

SCHEDULE D
to the Strategic Partnering Agreement
dated _____, 2006

AGREEMENT TO LEASE AND
BUILD TO SUIT AGREEMENT

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AGREEMENT TO LEASE AND BUILD TO SUIT AGREEMENT

This Agreement is dated for reference _____, 20__,

BETWEEN:

_____, a _____
corporation having an office at

_____,
_____, British Columbia, _____

(the “**Landlord**”)

AND:

VANCOUVER COASTAL HEALTH AUTHORITY, a government corporation continued under the *Health Authorities Act*, with offices at 601 West Broadway, 11th Floor, Vancouver, British Columbia, V5P 1X8

(“**VCHA**”)

WHEREAS:

- A. The Landlord is the registered owner of the Lands (as hereinafter described);
- B. The Landlord has agreed to construct and build on the Lands the Building (as hereinafter described); and
- C. The Landlord wishes to lease a portion of the Building to VCHA and VCHA wishes to lease a portion of the Building from the Landlord,

all on the terms and subject to the conditions hereinafter set forth.

1. INTERPRETATION

1.1 Definitions

Capitalized terms used in this Agreement will have the meanings assigned to them below:

- (a) “**Applicable Laws**” means all present and future laws, statutes, ordinances, regulations, municipal bylaws, treaties, judgments and decrees, applicable to any person, property or event, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any governmental authority having or purporting to have authority over

that person, property or event, and all general principles of common law and equity;

- (b) **“Approved Plans and Specifications”** means all detailed structural and architectural plans prepared by or on behalf of the Landlord and approved by VCHA pursuant to the terms of this Agreement, which as of the date of this Agreement includes the plans and specifications, if any, described in Schedule B;
- (c) **“Architect”** has the meaning set out in Section 4.4;
- (d) **“Building”** means the base building and all improvements, structures, fixtures and appurtenancies thereto to be constructed on the Lands in accordance with this Agreement;
- (e) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in Vancouver, British Columbia;
- (f) **“Change Order”** has the meaning set out in Section 4.8;
- (g) **“Construction”** means construction of the Project;
- (h) **“City”** means the City of _____;
- (i) **“Design”** means the entire process for the design of the Project;
- (j) **“Final Approved Drawings and Specifications”** has the meaning set out in Section 3.3;
- (k) **“Governmental Authority”** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;
- (l) **“Head Contractor”** has the meaning set out in Section 4.4;
- (m) **“Landlord’s Construction Budget”** has the meaning set out in Section 5.1;
- (n) **“Landlord’s Permits”** has the meaning set out in Section 4.5;
- (o) **“Landlord’s Work”** means the improvements and systems described in Schedule C;
- (p) **“Lands”** means the lands and premises described in Schedule A;
- (q) **“Lease”** means the lease of the Premises in the form attached as Schedule F;
- (r) **“Parking Area”** means a parking area to be constructed **[on the Lands adjacent to]** the Building with at least [_____] parking stalls;

- (s) **“Premises”** has the meaning given to it in the Lease;
- (t) **“Project”** means the development and construction of the Building, the Parking Area, a truck unloading and manoeuvring area, landscaping, and other components of the Landlord’s Work set out in Schedule C and includes all agreed changes to the Approved Plans and Specifications;
- (u) **“Project Schedule”** means the project schedule attached as Schedule D, as it may be amended pursuant to the terms of this Agreement;
- (v) **“Substantial Completion”** means that all of the Substantial Completion Criteria have either been satisfied or waived by VCHA, and, without prejudice to its right to require the completion or correction of any construction deficiency, VCHA will, for the purpose only of establishing Substantial Completion be deemed to have waived satisfaction of any Substantial Completion Criteria not then satisfied if it commences its operations in the Premises;
- (w) **“Substantial Completion Criteria”** means:
 - (1) certification by the Architect of the achievement of "substantial performance" as defined in the *Builders' Lien Act* (British Columbia);
 - (2) all life safety systems are substantially operational;
 - (3) all mechanical and electrical systems are substantially operational;
 - (4) elevators have been inspected and passed by applicable Governmental Authorities;
 - (5) **[an occupancy permit has been issued for the Parking Area]** and
 - (6) an occupancy permit has been issued for the Building;
- (x) **“Substantial Completion Date”** means the date the Project achieves Substantial Completion;
- (y) **“VCHA’s Work”** means the improvements, fixtures, furnishings and equipment described in Schedule F; and
- (z) **“Unavoidable Delay”** has the meaning set out in Section 6.8.

1.2 Use of “including”

The word **“including”** when following any general term or statement will not limit the general term or statement to the specific matter immediately following the word “including” or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

1.3 Schedules

The schedules referred to in this Agreement and attached hereto form a part of this Agreement. The Schedules are as follows:

Schedule A	Lands
Schedule B	Description of Approved Plans and Specifications
Schedule C	Landlord's Work
Schedule D	Project Schedule
Schedule E	Insurance
Schedule F	Lease

2. LANDLORDS' QUALIFICATIONS

2.1 Standard of Performance

2.2 Landlord's Representations and Performance Covenant

The Landlord represents that it has sufficient experience and expertise to perform the obligations described herein in accordance with the terms of this Agreement, including design, constructing and completing the Project to the standard, and within the time schedules and budgets, contemplated herein, and further represents that any person that it retains to perform any of its obligations set out herein will be similarly qualified. The Landlord acknowledges that it has been retained by VCHA in reliance on the above representations.

Without limiting the foregoing, the Landlord will perform its obligations hereunder diligently, in good faith and with a degree of care, skill and diligence normally provided by a qualified and experienced developer performing services similar to the services described herein in the Greater Vancouver area at the time the Landlord performs its obligations hereunder. To the extent that the Landlord retains, whether directly or indirectly, other persons, including any contractors, sub-contractors, suppliers, consultants or sub-consultants, to perform its obligations hereunder, the Landlord will at all times remain and be held fully responsible to VCHA for any acts or omissions of such persons and for the Landlord's obligations hereunder. No sub-contract, whether consented to or not, relieves the Landlord from any of its obligations under this Agreement.

3. DESIGN

3.1 Project Plans, Specifications and Timetable

- (a) The Landlord has consulted and will continue to consult with VCHA in the preparation of:
 - (1) detailed plans and specifications for the Project; and
 - (2) the Project Schedule.

VCHA hereby acknowledges that it has approved of the plans and specifications described in Schedule B.

- (b) If the Landlord requires amendments to the Approved Plans and Specifications prior to the commencement of construction of the Building, the Landlord will deliver to VCHA the revised documents. VCHA will have 10 Business Days after receipt to review and approve the revised documents. If VCHA has not provided either its approval or its requests for changes to the revised documents within such period VCHA will be deemed to have approved the revised documents.

3.2 Landlord's Responsibility

Landlord will at its cost carry out and complete the Design of the Building:

- (a) in general compliance with the Approved Plans and Specifications; and
- (b) in accordance with the terms of this Agreement.

3.3 Design Completion Process

Landlord will direct the Architect, (and ensure that the Architect directs the design professionals) to undertake the Design of the Building progressively, in cooperation with VCHA and according to the following design phases:

- (a) Schematic Design Phase – the Architect will prepare a refined schematic design for the Building, that complies with the Approved Plans and Specifications, the requirements of the City, and all other applicable building laws;
- (b) Preliminary Development Permit Drawings Phase – the Architect will prepare, and for that purpose will direct and coordinate the work of the design professionals as required, drawings and specifications, to the level of detail and completeness of "Preliminary Development Permit Drawings" as ordinarily required by the City, based on the approved schematic design drawings as described in subsection (a), and which comply with the Approved Plans and Specifications the requirements of the City, and all other applicable building laws, for review by VCHA's Project Leader;
- (c) Review of Construction Drawings – at each of the times when the Design is developed generally to the 50% and 95% completion stages the Landlord will provide to VCHA's Project Leader a full set of drawings and specifications which are based on the approved preliminary development permit drawings as described in (b) above, and which comply with the Approved Plans and Specifications, the requirements of the City and all other applicable building laws, and all other requirements of this Agreement, for review by VCHA's Project Leader and while such review by VCHA's Project Leader will be for the benefit of VCHA (as provided by Section 3.6) and while VCHA's Project Leader will not assume any responsibility for Design (as provided by Section 3.7) VCHA's

Project Leader will confirm such compliance, or advise as to any non-compliance;

- (d) Building Permit Application Phase – following submission to and approval by the City the Architect will prepare building permit drawings and construction drawings for the Building as customarily required and used for the design and construction of buildings in Vancouver similar to the size and complexity of the Building, and will deliver a copy of such drawings to VCHA before the commencement of any construction on the Site; and
- (e) Approved Drawings and Specifications - the Landlord will prepare (and for that purpose will direct and coordinate the work of the Architect and the design professionals as required) complete drawings and specifications, which are based on the building permits drawings and approvals described in (d) above, and which comply with the Approved Plans and Specifications, the requirements of the City, and all other applicable Building Laws, and all other requirements of this Agreement, as will be used by the Landlord for the Construction of the Building. Landlord will deliver three complete copies of the drawings and specifications to VCHA's Project Leader to review and confirm such compliance before the Landlord issues any of the drawings and specifications for tender, and upon confirmation VCHA's Project Leader will initial one complete copy (the "**Final Approved Drawings and Specifications**") and deliver the copy back to Landlord. Throughout the completion of detailed design of the Building, and the construction of the Building, Landlord will submit all amendments or additions to the Final Approved Drawings and Specifications to VCHA's Project Leader for review to confirm compliance as aforesaid (which confirmation will be indicated by initialling by VCHA's Project Leader) and upon confirmation such drawings and specifications will be deemed to be included in the Final Approved Drawings and Specifications.

3.4 Progressive Confirmation of Design

For each design phase described in Section 3.3 of this Schedule, Landlord will obtain, the written confirmation of compliance of VCHA's Project Leader before directing or permitting the Architect or the design professionals to proceed with the next design phase. The parties will cooperate to establish a schedule and protocol for Landlord's application for confirmation of compliance and VCHA's review and response, with both parties acting in a timely way so as to facilitate the efficient completion of the Design. In the event of a dispute between the parties then the view of VCHA's Project Leader will prevail without prejudice to Landlord's right to refer the matter in dispute to Dispute Resolution. If Landlord proceeds with a design phase in advance of the written or deemed confirmation of compliance of VCHA's Project Leader then VCHA's Project Leader may require Landlord to make changes to such advanced design which Landlord will undertake at its own cost. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter that is in Dispute, the parties will proceed in accordance with the position of VCHA, provided that Landlord

may treat proceeding in accordance with VCHA's position as a Delay Event in the event that the relevant matter in Dispute is determined in favour of Landlord.

3.5 User Consultations

The parties acknowledge that (i) efficient Design requires appropriate consultation with representatives of the users of the Building (the "**User Consultation Group**"), and (ii) Landlord, the Architect and the design professionals and VCHA's Project Leader have met with the User Consultation Group prior to the execution of this Agreement to consult with them as to the Design. Such consultation has and will include Design issues relating to users of the Building that require input from VCHA including space allocation to individual users, floor arrangements, adjacencies and generic design of offices and examination rooms in the Building. The parties have and will undertake such consultation based on protocols (a "**User Consultation Protocol**") which the parties will develop and follow to describe the nature and timing of consultations with the User Consultation Group that are reasonably required to take account of the requirements of the User Consultation Group in the completion of the Design. For the purpose of a User Consultation Protocol, VCHA will appoint from time to time, as VCHA reasonably requires three components of the User Consultation Group:

- (a) a "Project Management Committee" made up of senior representatives of VCHA with authority to make decisions regarding Users;
- (b) a "Department User Committee" made up of Department Heads with responsibility to make recommendations regarding Design issues relating to users of the Building generally; and
- (c) a "Division User Committee" made up of representatives with the opportunity to provide user input to the Design process.

A User Consultation Protocol will include an appropriate number of consultation meetings between Landlord and the above committees, and permit the committees an appropriate length of time to consult with others and make recommendations, but will include time deadlines as reasonably required so as to permit proper consultation without delaying the Work. Landlord will administer a User Consultation Protocol in coordination with VCHA's Project Leader so as to avoid any delays to the Work.

If through no fault of Landlord the consultation process with the User Consultation Group causes a delay to the performance of the Work, and subject to Landlord's duty to mitigate the effect of any delay, such delay will constitute a Delay Event and be subject to Section XX.

The parties will have further consultations with the User Consultation Group with respect to the Design if any amendments to the Design are proposed or required by reason of a change in building laws, a requirement by the City or result from the Design process set out in Sections 3.3 and 3.4 which, in any of the foregoing cases, will have a material affect on the users of the Building.

Landlord will not make any commitments to any potential users of the Building with respect to details of Design except in accordance with a Change Order.

3.6 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) will be interpreted as giving VCHA's Project Leader any responsibility for any aspect of the Design or the Construction, and neither the Landlord or the Architect will be entitled to rely on any advice or approvals that a representative of VCHA may give with respect to the Design or Construction.

3.7 VCHA's Review, Approval and Confirmation

Any approval or confirmations required to be given by VCHA under this Agreement relating to the Design or construction may be given by VCHA's Project Leader. Landlord's Project Leader will, on behalf of Landlord, submit, or cause to be submitted, items for approval or confirmation in accordance with the Project Schedule (as may be updated under Section XX of this Agreement), or otherwise in a timely way so as to permit VCHA's Project Leader, a reasonable time to consider the submission and to consult with other representatives of VCHA as required and, subject to the above, VCHA's Project Leader will in a timely way respond to a request for approval or confirmation of compliance so as to facilitate the efficient completion of the Design or construction and either:

- (a) approve or confirm the submission; or
- (b) reject the submission and provide written reasons.

If VCHA's Project Leader has not responded to a request for approval or confirmation of compliance where required under this Schedule within the time period as may be set out in the Project Schedule (which will in no event be less than five calendar days) then the request will be deemed to be approved or confirmed without any further action or documentation required.

VCHA's rights of review and approval or confirmation of compliance will be for VCHA's benefit only, and no approval or confirmation of compliance by VCHA's Project Leader or other representative of VCHA will in any way relieve Landlord of its obligation for all aspects of the Design and Construction of the Facility except as may be expressly set out in this Agreement.

3.8 Permits

The Landlord will use reasonable efforts to obtain all the Landlord's Permits in a timely manner so as to enable the Head Contractor to commence construction of the Project on or before _____, 20____.

4. CONSTRUCTION OF PROJECT

4.1 Construction

The Landlord will, upon obtaining the Landlord's Permits, commence the construction of the Building and will complete the Project at its sole cost and expense, in strict compliance with the Approved Plans and Specifications and the terms of this Agreement.

[The Landlord will use commercially reasonable efforts so as to achieve Substantial Completion of the Project at an actual cost not to exceed the Landlord's Construction Budget - consider in light of proposals]

4.2 Landlord's Construction Covenants

The Landlord will be responsible for all development duties with respect to the Project in accordance with this Agreement including:

- (a) the negotiation for and procurement of:
 - (1) all necessary licenses and permits required under Applicable Laws (including building permits, development permits and occupancy permits) to allow development, construction, completion and occupancy of the Project in accordance with this Agreement; and
 - (2) construction and take out long term financing for the Project;
- (b) engagement of any consultants for the undertaking of architectural, engineering and consulting services required with respect to the Project;
- (c) tendering, negotiation and procurement of all products and construction services required to complete the Project;
- (d) timely and complete performance of all obligations of the Landlord under any financing agreements, construction contracts or consulting agreements related to the Project;
- (e) obtaining any rezoning of the Lands as may be required to permit the activities contemplated in the Lease;
- (f) the preparation of all reports, studies, financial projections if any, as may be required in connection with the Project;
- (g) obtaining and maintaining the insurance policies described in Schedule E hereto, for the time periods described therein;
- (h) provision and procurement of all design, inspection, testing and design certifications relating to the Project; and
- (i) such other duties as are normally carried out in connection with the design, development and construction of a project of the size, type and location as the Project.

4.3 Compliance with Applicable Laws

The Landlord will perform all of its obligations, and the Project will be completed, and in every respect undertaken, in full compliance with all Applicable Laws, including the applicable building codes and the bylaws of the City and including the City's normal design review panel and other

review/approval processes. The Landlord will be responsible for all contact with the City regarding planning approvals.

4.4 Consultants and Head Contractor

In connection with performing its obligations herein, the Landlord will in consultation with VCHA retain an architect (the "**Architect**") and a head contractor (the "**Head Contractor**") in respect of the Project. The Landlord will obtain VCHA's prior approval, not to be unreasonably withheld or delayed, in respect of the initial and any replacement Architect or Head Contractor.

The Landlord will use reasonable commercial efforts so that contracts with the Architect and Head Contractor and any other contracts with consultants, subcontractors or suppliers and related to the Project are made on terms that are not inconsistent with the terms set out in this Agreement. Without limiting the foregoing, such contracts will permit the Landlord, Architect or Head Contractor, as the case may be, to terminate those contracts with as little additional cost to the Project as is reasonably possible, in the event that this Agreement is terminated.

4.5 Landlord's Permits

The Landlord will be responsible for obtaining all development and building permits and all other approvals, consents, permits and authorities necessary for construction of the Landlord's Work and the use of the Building by VCHA for its intended purposes (collectively, the "**Landlord's Permits**").

4.6 Representatives

The Landlord and VCHA will each appoint a Project Leader. The Project Leader will be the primary contact for conveying information and authorizing approvals. The Project Leader for VCHA is _____ and the Project Leader for the Landlord is _____. Either party may from time to time replace its respective Project Leader and will promptly advise the other in writing of such replacement.

4.7 Changes to Approved Plans and Specifications - Landlord

The Landlord will not make any material change to the Approved Plans and Specifications prior to the commencement of Construction other than in accordance with Section 3.1(b) and, after commencement of construction of the Building, without the prior written consent of VCHA; provided however, the Landlord will have the ability to substitute materials providing equivalent performance standards to those set out in the Approved Plans and Specifications for the Project without the consent of VCHA. The Landlord will provide VCHA with prompt written notice of all such substitutions. If the Landlord wishes to substitute products or materials with products or materials having performance standards that are not equivalent to those of the replaced products or materials, the Landlord will obtain the prior written consent of VCHA, which consent will not be unreasonably withheld or delayed.

4.8 Change Orders - VCHA

If VCHA wishes to change any aspect of the Approved Plans and Specifications by altering or adding to the Landlord's Work, the Landlord will promptly price the effect of the requested change both as a cash payment and as an increase in Basic Rent (as defined in the Lease) and the Head Contractor will determine the additional time, if any, to effect such change. VCHA will have a period of seventy-two (72) hours following delivery of the information set out above to advise the Landlord by written change order (a "**Change Order**") whether the Landlord is to implement the proposed change. The Landlord will ensure that its contract with the Head Contractor provides that the cost of a Change Order will not exceed the cost of VCHA-approved change set out in the Change Order, plus 15%, representing all overhead, mark up and administration fees. If VCHA issues a Change Order, the Landlord will thereafter deliver to VCHA a revised Project Schedule and Landlord's Construction Budget. VCHA may elect to pay the cost of such Change Order, if any, by an increase in the Basic Rent or by a cash payment. The Landlord will provide VCHA with an estimate of the effect on Basic Rent of the proposed Change Order in order to assist VCHA in its election.

4.9 Inspections

The Landlord will permit VCHA and any authorized representatives of VCHA to have access during customary business hours to the Building including the Premises during the construction period and to any documents related to the Project in the possession or control of the Landlord.

4.10 Deficiencies

The Landlord will notify VCHA in writing at least 60 days prior to the date on which the Landlord reasonably expects Substantial Completion of the Project to be attained. Upon receipt of the notification described above, the Landlord and VCHA will arrange for a joint inspection of the Building, including the Premises, so as to prepare a list of deficiencies. The Landlord will complete all such deficiencies or cause such deficiencies to be completed as quickly as reasonably possible and so as to comply with the Project Schedule. If the Landlord does not agree that an item identified by VCHA is a deficiency or requires completion or rectification, the matter in dispute will be referred to the Architect and the determination of the Architect will be binding on both parties.

4.11 Warranty

The Landlord warrants that the Landlord's Work will be of the quality specified, free from defects in design, workmanship and materials and suitable for the purposes contemplated by this Agreement for a period of one (1) year from the Substantial Completion Date.

The Landlord will, for a period of one (1) year after the Substantial Completion Date, make or cause the Head Contractor or any of its subcontractors, as the case may be, to make all repairs, maintenance, replacements or alterations within or upon the Building, including the Premises, forming part of the Landlord's Work required as a result of material non-compliance with the Approved Plans and Specifications or as a result of defects in the workmanship or materials provided to or incorporated therein. Thereafter, the provisions of the Lease with respect to repairs and maintenance will apply.

Upon the Substantial Completion Date, the Landlord will assign to VCHA all service guarantees and warranties relating to the Premises but such assignment will not relieve the Landlord from its obligations under this Section 4.11 provided that VCHA will authorize the Landlord to pursue third party warranties on behalf of VCHA.

4.12 Insurance

The Landlord will take out and maintain at its cost and expense insurance coverage during construction that a prudent developer of a project similar to the Project would carry, including but not limited to the policies of insurance described in Schedule E hereto. Further, the Landlord will comply with all of its obligations described in Schedule E.

4.13 Environmental Matters

The Landlord covenants, represents and warrants that, at the commencement of construction of the Project, at the Substantial Completion Date and at the commencement of the term of the Lease, the Lands, including ground and surface water thereunder and thereon, will at all times comply with all Applicable Laws, including any environmental laws, regulations, guidelines and policies of all authorities having jurisdiction over the Lands, except to the extent caused by or contributed to by any act or omission of VCHA or those persons for whom VCHA is responsible at law.

The Landlord will be responsible for any clean up and liability arising from any pollution due to the Landlord's Work and will bear the cost of any clean-up, criminal proceedings and fines and liability arising from pollution in connection with the Project.

If the Landlord encounters toxic or hazardous substances or materials at the Lands, or has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Lands, then the Landlord will take all reasonable steps, including stopping the Landlord's Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and immediately notify VCHA of such circumstances.

Throughout the course of the Landlord's Work the Landlord will cause the Project to be maintained in a neat and tidy condition, free from accumulation of waste products, debris, snow and ice and construction debris including roads within and giving access to the Project. Prior to or concurrent with requesting that the Architect issue a certificate of Substantial Completion of the Project, the Landlord will conduct a thorough cleaning of all surfaces interior and exterior of the Building.

4.14 Workers Compensation

The Landlord is responsible for ensuring that the Head Contractor arranges for all companies or persons engaged in the Project to be fully covered by workers compensation and that the Head Contractor is responsible for site safety and ensuring that requirements of the Workers Compensation Board are met. At the request of VCHA, the Landlord will provide satisfactory evidence that the required regulations are being complied with and that the necessary premiums are being paid as required by law.

4.15 Liens

- (a) The Landlord will at all times keep the Lands free and clear of all claims of builders' liens which may be filed by any contractor, subcontractor, supplier or other party in any way contributing to the Project, save and except claims of builders' liens arising out of work or materials contracted for by VCHA in connection with VCHA's Work.
- (b) VCHA will at all times keep the Lands free and clear of all liens, charges and encumbrances whatsoever including, without limitation, claims of builders' liens which may be filed by any contractor, subcontractor, supplier or other party in any way contributing to VCHA's Work, save and except claims of builders' liens arising out of work or materials contracted for by the Landlord.

4.16 VCHA Construction Covenants

VCHA will:

- (a) provide any approvals required of VCHA within a reasonable response time; and
- (b) pay the Landlord for any costs arising from VCHA-approved Change Orders, all as more particularly described in Section 4.8 of this Agreement.

5. LANDLORD'S CONSTRUCTION BUDGET

5.1 Landlord's Construction Budget

Promptly upon execution of this Agreement, the Landlord will prepare for VCHA's review a Landlord Construction budget (the "**Landlord's Construction Budget**"). Once the major elements of the Project have been identified, the Approved Plans and Specifications finalized, and the tendering process is substantially complete, the Landlord will deliver to VCHA a revised Landlord's Construction Budget.

5.2 Open Book and Reporting Requirements

The Landlord will maintain to the reasonable satisfaction of VCHA all records relating to the actual costs of the Project and make such records available for review by VCHA or VCHA's authorized representatives on a consistent basis during normal business hours. The Landlord will take all steps reasonably required by VCHA to ensure VCHA or its authorized representatives remain informed about the progress of the Project throughout the term of this Agreement, including without limitation preparing and delivering to VCHA a monthly report on all aspects of the Project, including:

- (a) the approved Project Schedule, with anticipated and actual variations, together with reasons;
- (b) the Landlord's Construction Budget together with identified or anticipated overruns or underruns, with reasons; and

- (c) the percent complete of each of the major elements of the Project.

6. PROJECT SCHEDULE

6.1 Initial Project Schedule

Attached as Schedule D is the initial Project Schedule, which the parties have relied upon in entering into this Agreement, including the Target Substantial Completion Date.

6.2 Project Schedule Updates

The Landlord will ensure that the Project Schedule is at all times an accurate, reasonable and realistic representation of Landlord's plans for the completion of the Project in accordance with the requirements of this Agreement. The Landlord will, as required from time to time until Substantial Completion, but no less than once per calendar month, deliver an updated Project Schedule to VCHA's Project Leader for review for compliance with the requirements of this Agreement, and which will include the following:

- (a) adjustments resulting from delays and Change Orders, if any, as permitted by this Agreement;
- (b) as the design progresses, best estimates of:
 - (1) the start and completion dates for the various design phases; and
 - (2) the commencement of construction;
- (c) the planned start and completion dates of the major activities of construction; and
- (d) the estimated Substantial Completion Date.

Once confirmed by VCHA's Project Leader, the updated Project Schedule will be the Project Schedule under this Agreement in substitution for the previously approved Project Schedule. If at any time either the Landlord's or VCHA's Project Leader, as the case may be, does not agree with the proposed updates that may be required to the Project Schedule then the disagreement will be resolved pursuant to Section 9.

6.3 Failure to Update Project Schedule

If the Landlord fails or refuses to update the Project Schedule as required under Section 6.2, then such failure or refusal will be deemed to be a material breach of the Landlord's obligations under this Agreement.

6.4 Compliance with Project Schedule

The Landlord will undertake the design and construction of the Building in compliance with the Project Schedule, as updated pursuant to this Agreement.

6.5 Move-In Schedule

The Landlord specifically acknowledges that VCHA will rely on Substantial Completion of the Building by the Substantial Completion Date as set out in the Project Schedule (as may be adjusted under Section 6.2) because the Building will be occupied in part by physicians and other medical staff that VCHA requires to be moved to the Building from other premises to facilitate and permit other VCHA projects.

As soon as reasonably practicable, but in any event no more than 90 days prior to the Substantial Completion Date the Landlord will deliver to VCHA's Project Leader a move-in schedule (the "**Move-in Schedule**") indicating the anticipated dates when the areas in the Building will become available for occupation by VCHA so as to facilitate and permit physicians and other medical staff to move from existing premises and take up occupation in the Building in an efficient manner. VCHA's Project Leader will advise the Landlord of any key or significant moves or move-in requirements, and the Landlord will, as reasonably possible without incurring additional costs, accommodate VCHA's requirements and requests. The Landlord will, as may be required from time to time, up-date the Move-in Schedule.

6.6 Delay

The Landlord will promptly notify VCHA in writing if the Project is behind the Project Schedule or upon becoming aware of any actual or threatened occurrence or condition which would reasonably be expected to cause a delay in meeting the deadlines set forth in the Project Schedule.

In the event of a delay, the Landlord will use all reasonable commercial efforts to overcome or minimize the effects of such delay (including rearranging and rescheduling the work on the Project so as to minimize the ultimate delay in completion of the Project), utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available.

If the Project does not achieve Substantial Completion on or before _____, 20____ (subject to extension of such date due to Unavoidable Delay or due to a Change Order) and the delay was not caused by any act or omission of VCHA, then the Landlord will pay to VCHA a penalty equal to 1 day's Basic Rent for the Premises (assuming for the purposes of this calculation that the rentable area of the Premises is equal to _____ square feet) for each day from _____, 20____ until the Project achieves Substantial Completion. Such penalty will be paid by giving VCHA a period free of Basic Rent under the Lease for the Premises for a period commencing on the Commencement Date (as defined in the Lease) and continuing for the number of days equal to the number of days from _____, 20____ until the date of Substantial Completion of the Project.

If the Project does not achieve Substantial Completion on or before _____, 20____ (subject to extension of such date due to Unavoidable Delay or due to a Change Order) and the delay was caused by an act or omission of VCHA, then VCHA will pay the Landlord a penalty equal to 1 day's Basic Rent for the Premises (calculated on the same basis as described above)

for each day from _____, 20____ until the date of Substantial Completion of the Project.

6.7 Final Date for Delivery

If:

- (a) the Landlord is unable to commence construction of the Building on or before _____, 20____; or
- (b) the Substantial Completion Date is not on or before _____, 20____,

then VCHA may deliver written notice to the Landlord terminating this Agreement. In such an event, the penalty, if any, payable under Section 6.1 will be at an end and, if the failure of the Landlord to meet either of the foregoing targets is due to Unavoidable Delay, neither party will thereafter have any further obligation or liability to the other. If the failure of the Landlord to meet either of the foregoing targets is due to any act or omission of either party, the party not responsible for the delay will be entitled to exercise all remedies available to it against the other party. The date set out in this Section 6.7 is not subject to extension due to Unavoidable Delay.

6.8 Unavoidable Delay

- (a) If either party to this Agreement fails to observe or perform any of the covenants or obligations herein imposed upon it within the time provided and such failure has been occasioned by or in connection with or in consequence of Unavoidable Delay, such failure will be deemed not to be a breach of such covenants or obligations.
- (b) For the purpose of this Agreement, "**Unavoidable Delay**" means any act beyond the control of the parties including, but without restricting the generality thereof, lightning, earthquakes and storms, strikes, lockouts, shortage of necessary labour or other industrial disturbances, landslides, floods, fires, washouts and any acts, rules, regulations, orders or directives of any government or agency thereof, civil disturbances, the order of any court or any other causes whether herein enumerated or otherwise not reasonably within the control of a party and which by the exercise of due diligence such party is unable to overcome. Lack of financial resources on the part of either party will not constitute Unavoidable Delay.
- (c) The party claiming Unavoidable Delay will notify the other party in writing within 3 Business Days after the beginning of the occurrence (if it will last that long) to the effect that such party is unable by reason of Unavoidable Delay (the nature of which will be specified in such notice) to perform particular covenants or obligations within the times required under this Agreement. The party relying on Unavoidable Delay will at the request of the other party, acting reasonably, submit evidence of the occurrence of Unavoidable Delay and the effect of such Unavoidable Delay. Failure to provide the above described notices will not invalidate the benefit of claiming the Unavoidable Delay.

- (d) Except to the extent otherwise stated herein, dates set forth in this Agreement will be automatically extended by the period of an Unavoidable Delay.
- (e) For delays and non-execution of obligations due to Unavoidable Delay, no party may claim penalties, interest or any other compensation due to Unavoidable Delay.

7. DEFAULT AND EARLY TERMINATION BY VCHA

7.1 Termination by VCHA

Upon the occurrence of any event of default described in Section 5.3 by the Landlord and the expiry of any cure periods required by the lender(s) providing the construction and/or take-out financing for the Project, VCHA may in VCHA's sole discretion and without prejudice to any other rights or remedies of VCHA under this Agreement or at law or in equity, terminate this Agreement by delivery of written notice to the Landlord.

Notwithstanding the foregoing, in the case of a default described in Sections 5.3 (a) or (b), VCHA will provide the Landlord with written notice of the default, and 30 days thereafter in which to cure such default to the reasonable satisfaction of VCHA, failing which VCHA may issue a further written notice to the Landlord terminating this Agreement.

If this Agreement is terminated by VCHA pursuant to this Section 5.2 then unless otherwise expressly set out in this Agreement, and subject to VCHA maintaining its right to claim damages from the Landlord, all rights and obligations of the Landlord and VCHA under this Agreement will cease, including any obligation of VCHA to enter into the Lease or pay rent thereunder.

This Section in no way limits the rights of VCHA to terminate this Agreement for cause in the manner described in Section 6.7.

7.2 Defaults of the Landlord

The following will each constitute an event of default by the Landlord:

- (a) failure of the Landlord or any person for whom the Landlord is responsible at law (including without limitation the Head Contractor) to perform its duties set out in this Agreement substantially in accordance with the Approved Plans and Specifications and the Project Schedule (provided that if the delay is caused by Unavoidable Delay then, subject to Section 4.2, there will be an extension of the time to perform such duties equal to the length of the delay);
- (b) acting outside of the scope of the Landlord's duties set out in this Agreement;
- (c) the Landlord materially defaults under any financing arrangements related to the Project, any cure period (if any) set forth in such financing arrangements has expired, and the lender(s) thereunder have declared due and payable the indebtedness of the Landlord prior to the date or dates on which such indebtedness would otherwise have been due thereunder;

- (d) the financing arrangements made by the Landlord for the Project are cancelled or no longer available to the Landlord and have not been replaced within 90 days by comparable financing arrangements, approved by VCHA, acting reasonably;
- (e) an order is made, a resolution is passed or a petition is filed, for the Landlord's liquidation or winding-up;
- (f) the Landlord commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) a bankruptcy petition is filed or presented against the Landlord or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Landlord;
- (h) a compromise or arrangement is proposed in respect of a Landlord under the *Companies Creditors Arrangement Act* (Canada) or any legislation of similar purport; and
- (i) a receiver or receiver-manager of any of the Landlord's Property is appointed, or the Landlord ceases, in VCHA's reasonable opinion based on generally accepted accounting principles, to carry on business as a going concern.

8. LANDLORD INDEMNITY

The Landlord will indemnify and hold VCHA, its directors, officers, employees, agents and invitees (collectively, the "**VCHA Representatives**") harmless from and against all claims, liabilities, losses, damages, demands, expenses (including legal expenses calculated on a solicitor and own client basis), costs, obligations, actions and causes of action of every kind and nature whatsoever that may be asserted, made or brought against or incurred, suffered or sustained by VCHA or any VCHA Representative for or in respect of injury to or the death of any person whomsoever, and for or in respect of damage to or loss or destruction of any property (including VCHA's property or the property of any VCHA Representative) arising directly or indirectly from any act or omission by the Landlord or any person for whom the Landlord is responsible at law, in the performance of this Agreement or breaches in the performance of this Agreement. This indemnity will survive the expiry or earlier termination of this Agreement.

9. DISPUTE RESOLUTION

9.1 Cooperation

VCHA and the Landlord will make all reasonable efforts in good faith to resolve through negotiation any dispute or disagreement regarding the interpretation of this Agreement or any matter which may arise during the design and construction of the Project. Within 5 Business Days of written notice from one party to the other, the representatives of the parties will meet and use all reasonable efforts to resolve the dispute or disagreement on mutually acceptable terms. In the case of disputes in the respect to interpretation of design drawings referred to in Schedule "B", the parties will first seek the non-binding interpretation of the Architect.

9.2 Arbitration

If the process referred to in Section 9.1 is unsuccessful within 15 days of the written notice referred to in Section 9.1, the dispute or disagreement will be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* (British Columbia). The single arbitrator will be selected by agreement of the parties or, if the parties fail to agree upon an arbitrator within thirty (30) days of the written notice referred to in Section 9.1, a single arbitrator will be appointed pursuant to the *Commercial Arbitration Act* (British Columbia), and the decision of the arbitrator will be final and binding on both parties. The costs of each party to any of the dispute resolution processes set out herein will be borne by that party, regardless of the outcome of any of those processes, subject only to the decision of any arbitrator.

10. LEASE

10.1 Lease

If the Landlord constructs the Building and completes the Project in accordance with the terms and conditions of this Agreement then within 2 Business days of VCHA receiving written confirmation from the Landlord or the Architect of the Substantial Completion Date VCHA will execute and deliver to the Landlord 2 original copies of the Lease. Within 2 Business days of delivery by VCHA of the Lease the Landlord will execute and deliver to VCHA one (1) original copy of the Lease. The parties acknowledge and agree that the reference date of the Lease will be the Commencement Date (as defined below).

10.2 Term

The term of the Lease of the Premises will be **[20 years]** commencing on the first day of the month following the Substantial Completion Date (the "**Commencement Date**"). Upon the determination of the Commencement Date, the parties will sign a certificate certifying said date.

10.3 Basic Rent

VCHA will pay to the Landlord Basic Rent set commencing on the Commencement Date which Basic Rent will be calculated by multiplying the area of the Premises by \$_____ per square foot. To calculate the Basic Rent, determine the rentable area of the Premises and the rentable area of the Building for the purposes of the Lease, the Landlord will retain at its sole cost and expense a registered surveyor to calculate and certify the rentable area of the Premises and the rentable area of the Building for the purposes of the Lease. The Landlord will obtain and deliver to VCHA the survey on or before the date it delivers to VCHA written notice of the Substantial Completion Date, as contemplated in Section 10.1. The surveyor will undertake its survey in accordance with the standards of the Building Owners and Managers Association International ("BOMA") as they are in force from time to time. The certification of such surveyor will be binding on both the Landlord and VCHA.

10.4 Early Occupancy

VCHA may undertake VCHA's Work and install its fixtures, furniture and equipment in the Premises prior to the Commencement Date subject to the Landlord's consent, which consent

will not be unreasonably withheld, conditioned or delayed. The Landlord will provide VCHA with 4 weeks' notice of the date when it anticipates that the Premises will be available for VCHA to commence VCHA's Work. During the period of occupancy of the Premises by VCHA prior to the Substantial Completion Date, all of the provisions of the Lease will apply except that during this period no Basic Rent or additional rent will be payable by VCHA.

11. TENANT'S WORK

VCHA will be responsible for the design, delivery and construction of all VCHA's Work, and obtaining the necessary regulatory approvals. To the extent that the Landlord has not provided VCHA with access as contemplated in Section 8.4, promptly upon the Substantial Completion Date the Landlord will provide VCHA and its authorized representatives with access to the Building for VCHA to complete VCHA's Work.

12. ASSIGNMENT

Neither party may assign its rights under this Agreement without the consent of the other party, which consent may be arbitrarily withheld or delayed.

13. GENERAL

13.1 Notice

Any notice or other communication required or permitted to be given under this Agreement will be in writing unless otherwise specified and will be effectively given if delivered or sent by telecopier or other electronic means of communication which results in a printed signed document, addressed or directed as follows:

To the Landlord:

_____, British Columbia

Attention: _____

Fax: (_____) _____;

with a copy to:

Attention: _____

Fax: (_____) _____,

To VCHA:

VANCOUVER COASTAL HEALTH AUTHORITY
Corporate Office
601 West Broadway, 11th Floor
Vancouver, British Columbia
V5T 1X7

Attention: Executive Director, Facilities and Projects Manager

Fax: (604) 875-5673,

with a copy to:

BULL, HOUSSER & TUPPER LLP
3000 - 1055 West Georgia Street
Vancouver, British Columbia
V6E 3R3

Attention: Greg Lewis

Fax: (604) 641-4949,

or to such other address or number as a party may specify by notice given as set out above.

13.2 Date of Delivery of Notice

Any notice or other communication will be deemed to have been received on the date of delivery or transmission if it is a business day and otherwise on the next succeeding business day.

13.3 Survival

The provisions of this Agreement will survive execution and delivery of the Lease by VCHA and the Landlord, except that if there is a contradiction between such provisions and the terms and conditions of the Lease, this Agreement will prevail.

13.4 Successors and Permitted Assigns

This Agreement will be binding on, and may be enforced by, the Landlord, VCHA and their respective successors and permitted assigns.

13.5 Time of Essence

Time is of the essence of this Agreement.

13.6 Binding Agreement

Execution and delivery of this Agreement by the parties will constitute a binding and enforceable contract. The parties expressly acknowledge and agree that this Agreement is not to be construed as an agreement to agree or in any other manner which might render this Agreement, or any provision herein, unenforceable.

13.7 Counterparts

This Agreement may be executed in any number of counterparts or by facsimile, each of which will together, for all purposes, constitute one and the same instrument, binding on the parties, and each of which will together be deemed to be an original, notwithstanding that all of the parties are not signatory to the same counterpart or facsimile.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first above written.

Per: _____
Authorized Signatory

Authorized Signatory

VANCOUVER COASTAL HEALTH AUTHORITY

Per: _____
Authorized Signatory

Authorized Signatory

SCHEDULE A

LANDS

SCHEDULE B

DESCRIPTION OF APPROVED PLANS AND SPECIFICATIONS

SCHEDULE C
LANDLORD'S WORK

SCHEDULE D
PROJECT SCHEDULE

SCHEDULE E

INSURANCE

1. INSURANCE

[DRAFTING NOTE: SUBJECT TO REVIEW BY VCHA'S INSURANCE ADVISERS]

1.1 The Landlord will, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance from insurers and in forms and amounts acceptable to VCHA:

(a) **COMPREHENSIVE GENERAL LIABILITY INSURANCE** in a Wrap-up form and on an occurrence basis, in an amount of not less than Five Million Dollars (\$5,000,000) inclusive per occurrence against bodily injury including death and property damage arising out of the operations of the Landlord, its employees, agents, Head Contractor, sub-contractors, Architect or sub-consultants and with a deductible no greater than Ten Thousand Dollars (\$10,000). This coverage will include twenty four (24) months completed operations coverage to commence from the date of Substantial Completion of the Project. Such insurance will be in the joint names of VCHA, the Landlord and the Architect and the Head Contractor and will include, but not be limited:

- (i) Product and Completed Operations Liability;
- (ii) VCHA's and Landlord's Protective Liability;
- (iii) Blanket Contractual Liability;
- (iv) Contingent Employer's Liability;
- (v) Personal Injury Liability;
- (vi) Non-Owned Automobile Liability;
- (vii) Cross Liability;
- (viii) Employees as Additional Insured;
- (ix) Shoring, Blasting, Excavating, Underpinning, Demolition, Removal, Pile-driving and Caisson Work, Work Below Ground Surface, Tunnelling and Grading, as applicable;
- (x) Broad Form Property Damage;
- (xi) Elevator and Hoist Liability;
- (xii) Operation of Attached Machinery.

(b) **BUILDER'S RISK INSURANCE**, in the form of an "all risks" builder's risk policy including coverage for flood and earthquake. Deductibles for flood coverage will be no more than \$25,000 and deductibles for earthquake coverage will be no more than the greater of 5% of any loss, or \$50,000. Such policy will insure the Project to the full replacement cost, and will extend to cover property at any other location, while in transit and during erection, installation and testing. Such insurance will continue until issuance of the certificate of Substantial Completion of the Project, will extend to protect the interest of VCHA and will include:

- (i) a "Breach of Conditions" clause, that provides that notwithstanding anything contained elsewhere in the policy, any breach of a condition of the policy, whether by commission or omission, by one of the parties insured will not prevent recovery by any other party or all parties insured who are innocent of any such act or breach; and
- (ii) coverage for resultant damage from error in design.

(c) **BOILER AND MACHINERY INSURANCE** during any time when boiler and pressure vessels are installed and form part of the Project, the Landlord will maintain or cause to be maintained comprehensive boiler and machinery insurance on a repair and replacement basis without rights of subrogation or cross claim, for the full replacement cost of the boilers and pressure vessels forming part of the Project. Such insurance will be maintained continuously from commencement of use or operation of the property insured and until ten (10) days after the date of Substantial Completion of the Project. The insurance policies will be in the joint names of VCHA and the Landlord and will contain a "joint loss agreement" between the property insurers and the boiler insurers.

(d) **EQUIPMENT INSURANCE** on an "all risks" basis covering construction machinery and equipment owned by the Landlord and used for performance of the work comprising the Project in such forms and amounts as will enable prompt replacement and repair of such machinery and equipment. Such insurance will include a waiver of subrogation in favour of VCHA.

(e) **AUTOMOBILE LIABILITY INSURANCE** on all vehicles owned, operated or licensed in the name of the Landlord, in an amount of not less than Two Million Dollars (\$2,000,000).

All of the foregoing insurance policies will:

- (f) be primary and not require the sharing of any loss by VCHA or by an insurer of VCHA. The Landlord will be responsible for deductible amounts under the policies;
- (g) unless otherwise specified herein, commence from the date of commencement of the work related to the Project and continue until the date of

Substantial Completion of the Project, subject to extension of the coverage period as may be stipulated herein;

(h) be endorsed to provide VCHA with thirty (30) days advance written notice of cancellation or material change; and

(i) include a waiver by the Landlord of all rights of recourse against VCHA with regard to damage to the Landlord's property.

1.2 The Landlord will provide VCHA with evidence of all required insurance (in the form of a completed Certificate of Insurance) prior to the commencement of any site preparation or any of the Landlord's Work.

1.3 The Landlord will require and ensure that the Head Contractor or sub-contractor maintains:

(a) comprehensive general liability insurance;

(b) equipment insurance on an all risks basis covering construction, machinery and equipment owned by such Head Contractor or sub-contractor for performance of the work in such forms and amounts as will enable prompt replacement and repair of such machinery and equipment; and

(c) automobile liability insurance on all vehicles owned, operated or licensed in the name of such Head Contractor or sub-contractor, in an amount of not less than Two Million Dollars (\$2,000,000).

1.4 The Landlord will require and ensure that the Architect and each sub-consultant retained by or on behalf of the Landlord carries professional liability insurance in an amount of not less than One Million Dollars (\$1,000,000) aggregate value, \$1,000,000 per occurrence, insuring liability resulting from errors and omission in the performance of professional services under this Agreement. This coverage will be in place prior to commencement by any such consultant of any services in relation to the Project and will include a twelve (12) month maintenance period to commence upon issuance of the certificate of Substantial Completion of the Project.

1.5 The Landlord will act on behalf of VCHA and itself for the purpose of adjusting the amount of loss or damage payment under the Builders' Risk and Boiler and Machinery insurance policies. Loss or damage will not affect the rights and obligations of either party under this Agreement.

SCHEDULE F
to Agreement to Lease and Build to Suit Agreement
dated _____, 20_____

LEASE

from

to

VANCOUVER COASTAL HEALTH AUTHORITY

for

_____ **British Columbia**

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- SCHEDULE A DESCRIPTION OF LAND**
- SCHEDULE B FLOOR PLAN OF PREMISES**

THIS LEASE dated as of this _____ day of _____, 20____,

BETWEEN:

_____, a British Columbia
company having an office at _____

(the "Landlord")

AND:

VANCOUVER COASTAL HEALTH AUTHORITY, a government
corporation continued under the *Health Authorities Act*, with
offices at 601 West Broadway, 11th Floor, Vancouver, British
Columbia, V5P 1X8

(the "Tenant")

INTERPRETATION WITNESSES THAT in consideration of the sum of \$1.00 paid by each party to other party and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the Landlord hereby demises and leases the Premises to the Tenant, to have and hold during the Term, and the Tenant accepts that lease, on the following terms and conditions, to which the Landlord and Tenant agree:

1. INTERPRETATION

1.1 Performance

In exercising its rights and carrying out its obligations, each of the Landlord and Tenant will act reasonably, prudently, promptly, and fairly.

1.2 Rights and Obligations

All the Landlord's and Tenant's rights and obligations in this Lease will apply throughout the Term, and longer if this Lease so states.

1.3 Consents

If either the Tenant or the Landlord needs the other's consent, it will obtain that consent in writing before proceeding. Neither party will unreasonably withhold or delay its consent except as specifically provided herein.

1.4 Dispute Resolution

Any dispute between the parties, whether arising during the Term or any time thereafter, which touches upon any one or more of the issues or matters described in the following paragraph

(individually a "Dispute" and collectively the "Disputes") or the rights and liabilities of the parties arising out of or connected with any of the Disputes will be subject to arbitration before a single arbitrator under the *Commercial Arbitration Act* (British Columbia) as amended, or any legislation in substitution therefore (the "*Commercial Arbitration Act*"), and as provided in this Article.

The issues or matters that may be submitted to arbitration under this provision will relate to or involve the determination, interpretation, calculation or reconciliation of:

- (a) Additional Rent, Additional Services, Cost of Additional Services, Event of Delay, Inherent Structural Defects, Insured Damage, Leasehold Improvements, Operating Costs, rentable area of the Premises, rentable area of the Building, Proportionate Share, and Taxes;
- (b) Landlord's services and additional services under Article 5 of this Lease;
- (c) matters relating to Article 7 of this Lease;
- (d) the adequacy of Landlord's insurance under sections 9.3 and 9.4 of this Lease and to the extent the Tenant does not self-insure and obtains the policies of insurance declared in section 10.1, then the adequacy of such Tenant insurance; or
- (e) such other issues or matters as the parties may agree to submit to arbitration.

Either party may initiate arbitration of a Dispute by delivering notice of the issues to be arbitrated to the other party. If the parties are unable to agree upon the selection of an arbitrator within 21 days of delivery of the notice of arbitration, then the arbitrator will be appointed by a Judge of the Supreme Court (upon application of either party), in accordance with the procedure set out in the *Commercial Arbitration Act*. The Arbitrator will have a minimum of five (5) years professional experience in the field or area involving the Dispute to be arbitrated.

The arbitration will take place at a time and location in the City of Vancouver as the arbitrator decides. The arbitrator will, after hearing any evidence and representations that the parties may submit, make his or her decision and reduce the same in writing and deliver one copy thereof to each of the parties. The decision made by the arbitrator will be final and binding upon the Landlord and the Tenant, and their respective successors and assigns.

Except as otherwise provided, the cost of the arbitration will be borne by the parties as may be specified in such determination. The provisions of this Article will be deemed to be a submission to arbitration within the provisions of the *Commercial Arbitration Act*, provided that any limitation on the remuneration of arbitrators imposed by the *Commercial Arbitration Act* will not apply.

1.5 Fully Net Lease

This Lease will be a carefree fully net lease for the Landlord, except if an item is expressly stated to be for the Landlord's account. Otherwise, the Tenant will pay all expenses, costs and

outgoings with respect to the Premises, their use, occupancy, and contents, including its Proportionate Share of Operating Costs and Taxes, and the Cost of Additional Services. The Tenant will also pay its costs of carrying out its obligations under this Lease.

1.6 Entire Agreement

This Lease and the Agreement to Lease and Build to Suit Agreement, constitute the entire agreements between the Landlord and Tenant. No verbal, written, express, or implied representations, warranties, guarantees, covenants or agreements of either the Landlord or the Tenant will survive the signing of this Lease except if they are set out in this Lease. This Lease may only be modified by an express written agreement, made after this Lease has been executed, which both the Landlord and Tenant have signed.

1.7 Definitions

In this Lease:

- (a) **“Additional Rent”** means all money the Tenant must pay under this Lease, including indemnities, but excluding Basic Rent;
- (b) **“Additional Services”** means the services and supervision the Landlord supplies or provides to the Tenant over and above what the Landlord supplies as the standard level of services and supervision included in Operating Costs and available to Building occupants generally;
- (c) **“Administration Fee”** means the Landlord’s cost of administering the Land, being an estimate made by the Landlord, acting reasonably, of the overhead expenses of the Landlord incurred in administering the Land but not directly allocable or attributable to the operation, maintenance, repair or preservation of the Land, which fee will not exceed _____% of the total of all Operating Costs (excluding this Administration Fee) and Taxes;
- (d) **“Agreement to Lease and Build to Suit Agreement”** means the Agreement to Lease and Build to Suit Agreement dated for reference _____, _____, between the Landlord and the Tenant;
- (e) **“Basic Rent”** means the annual rent the Tenant is to pay under Section 3.2;
- (f) **“Building”** means the building on the Land, and the common areas, improvements, and amenities from time to time on the Land or in the Building;
- (g) **“Commencement Date”** means _____, 20____ [DRAFTING NOTE: INSERT THE DATE THAT IS THE FIRST DAY OF THE MONTH FOLLOWING THE FINAL SUBSTANTIAL COMPLETION DATE UNDER THE AGREEMENT TO LEASE AND BUILD TO SUIT AGREEMENT];

- (h) **“Cost of Additional Services”** means the Landlord’s costs of providing Additional Services, together with a supervisory fee equal to ___% of those costs;
- (i) **“day”** or **“days”** means a calendar day or calendar days;
- (j) **“End of the Term”** means the expiry or earlier termination of the Term;
- (k) **“Event of Delay”** means an event or cause beyond the reasonable control of the Landlord or the Tenant, as the case may be, including acts of God, labour or industrial disturbances, civil disturbances, wars, interruptions by Government Body or court orders, transportation disruptions, or shortages of materials but excluding lack of funds or financial resources;
- (l) **“Government Body”** means any municipal, provincial, federal, school, or other statutory authority, or department or agency thereof;
- (m) **“Inherent Structural Defects”** mean material defects in the structure of the Building which an architect or engineer, appointed by the Landlord at the Tenant’s request, certifies, in his opinion, to be the result of an ascertainable error in design or workmanship or of the use of substandard building materials;
- (n) **“Insured Damage”** means damage by fire or other peril to the Building or to the Premises which the Landlord is responsible for repairing and for which the Landlord will actually recover the entire cost of repair under the Landlord’s insurance policies;
- (o) **“Land”** means the land described in Schedule A and any improvements thereon, including the Building;
- (p) **“Lease”** means this document including the attached schedules;
- (q) **“Leasehold Improvements”** means all improvements, alterations, partitions, or fixtures from time to time installed for or by the Tenant in the Premises, except for furniture and readily removable trade fixtures and equipment which are not hard wired or plumbed; **[Drafting Note: this definition may need amendment if the Tenant intends to install fixtures which it may wish to remove during or at the end of the Term]**
- (r) **“Normal Business Hours”** means the hours of 7:00 a.m. to 6:00 p.m. Monday to Friday except for statutory holidays; **[Drafting Note: consider for each site whether the Tenant intends to operate outside of these hours]**
- (s) **“Operating Costs”** means the total, without duplication, of all costs, calculated according to Canadian generally accepted accounting principles consistently applied, which the Landlord incurs directly or indirectly to manage, operate, maintain, repair, replace, or preserve the Land and the rentable and non-rentable areas of the Building, including the costs of:

- (1) complete landscaping, gardening, cleaning, janitorial, supervisory, and maintenance services;
- (2) operating elevators;
- (3) heating, cooling, and ventilating;
- (4) hot and cold water;
- (5) electricity and power including lighting and other utilities and services;
- (6) cleaning, maintaining, and servicing all electric lighting fixtures, and replacing light bulbs, tubes, relays, starters, and ballasts;
- (7) repairing and servicing elevators and any interior climate control system;
- (8) window cleaning, painting, and sanitary control;
- (9) security;
- (10) insurance premiums for insurance which the Landlord is required hereunder to and does maintain;
- (11) amounts paid by the Landlord to third parties, at reasonably competitive rates, for services in managing, operating, repairing, replacing or preserving the Land and the Building;
- (12) salaries, wages, and fringe benefits paid or provided to employees who devote substantially all of their time to the management, operation, maintenance, repair, replacement or preservation of the Building, and amounts paid to independent contractors, and bona fide expenses of such persons, to the extent such salaries, wages, payments and compensation are directly attributable to the management, operation, maintenance, repair, replacement or preservation of the Building;
- (13) any taxes imposed on the Landlord with respect to goods and services which are supplied or provided to or for the benefit of the Land or the Building which are in excess of any input tax credits available to the Landlord for such taxes;
- (14) the Administration Fee;
- (15) depreciation or amortization of the cost of any improvement, modification or addition to the Building or the machinery, equipment or facilities related thereto where, in the reasonable opinion of the Landlord, such expenditures may reduce Operating Costs, will maintain the quality, integrity or character of the Building or its machinery, equipment or facilities, is for the benefit of Building users generally, or is required by any Governmental Body having jurisdiction over the Building, plus interest

on the undepreciated or unamortized portion of the original cost of such improvement, modification or addition, calculated and deemed payable monthly, from the date on which the relevant cost was incurred at an annual rate of interest equal to the Prime Rate plus 2 percent per annum;

but excluding the costs of:

- (A) Taxes;
- (B) Landlord's debt service;
- (C) correcting Inherent Structural Defects or initial maladjustments in operating equipment;
- (D) leasing commissions and rental advertising;
- (E) costs of repairs, alterations or improvements to the premises of other tenants;
- (F) costs and expenses resulting from the negligence of the Landlord, or its agents, servants and employees;
- (G) alterations, additions, repairs and replacements of a capital nature determined in accordance with generally accepted accounting practices and all items of expense incurred in lieu of capital costs, including without limitation structural repairs and replacement of the roof and other major components of the Building;
- (H) all costs related directly or indirectly to environmental matters or to compliance with environmental laws by the Landlord or those for whom it is responsible at law, including all investigations and remedial work requested or ordered by any Government Body pertaining to the presence of any hazardous substance on, under or affecting the Land or any part thereof;
- (I) any bad debt loss, rent loss or reserves for bad debts or rent loss;
- (J) the ownership, management or operation of a garage or parking area which does not supply free parking to the Tenant and its invitees; and
- (K) all costs related directly or indirectly to upgrading requests or orders of any Government Body.

In calculating Operating Costs there will be a credit for:

- (L) insurance proceeds for Insured Damage which the Landlord actually recovers;

- (M) recovery, if any, from Building occupants of the costs of electricity and light bulbs, and tube and ballast replacement, to the extent that such items were included in Operating Costs;
 - (N) any contribution to Operating Costs pursuant to any leases or licences of Building areas used for storage purposes only;
 - (O) all amounts which the Landlord is entitled to recover as a result of a Court order, a negotiated settlement of a claim, a claim for insurance or for indemnity or contribution from a third person or a claim under a construction, repair, maintenance or performance warranty or guarantee if the subject matter of such order, settlement or claim pertains to the replacement, repair, maintenance or operation of all or part of the Land and the rentable and non-rentable areas of the Building, provided that the costs of such replacement, repair, maintenance or operation were not excluded from the calculation of Operating Costs hereunder, and
 - (P) all amounts which the Landlord is entitled to receive for utility rebates, credits or similar allowances, excluding any recoveries from other tenants with respect to utility costs;
- (t) **“Premises”** means the space located on the _____ floor(s) of the Building consisting of approximately _____ square feet more or less of rentable area, as measured and calculated in accordance with the standards of the Building Owners and Managers Association International (“BOMA”), and indicated in heavy black outline on the floor plan attached as Schedule B, but does not include the exterior faces of all adjoining corridors and outside walls and roof;
- (u) **“Prime Rate”** means the annual rate of interest announced from time to time by Royal Bank of Canada (or any successor to it) as being its reference rate of interest then in effect for determining interest on Canadian dollar commercial loans made in Canada;
- (v) **“Proportionate Share”** means, for the purposes of this Lease, that fraction the numerator of which is the rentable area of the Premises expressed in square feet and calculated in accordance with the standards of BOMA as they are in force from time to time, and the denominator of which is the aggregate rentable area in square feet of all portions of the Building available for leasing whether leased or not, other than areas rented for storage purposes only, and any certification thereof by a qualified land surveyor will be binding on the Landlord and the Tenant, absent manifest error; provided that the rentable area of the Premises or of all areas in the Building available for leasing may change from time to time due to alterations to the Premises or the Building or for other reasons and in any such case the Landlord may (and if requested by the Tenant, will) cause the rentable

area of all or any part of the Building to be re-determined by a qualified land surveyor and thereafter, upon notice to the Tenant, "Proportionate Share" will mean the revised fraction resulting from such re-determination. If the Landlord allocates Operating Costs and Taxes between a commercial retail portion of the Building and an office portion of the Building, the denominator referred to above will be the rentable area in square feet of the office portion of the Building available for leasing, other than for storage purposes only;

- (w) **"Rent"** means Basic Rent and Additional Rent;
- (x) **"Taxes"** mean all taxes, duties, rates, levies, assessments, or charges including those for local improvements, education, and schools, levied, imposed, or assessed from time to time by any Government Body against the Land, the Building, or the Landlord in respect thereof, including all taxes imposed by any Government Body on the Landlord measured by or based in whole or in part upon the capital employed by the Landlord, calculated as if the amount of such tax were the amount due if the Land were the Landlord's only real property, and including the amount, if any, of any capital or place of business tax imposed by a Government Body on the Landlord with respect to the Land. "Taxes" will not include tax or licence fees on businesses carried on by Building occupants, development cost charges or similar charges, local improvement rates or similar charges which arise from, or which in any way relate to, any development by or on behalf of the Landlord, or corporate income, profits, or excess profits tax upon the Landlord's income to the extent that such tax is not levied in lieu of the various charges; and
- (y) **"Term"** means the term of twenty (20) years starting on the Commencement Date, and any renewal or extension of the Term and any period of permitted overholding.

1.8 Determining Areas

The Landlord and the Tenant acknowledge and agree that the rentable area of the Premises and the rentable area of the Building will be determined prior to the Commencement Date by a surveyor appointed by the Landlord pursuant to the terms of the Agreement to Lease and Build to Suit Agreement.

Upon reasonable request by the Tenant during the Term, the Landlord will appoint, at the Landlord's expense, a land surveyor to determine the rentable area of the Premises or the rentable area of the Building, according to the standards of the Building Owners and Managers Association International, as in force from time to time.

1.9 Currency

All references to money are to lawful currency of Canada.

1.10 Severability

If any provision of this Lease or the application thereof to any person or to or in any circumstance will, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or to or in circumstances other than those as to or in which it is invalid or unenforceable, will not be affected thereby, and each provision of this Lease will be valid and be enforced to the full extent permitted by law.

1.11 Governing Law

This Lease will be governed by the laws of the Province of British Columbia.

1.12 Construction

Singulars will include plurals and masculine will include feminine and neuters, and vice-versa. If the word "including" is used, the words "without limiting the generality of the foregoing" will be deemed to follow. Headings are for convenience of reference only.

2. EARLY OCCUPANCY

2.1 Early Possession

If the Tenant uses or occupies the Premises before the Commencement Date, the provisions of this Lease will apply.

3. RENT AND ADDITIONAL RENT

3.1 Paying Rent

The Tenant will pay Rent duly and punctually to the Landlord or to such other person or place of which the Landlord gives notice to the Tenant. The Tenant will pay Rent without deduction, abatement, or set-off, except to the extent as permitted herein. The Tenant's obligation to pay Rent due during the Term will survive the End of the Term. The Tenant will not be obligated under any circumstances to provide the Landlord with a security deposit in respect of the Tenant's obligations under this Lease.

3.2 Basic Rent

[Drafting Note: this section may need to be revised on a case-by-case basis]

The Tenant will pay Basic Rent as follows:

- (a) for the first ten (10) years of the Term, the Tenant will pay to the Landlord Basic Rent in the amount of \$_____ per annum, based on a rate of \$_____ per square foot of rentable area of the Premises, payable in advance in equal consecutive monthly instalments of \$_____, starting on the Commencement Date and continuing on the first day of each month during the first ten (10) years of the Term; and

- (b) for the eleventh (11th) through twentieth (20th) years of the Term, the Tenant will pay to the Landlord Basic Rent in the amount of \$_____ per annum, based on a rate of \$_____ per square foot of rentable area of the Premises, payable in advance in equal consecutive monthly instalments of \$_____, starting on the eleventh anniversary of the Commencement Date and continuing on the first day of each month during the eleventh (11th) through twentieth (20th) years of the Term.

3.3 Operating Costs

- (a) The Term will consist of fiscal periods of 12 consecutive months, each ending on December 31, except that the first and last fiscal periods may be shorter. The Landlord may change the date on which the fiscal periods end by giving the Tenant at least 60 days' advance notice. In any such case, the then current fiscal period will be extended or shortened so that it ends on the new date.
- (b) The Landlord will pay, or cause to be paid, the costs that comprise the Operating Costs when due, unless the Landlord is expressly permitted to defer payment under this Lease. The Landlord will use reasonable commercial efforts to minimize Operating Costs including making commercially prudent decisions as to what capital items are leased or purchased.
- (c) The Landlord will give due weight and consideration to the use being made and benefits derived or being derived by the Tenant in relation to other users of the utilities and services in the Building (including the Landlord and other tenants) in determining the proportionate share formula to be used for the purposes of this Lease. In the case of separately metered utilities which are for the sole use of a particular tenant, such tenant (including the Tenant) will pay 100% of the costs recorded by such meter and such costs will not be included in Operating Costs.
- (d) Before the Term starts and before each fiscal period starts, the Landlord may give the Tenant an estimate of its monthly Proportionate Share of Operating Costs for the then existing fiscal period or the coming fiscal period. The Tenant will pay that estimated Proportionate Share or, if no estimate is given, the same Proportionate Share it was paying for the previous fiscal period, monthly on the same dates and in the same manner that it pays Basic Rent.
- (e) If the Building contains portions which are used for commercial retail use as well as portions used for offices, the Landlord may, in any manner it considers equitable in the circumstances, allocate the Taxes and Operating Costs for the Land and Building between the commercial retail portion of the Building and the office portion of the Building, in which case the Tenant will pay its Proportionate Share of the Taxes and Operating Costs allocated to the office portion of the Building. **[Drafting Note: depending on circumstances consider allocation of Taxes and Operating Costs as between the commercial retail and office portions]**

- (f) After the Landlord has completed its accounting for each fiscal period (and in any event on or before March 1 following such fiscal period), the Landlord will give the Tenant an audited statement of the Operating Costs for that fiscal period. If the statement shows a shortfall between the estimated Proportionate Share of Operating Costs the Tenant has paid for that fiscal period and its actual Proportionate Share, the Tenant will pay that shortfall within 30 days after it receives the statement. If the statement shows that the Tenant has paid too much, the Tenant will receive a credit against future Rent for the difference (or a refund from the Landlord if the overpayment is determined after the End of the Term).
- (g) Within 90 days after receipt from the Landlord of the audited statement of the Operating Costs referred to in section 3.3(f), the Tenant may deliver notice to the Landlord that it disputes the source or calculation of Operating Costs. If the Landlord and the Tenant are able to resolve the dispute within 15 days thereafter, the provisions of section 3.3(f) with respect to adjustment and refund will apply. If the Landlord and the Tenant are unable to resolve the dispute within 15 days thereafter, the Tenant may deliver notice to the Landlord either to proceed to arbitration under section 1.4 to resolve the dispute. The determination of the arbitrator will be conclusive and binding on the Landlord and the Tenant and the provisions of section 3.3(f) with respect to adjustment and refund will apply to such determination.
- (h) For a period of at least two (2) years from the date of production of such records:
- (1) the Landlord will maintain full and detailed records of expenses and costs incurred for the Building and the Land together with proper records of all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto; and
 - (2) at all reasonable times and from time to time the Landlord will make all such records available to the Tenant, or to persons acting on its behalf, for inspection and for the purpose of making copies thereof and taking extracts therefrom and will furnish to such persons any and all information which they may require from time to time in connection therewith.
- (i) The Tenant will have the right, at its cost, to require, on reasonable notice to the Landlord, the Landlord's books and records of Operating Costs and Taxes during the period referred to above to be audited. In the event that any such audit discloses that the Landlord has overstated the amount payable by the Tenant on account of Taxes and/or Operating Costs for the period in question, then the Landlord will forthwith after notice from the Tenant reimburse the Tenant for any overpayment which has been made by the Tenant and, if any such audit discloses that the Landlord has overstated by 3% or more the amount payable by the Tenant on account of Taxes and/or Operating Costs for the period in question, the Landlord will also forthwith after notice from the Tenant pay the cost of the audit (or reimburse the Landlord for such cost).

3.4 Cost of Additional Services

The Tenant will pay to the Landlord, in the same manner it pays its Proportionate Share of Operating Costs or in such other manner as the Landlord may request, the Cost of Additional Services in respect of the Tenant's use of the Premises outside of Normal Business Hours or in respect of extra interior climate control, electrical, or other services, or materials, which result from the Tenant's activities, or requests, over and above those normally provided to Building occupants or outside of Normal Business Hours. Section 3.3 will apply to those extra costs so far as applicable. The Landlord may install meters, at the Tenant's cost, to check the Tenant's consumption of utilities.

3.5 Taxes

- (a) The Term will consist of tax periods of 12 consecutive months, each ending on December 31st, except that the first and last tax periods may be shorter. The Landlord may change the date on which the tax periods end by giving the Tenant at least 60 days' advance notice. In any such case, the then current tax period will be extended or shortened so that it ends on the new date.
- (b) If the Premises or any property or rights specific to the Tenant are assessed separately in respect of any tax period by the relevant Government Body, the Landlord will calculate the Tenant's share of Taxes on that separate basis.
- (c) Recognizing that the Tenant is a health authority and exempt from payment of certain taxes, the Landlord will from time to time and upon the Tenant's request consent to, cooperate with and assist the Tenant in any application to have the Premises, and any improvements to the Premises, designated as exempt from the payment of real property tax or other taxes, as the case may be. If all or any portion of the Building or the Land is determined or assessed by the appropriate Government Body as being exempt from real property taxes or any other Tax arising from the status of the Tenant or the uses of it of the Premises, then the Tenant will obtain the benefit of 100% of any such exemption or reduction in such Taxes when calculating the Tenant's Proportionate Share of Taxes and the Tenant will make no payment or contribution in respect of such Taxes for that portion and will provide the Landlord with evidence of such exemption.
- (d) Before the Term starts and before each tax period starts, the Landlord may give the Tenant an estimate of its monthly Proportionate Share of Taxes and any further share of Taxes payable under this Section 3.5 for the then existing tax period or the coming tax period. The Tenant will pay that estimated Proportionate Share or, if no estimate is given, the same Proportionate Share it was paying for the previous fiscal period, monthly on the same dates and in the same manner that it pays Basic Rent. Within thirty (30) days of the end of each tax period, the Landlord will give the Tenant a statement of the actual Taxes due from that Tenant for that tax period which will include any separate, higher or lower Taxes due. If the statement shows a shortfall between the estimated Proportionate Share of Taxes and any further share of Taxes payable under this

section which the Tenant has paid for that tax period and its actual Proportionate Share and any further share, the Tenant will pay that shortfall within 30 days after it receives the statement. If the statement shows that the Tenant has paid too much, the Tenant will receive a credit against future Rent for the difference (or a refund if the overpayment is determined after the End of the Term).

- (e) The Landlord will pay the Taxes, except that the Landlord may defer payment if deferment is lawful. The Landlord may contest or appeal the amount or validity of Taxes. The Tenant will have the right to require the Landlord to appeal any assessment of the Taxes payable by the Landlord or may carry out any such appeal itself (either in its own name or on behalf of and in the name of the Landlord). Each party will provide the other party with all reasonable cooperation in the prosecution of any appeal of Taxes. Subject to section 3.5, if the Landlord receives a reduction in the Taxes and if the Tenant has paid its Proportionate Share of the Taxes which are reduced, the Tenant will receive a credit for its Proportionate Share of the reduction. The costs of appeal (whether incurred by the Landlord or the Tenant) will be included in Operating Costs if the appeal is for the benefit of the Building as a whole and, if not, the costs of appeal will be apportioned equally between the rentable premises in the Building benefiting from the reduction, if any, provided such reduction is equal to or greater than the costs of appeal. If the costs of appeal are greater than the reduction, then the excess shall be borne by the Tenant.
- (f) If the Landlord cannot obtain from the appropriate Government Body or public or private utility an allocation of Taxes or of any other taxes, duties, rates, levies, assessments, or charges which the Tenant is obliged to pay, which is sufficient to calculate the Tenant's Proportionate Share or portion, the Landlord will make that allocation, acting reasonably.

3.6 Tenant's Taxes and Other Charges

The Tenant will pay, as and when due, to the appropriate Government Body or public or private utility or to the Landlord, as required by the applicable laws or the terms of supply, all licence fees, taxes, rates, duties, levies, assessments, or other charges imposed, assessed, or levied by any Government Body or public or private utility from time to time, whether imposed on the Landlord or the Tenant, in respect of:

- (a) the personal property, fixtures, business, franchise, income, occupancy, use, or sales of the Tenant or other occupant of the Premises;
- (b) Leasehold Improvements, fixtures, or machinery installed in the Premises by or for the Tenant;
- (c) any goods and services tax or similar tax or assessment imposed on the Tenant in respect of the supply by the Landlord to the Tenant of the Premises or any other goods or services supplied by the Landlord to the Tenant pursuant to this Lease;

- (d) other space used by the Tenant in the Building; and
- (e) utilities and services used in or supplied to the Premises, to the extent that the Landlord has not included them in Operating Costs.

If any such charges are not allocated separately for the Premises, the Landlord will make that allocation, acting reasonably, and if utilities or services are not sub-metered, the allocation will be on a connected load and usage basis or other equitable basis. Upon request by the Landlord, the Tenant will give the Landlord evidence that the Tenant has paid those charges as required.

3.7 Additional Rent

The Tenant will pay all Additional Rent upon demand by the Landlord unless other times for its payment are expressly set out in this Lease. If the Tenant fails to pay any Additional Rent, as and when due, the Landlord will have the same remedies for its collection as it has for recovering Basic Rent in arrears. If the Tenant fails to pay any sum which the Tenant is obliged to pay to third parties in respect of the Premises, then, subject to section 7.7, the Landlord may pay it and it will then be a debt owing by the Tenant to the Landlord.

3.8 Interest on Arrears

When any Rent, or any interest accrued thereon, is in arrears, it will bear interest at the Prime Rate plus 2% per annum compounded and payable monthly, from the date such Rent became due to and including the date of payment. The Landlord will have all remedies for its collection as it has for recovering Basic Rent in arrears.

3.9 Irregular Periods

If the Term begins or ends other than on the first or last day of a month or if the first or last fiscal period or tax period is less than 12 months, Rent for any broken month or broken period will be pro rated at a rate per day equal to 1/365 of the annual Rent.

4. THE PREMISES

4.1 Examination of Premises

Pursuant to the terms of the Agreement to Lease and Build to Suit Agreement, the Tenant will inspect the Premises before taking possession and will give the Landlord notice of any problems or construction deficiencies. If the Tenant takes possession of the Premises without giving such notice, the Tenant will be deemed to have accepted the Premises in their then current condition, except for Inherent Structural Defects.

4.2 Possession and Use of Premises

The Tenant will:

- (a) take possession of the Premises on the Commencement Date;

- (b) not allow anyone except for its employees, customers, other persons lawfully having business with the Tenant, or permitted assignees or sub-tenants, to use or occupy the Premises;
- (c) use the Premises only for the provision of health care services;
- (d) not let the Premises remain vacant for more than 30 consecutive days;
- (e) not do anything in the Premises which is noxious, dangerous, or offensive or which would be a nuisance or disturb other Building occupants;
- (f) not overload the Premises floor without the Landlord's consent beyond a capacity of 50 lbs. per square foot;
- (g) not cause any waste or damage to the Premises;
- (h) not let the Premises become untidy or unsightly;
- (i) not store or use any dangerous, contaminating or inflammable substances in the Premises; and
- (j) not store any goods, equipment or supplies in the Premises other than those used in the Premises.

4.3 Complying With Laws

Each of the Landlord and the Tenant will comply promptly with all lawful requirements of any Government Body with which it must comply in order to observe or perform its obligations under this Lease. Further, the Landlord shall comply at all times during the Term hereof with all laws, statutes, bylaws, ordinances, regulations or other lawful requirements of any Governmental Body having jurisdiction in respect of the Building or the Lands.

4.4 Quiet Enjoyment

If the Tenant duly and punctually pays the Rent and complies with its obligations, the Tenant will be entitled to peaceably possess and enjoy the Premises during the Term.

4.5 Regulations

The Landlord in consultation with the Tenant may make reasonable regulations which apply uniformly to the Tenant and Other Tenants. The Landlord will enforce any such regulations against the Tenant only if it enforces such regulations against all other tenants in the Building.

4.6 Tenant's Signs

The Tenant may install identification and other signs at or near the entrances to the Premises as well as a listing in the directory in the main lobby of the Building, in each case containing the name of the Tenant and a description of the services provided in the Premises. With the prior written consent of the Landlord, not to be unreasonably withheld or delayed, the Tenant may

install identification and other signs in such other locations in and on the Building as the Tenant might reasonably require. The Tenant will at its own cost, comply with all lawful requirements of any applicable Government Body and acquire all requisite statutory permits which may be required to erect or maintain any such identification and signs.

5. LANDLORD'S SERVICES AND ADDITIONAL SERVICES

5.1 Provision of Utilities and Services

The Landlord will, to the Tenant's reasonable satisfaction take all reasonable action from time to time to ensure the continuous availability of electrical service, water, storm and sanitary sewers, gas, telephone, cablevision, internet and other utilities and services which the Tenant may reasonably require as of the Commencement Date except that the Landlord will not be liable to the Tenant for disruptions in availability beyond its reasonable control.

5.2 Utility Repairs and Maintenance

The Landlord will maintain, repair, replace and re-construct all systems and facilities for the provision of the utilities or services which it is obliged to provide under this Article 5 and for the provision of utilities or services for any common areas of the Building (including a lighting system):

- (a) in a good and workmanlike manner;
- (b) so as to disturb as little as reasonably possible the free flow of pedestrian and vehicular traffic and vehicular parking;
- (c) whenever reasonably possible, at times when the Premises are not open for business and, otherwise, at such times and by such methods as will minimize interference with the Tenant's business to the extent reasonably possible; and
- (d) except in case of emergency, only after delivering to the Tenant as much notice as is reasonably possible that any such work is to commence, particularly if the Landlord reasonably anticipates that the Landlord will be excavating or disturbing the paving in any parking areas on the Land.

5.3 Interior Climate Control

The Landlord will provide to the Premises, during Normal Business Hours, by means of a system for heating, cooling, filtering and circulating air, processed air in quantities and at temperatures which will keep the Premises comfortable for normal office purposes based on normal occupancy, to building standards for comparable buildings in the vicinity. Any adverse effect upon the heating, cooling and air circulation systems due to alterations to the Premises made by or on behalf of the Tenant will be corrected at the expense of the Tenant. At the request of the Tenant, the Landlord may provide air-conditioning to the Premises outside Normal Business Hours as an Additional Service, and the Tenant will pay to the Landlord the Cost of Additional Services related thereto.

5.4 Elevators

The Landlord will furnish elevator service to the floor on which the Premises are located for use by the Tenant and its invitees, in common with others, but under the Landlord's supervision and subject to the Regulations.

5.5 Repairs and Liability

If, in the Landlord's opinion, the interior climate control system or the elevators need repair, replacement, or alteration, the Landlord may interrupt or reduce service, but will so repair, alter, or replace within a reasonable time and the Landlord will not be liable to the Tenant for any such interruption or reduction or its consequences.

5.6 Access

The Tenant and its invitees, in common with others, may use the common entrances, lobbies, stairways, and corridors of the Land and Building to gain access to the Premises, subject to any regulations prepared by the Landlord pursuant to the terms of this Lease.

5.7 Washrooms

The Tenant and its invitees, in common with others, may use the washrooms on the floor(s) on which the Premises are located.

5.8 Janitor Service

The Landlord will provide cleaning services, generally by external janitorial contract, to the common areas of the Building in accordance with modern building standards for comparable buildings in the vicinity. The Landlord will use reasonable efforts, as a prudent owner, to ensure a good standard of service and conduct from cleaning personnel. The Landlord will not be responsible for providing cleaning services to the Premises.

5.9 Water, Telephone, and Light

The Landlord will provide building standard ducts to bring telephone services to the Premises, hot and cold water to building standard washrooms, and reasonable lighting to the Premises and to Building common areas.

5.10 Additional Services

The Landlord will have the exclusive right, by way of Additional Services, to provide to the Premises extra cleaning services requested by the Tenant, and to supervise the Tenant's repairs or alterations in the Premises. If the Landlord provides Additional Services, by right or by agreement with the Tenant, the Tenant will pay the Cost of Additional Services to the Landlord.

5.11 Energy and Security

The Tenant will co-operate with the Landlord to conserve energy and to maintain security including shutting off any lights or equipment when leaving the Premises.

5.12 Light Fixtures

The Landlord will have the exclusive right to install, repair, maintain, clean, relamp, and destaticize fluorescent fixtures, at competitive rates.

5.13 Customer Parking

During Normal Business Hours and subject to the provisions herein set out, the customers and invitees of the Tenant will, while doing business at the Tenant's Premises, be entitled to park in those parking stalls in the Building designated by the Landlord for customer parking, without charge. The number of such parking stalls will not be less than _____. The Landlord will have the right from time to time, to change the area, level, location and arrangement of the parking areas, and to enforce parking charges for all parking stalls used by the Tenant's customers and invitees. If the Landlord imposes parking charges then the Tenant will participate in any ticket validation system established by the Landlord, so that customers of the Tenant will be able to have their parking ticket validated by the Tenant and will not be charged for parking while attending at the Premises. The Tenant will abide by all rules and regulations established by the Landlord for the operation of the parking areas and the said ticket validation system.

5.14 Tenant Parking

The Tenant, its officers, employees, and other persons for whom the Tenant is responsible will park in those parking areas for such use designated by the Landlord and will not park in the customer parking areas or on public streets in the immediate vicinity of the Building. The Tenant's employees working at the Premises will be entitled to park without charge in the areas of the parking facility on the Land designated for employee parking. The number of such parking stalls will not be less than _____. Parking for the Tenant and its employees will be regulated by the Landlord in a reasonable manner, and may be limited to specified times and places arranged so as to cause minimal interference to the businesses within the Building. The Tenant and its employees, suppliers and other persons for whom the Tenant is, directly or indirectly, responsible, will abide by such regulations as may be established by the Landlord from time to time. Upon the Landlord's request, the Tenant will furnish a list of the vehicles and licence plate numbers of its employees, and the Tenant and its employees will display any parking decals provided by the Landlord. The Landlord will have the right to remove any trespassing vehicles or vehicles parked in violation of the above provisions or the Landlord's parking regulations. The Landlord will have the right from time to time, to change the area, level, location and arrangement of the parking areas.

6. MANAGEMENT AND USE OF THE BUILDING

6.1 Management

The Landlord will manage, operate, repair, and maintain the Building and the Land at all times in good order, condition and repair, as would a careful owner of comparable first-class office premises in the vicinity, whether such repairs are ordinary or extraordinary, foreseen or unforeseen. Further, the Landlord will:

- (a) keep any parts of the Building not leased to other tenants clean, tidy and well maintained, repair promptly all broken glass and maintain all floors, walls, ceilings, pavements, sidewalks and other surfaces with the surfacing materials originally installed or with substitutes which are in all respects equal or superior thereto in quality, use and durability;
- (b) prevent the use of any premises in the Building for any purpose which is a nuisance, and will not permit any part of the Building or Land to be used for the storage, treatment, handling or disposal of any hazardous substance, except in strict compliance with all Applicable Laws;
- (c) keep the Building (including the Premises) free of any mould or fungal growth (and conditions which might reasonably be expected to give rise to such mould or fungal growth) which might adversely affect the health of any tenants or persons occupying or visiting the Building;
- (d) keep all flower beds and landscaped areas suitably planted and, when reasonably necessary, cut and weed all grass, prune and spray all trees against insects and diseases, water and fertilize all grass, trees and flower beds, and replace any grass, trees, shrubs and flowers as required to maintain a well-landscaped appearance, all as permitted by Applicable Laws;
- (e) maintain parking areas on the Land in good condition and keep them and their accesses open at all times when the Premises is open for visitation by invitees of the Tenant; and
- (f) cause the parking areas on the Land to be adequately lit during their use after dark, keep parking spaces and aisles properly striped and otherwise marked, maintain the appropriate traffic and direction signs and adequately supervise the flow of traffic to, from and in such parking areas, and keep such parking areas free of refuse and debris and reasonably free of snow and ice.

6.2 Prohibited Uses

The Landlord will not use the Building or Land, or suffer or permit the Building or Land to be used, for or in connection with premises operated wholly or in part for any activity other than office or health purposes or such other activity, including without limiting the generality of the foregoing retail uses, as the Landlord may decide, acting reasonably, having regard to the nature of Tenant and the Tenant's use of the Premises.

[Drafting Note: use restrictions to be discussed with Proponents]

7. RENOVATIONS, DAMAGE AND EXPROPRIATION

7.1 Landlord's Repairs

The Landlord will keep the Building in a good and reasonable state of repair and maintenance, consistent with the standards for comparable first class offices in the vicinity, except for non-structural elements of the Premises and other leased premises and reasonable wear and tear, and will repair Insured Damage (except if this Lease is terminated under section 7.8), including:

- (a) all systems and facilities for the provision of utilities and services necessary for the efficient operation of the Building;
- (b) all systems, fixtures and equipment in the Building including heating, ventilating and air-conditioning units (and all associated electrical and plumbing systems, fixtures and equipment);
- (c) the roof and the roof membrane of the Building and all structural elements of the Building, including the foundations, sub-floors and outer walls. The Landlord will deliver to the Tenant at such times as the Tenant may reasonably request, a then current report from a qualified roofing consultant (which consultant will be approved by the Tenant, acting reasonably) as to the condition of the roof and the roof membrane and any recommended repairs thereto or replacements thereof and will promptly make or cause to be made any and all repairs and replacements referred to in such report;
- (d) all repairs and replacements relating directly or indirectly to environmental matters or to compliance with environmental laws, including all investigations and remedial work requested or ordered by any Government Body pertaining to the presence of any hazardous substance on, under or affecting the Land or the Building or any part thereof, except to the extent caused by the Tenant or persons for whom at law the Tenant is responsible;
- (e) all upgrading requests or orders of any applicable Government Body;
- (f) all repairs and replacements arising directly or indirectly from any faulty or inadequate workmanship, faulty or inadequate materials or errors in design or engineering, with respect to the original construction of the Building or the Landlord's subsequent repair or replacement; and
- (g) damage or destruction by fire or other casualty.

7.2 Tenant's Repairs

The Tenant will keep the Premises, its Leasehold Improvements, its trade fixtures, and any plate or other glass in the Premises or in the exterior walls of the Premises in a good and reasonable state of repair and maintenance, consistent with the standards for comparable

offices in the vicinity, except for the structural elements of the Premises and Insured Damage, and except if this Lease is terminated under section 7.8. Section 7.4 will apply to Tenant repairs.

7.3 Inspection and Access

The Landlord, by its representatives, may enter the Premises at all reasonable times and during any emergency to:

- (a) inspect or supervise repair, maintenance, or renovation;
- (b) do its own repairs, maintenance, or renovations;
- (c) gain access to utilities and services (including underfloor or overhead ducts and access panels); and
- (d) determine electric light, power and water consumption by the Tenant in the Premises.

Except in the case of emergency, the Landlord will deliver to the Tenant as much notice as possible of its intention to do any work under this section 7.3 which may materially interfere with access to, visibility or exposure of, or parking for invitees of, the Premises, and will obtain the Tenant's prior written consent to the timing and scheduling of any such work, such consent not to be unreasonably withheld, delayed or conditioned. In carrying out any such work, the Landlord will disturb the Tenant's activities in the Premises and the use of the Common Areas as little as reasonably possible.

7.4 Tenant Renovations

The Tenant will not construct, install, or alter anything in the Premises, or make any changes to the electrical, heating, ventilating, air-conditioning, fire protection or sun draping systems in the Premises or elsewhere in the Building, without the Landlord's consent, which will not be unreasonably withheld, conditioned or delayed. When requesting that consent, the Tenant will give the Landlord a copy of reasonably detailed drawings and specifications for the proposed work. The Tenant will do such work in a good and workmanlike manner, in accordance with the drawings and specifications the Landlord has approved, and in accordance with the Landlord's reasonable requirements and the requirements of any applicable Government Body and the insurers of the Building. The Tenant will use contractors and subcontractors to whom the Landlord has consented, acting reasonably, except that the Landlord may designate the contractors and subcontractors to be used for mechanical, structural, or electrical design and work and except that the labour union affiliations of workers must be compatible with those of workers employed by the Landlord or its contractors. **[Drafting Note: this may need further revision to accord with VCHA's collective bargaining agreement]** Upon completing any work, the Tenant will deliver to the Landlord a full set of as-built drawings, if any, and if not, then the final set of approved construction drawings, that the Landlord may keep. All Leasehold Improvements will immediately become property of the Landlord upon being made or installed, subject to any express written agreement between the Landlord and the Tenant to the contrary.

7.5 Landlord Renovations

The Landlord may alter the Building from time to time including constructing additional floors, altering the Building's size, or altering the location, dimensions, or specifications of utilities, common areas, or mechanical systems so long as the physical dimensions of the Premises are not materially altered as a result and the Landlord obtains the Tenant's prior written consent for any such alteration, such consent not to be withheld, conditioned or delayed. If such alteration results in additional land being added to the Land or being used to service the Building, such additional land will be deemed to form part of the Land. If such alteration results in a change in the rentable area of the Building, the Landlord will forthwith modify the Tenant's Proportionate Share accordingly.

7.6 Payment for Work

The Tenant will pay all accounts for its renovations and repairs as and when due, except as set out in Section 7.7.

7.7 Liens

Each of the Landlord and the Tenant will pay when due all costs for work which it does or causes to be done in any or all of the Land, Building or the Premises which could result in any lien or encumbrance being registered or filed against title to any or all of the Land or the Tenant's leasehold interest. Each of the Landlord and the Tenant will immediately notify the other of the registration or filing of any such lien or encumbrance of which it has knowledge and will cause the same to be removed from title, by payment into Court together with such security for costs as the Court may deem appropriate, or otherwise, within fifteen (15) days after learning of it, provided that if either party desires to diligently contest in good faith the amount or validity of any lien it may do so after notice to the other party.

7.8 Damage or Destruction

If the Premises or the Building are materially damaged by any cause, the Landlord, within 10 days after the damage occurs, will appoint an architect or engineer to determine, within 30 days, the extent of the damage and how long he estimates the damage will take to repair. The Landlord will give the Tenant a copy of the architect's or engineer's report. If the report indicates that the Premises or Building will take more than 180 days from the date of the report to repair, then the Tenant may give notice to the Landlord, within 10 days after receipt of the report, terminating this Lease. If this Lease is so terminated, the termination date will be the 10th day after the date the Landlord receives such notice from the Tenant, and in such case neither the Landlord nor the Tenant will be obliged to repair. If this Lease is not so terminated, each of the Landlord and Tenant will repair the damage to the extent it is obliged to do so under sections 7.1 or 7.2, as applicable.

7.9 Abatement

If the Premises are not reasonably capable of use and occupancy by the Tenant for its business for more than 10 days as a result of any damage, Rent will abate, from the date of the damage, in proportion to the part or parts of the Premises not reasonably capable of use and occupancy

until the Premises are again reasonably capable of such use and occupancy or, with respect to the Tenant's repairs after such damage, until such time as, in the Landlord's reasonable opinion, those repairs ought to have been completed. If the Landlord and Tenant disagree on the extent or time of the abatement, the Landlord will ask an architect or engineer to determine the dispute.

7.10 Expropriation

If a Government Body expropriates all or part of the Land or Building, the Landlord, within 60 days after it receives the notice of expropriation, may give the Tenant not less than 30 days' notice terminating this Lease. If a Government Body expropriates all or part of the Premises such that any remainder is not reasonably capable of use and occupancy, the Tenant, within 60 days after it receives the notice of expropriation, may give the Landlord not less than 30 days' notice terminating this Lease. If this Lease is so terminated, neither the Landlord nor Tenant will have any claim against the other with respect to the expropriation. Each of the Landlord and Tenant may claim against the Government Body for compensation for loss of its interest and may retain any compensation awarded to it. Each of the Landlord and Tenant will co-operate with the other in pursuing its respective claim. If the Landlord receives a compensation award which specifically includes an award to the Tenant, the Landlord will remit the Tenant's portion to it. If this Lease is not so terminated then section 7.8 will apply to any repairs which are necessary as a result of the expropriation and section 7.9 will apply to abatement of Rent during any repair period. After the later of the date of expropriation or the repair period, if any, Basic Rent will be adjusted so that it will bear the same proportion to the original Basic Rent as the area of the remaining Premises bears to the area of the Premises immediately before the expropriation, and the Tenant's Proportionate Share will be adjusted as provided in the definition of that term.

8. DISPOSITIONS

8.1 Assigning and Sub-Letting

The Tenant may assign this Lease or sublet or license the whole or any part of the Premises, upon written notice to, but without the consent of, the Landlord:

- (a) to other publicly-funded bodies and their agents or agencies, corporate or otherwise, or to public or private sector parties offering health programs and services (including medical procedures and medical clinics), in which case the Tenant will continue to be liable to the Landlord for payment of all Gross Rent payable by the Tenant to the Landlord under this Lease;
- (b) to a successor of the Tenant by amalgamation, merger or other corporate or governmental reorganization or legislative act, including a direction under the *Health Authorities Act* (British Columbia); and
- (c) in the case of a sublease, concession or licence, of any part of the Premises, if the subleases, concessions or licences in the aggregate do not exceed 10% of the Premises.

In any other case, the Tenant will not assign, sublet or license the whole or any part of the Premises without the consent of the Landlord, which consent the Landlord covenants not to unreasonably withhold condition or delay, having regard to the covenant, creditworthiness, business reputation (to the extent applicable) of the proposed transferee. In the case of an assignment, the Tenant will continue to be liable to the Landlord for performance of all of the Tenant's obligations under this Lease. Any permitted assignment, sublease or licence of the whole or any part of the Premises may include, without the consent of the Landlord, an assignment or sublicense, as the case may be, of the licences, or any part thereof, granted to the Tenant pursuant to the terms of this Lease.

8.2 Landlord's Disposition

If the Landlord sells, conveys, transfers or otherwise disposes of its legal or beneficial interest in the whole or part of the Land and Building, except by way of leasing in the normal course of business, granting of a security interest to any lender, or granting of a utility or highway right-of-way to a Government Body, the Landlord will cause the person or persons in whom legal or beneficial title to the whole or part of the Land and Building, is to vest, to execute and deliver to the Tenant, on or prior to the effective date of the sale, conveyance, transfer or disposition, an agreement, in form and substance reasonably satisfactory to the Tenant, whereby each of such person or persons and their respective heirs, executors, administrators, successors and assigns, will be bound (jointly and severally if more than one person) to the Tenant to observe or perform the Landlord's obligations under this Lease and any license(s) granted hereunder, from and after the effective date.

8.3 Release of Landlord

If the Landlord has disposed of all of the Land and Building and in connection therewith the agreement(s) described in section 8.2 have been executed and delivered to the Tenant, then from and after the date of execution and delivery of the agreement(s) described in section 8.2, the Landlord will have no further liability to the Tenant to observe or perform its obligations under this Lease except to the extent of any then existing defaults on the part of the Landlord.

8.4 Mortgaging by Landlord

If the Landlord grants or has granted any security interest in the whole or any part of the Land and Building to a lender prior to registration of this Lease (or a short form thereof), the Landlord will request that the Landlord's lender, forthwith after execution of this Lease or at the time such security instrument is granted, as the case may be, execute and deliver to the Tenant an agreement, in form and substance reasonably satisfactory to the Tenant and acceptable for registration, whereby such Landlord's lender grants to the Tenant priority for this Lease (or a short form thereof) over the security interest as if this Lease (or a short form thereof) had been executed, delivered and registered prior to the execution, delivery, registration or advance of funds under the security instrument. If the Landlord's lender refuses to execute and deliver such priority agreement, then the Landlord will use all reasonable commercial efforts to cause the Landlord's lender, forthwith after execution of this Lease or at the time such security interest is granted, as the case may be, to execute and deliver to the Tenant a non-disturbance agreement, in form and substance reasonably satisfactory to the Tenant.

8.5 Security Interest in Tenant's Fixtures and Equipment

The Tenant will not mortgage or charge its leasehold interest in the Premises without the Landlord's consent, not to be unreasonably withheld, conditioned or delayed, but will be entitled to grant a security interest in its fixtures, chattels, furniture, or equipment to its lender, and the Landlord covenants to provide the Tenant's lender with a landlord's consent agreement in a form mutually acceptable to the Landlord and the Tenant's lender.

9. SURRENDERING PREMISES AND REMOVING FIXTURES

9.1 Surrender

At the End of the Term, the Tenant will surrender possession of the Premises and the Tenant's Leasehold Improvements to the Landlord, without compensation, in the condition in which the Tenant was obliged to keep them during the Term. The Tenant's Leasehold Improvements will remain the Landlord's property, except for those the Tenant is obliged to remove under section 9.2. At the End of the Term, the Tenant will give the Landlord a surrender of this Lease, which will be in form acceptable for registration if applicable.

9.2 Removal of Fixtures

At the End of the Term, the Tenant will remove from the Premises:

- (a) its trade fixtures;
- (b) its furniture and equipment; and
- (c) those Leasehold Improvements which the Landlord requires it to remove,

except that, if the Tenant is then in default under this Lease, the Tenant will not remove any of those items unless the Landlord expressly requires it to do so.

The Tenant will repair any damage to the Premises caused by the removal of those items. If the Tenant does not remove any such items, the Landlord may do so and the Tenant will pay the Landlord's removal and storage charges.

9.3 Survival

The Tenant's obligations in this Article 9 will survive the End of the Term.

10. INSURANCE

10.1 Tenant's Insurance

[Drafting Note: this section is subject to review and comment by the Risk Management Branch]

The Tenant will obtain and maintain in good standing:

- (a) liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises and the Building, including personal liability, liability assumed by contract, Tenant's legal liability, and non-owned automobile liability. Such insurance will:
- (1) have a limit of not less than \$3,000,000.00 in respect of any one occurrence;
 - (2) be primary insurance and will not call into contribution any other insurance available to the Landlord or its mortgagee, which means that the Tenant's insurance will cover any loss before the Landlord's or other insurance; and
 - (3) provide for cross-liability and severability of interests;
- (b) insurance upon the Tenant's property normally located within the Building, and any property which is repaired at the Tenant's expense under this Lease, including stock in trade, inventory, furniture, fittings, Leasehold Improvements, and Tenant's fixtures in an amount equal to the full replacement cost thereof, against at least the perils of fire, sprinkler leakage, theft, vandalism, riot, civil commotion, impact of aircraft, water damage, earthquake, flood, and any perils not mentioned above which are included in normal "all risks" coverage; and
- (c) such other types of insurance as a prudent tenant would obtain from time to time.

The Tenant will obtain all such insurance in at least those amounts set out above with respect to liability insurance and otherwise in those amounts indicated by the Landlord as being the amounts of insurance coverage a prudent tenant of comparable space in a comparable building in the vicinity would obtain and maintain from time to time. All such insurance policies will:

- (d) include any mortgagee of the Tenant if applicable, the Landlord, and any mortgagee of the Landlord if applicable, as additional insureds;
- (e) contain a waiver of any right of subrogation or recourse by the Tenant's insurer against the Landlord or its employees or mortgagees, whether or not any loss is caused by the act, omission or negligence of the Landlord or its employees or mortgagees;
- (f) provide that the insurer will give the Landlord (and any of the Landlord's mortgagees of which it has received notice) 30 days' prior written notice of cancellation of, material alteration in, or lapse of, any policy; and
- (g) provide that such policies will not be invalidated in respect of the interest of the Landlord or the Landlord's mortgagees by reason of any breach or violation of any warranties, representations, declarations, or conditions contained in the policies.

The Tenant hereby waives its right of recovery against the Landlord and its employees or mortgagees in respect of any loss that is recoverable by the Tenant under any of the foregoing policies.

The Tenant will effect all such policies with insurers and upon terms satisfactory to the Landlord. The Tenant will give the Landlord certified copies of its insurance policies evidencing all such insurance and its renewal. The Tenant will pay the premium for each policy. If the Tenant fails to obtain or maintain any such insurance, the Landlord may do so as the Tenant's agent and at the Tenant's cost. The Tenant will review all its policies annually to ensure that they are up to date.

10.2 Tenant Right to Self-Insure

Notwithstanding the foregoing, the Landlord acknowledges that the Tenant is insured for all risks property insurance and commercial public liability coverage as a health authority under the provisions of the Health Care Protection Program and the Landlord confirms that the Tenant is deemed to be in compliance with the insurance requirements set forth above provided that the Tenant remains insured under the Health Care Protection Program (or any successor program that provides substantially the same protection as the Health Care Protection Program) throughout the Term and any renewals of this Lease.

If the Tenant proposes to assign this Lease to any other person pursuant to the terms of this Lease (other than a person who is insured under the provisions of the Health Care Protection Program in the same manner as the Tenant), then it is understood and agreed that the proposed assignee will be required to provide the Landlord with certificates of insurance evidencing policies of insurance described in section 10.1 and that meet all of the requirements set forth therein.

10.3 Landlord's Insurance

The Landlord will obtain and maintain in good standing:

- (a) all risks property insurance for the Land and Building, including drain and sewer backup, earthquake and flood insurance, on a replacement cost basis, including the cost of foundations and excavation, increased costs due to bylaws and codes and soft redevelopment costs, and with a deductible not exceeding that which would be obtained by a prudent owner;
- (b) commercial general liability insurance with respect to the Land and Building, including products and completed operations and blanket contractual liability and such other risks against which a prudent owner would insure from time to time, in an amount of at least \$10,000,000 for claims for personal injury, bodily injury, death or property damage arising out of any one accident or occurrence; and
- (c) boiler and machinery insurance on a comprehensive form in respect of any boilers, pressure vessels and electrical and mechanical equipment in the Building, on a replacement cost basis with a bylaws and soft costs endorsement.

The Landlord will place such insurance with a reputable insurance company licensed to do business in the Province. Any insurance proceeds available in the event of loss, damage, or destruction to the Land and Building which are not paid by the insurer directly for the repairing or rebuilding of the Land and Building will be payable to the Landlord. The Landlord may cause such policies to include the Landlord's lenders as loss payees as their interests may appear.

The Landlord will cause any policy which it obtains pursuant to section 10.3(b) to include cross liability and severability of interest clauses. The Landlord will cause all policies which it obtains pursuant to this section 10.3 to waive the insurer's rights of subrogation against the Tenant and its employees, agents, contractors and subcontractors and the Landlord hereby waives its rights of recovery against such parties. The Landlord, on reasonable request by the Tenant from time to time, will deliver to the Tenant certificates of insurance and certificates of renewal to evidence the insurance which the Landlord is required to obtain. All such certificates will contain a provision requiring 30 days written notice to the certificate holder of either material change or cancellation.

11. DEFAULT, BANKRUPTCY, AND TERMINATION

11.1 Landlord May Perform Covenants

If the Tenant defaults in complying with any of its obligations, the Landlord, in addition to its other rights and remedies under this Lease or at law or at equity, may remedy or attempt to remedy any such default and for such purpose may upon further written notice to the Tenant enter the Premises. No such entry will be deemed to be a re-entry or trespass. The Tenant will reimburse the Landlord for the Landlord's costs of so remedying or attempting to remedy. The Landlord will not be liable to the Tenant for any act or omission in so remedying or attempting to remedy unless such act or omission amounts to intentional misconduct or gross negligence.

11.2 Right of Re-Entry on Default or Termination

If and whenever:

- (a) the Tenant fails to pay any Rent after it is due and after 15 days' notice from the Landlord; or
- (b) the Tenant defaults in observing or performing any of its obligations and fails to cure that default within 30 days after the Landlord gives the Tenant notice specifying the nature of the default; or
- (c) this Lease is terminated under any provision hereof; or
- (d) the Landlord has become entitled to terminate this Lease,

then, in any such case, the Landlord thereafter may enter into the Premises or any part thereof in the name of the whole to repossess the Premises and enjoy as of its former estate, despite anything in this Lease to the contrary. If notice of default is given as provided above and the default is cured by the Tenant within the applicable time period set out above, then any notice of

termination given by the Landlord in respect of such default will have no effect and this Lease will continue in full force and effect.

11.3 Termination and Re-Entry

If the Landlord is entitled to re-enter the Premises under this Lease or at law or at equity, the Landlord, in addition to its other rights and remedies, may terminate this Lease forthwith by delivery of written notice to the Tenant of such termination.

11.4 Payment of Rent on Termination

If the Landlord gives the Tenant notice of termination in accordance with the terms of this Lease, this Lease and the Term will end, Rent will be apportioned on a daily basis to the End of the Term (except if it has abated, in whole or in part, under section 7.9), the Tenant will pay that apportioned Rent on demand by the Landlord, the Tenant will immediately give possession of the Premises to the Landlord, and the Landlord may re-enter and take possession of the Premises if it has not then done so.

11.5 Limitation of Landlord's Recourse

In connection with the exercise by the Landlord of any of its remedies contained in this Lease or at law, the Landlord acknowledges and agrees that its recourse against the Tenant for the recovery of monetary amounts shall be limited to the assets of the Tenant only.

11.6 Tenant May Perform Covenants

If the Tenant delivers to the Landlord written notice of default in any of the covenants, agreements or services to be provided by the Landlord hereunder in connection with a matter that requires an immediate response for the health or safety of occupants of the Building or the Premises, or the proper functioning of such areas, and the Landlord fails to remedy such default:

- (a) within seventy-two (72) hours from and after delivery of such written notice; or
- (b) within such period less than seventy-two (72) hours from and after delivery of such written notice as will ensure that the Tenant suffers no loss or damage if, by reason of the nature of such default, the Tenant may reasonably be expected to suffer loss or damage if such default is not remedied within a period less than seventy-two (72) hours,

then and in any and every such event, the Tenant may without further notice to the Landlord take such steps as may, in the sole judgement of the Tenant, be necessary to remedy such default, and without limiting any of the Tenant's remedies at law or in equity, all costs incurred by the Tenant in remedying any such default of the Landlord, plus an administrative fee equal to 10% of such costs, shall be charged to and paid by the Landlord.

11.7 Cumulative Remedies

No reference to nor exercise of any specific right or remedy under this Lease or at law or at equity by either the Landlord or the Tenant, as the case may be, will prejudice, limit or preclude the Landlord or the Tenant, as the case may be, from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the Landlord or the Tenant, as the case may be, may from time to time exercise any one or more of such rights or remedies independently, successively or in combination.

11.8 Waiver and Condoning

Any condoning or overlooking by the Landlord or the Tenant of any default by the other in observing or performing its obligations under this Lease will not operate as a waiver of such default and any waiver of a particular default will not operate as a waiver of any subsequent or continuing default.

12. INDEMNITIES

12.1 Tenant Indemnity

Subject to obtaining all required approvals from the Risk Management Branch of the Province of British Columbia (which the Tenant will use all commercial reasonable efforts to obtain), the Tenant will (except to the extent that the Landlord is required to carry insurance hereunder) indemnify and hold harmless the Landlord from and against every demand, claim, proceeding, cause of action, judgment, expense, loss or damage (other than any consequential loss, economic loss and loss of profits), which the Landlord may suffer or incur or be put to arising out of or in connection with:

- (a) the Tenant's use and operation of the Premises, unless caused by the negligence or misconduct of the Landlord or persons for whom at law the Landlord is responsible;
- (b) any death of or injury or damage to the person or property of the Landlord, any other tenant or any other person rightfully in the Building or on the Land, where the death, injury or damage is caused by the negligence or misconduct of the Tenant or persons for whom at law the Tenant is responsible;
- (c) any default by the Tenant in observing or performing its obligations under this Lease; or
- (d) any breach by the Tenant of any warranty or representation under this Lease.

12.2 Landlord's Indemnity

The Landlord will (except to the extent that the Tenant is required to carry insurance hereunder) indemnify and hold harmless the Tenant from and against every demand, claim, proceeding, cause of action, judgment, expense, loss or damage (other than any consequential loss,

economic loss and loss of profits), which the Tenant may suffer or incur or be put to arising out of or in connection with:

- (a) the use, condition (including the environmental condition) and operation of the Land and Building, unless caused by the negligence or misconduct of the Tenant or persons for whom at law the Tenant is responsible;
- (b) any death of or injury or damage to the person or property of the Landlord, the Tenant, any other tenant, or any other person rightfully in the Building or on the Land, where the death, injury or damage is caused by the negligence or misconduct of the Landlord or persons for whom at law the Landlord is responsible;
- (c) any default by the Landlord in observing or performing its obligations under this Lease;
- (d) any breach by the Landlord of any warranty or representation under this Lease; or
- (e) any request or order made to the Tenant by any Government Body requiring investigation or remediation of any hazardous substance on, under or affecting the Land or Building, except to the extent that such request or order arises as a result of the negligence or misconduct of the Tenant or persons for whom at law the Tenant is responsible.

12.3 Survival

The indemnities set forth in this Section 12 will survive the End of the Term.

13. ENVIRONMENTAL MATTERS

The Landlord represents and warrants that, to the best of its knowledge, the Land and the Building (including the Premises) do not contain any environmental contamination and will not be in breach of any Applicable Laws governing the use, transportation, handling, storage or disposal of contaminated materials at the time the Tenant is granted possession and occupancy of the Premises. The Landlord will, at its sole cost, be responsible for the removal of any contaminants in the Land and the Building (including the Premises) that are required to be removed by Government Body, provided however, the Landlord will not be required or responsible to remove any contaminants brought into the Premises by the Tenant. The Tenant will remove any contaminants brought into the Premises by the Tenant, at its sole cost and expense.

14. GENERAL PROVISIONS

14.1 Events of Delay

If either the Landlord or the Tenant is unable to provide any service, utility, work, or repair by reason of an Event of Delay, the time for performing the obligation will be extended by that

period of time which is equal to the length of the delay, and the Landlord or the Tenant, as the case may be, will use all reasonable efforts to overcome any such Event of Delay. Neither the Landlord nor the Tenant will be entitled to compensation for any inconvenience, nuisance, or discomfort caused by such an Event of Delay, or to cancel this Lease.

14.2 Overholding

This Lease will terminate at the End of the Term without notice or demand. If the Tenant stays in the Premises after the End of the Term without a further written agreement with the Landlord, such holding over will not constitute a renewal of this Lease. In such case, the Landlord, at its option, may elect to treat the Tenant as one who has not vacated at the End of the Term and to exercise all its remedies in that situation, or may elect to construe such holding over as a tenancy from month to month subject to all the terms of this Lease, except: (i) for Term, (ii) for basic rent which will be equal to the Basic Rent payable in respect of the last year before the End of the Term, payable in advance in monthly instalments on the first day of each month, and (iii) that there will be no inducements or allowances, renewal rights, rent abatements, rights of refusal, rights to additional space or other like concessions or rights.

14.3 Exhibiting Premises

The Landlord, during Normal Business Hours, may exhibit the Premises to prospective tenants during the last six months of the Term and, at all reasonable times, to the Landlord's prospective purchasers and lenders, but, in so doing, will disturb the Tenant as little as possible.

14.4 Certificates

Either the Landlord or the Tenant, at the other's request and cost, will deliver to the other or to any other person a certificate setting out:

- (a) whether this Lease is in full force and effect;
- (b) whether it has been modified or assigned;
- (c) confirming the Rent and the state of accounts between the Landlord and Tenant;
- (d) to the best of its knowledge, the existence of any defaults; and
- (e) any other reasonable information which is requested.

14.5 Notices

Any notice, request, or demand required or permitted to be given must be in writing and will be sufficiently given if delivered by courier or mailed by prepaid registered post from within British Columbia, as follows:

(a) to the Landlord:

 _____, British Columbia

(b) to the Tenant:

VANCOUVER COASTAL HEALTH AUTHORITY
 Corporate Office
 601 West Broadway, 11th Floor
 Vancouver, British Columbia
 V5T 1X7

Attention: Executive Director, Facilities and Projects Manager

Fax: (604) 875-5673

Any notice, request, or demand will be presumed, if mailed, to have been received 5 business days after the day on which it is mailed and, if delivered, upon receipt, except that if, between the time of mailing and actual receipt, there is a mail strike, slowdown, or labour dispute which might affect delivery, the notice will be effective only if actually delivered. Either the Landlord or Tenant will give notice to the other changing its address for service.

14.6 Time of Essence

Time will be of the essence of this Lease.

14.7 Registration

The Tenant may at its cost register this Lease or any notice of the filing in respect of this Lease in the Land Title Office. In this regard, the Landlord will promptly execute and deliver to the Tenant any documentation in furtherance of this subject.

14.8 Option To Renew

[Drafting Note: consider and discuss renewal rights]

14.9 Brokerage

The Landlord is responsible for any fees/commissions owing to its agents/brokers. The Tenant is responsible for any fees/commissions owing to its agents/brokers.

14.10 Confidentiality and Publicity

The Landlord will respect and maintain the confidentiality of all medical records, client information, staff records, and software of the Tenant (the "Confidential Materials"). Without

limiting the generality of the foregoing, the Landlord covenants that it will not seize, remove, copy, damage, delete, destroy, detain, or block the Tenant's access to the Confidential Materials or to any computers, folders, or storage media or devices containing the Confidential Materials, or attempt to do any of the foregoing, or authorize any third party to do any of the foregoing.

The Landlord will use all reasonable commercial efforts to keep confidential, and to cause its employees, officers, agents, contractors and consultants, lenders and financial institutions, to keep confidential, the terms and conditions of this Lease and all financial information with respect to the Tenant, including all information with respect to Basic Rent and Gross Rent, except to the extent that it is reasonably required to disclose same, on a confidential basis, to its financial advisers, lenders and prospective purchasers.

The Landlord will notify the Tenant in advance of any proposed publicity or publications by or on behalf of the Landlord relating to this Lease or the Property (including press releases and press conferences but excluding brochures, pamphlets, books or other marketing materials intended to promote or advertise the Property) and will use reasonable efforts to make such changes thereto reasonably requested by the Tenant.

14.11 Binding Effect

This Lease will enure to the benefit of and be binding upon the Landlord and the Tenant and each of their respective heirs, executors, administrators, successors, and permitted assigns.

IN WITNESS WHEREOF the Landlord and Tenant have executed this Lease as of the day and year first above written.

Per: _____
Authorized Signatory

Authorized Signatory

VANCOUVER COASTAL HEALTH AUTHORITY

Per: _____
Authorized Signatory

Authorized Signatory

SCHEDULE A
DESCRIPTION OF LAND

Description of Land:

SCHEDULE B
FLOOR PLAN OF PREMISES

Attach floor plan of premises.