profit and governmental entrepreneurial support agencies, anchor tenants, and private service firms to accelerate business success and create new knowledge based jobs in Ottawa. It shall not be unreasonable for the Landlord to withhold its consent if the proposed sublease is contrary to the intended use of the Innovation Centre as described in the Contribution Agreement and lease out plan. The Parties acknowledge that all subleases approved by the Landlord will be conditional upon the sublessee waiving any statutory or other right to remain in possession of any portion of the Innovation Centre, where this Lease is terminated.

ARTICLE 11 LANDLORD'S ACCESS AND INSPECTIONS

11.1 Access and Inspections

The Landlord shall have the right, from time to time, to inspect the Lands and Facility to determine whether the Tenant is in compliance with its obligations under this Lease and the Contribution Agreement. The Landlord shall provide reasonable notice to the Tenant without materially disrupting the operation of the Facility.

11.2 Landlord's Monitoring, Inspections, Audits and Test

The Landlord shall undertake, at its sole cost, such monitoring, audits, tests and inspections as are required in connection with the Landlord's ownership of and/or operation of Lands and including without limitation. Upon reasonable notice to the Tenant and without materially disrupting the operation of the Facility, the Landlord shall be entitled to enter the Lands and Improvements to undertake such monitoring, audits, tests and/or inspections.

ARTICLE 12 DEFAULT

12.1 Default

Each of the following shall be an event of default of the Tenant (an "**Event of Default**"):

- (a) whenever the Tenant defaults in the payment of any payment to the Landlord required pursuant to this Lease, including but not limited to Rent, and such default continues for five (5) days after written notice to the Tenant;

- (b) the Tenant has breached any of its obligations in this Lease and, if such breach is capable of being remedied, in the opinion of the Landlord, acting reasonably:
 - (i) the Tenant fails to remedy such breach within ten days after written notice to the Tenant; or,
 - (ii) if such breach cannot reasonably be remedied within ten days, the Tenant fails to commence to remedy such breach within such ten days, in the opinion of the Landlord;
- (c) the Tenant is in default under the terms of the Contribution Agreement and such default remains uncured after expiration of any applicable cure period.

12.2 Remedies of the Landlord

Upon the occurrence of any Event of Default by the Tenant in accordance with the terms and conditions of this Lease, in addition to any remedy which the Landlord may have by this Lease or at law or in equity, the Landlord may, at its option:

- (a) remedy or attempt to remedy the Event of Default for the account of the Tenant and to enter upon the Lands and Facility for such purposes, including initiating any action the Landlord considers necessary in order to facilitate the successful continuation or completion of the Project, or to perform any maintenance or repairs as required in this Lease. The Tenant shall pay to the Landlord, on demand, all expenses incurred by the Landlord in remedying the Event of Default, together with an administer fee of 15% from the date such expense was incurred by the Landlord; and/or
- (b) re-enter and take possession of the Lands and thereby terminate this Lease, and expel all Persons including at the option of the Landlord any of the Tenant's sublessees, and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord, without the Landlord becoming liable for any loss which may be occasioned; and/or
- (c) enter the Lands as agent of the Tenant either by force or otherwise, without being liable for any prosecution therefor, and without being deemed to have terminated this Lease, and relet the Premises or any part thereof as the agent of the Tenant, and receive the rent therefor to be applied on account of the Rent; and/or
- (d) exercise its right of distress and the Tenant hereby waives any present or future limitation on the Landlord's right of distress.

12.3 Right of Self Help

- i. In the event that there shall be an Event of Default by the Tenant, at any time thereafter while it is subsisting, the Landlord may, on five (5) business days prior notice enter into and upon the Lands or appoint an agent on behalf

of the Landlord to enter upon the Lands to rectify the matter in default or appoint a receiver or receiver/manager by instrument in writing to enter upon the Lands to rectify the default (the "Receiver").

- ii. If the Landlord shall appoint a Receiver in accordance with Section 12.4 the Receiver shall be deemed to be the agent of Tenant and not of the Landlord and the Landlord shall not in any way be responsible for any misconduct or negligence on the part of the Receiver.
- iii. The Landlord's right of self help pursuant to Section 12.4 shall include the right, but not the obligation, of the Landlord to, after delivering to the Tenant notice pursuant to Section 12.4(a), provided that period of notice set out in Section 23.4(a) may be abridged if in the reasonable opinion of the Landlord the urgency

of the situation so demands, without thereby waiving or releasing the Tenant from any obligations of the Tenant in this Lease contained:

- 1. make any payment required to be made by the Tenant pursuant to this Lease; and/or,
- 2. effect any insurance coverage required to be obtained and maintained by the Tenant and pay premiums therefore; and/or,
- 3. perform any other act on the part of the Tenant to be made and performed hereunder.

in such manner and to such extent as the Landlord may reasonably deem desirable, and in exercising any such rights may pay necessary and incidental costs and expenses, employ legal counsel and incur and pay reasonable solicitors' and legal counsel fees.

12.4 Termination for Insolvency

In addition to the rights set forth in Sections 12.2 and 12.3 above, upon the provision of notice thereof to the Tenant, the Landlord may immediately terminate this Lease upon the occurrence of any of the following events in respect of the Tenant, all without any cost, obligation or liability or other Claim against the Landlord:

- iv. any arrangement or composition with or for the benefit of creditors being entered into by or in relation to the Tenant which prevents the Tenant from fulfilling its Material obligations hereunder;
- v. any proceedings with respect to the Tenant being commenced under the *Companies' Creditors Arrangement Act* that are not dismissed, contested in good faith using reasonable efforts or settled within twenty (20) Business Days from the commencement of such proceedings provided that the foregoing, after the exhausting of all potential appeals, prevents the Tenant from fulfilling its Material obligations hereunder;

- vi. a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any Material part of the assets of the Tenant provided that the foregoing prevents the Tenant from fulfilling its Material obligations hereunder;
- vii. the Tenant ceasing to carry on business;
- viii. the Tenant making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Tenant under the *Bankruptcy and Insolvency Act* or otherwise and, if commenced against the Tenant, not contested in good faith using commercially reasonable efforts within twenty (20) Business Days of its commencement provided that the foregoing, After the exhausting of all potential appeals, prevents the Tenant from fulfilling its Material obligations hereunder; or
- ix. a petition being filed (and not being contested in good faith using commercially reasonable efforts for a period not exceeding twenty (20) Business Days), or a resolution being passed or an order being made for the winding-up, liquidation or dissolution of the Tenant, provided that the foregoing, after the exhausting of all potential appeals prevents the Tenant from fulfilling its Material obligations hereunder.

12.5 Costs

The Tenant shall pay, within five (5) days after demand, the Landlord all damages, costs and expenses (including without limitation all reasonable legal fees on a solicitor and his own client basis) incurred by the Landlord in enforcing the terms of this Lease, or in the obtaining of possession of the Lands, or for the collection of any monies from the Tenant, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or too indemnify the Landlord. The Landlord may, at its option, charge an additional fifteen percent (15%) of the total cost presenting the Landlord's overhead.

12.6 Remedies Cumulative

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, or by statute, or at law or in equity, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies

available to the Landlord at law or in equity.

12.7 Non-Waiver

Any condoning, excusing or overlooking by either the Landlord or the Tenant of any default by the other at any time or times in respect of any obligation of the other herein shall not operate as a waiver of the non-defaulting Party's rights hereunder in respect of such default or so as to defeat or affect in any way the rights of the non-defaulting Party in respect of any such continuing or subsequent default by the defaulting Party. No waiver shall be implied by anything done or omitted by a Party and no waiver of any provision of this Lease is binding unless it is in writing and signed by all the Parties to this Lease except that any provision which does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed waiver to all other Parties. Any waiver of a particular default shall not operate as a waiver of any subsequent or continuing default.

12.8 Application of the Dispute Resolution Procedure

For clarity, and without altering the general application of the Dispute Resolution Procedure, Disputes relating to this Article 13 shall be subject to the Dispute Resolution Procedure.

ARTICLE 13- Dispute Resolution

13.1 Procedure

Except as otherwise provided in this Lease, any Dispute will be resolved in accordance with the following dispute resolution procedure (the "**Dispute Resolution Procedure**"):

- (a) the Tenant and the Landlord shall make all reasonable efforts to promptly resolve amicably any Dispute, controversy or Claim by negotiations, which shall be initiated by either of them giving to the other written notice (the "**Dispute Notice**") containing details of the Dispute and the other shall provide its written reply thereto within ten (10) Business Days. The Parties shall provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations;
- (b) if, for any reason, the Dispute has not been resolved as aforesaid within a further ten (10) Business Days after receipt of both the Dispute Notice and the reply thereto, then the Dispute shall be elevated to the Deputy City Manager for the City of Ottawa by the Landlord and to the Executive Director, Innovation Centre at Bayview Yards by the Tenant for resolution within ten (10) Business Days of receipt of such request;
- (c) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) Business Day period, then the Parties shall proceed to attempt to resolve the Dispute by way of attending a mediation between the Parties.

Either Party may initiate the mediation by providing a written notice to the other Party to schedule the mediation. Such a request will include the name of the proposed mediator and, if the Parties cannot agree on the mediator to be appointed within three (3) Business Days of receipt of such notice, either may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to have such a mediator appointed. The mediator's fees, costs and expenses shall be borne equally by the Parties. Such mediator and the Parties shall make their commercially reasonable efforts to hold the mediation and resolve the Dispute within ten (10) Business Days of the mediator's appointment;

- (d) should the Parties not be able to resolve the Dispute at the mediation, either Party may elect, by providing a written notice to the other Party within ten (10) Business Days of the completion of the mediation (as confirmed by the mediator), that the Dispute be resolved by referral to a final and binding arbitration between the Parties pursuant to the *Arbitration Act* (Ontario). The arbitration shall be conducted by a single arbitrator, the place of arbitration shall be Ottawa, Ontario, and the language of the arbitration shall be English. If the Parties cannot agree upon the appointment of the single arbitrator within ten (10) Business Days of receipt of the request to arbitrate, either Party may apply to a Judge of the Ontario Superior Court of Justice in Ottawa, Ontario, to appoint same. Unless otherwise agreed by the Parties or decided by the arbitrator, arbitration shall be completed within forty-five (45) days after the appointment of the arbitrator. The decision and any award of the arbitrator, including his/her decision as to the costs of the arbitration and who shall bear same, shall be final and binding on the Parties and there shall be no appeal therefrom. The Parties shall require the arbitrator to render his/her decision within sixty (60) days of the conclusion of the arbitration;
- (e) the mediation and arbitration contemplated above shall be conducted on a confidential basis; and
- (f) the time limits referred to in this Article 14 may be abridged or extended by mutual agreement of the Parties.

13.2 Complete Defence

If the Parties have elected, under this Article 14 to arbitrate their Dispute, except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of either of the Parties, and subject to the provision of Section 14.1(d), the provisions of this Article 14 are a complete defence to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with the Agreement.

13.3 Continuing Obligations

The Tenant and the Landlord shall continue to fulfill their obligations in respect of the

Lease during the Dispute Resolution Procedure described in Article 14.

ARTICLE 14

GENERAL

14.1 Uncontrollable Circumstances

(a) Definition

For the purposes of this Section 14.1, "**Uncontrollable Circumstances**" means any circumstance or act beyond the reasonable control of the Party to this Lease claiming Uncontrollable Circumstances, including an intervening act of God or public enemy, war, blockade, strike, walkout, labour dispute, (other than a strike, walkout or labour dispute affecting the Party claiming Uncontrollable Circumstances) civil commotion, fire, flood, tidal wave, earthquake, quarantine restriction, a governmental embargo or a material change to applicable laws, which either delays the performance beyond its scheduled time of, or results in a material change to, an obligation created by this Lease, provided:

- (i) the obligation in respect of which the Party claiming Uncontrollable Circumstances is Material;
- (ii) such circumstance or act is not expressly dealt with under this Lease; and
- (iii) is not one for which a contingency plan may be established by the Party claiming Uncontrollable Circumstances on commercially reasonable terms which would have permitted such Party's normal operations to be resumed within a reasonable time thereafter; or does not arise by reason of:
 - (A) the negligence or willful misconduct of the Party claiming Uncontrollable Circumstances or those for whom it is responsible at law; or
 - (B) any act or omission by the Party claiming Uncontrollable Circumstances (or those for whom it is responsible at law) in breach of the provisions of this Lease.

(b) Occurrence

If uncontrollable Circumstances occur, the Party claiming Uncontrollable Circumstances shall notify the other as soon as possible and in any event within five (5) Business Days following the date upon which the Party first becomes aware (or should have been aware, using reasonable due diligence) of such Uncontrollable Circumstances so that the other Party may verify same and keep the other Party informed throughout the continuance of such Uncontrollable circumstances including as to when the Uncontrollable Circumstances or the consequences of the Uncontrollable Circumstances have ceased and as to when the

performance of the Party claiming Uncontrollable Circumstances affected obligations will be resumed.

(c) **Mitigation**

The Parties shall use their commercially reasonable efforts to mitigate the consequences of any Uncontrollable Circumstances.

(d) **Effect of an Uncontrollable Circumstances**

Delays in or failure in the performance of either Party under this Lease shall not constitute default or give rise to any claim for damages or right to terminate the Lease if and to the extent caused by Uncontrollable Circumstances. Despite any Uncontrollable Circumstances, the Party, claiming such Uncontrollable Circumstances, unless otherwise agreed upon by the other Party, shall nevertheless continue to perform its obligations hereunder, to the extent that the Uncontrollable Circumstances do not prevent the performance of such obligations.

(e) **Disputes**

If there is a Dispute as to the occurrence or the effect of Uncontrollable Circumstances, then such matter shall be resolved pursuant to the Dispute resolution procedure described in Article 14.

Pending the resolution of the Dispute by the Dispute Resolution Procedure, the Parties shall continue to fulfill their obligations under this Lease as required except as may be prevented by the Uncontrollable Circumstances.

14.2 Registration on Title

If the Tenant wishes to register a notice or short form of this Lease, or this Lease in full, on Title to the Lands, the Tenant may do so provided that a separate parcel register has been created for the Lands and provided that the Landlord has first approved such notice or short form of this Lease (such approval not to be unreasonably withheld or delayed.)

The Tenant agrees that it will, at its sole expense, discharge and withdraw from title any such registration within 30 days after the expiration or sooner termination of this Lease. If such registration is not discharged and withdrawn during the aforesaid time, the Landlord shall have the right and is hereby appointed by the Tenant as its agent and attorney to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

The Landlord may register and deposit in the applicable land Titles at its sole expense, the R-Plan attached as Schedule "B". The Landlord agrees to register an access easement in favor of the Tenant over Part X in the R-Plan attached as Schedule "B", which does not form part of the Leased Lands. Such easement will be registered at the expense of the City.

14.3 Confidentiality

The treatment of Confidential Information by the Parties shall be governed by Article 24 of the

Contribution Agreement.

14.4 Planning Act and Municipal Act

The Tenant acknowledges that although the Landlord is a Party to this Lease, the Landlord is and shall remain an independent planning authority with all requisite powers and discretion provided under applicable laws including the *Planning Act* (Ontario) and the *Municipal Act, 2001* (Ontario).

14.5 Survival of Obligations

Any obligation of a Party which is unfulfilled on the termination of this Lease shall survive until fulfilled.

14.6 Severability of Illegal Provision

Each provision of this Lease is severable. If any provision of this Lease is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Lease or the legality, validity or enforceability of that provision in any other jurisdiction except that if:

- (a) on the reasonable construction of this Lease as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable; and
- (b) as a result of the determination by a court of competent jurisdiction that any part of this Lease is unenforceable or invalid and, as a result of such determination or this Section, the basic intentions of the Parties in this Lease are frustrated, the Parties will use reasonable efforts to amend, supplement or otherwise vary this Lease as will best preserve for the Parties the benefits and obligations of such unenforceable or invalid provision.

14.7 Governing Law

This Lease and each of the documents contemplated by or delivered under or in connection with this Lease are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which will be deemed to be the proper law of this Lease.

14.8 No Partnership

Notwithstanding the cooperation of the Parties, from time to time, as more particularly described herein, the Parties expressly disclaim any intention to create a partnership or joint venture or to constitute the other Party as its agent. Nothing in this Lease shall constitute the Parties, as partners or joint ventures nor shall it constitute one Party as the agent of the other Parties. The Parties acknowledge and agree that the Tenant is independent of the Landlord.

14.9 Joint and Several Liability

If at any time there is more than one Tenant together or in succession, they shall be jointly and severally liable for all of the obligations of the Tenant hereunder .

14.10 Guarantee

The Guarantor hereby guarantees all of the obligations of the Tenant hereunder.

14.11 Headings

The headings in this Lease are for convenience only and shall not affect its interpretation. Words importing the plural or the singular shall include the singular and the plural and words importing the masculine shall include the feminine or neuter or corporations, or vice versa, as the context so requires.

14.12 Time of Essence

Time shall be of the essence of this Lease.

14.13 Successors and Assigns

Except as otherwise specifically provided, the covenants, terms and conditions contained in this Lease shall apply to and enure to the benefit of and bind the respective successors and assigns of the Parties hereto.

15.14 Notices and Consents

Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Lease other than for day-to-day operational purposes (in this Section, each a "notice") to a Party must be given in writing. A notice may be given by delivery to an individual or electronically by fax, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following Party:

If to the Landlord:

City of Ottawa
110 Laurier Avenue
West Ottawa, Ontario
K1P 1J1

Attention
: Fax:

with a copy
to:

City Legal Department
110 Laurier Avenue
West
Ottawa, Ontario K1P 1J1

Attention:

Fax:

Deputy City Solicitor, Corporate
Development and Environmental

Law
613-560-1383

with a copy
to:

City of Ottawa
110 Laurier Avenue West
Ottawa, Ontario K1P 1J1

Attention Director Real Estate
Partnership and Development
: Fax: Office
613-560-6051

If to the Tenant:

Ottawa, Ontario

Attention: Fax:

Attention:

Fax:

or to any other address, fax number, or individual that the Party designates. Any notice:

- (a) if validly delivered or if validly transmitted electronically, before 4:30 p.m. (Ottawa time) on a Business Day, will be deemed to have been given on the Business Day; and
- (b) if validly delivered, or if validly transmitted electronically, after 4:30p.m. (Ottawa time) on a Business Day will be deemed to have been given on the Business Day after the date of transmission. The term "**Business Day**" means any day other than a Saturday, a Sunday or a statutory holiday in the province of Ontario.

14.15 Payments

The Tenant will forward all payments to:

City of Ottawa
Accounts Receivable
P.O. Box 3441
Ottawa, ON K1P 1J5

or to such other person or at such other location as the Landlord shall direct by notice in writing.

14.16 Further Acts

Each Party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Lease.

14.17 Amendment

No amendment, supplement, restatement or termination of any provision of this Lease is binding unless it is in writing and signed by each Party to this Lease at the time of the amendment, supplement, restatement or termination.

The Parties acknowledge that upon approval by City Council of the Phase 2 Business Plan and requirements, the Parties will negotiate an amendment to this Lease to include the requirements for Phase 2 Improvements.

14.18 Counterparts

This Lease and all documents contemplated by or delivered under or in connection with this Lease may be executed and delivered in any number of counterparts with the same effect as if all Parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

14.19 Schedules

All Schedules attached to this Lease form an integral part hereof.

14.20 Entire Agreement

This Lease and any other agreements herein contemplated to be entered into among, by or with the Parties hereto, constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties hereto and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof.

14.21 No Offer

No contractual or other rights will exist between the City of Ottawa and the Innovation Centre at Bayview Yards as a result of the negotiation of this Lease until all parties have executed and delivered this Lease, notwithstanding that the City may have delivered to the Innovation Centre at Bayview Yards an unexecuted copy of this Lease. Such delivery will be for examination purposes only and does not and will not create any interest by the Innovation Centre at Bayview Yards in the Lands, or raise any estoppel against the City. Execution of this Lease by the Innovation Centre at Bayview Yards and its return to the City will not create any obligation on the City, notwithstanding any time interval until the City has in fact executed and delivered this Lease to the Innovation Centre at Bayview Yards.

14.22 Drafting of Lease

This Lease and all of the other agreements or documents relating hereto have been drafted and negotiated by the Parties with the benefit of legal representation and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not apply to the construction or interpretation of this Lease or any of the other agreements or documents relating hereto. The parties each acknowledge having obtained their own independent legal advice with respect to the provisions of this Lease prior to its execution.

14.23 Power, Capacity and Authority

The City and the Tenant covenant, represent and warrant to each other that they have the power, capacity and authority to enter into this Lease and to perform its obligations hereunder and that there are no covenants, restrictions or commitments given by it which would prevent or inhibit it from entering into this Lease.

14.24 Municipal Freedom of Information and Protection of Privacy Act

The Tenant acknowledges that the City of Ottawa is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended (“MFIPPA”) with respect to, and protection of, information under its custody and control. Accordingly, all documents provided to the City may be available to the public unless the party submitting the information requests that it be treated as confidential. The City covenants and agrees to promptly notify Tenant of any request for disclosure and to allow the Tenant, as applicable, an opportunity to make submissions and to contest any such request. Notwithstanding the foregoing, all information is subject to MFIPPA and may be subject to release under the Act, notwithstanding any party’s request to keep the information confidential.

(signature page follows on the next page)

IN WITNESS WHEREOF the Parties hereto have duly executed this Lease as of the date first above written.

CITY OF OTTAWA

Per:

Name: Kent
Kirkpatrick Title: City
Manager

Per: _____

Name: M. Rick O'Connor
Title: City Clerk and
Solicitor

We have the authority to bind the Corporation.

Innovation Centre at Bayview Yards

Per :

Title:

I have the authority to bind the Corporation.

Per:

Title:

We have the authority to bind the Corporation.

SCHEDULE "A"

LEGAL DESCRIPTION

Part of Lot 10, Concession 4 (Rideau Front), designated as Part 1 on Plan 4R-26804, being part of PIN 04592-0001(LT)

SCHEDULE "B"

SKETCH OF "LANDS"

& R- PLAN

SCHEDULE "C"

City's Accessibility

Design Guidelines

