

# SCHEDULE A

## MUNICIPAL FACILITY LEASE (COMMERCIAL LEASE)

BETWEEN:

**CITY OF KELOWNA**, a municipal corporation having  
Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4  
  
(the "Landlord")

OF THE FIRST PART

AND:

**JUSTICE INSTITUTE OF BRITISH COLUMBIA**, having  
its registered offices at 715 McBride Boulevard,  
New Westminster, British Columbia, V3L 5T4  
  
(the "Tenant")

OF THE SECOND PART

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THIS LEASE, dated the 5 day of September, 2023, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

**1. BASIC TERMS, SCHEDULES, AND DEFINITIONS**

Basic Terms:

- (a) Landlord: CITY OF KELOWNA  
Address of Landlord: City Hall, 1435 Water Street  
Kelowna, B.C. V1Y 1J4  
Fax: 250-862-3349  
Email: molson@kelowna.ca
  
- (b) Tenant: JUSTICE INSTITUTE OF BRITISH COLUMBIA  
Address of Tenant: 715 McBride Boulevard, New Westminster,  
British Columbia, V3L 5T4
  
- (c) Premises: Part of Lot 1, Section 30, Township 26, KAP  
8081, ODYD  
PID: 009-890-165  
  
As identified in the attached Schedule A
  
- (d) License Area: The parking area, landscaped area, and  
surrounding property, as outlined in Schedule A  
as the "License Area", for purposes necessarily  
related to the permitted use of the Premises
  
- (e) Initial Term: Two (2) years  
Commencement Date: January 1, 2023
  
- (f) Renewal Term (if any): Three (3) one (1) – year renewal options, at the  
sole discretion of the Landlord
  
- (g) Annual Base Rent + Tax: 2023 - \$68,000.00 + GST  
2024 - \$75,000.00 + GST
  
- (h) Security/Performance Deposit: N/A
  
- (h) Property Taxes: Tenant Pays
  
- (i) Utilities: Tenant Pays
  
- (j) Permitted Use: For the Purpose of the Tenant's business as an  
educational institution

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

## 1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A	Premises and License Area
B	Maintenance Responsibility Checklist
C	Insurance

## 2. PREMISES AND LICENSE AREA

### 2.1 Premises

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

### 2.2 License Area

The Landlord furthermore grants a license (the "License") to the Tenant to use the parking area, landscaped area, and surrounding property outlined as the License Area in Schedule A, for purposes necessarily related to the permitted use of the Premises.

### 2.3 Leasehold Improvements

Leasehold improvements include any fixtures, improvements, installations, alterations, and additions to the Premises made from the time of the Tenant's occupancy and anytime hereafter made, erected, or installed, whether by the Tenant, the Landlord, or any other third party, in the Premises; including all partitions however fixed, including moveable partitions, and all wall-to-wall carpeting, with the exception of such carpeting where it is laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment ("Leasehold Improvements").

### 3. TERM

#### 3.1 Term

The Term of this Lease, and the related License, shall be on a month-to-month basis until the Tenant has obtained approval from the Ministry of Post-Secondary Education and Future Skills, provided always that the expiration date of the Lease shall be December 31<sup>st</sup>, 2024, and subject to earlier termination or renewal on the terms and conditions as set out herein.

#### 3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than six (6) months prior to the expiration of the initial Term of two (2) years;
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of two (2) years observed and performed the covenants and conditions herein contained

then the Landlord may, at the Landlord's sole discretion and acting reasonably, grant to the Tenant at the Tenant's expense a renewal lease of the Premises and, if applicable, the License Area for the Renewal Term(s) of one (1) year, upon the same terms and conditions, Annual Base Rent, and Additional Rent as are herein contained.

The lease may be renewed up to three (3) times, for a total of five (5) years including the original Term.

### 4. RENT

#### 4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

- (a) Annual Base Rent  
Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective year of this Lease.
- (b) Additional Rent

In addition, but subject to any operating costs the Landlord expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and, if applicable, the License Area including all applicable real estate taxes and other charges.

#### 4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and, if applicable, the License Area including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via Bank Transfer on a monthly basis.

#### 4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

#### 4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

#### 4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

#### 4.6 Net Lease

The Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Premises and, if applicable, the License Area whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

#### 4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

### 5. **TENANT'S COVENANTS**

#### 5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and, if applicable, the License Area and commence to carry on business in all or substantially all of the Premises and, if applicable, the License Area no later than 30 days after the Commencement Date, to use the Premises and, if applicable, the License Area only for the purpose set out in clause 1(j) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises and, if applicable, the License Area including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises and, if applicable, the License Area anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises and, if applicable, the License Area to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises and if applicable, the License Area, the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Reputational Obligations

The Tenant shall not take any action, or permit its officers, employees, contractors, or agents to take any action, which is intended, or would reasonably be expected, to harm the Landlord's reputation, or which would reasonably be expected to lead to unwanted or unfavorable publicity to the Landlord; provided, however, the foregoing limitation shall not apply to compliance with any legal process or statements made in response to authorized inquiry from a court or regulatory body.

(h) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises and, if applicable, the License



Area necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.

(i) Overholding

That if the Tenant shall continue to occupy the Premises and, if applicable, the License Area after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(j) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Landlord.

(k) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises and, if applicable, the License Area for the purpose of inspection or making repairs, alterations, or improvements to the Premises and, if applicable, the License Area as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(l) Showing Premises

Upon twenty four (24) hours' advanced notice, to permit the Landlord and its authorized agents and employees to show the Premises and, if applicable, the License Area to prospective tenants during the normal business hours of the last three months of the Term.

## 6. LANDLORD'S COVENANTS

### 6.1 Landlord's Covenants

The Landlord covenants with the Tenant that provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises and, if applicable, the License Area for the Term hereby granted, without

any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

## **7. REPAIR, DAMAGE, AND DESTRUCTION**

### **7.1 Landlord's Repairs**

The Landlord covenants with the Tenant that the Landlord will maintain the Premises according to the terms set out in the Landlord & Tenant Responsibility Checklist attached as Schedule C. Unauthorized repairs, except in a bona fide emergency, will not be reimbursed.

### **7.2 Tenant's Repairs**

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises and, if applicable, the License Area including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and License Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

### **7.3 Abatement and Termination**

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises that is not as a result of reasonable wear and tear and, if applicable, the License Area:

- (a) if the damage is such that the Premises and, if applicable, the License Area or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of ten (10) days, then:
  - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises and, if applicable, the License Area are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises and, if applicable, the License Area not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the

extent that any part of the Premises and, if applicable, the License Area is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence;

- (b) if the damage sustained identifies a repair or replacement is necessary that is the responsibility of the Landlord pursuant to Maintenance Responsibility Checklist attached as Schedule C, and if such repair or replacement cost is equal to or in excess of fifteen thousand dollars (\$15,000.00), then the Landlord shall provide written notice to the Tenant of the expense of such repair and replacement and the Tenant may, at its sole discretion, approve the repair or replacement, in which instance the Tenant shall be responsible for any repair or replacement costs in excess of fifteen thousand dollars (\$15,000.00). In the event the Tenant does not approve the repair or replacement the Landlord may, at its sole discretion, exercisable by written notice to the Tenant, given within one hundred twenty (120) days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and, if applicable, the License Area to the Landlord with reasonable expedition but in any event within one hundred twenty (120) days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises and, if applicable, the License Area having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence;
- (c) if the Premises and, if applicable, the License Area are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within two hundred forty (240) days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option, exercisable by written notice to the Tenant or Landlord, given within sixty (60) days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and, if applicable, the License Area to the Landlord with reasonable expedition but in any event within sixty (60) days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises and, if applicable, the License Area having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the

Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

#### 7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

### 8. TAXES AND OTHER COSTS

#### 8.1 Tenant Tax Obligation

The Tenant covenants with the Landlord:

- (a) to pay when due, all Property Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Premises by the Landlord, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;
- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and

#### 8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease as per the terms contained herein.

### 9. UTILITIES AND ADDITIONAL SERVICES

#### 9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, utilities and services of whatever nature or kind required in connection with the Premises and, if applicable, the License Area, and the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning, and garbage disposal. The tenant shall be responsible for obtaining and maintaining a gas operating permit. The tenant shall be responsible for obtaining and maintaining an electrical operating permit. The tenant is responsible for informing the Property

Manager, Real Estate and Building Services of the permits and who the Field Safety Representative is.

#### 9.2 Additional Services

Snow clearing, maintenance of parking lot, grass cutting, fertilizing, irrigation, leaf and litter clean up, and tree work services shall be provided by the Landlord.

### 10. LICENSES, ASSIGNMENTS, AND SUBLETTING

#### 10.1 General

It is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises and, if applicable, the License Area, to another party.

### 11. FIXTURES AND IMPROVEMENTS

#### 11.1 Installation of Fixtures and Improvements

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises and, if applicable, the License Area, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises and, if applicable, the License Area shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

#### 11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises and, if applicable, the License Area, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

### 11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

### 11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises and, if applicable, the License Area shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

### 11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises or License Area, but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

## **12. INSURANCE AND LIABILITY**

### **12.1 Tenant To Provide**

The Tenant shall procure and maintain, at its own expense and cost, the insurance policies listed in section 12.2 of this Lease, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the agreement, services and/or occupancy the Landlord advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this agreement, services and/or occupancy until the date that the Landlord certifies in writing completion of the agreement, services and/or occupancy or such further period as may be specified by the Landlord.

### **12.2 Insurance**

As a minimum, the Tenant shall, without limiting its obligations or liabilities under any other contract with the Landlord, procure and maintain, at its own expense and cost, the following insurance policies:

a) **Workers' Compensation Insurance**

Covering all employees of the Tenant engaged in the agreement, services and/or occupancy in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

b) **Comprehensive General Liability Insurance**

- (i) providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
- (ii) providing for all sums which the Tenant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this agreement, services and/or occupancy or any operations carried on in connection with this agreement;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;

- (iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

### 12.3 Automobile Liability Insurance

Covering all motor vehicles, owned, operated and used or to be used by the Tenant directly or indirectly in the performance of this agreement, services and/or occupancy. The limit of liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

### 12.4 The Landlord Named As Additional Insured

The policies required by sections 12.1, 12.2 and 12.3 above shall provide that the Landlord is named as an "Additional Insured" thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the Landlord.

### 12.5 Tenant's Sub-contractors

The Tenant shall require each of its sub-contractors to provide comparable insurance to that set forth under section 2 of Schedule C.

### 12.6 Certificates of Insurance

The Tenant agrees to submit Certificates of Insurance in the form attached as Schedule C for itself and all of its sub-contractors to the Landlord prior to the commencement of this agreement, services and/or occupancy. Such Certificates shall provide that thirty (30) days' written notice shall be given to the Landlord, prior to any material changes or cancellations of any such policy or policies.

### 12.7 Other Insurance

After reviewing the Tenant's Certificates of Insurance, the Landlord may require other insurance or alterations to any applicable insurance policies in force during the period of this contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the Landlord and result in increased insurance premium, such increased premium shall be at the Tenant's expense.

### 12.8 Additional Insurance

The Tenant may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the Landlord. The Tenant shall ensure that all of its sub-contractors are informed of and comply with the Landlord's requirements set out in this Schedule C.

### 12.9 Insurance Companies



All insurance, which the Tenant is required to obtain with respect to this agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

#### 12.10 Failure to Provide

If the Tenant fails to do all or anything which is required of it with regard to insurance, the Landlord may do all that is necessary to effect and maintain such insurance, and any monies expended by the Landlord shall be repayable by and recovered from the Tenant. The Tenant expressly authorizes the Landlord to deduct from any monies owing the Tenant, any monies owing by the Tenant to the Landlord.

#### 12.11 Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Tenant or any sub-contractor shall not be held to waive or release the Tenant or sub-contractor from any of the provisions of the Insurance Requirements or this agreement, with respect to the liability of the Tenant otherwise. Any insurance deductible maintained by the Tenant or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the Landlord will be recovered from the Tenant as stated in section 12.10 of this Part.

#### 12.12 Indemnification and Hold Harmless Clause

The Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant, or any assignee, sub-tenant, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease, excepting always liability arising from the negligence, acts, or omissions of the Landlord or those for whom the Landlord is responsible at law. This indemnity shall survive the expiry or termination of this Lease.

### 13. ENVIRONMENTAL MATTERS

#### 13.1 Definitions

For the purposes of this Part and Lease, the following terms shall have the following meanings:

- a) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport,

remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

- b) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);
- c) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
- d) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

### 13.2 Tenant's Representations and Warranties

The Tenant represents and warrants to the Landlord, and acknowledges that the Landlord is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

- a) except as disclosed to the Landlord in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and
- b) except as disclosed to and approved in writing by the Landlord, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 16.1 of this Agreement.

### 13.3 Condition of Premises

The Tenant acknowledges and agrees that the Landlord has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is

satisfied as to their environmental condition. The Tenant will not be responsible or liable for any Contaminants that are or were present and existing prior to the Tenant's occupancy. Likewise, the Landlord will not be responsible for the release of pre-existing Contaminants as a result of any negligent act or omission of the Tenant.

#### 13.4 Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

#### 13.5 Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

#### 13.6 Evidence of Compliance

The Tenant shall promptly provide to the Landlord a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the Landlord's request from time to time, obtain from an independent environmental consultant approved by the Landlord an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the Landlord and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the Landlord's request from time to time, provide the Landlord with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the Landlord.

#### 13.7 Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the Landlord, which consent may be unreasonably withheld.

#### 13.8 Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the Landlord at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.

#### 13.9 Access by Landlord

Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the Landlord requires, permit the Landlord to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the Landlord deems necessary for the safety and preservation of the Premises. The Landlord will take reasonable steps to minimize any interference with the Tenant's operations in the Premises or License Area.

#### 13.10 Authorizations

The Tenant shall promptly provide to the Landlord on request such written authorizations as the Landlord may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

#### 13.11 Notices

The Tenant shall promptly notify the Landlord in writing of:

- a) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the Landlord or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- b) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- c) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Tenant shall further notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the Landlord to notify the regulatory authorities.

#### 13.12 Removal of Contaminants

Prior to the expiry or earlier termination of this Agreement or at any time if requested by the Landlord or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the Landlord full information with respect to any remedial work performed pursuant to this section and shall comply with the Landlord's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the Landlord to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the Landlord, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the Landlord reasonably determines that the Landlord, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the Landlord may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

#### 13.13 Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

#### 13.14 Indemnity

The Tenant shall indemnify and save harmless the Landlord and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the Landlord or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

- a) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or
- b) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

#### 13.15 Survival of Tenant's Obligations

The obligations of the Tenant under this Part (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Part are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

### **14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES**

#### 14.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

- a) Sale or Financing of Premises

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

- b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

- c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations. The Landlord shall provide thirty (30) days' written notice of such assignment.

## **15. OCCURRENCE OF DEFAULT**

### **15.1 Unavoidable Delay**

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises and, if applicable, the License Area.

### **15.2 No Admission**

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title,

or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

### 15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

## 16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

### 16.1 Remediating by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, and the event of default is not remedied within the respective time period for doing so, the Landlord:

- a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises and, if applicable, the License Area to do any work or other things therein, and in such event all expenses of the Landlord in remediating or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

### 16.2 Remedies Cumulative

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

### 16.3 Right of Re-entry on Default



Provided and it is expressly agreed that:

- a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or
- b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or
- c) if without the written consent of the Landlord the Premises and, if applicable, the License Area shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or
- f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- g) if any policy of insurance upon the Premises from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises and, if applicable, the License Area by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises and, if applicable, the License Area and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or
- h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises and, if applicable, the License Area under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises and, if applicable, the License Area or any part thereof in the name of the whole

and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and, if applicable, the License Area and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

#### 16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises and, if applicable, the License Area under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises and License Area to the Landlord in accordance with clause 16.9.

#### 16.5 Right of Termination – No Default

In the event that the Landlord requires the use of the Premises for whatever reason, the Landlord shall have the right to terminate this Lease after giving the Tenant one (1) year written notice of the Landlord's intention to terminate, the effective date being three hundred sixty five (365) days from the notice.

#### 16.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises and License Area or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Landlord's other rights and remedies:

- a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and License Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.

#### 16.7 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the Landlord or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlords' consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

#### 16.8 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and, if applicable, the License Area and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises [or License Area upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

#### 16.9 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises and, if applicable, the License Area in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises and, if applicable the License Area, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises and if applicable the License Area, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

### 17. OCCUPATIONAL HEALTH AND SAFETY

#### 17.1 Prime Contractor

The Tenant agrees that it is the Prime Contractor for the purposes of the Worker's Compensation Act. The Tenant shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Tenant, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.

#### 17.2 Compliance with Laws

The Tenant and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices and appliances. The Landlord may, on twenty-four (24) hours written notice to the Tenant, suspend the Contract hereunder immediately as a result of failure to install such devices or because conditions of immediate danger exist that would likely result in injury to any person. Such suspension will continue until the default or failure is corrected.

#### 17.3 Indemnification

Without limiting the generality of any other indemnities granted by the Tenant herein, the Tenant shall indemnify and save harmless the Landlord against any loss or expense or penalty suffered or incurred by the Landlord by reason of failure of the Tenant, its agent or employees, or any subcontractors of the Tenant, its agent or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

### **18. WORKSAFE BC COVERAGE**

#### 18.1 General

The Tenant shall, at its own expense, procure and carry or cause to be procured and carried and paid in full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Tenant agrees that the Landlord has the unfettered right to set off the amount of any unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the Landlord to the Tenant. The Landlord shall have the right to withhold payment under this contract until the WorkSafe BC premiums, assessments or penalties in respect of this Contract have been paid in full.

#### 18.2 Proof of Registration

The Tenant shall provide the Landlord with the Tenant's WorkSafe BC registration number and a letter from WorkSafe BC confirming that the Tenant is registered in good standing with WorkSafe BC and that all assessments have been paid to date thereof prior to the Landlord having any obligations to pay monies under this contract.

#### 18.3 Indemnification

The Tenant shall indemnify and hold harmless the Landlord from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

## **19. NON-LIABILITY OF LANDLORD OFFICIALS**

Under no circumstances shall any officer, employee, or agent of the Landlord acting within the course and scope of his/her job responsibility be personally liable to the Tenant, or any party claim through or on behalf of the Tenant, with regards to the Contract, including but not limited to its negotiation, execution, performance, or termination.

## **20. MISCELLANEOUS**

### **20.1 Notices**

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises or License Area. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

### **20.2 Extraneous Agreements**

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease or the Premises or License Area save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the Landlord, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

### **20.3 Time of Essence**

Time shall be of the essence in this Lease.

#### 20.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

#### 20.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

#### 20.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

#### 20.7 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

#### 20.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should

any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

#### 20.9 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

#### 20.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises or License Area shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

#### 20.11 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

#### 20.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises or License Area shall be taken by any lawful power or authority by the right of expropriation, the Landlord may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises or License Area and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.10 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises or License Area, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale

by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

20.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the City and the Society have executed this Agreement on the date first above written.

**CITY OF KELOWNA** by its authorized )  
signatories: )  
 )  
\_\_\_\_\_)  
Mayor )  
 )  
\_\_\_\_\_)  
City Clerk )

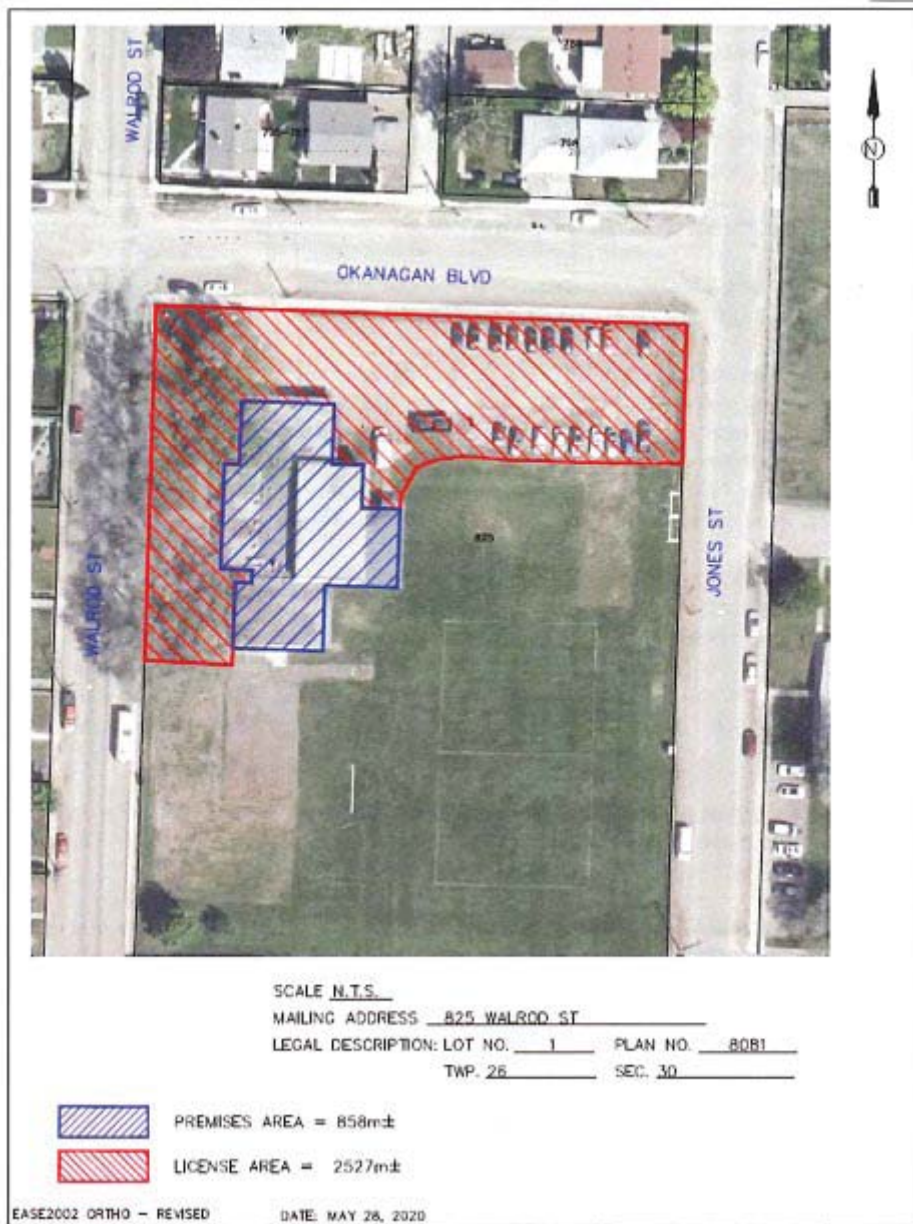
**JUSTICE INSTITUTE OF BRITISH COLUMBIA** )  
by its authorized signatory: )  
Mike )  
Proud )  
\_\_\_\_\_)  
Signature )  
Mike Proud )  
\_\_\_\_\_)  
Print Name )

Digitally signed by  
Mike Proud  
Date: 2023.09.12  
07:47:03 -07'00'



SCHEDULE A

PREMISES AND LICENSE AREA



## SCHEDULE B

### MAINTENANCE RESPONSIBILITY CHECKLIST

<b>Justice Institute - Walrod St 825 - Maintenance Responsibility</b>	<b>Landlord</b>	<b>Tenant</b>	<b>N/A</b>
Boiler operating permits			X
Electricity		X	
Electrical field safety representative		X	
Electrical operating permit		X	
Electrical system preventative maintenance		X	
Electrical system repairs (liability limit)	X		
Electrical/lights - lamp & tube replacement		X	
Elevator equipment repairs (liability limit)			X
Elevator maintenance contract			X
Elevator operating permits			X
Emergency lighting testing & repairs		X	
Exterior doors, windows, facades, utilities, parking lots, lighting etc.		X	
Fire alarm system repairs (liability limit)	X		
Fire alarm system testing & inspection contracts		X	
Fire extinguisher monthly & annual inspections		X	
Fire safety plan and fire drills		X	
Fire sprinkler system repairs (liability limit)			X
Fire sprinkler system testing and inspection contracts			X
Furnishings (maintain & replace)		X	
Garbage removal		X	
Heating		X	
HVAC preventative maintenance (see appendix "A")		X	
HVAC repairs (liability limit)		X	
Insurance - automotive		X	
Insurance - liability		X	
Insurance - property, building (provided by the Landlord, paid for by the Tenant)	X		
Insurance - tenant owned furnishings & fixtures		X	
Insurance - tenant owned operation equipment, computers, & furnishings		X	
Interior walls, flooring, doors, ceilings, lighting, plumbing fixtures etc.		X	
Internet		X	
Janitorial services & supplies		X	
Kitchen Exhaust Hood preventative maintenance (See appendix "E")			X
Kitchen Exhaust Hood repairs (liability limit)			X
Kitchen Hood Fire suppression system preventative maintenance (See appendix "E")			X
Kitchen Hood Fire suppression repairs (Liability Limit)			X
Kitchen Hood Fire suppression testing			X
Keys & locks repair and maintenance		X	
Landscape maintenance	X		
Licences & permits		X	
Maintenance of Mechanical, Electrical, Plumbing, Utility, and Elevating Systems		X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X		
Pest control		X	
Plumbing system preventative maintenance		X	
Plumbing system repairs (liability limit)	X		
Recycling program		X	
Roof inspection & maintenance	X		
Roof repairs (liability limit)	X		
Security system		X	
Signage		X	
Snow removal - sidewalks and internal walkways		X	
Snow removal - parking lot	X		
Taxes			
Telephone		X	
Tenant improvements		X	
Tenant improvements - Maintenance		X	
Tree removal	X		
Utilities - electricity		X	
Utilities - natural gas		X	
Utilities - propane			X
Utilities - water, sewer		X	
Vandalism (exterior) (liability limit)	X		
Vandalism (interior) (liability limit)		X	
Window Cleaning (exterior)		X	
Window Cleaning (interior)		X	

SCHEDULE C

INSURANCE



**CERTIFICATE OF INSURANCE**

City staff to complete prior to circulation

City Dept.: \_\_\_\_\_  
 Dept. Contact: \_\_\_\_\_  
 Project/Contract/Event: \_\_\_\_\_

Insured

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Broker

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

**Location and nature of operation and/or contract reference to which this Certificate applies:**

\_\_\_\_\_

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage \$ <b>2,000,000</b> Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage \$ <b>2,000,000</b> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Company (Insurer or Broker)

\_\_\_\_\_  
 Signature of Authorized Signatory

\_\_\_\_\_  
 Date