

AGREEMENT

BETWEEN

CANADIAN SPACE AGENCY

AND

TBD

FOR THE LOAN OF CERTAIN

PUBLIC PROPERTY KNOWN AS

TBD

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE 1	– INTERPRETATION	4
ARTICLE 2	– LOAN.....	4
ARTICLE 3	– CONSIDERATION	5
ARTICLE 4	– STATUS OF THE PARTIES.....	5
ARTICLE 5	– DELIVERY	6
ARTICLE 6	– SHIPPING CHARGES	6
ARTICLE 7	– RISK, INSURANCE.....	7
ARTICLE 8	– SECURITY.....	7
ARTICLE 9	– PHYSICAL INSPECTION AND LOCATION OF PROPERTY.....	7
ARTICLE 10	– NO WARRANTY	8
ARTICLE 11	– SOFTWARE	8
ARTICLE 12	– LIMITATION OF LIABILITY	9
ARTICLE 13	– INDEMNITY.....	9
ARTICLE 14	– USE.....	9
ARTICLE 15	– ENCUMBRANCE	10
ARTICLE 16	– MAINTENANCE, REPAIRS BY BORROWER	10
ARTICLE 17	– IMPROVEMENTS BY BORROWER.....	10
ARTICLE 18	– LOSS, REPLACEMENT	11
ARTICLE 19	– EXCUSABLE DELAY	11
ARTICLE 20	– ASSIGNMENT	12
ARTICLE 21	– MINISTER'S RIGHT TO RECALL	12
ARTICLE 22	– TERMINATION BY BORROWER.....	12
ARTICLE 23	– TERMINATION BY MINISTER.....	13
ARTICLE 24	– EVENTS UPON END OR TERMINATION	14
ARTICLE 25	– CAPABILITY OF THE PROPERTY UPON RETURN	15
ARTICLE 26	– NOTICES	15
ARTICLE 27	– AMENDMENTS AND WAIVERS	16
ARTICLE 28	– LOAN AGREEMENT TO ENURE.....	16
ARTICLE 29	– REPORTS	16
ARTICLE 30	– EFFECTIVE DATE AND RENEWAL	17
ARTICLE 31	– CONFLICT OF INTEREST AND VALUES AND ETHICS CODE FOR THE PUBLIC SECTOR.....	17
ARTICLE 32	– NO BRIBE	18
ARTICLE 33	– CONTINGENCY FEES.....	18
ARTICLE 34	– DISPUTE RESOLUTION	18
ARTICLE 35	– ENTIRE AGREEMENT.....	19
ARTICLE 36	– SURVIVAL	19
ARTICLE 37	– APPLICABLE LAW	19
ARTICLE 38	– LANGUAGE OF CHOICE	20

This Agreement made in duplicate

BETWEEN: CANADIAN SPACE AGENCY, an agency of the Government of Canada, acting through and represented by the Minister of Industry (Hereinafter referred to as "CSA" or "the Minister")

PARTY OF THE FIRST PART

AND: **TBD**, a body corporate duly incorporated under the laws of **TBD**, having its head office at **TBD** (Hereinafter referred to as the "Borrower")

[Note: if the borrower is an individual, use the following: Mr./Mrs. **TBD**, having a place of business at **TBD** (Hereinafter referred to as the "Borrower")]

PARTY OF THE SECOND PART

WHEREAS the Borrower wishes to borrow from the Canadian Space Agency certain public property known as **TBD** to be used exclusively and solely by the Borrower in relation to [**TBD** - e.g. *conducting further research and development; conducting demonstrations in aid of commercialization efforts; performing commercial services appropriate to the designed intent of the Property with the intent of generating revenues accruing to the Borrower; the Borrower's displays; or any other purpose in line with the mandate and objects of the CSA*]; and

WHEREAS the Minister is authorized, pursuant to the Public Property Loan Regulations, SOR/92-745 dated December 14, 1992, to loan either gratuitously or for such consideration as CSA may determine, public property belonging to Her Majesty for the loan of which there is no other provision in law; and

WHEREAS the Minister considers it appropriate to loan the above-mentioned public property to the Borrower and, as a result, has decided to enter into an agreement with the Borrower pursuant to, and in accordance with, the terms and conditions hereinafter set forth (hereinafter referred to as "this Loan Agreement");

NOW THEREFORE this Loan Agreement witnesseth that CSA and the Borrower have, in consideration of the mutual covenants hereinafter set forth, agreed as follows:

Initials:

ARTICLE 1 – INTERPRETATION

- (1) In this Loan Agreement, unless the context otherwise requires:

"Borrower" means **TBD**;

"CSA" means the Canadian Space Agency as established by the Canadian Space Agency Act, S.C. 1990, c. 13;

"Her Majesty" means Her Majesty the Queen in right of Canada, acting through and represented by the Minister;

"Minister" means the Minister of Industry as minister responsible for the CSA, and any official acting on the Minister's behalf;

"Parties" means the CSA and the Borrower;

"Property" means the public property known as **TBD** which is listed and more particularly described in Schedule "A" to this Loan Agreement and includes any item of it;

- (2) Words connoting the singular shall include plural, the masculine, the feminine, and vice versa.
- (3) The words "hereof", "herein" and "hereunder" refer to the terms of this Loan Agreement.
- (4) The Article headings of this Loan Agreement are not part of this Loan Agreement and are included solely for convenience.

ARTICLE 2 – LOAN

- (1) Subject to the terms and conditions of this Loan Agreement, and, in particular, to Paragraph (2) of this Article, CSA shall loan to the Borrower the Property for the exclusive and sole use of The Borrower for a term commencing on the Effective Date and ending on **TBD**.
- (2) This Loan Agreement is conditional upon the Borrower using or permitting the Property to be used solely for purposes of **TBD** - *e.g. conducting further research and development; conducting demonstrations in aid of commercialization efforts; and performing commercial*

services appropriate to the designed intent of the Property with the intent of generating revenues accruing to the Borrower; the Borrower's displays; or any other purpose in line with the mandate and objects of the CSA].

- (3) The Property shall always remain and be deemed to be personal and movable property, even though the Property may hereafter become attached or affixed to realty.

ARTICLE 3 – CONSIDERATION

- (1) This Loan Agreement is made by the Minister without monetary consideration to be paid by the Borrower.

[Note: use this paragraph as paragraph 1 instead if the Borrower is required to pay any amount of money in return for the loan. Modify as needed.]

- (1) In consideration for this Loan Agreement, the Borrower shall make the following payments to Her Majesty:
 - (a) A payment of [Insert the amount in letters] dollars (\$XXX), at the time of the last signature of this Loan Agreement;
 - (b) A yearly payment [Insert the amount in letters] dollars (\$XXX), on each anniversary date of the last signature of this Loan Agreement.

[Note: use the following paragraph if the Borrower is requested to perform some form of services with the borrowed public property in return for the loan]

- (2) In consideration for this Loan Agreement, the Borrower shall **TBD**;

ARTICLE 4 – STATUS OF THE PARTIES

- (1) The Parties acknowledge and agree that they are independent from each other and that nothing in this Loan Agreement is intended to create a partnership, a joint venture or an agency between the Borrower and Her Majesty, the Minister, or the CSA.
- (2) The Borrower agrees not to represent itself as an agent of Her Majesty, of the Minister or of the CSA to anyone. The Borrower shall conduct itself, in all respects, as a distinct entity

from Her Majesty, the Minister and the CSA and as to maintain that distinction in the eye of all third parties.

ARTICLE 5 – DELIVERY

[Note: use the following paragraph if the Borrower is already in possession of the Property]

- (1) The Borrower acknowledges that it has possession of the Property, that the Property is in working condition and good state of repair, and that the Property is suitable for its purposes.

[Note: use the following paragraphs if the Borrower is **not** already in possession of the Property]

- (1) Delivery of the Property by the Minister, or at the Minister's orders, to the Borrower, or to a common carrier designated by the Borrower, or to any person agreed to in writing between the Minister and the Borrower, for delivery to the Borrower shall constitute delivery to the Borrower hereunder. The Minister will notify the Borrower of the date of availability of the Property and give to the Borrower a reasonable opportunity to inspect the Property as to its condition and state of repair and its suitability for the purposes of the Borrower. The Borrower may supervise and inspect any preparation, packing and handling of the Property performed by the Minister for the purposes of this Loan Agreement.
- (2) Delivery of the Property by the Minister to the Borrower shall be in accordance with the delivery schedule set forth in Schedule "A" to this Loan Agreement.

ARTICLE 6 – SHIPPING CHARGES

[Note: use the following paragraph if the Borrower is **not** already in possession of the Property]

- (1) The Minister shall prepare and pack the Property to delivery to the Borrower, at no charge to the Borrower. The Borrower shall be responsible for all shipping, handling and storage associated with:
 - (a) transporting the Property to the place or places where it is to be used by the Borrower; and
 - (b) returning the Property to CSA in accordance with the terms of Article 24 hereof, and

the Borrower shall be responsible for the payment of all charges and costs associated with (a) and (b) above.

[Note: use the following paragraph if the Borrower is already in possession of the Property]

- (1) At the end of the term, the Borrower shall return the Property to CSA in accordance with the terms of Article 24 hereof, and shall be responsible for the payment of all charges and costs associated with the return, including shipping, handling and storage.

ARTICLE 7 – RISK, INSURANCE

Except as herein otherwise provided, the Property shall be at the risk of the Borrower until the Property has been returned to CSA. The Borrower shall be responsible for any loss of, or damage to, the Property, and shall insure the Property to the full replacement value thereof, as listed in Schedule "A" hereto, against loss, damage or injury arising from any cause whatsoever, normal wear and tear excepted. The Borrower shall, upon request therefor, provide a copy of any such insurance policy to CSA.

ARTICLE 8 – SECURITY

The Borrower shall provide full and reasonable physical security in respect of the Property.

ARTICLE 9 – PHYSICAL INSPECTION AND LOCATION OF PROPERTY

[Note: use this paragraph when the location of the Property during the term of the loan is known already at the time of the signature of the Agreement]

- (1) The Borrower shall keep the Property at TBD, located TBD, and shall not move the Property from this location without the prior authorization of a duly authorized representative of the Minister in writing. Such authorization shall be subject to terms and conditions set by the Minister. In any event, the Borrower shall ensure that the Property shall not leave Canada without the authorization of a duly authorized representative of the Minister in writing.

[Note: use this paragraph when the location of the Property during the term of the loan is unknown

Initials:

at the time of the signature of the Agreement]

- (1) The Borrower shall provide to CSA notice of the location of the Property or any item thereof, and shall inform CSA of any change of location of the same.
- (2) The Minister shall, upon reasonable notice and during normal business hours, have access to the Property for purposes of inspection. The Borrower shall ensure that the Minister shall, upon reasonable notice and during normal business hours, have access on a non-interference basis for purposes of inspection to any of the Property which may be installed or housed on the premises of third parties.
- (3) The Borrower shall provide to the Minister and to the Minister's designated invitees, upon reasonable notice and during normal business hours, access to the Property and shall run demonstration as required of the Property's functionality and performance.

ARTICLE 10 – NO WARRANTY

The Borrower acknowledges and agrees that the Property is loaned on an “as is” basis. Accordingly, and notwithstanding any other provision hereof, the Minister makes no representations, warranties or conditions, whether express or implied,

- (a) as to the quality, safety, correctness, performance, durability or accuracy of the Property;
- (b) that specific results will be obtained from the use of the Property; or
- (c) that the Property is suitable for any particular purpose, including any of the Borrower’s purposes.

ARTICLE 11 – SOFTWARE

The Borrower acknowledges that where the Property or any item of it, as listed in Annex A, include software, or where the use of the Property requires the use of software, the Minister does not transfer any associated right or license to use such software to the Borrower under this Loan Agreement. The Borrower acknowledges and agrees that it is the sole responsibility of the Borrower to ensure that it has obtained from the relevant third parties the right and licence to use such software. The Borrower further acknowledges and agrees that Annex A may not contain the complete list of the software included with the Property or required to use it, and that it is the Borrower’s sole responsibility to ensure it has obtained the necessary rights and license to use such software.

ARTICLE 12 – LIMITATION OF LIABILITY

- (1) The Borrower hereby acknowledges and agrees that neither Her Majesty nor the Minister, the CSA, or any of their officers, employees, agents and servants shall be responsible or liable to the Borrower for any loss or damage of any kind whatsoever (including injury, death, and loss of profit, loss of business, depletion of goodwill or like loss, and any other indirect damages) suffered, or alleged to be suffered, by any person through the use of the Property by the Borrower or in relation in any way whatsoever with this Loan Agreement. .
- (2) Neither Her Majesty nor the Minister, the CSA, or any of their officers, employees, agents and servants shall be liable to the Borrower for indirect or consequential damages or for any purely economic loss or loss of profit arising, or alleged to arise, from the performance of, or failure to perform, any provision of this Loan Agreement.
- (3) The Borrower hereby waives any and all claims, actions, demands and proceedings of whatever kind or nature against Her Majesty, the Minister, the CSA and all their officers, employees, agents and servants that may arise, or be alleged to arise, from any loss or damage referred to in paragraphs (1) and (2) above.

ARTICLE 13 – INDEMNITY

The Borrower shall be liable for and shall indemnify and save harmless Her Majesty, the Minister, the CSA and all their officers, employees, agents and servants from and against any and all claims, actions, demands, costs, or damages of any nature or kind arising from, alleged to arise from, or in connection with any aspect of this Loan Agreement, including, without limitation, the possession or use of the Property by the Borrower or by any other person with the permission of the Borrower during the term of this Loan Agreement or any extension hereof.

ARTICLE 14 – USE

- (1) The Borrower shall use and permit to be used the Property in accordance with any applicable manufacturer's manuals or instructions which have been provided to or are known to the Borrower.
- (2) The Borrower shall, in its use of the Property, comply at all times with all applicable laws, governmental regulations such as the Controlled Goods Program under the *Defense Production Act* (R.S., 1985, c. D-1), administrative requirements, and the terms of any

permits or licenses issued by governments or other entities and that govern the use of the Property.

ARTICLE 15 – ENCUMBRANCE

- (1) The Borrower shall not sell, dispose or assign the Property, in whole or in part, or suffer any lien, mortgage, hypothec or pledge upon any interest in the Property.
- (2) Except with the prior written authorization of the Minister, the Borrower shall not lease or assign the Property, or accept any remuneration for the use of the Property by any third party, and any remuneration which may be received by the Borrower for such use shall, unless otherwise approved in writing by the Minister, be deemed to have been received by the Borrower in trust for Her Majesty.

ARTICLE 16 – MAINTENANCE, REPAIRS BY BORROWER

Subject to Articles 17 and 18 hereof, the Borrower shall, at its own cost and expense, maintain, service and keep the Property in good repair condition and working order, and shall furnish and install all parts, mechanisms, devices required therefore. All parts, mechanisms and devices so furnished and installed shall immediately become part of the Property for all purposes thereof; parts, mechanisms and devices which have been replaced or are no longer required shall be returned to the CSA and Schedule “A” to this Agreement shall be amended accordingly.

ARTICLE 17 – IMPROVEMENTS BY BORROWER

The Borrower may, with the prior written approval of the Minister and at its own cost, add to or modify any item of the Property. The Borrower shall, when seeking approval of an addition or modification of an item of the Property, furnish to the Minister written particulars, including sketches or plans, of all additions to or modifications of the Property, including assessment of the impact of such addition or modification to the value and utility of the Property. Any such additions or modifications which, in the opinion of the Minister, cannot be removed without damage to the property or without causing a diminution of its utility to the Crown, shall become the property of Her Majesty and Schedule “A” to this Agreement shall be amended accordingly.

ARTICLE 18 – LOSS, REPLACEMENT

- (1) In the event that any item of the Property shall become lost, stolen, destroyed or damaged beyond repair for any reason, or in the event of any condemnation, confiscation, theft or seizure or expropriation of such items, other than a confiscation, seizure or expropriation by Her Majesty, the Borrower shall promptly inform the Minister thereof. The Minister may elect to receive a cash payment equal to the replacement value of such item or to direct the Borrower to take immediate steps to cause the replacement of such item with property which is free and clear of all liens and encumbrances and which, in the opinion of the Minister, is similar in condition and value to the item of Property prior to the occurrence of any of the foregoing events. Such replacement shall take place at the Borrower's expense and, upon completion of the replacement, such replacement or part shall become subject to this Loan Agreement and the replaced item of the Property shall simultaneously be released from the terms hereof.
- (2) The Minister agrees not to elect to receive a cash payment if the item of the Property is still required to complete the uses as specified at Article 2 or if the Borrower's insurance policy precludes the payment of cash instead of replacing the item, as evidenced to the reasonable satisfaction of the Minister. The Term "Property" as used in this Loan Agreement shall include such replacement or part unless the context otherwise requires. Nothing herein shall require the Borrower to expend any sum greater than the replacement value of the Property, as set forth in Schedule "A" hereto, as to any single occurrence of loss or damage.

ARTICLE 19 – EXCUSABLE DELAY

- (1) The performance by the Borrower of any action or obligation hereunder, the performance of which has been rendered unreasonable due to an event beyond the control of the Borrower, shall be excused for the duration of such circumstances. Circumstances giving rise to an excusable delay may, without limitation, include acts of God and nature, acts of public enemies, acts of government, quarantines, strikes, war and transportation shortages.
- (2) The Borrower shall advise the Minister of the likelihood of a delay occurring as soon as the Borrower has become so aware and of the full facts of matters giving rise to such delay.

ARTICLE 20 – ASSIGNMENT

This Loan Agreement shall not be assigned, in whole or in part, by the Borrower without the prior written consent of the Minister and any assignment made without such consent shall be of no force or effect in relation to any obligations or liabilities due to Her Majesty pursuant to this Loan Agreement.

ARTICLE 21 – MINISTER'S RIGHT TO RECALL

- (1) During any term of this Loan Agreement, the Minister shall have the right to recall any item of the Property upon three (3) months notice to that effect to the Borrower.
- (2) Should such a right be exercised, the Borrower shall be responsible for preparing and packaging the Property, and the Minister for all shipping, handling and storage associated with:
 - (a) transporting the Property to the place or places where it is to be used by the Minister; and
 - (b) returning the Property to the location specified by the Borrower on the termination of the recall period,

and the Minister shall be responsible for the payment of all costs and charges associated with (a) and (b) above.

ARTICLE 22 – TERMINATION BY BORROWER

- (1) The Borrower may terminate the whole of this Loan Agreement at any time by giving to the Minister thirty (30) days notice of such termination, in which case the provisions of Article 24 hereof shall apply.
- (2) The Borrower may, with respect to any item of the Property, terminate in part this Loan Agreement by delivering such item of the Property, in the same condition as it was delivered to the Borrower, normal wear and tear excepted, to CSA, Saint-Hubert, Quebec or at such other place as the Minister and the Borrower may have agreed in writing, and by notifying the Minister of its intention to terminate in part this Loan Agreement with respect to such item of the Property. The term "Property" as used in Article 24 hereof shall include any item of the Property to which this Article shall apply.

ARTICLE 23 – TERMINATION BY MINISTER

- (1) The Minister may terminate the whole or any part of this Loan Agreement at any time by giving to the Borrower thirty (30) days notice of such termination, in which case the provisions of Article 24 hereof shall apply.
- (2) The Minister may, at his option, immediately terminate the whole or any part of this Loan Agreement by notice to the Borrower should any of the following events occur:
 - (a) if the Borrower is in a situation where it:
 - (i) applies for or consents to the appointment of a receiver, receiver-manager, trustee or liquidator for itself or any of its property; or
 - (ii) is unable, or admits its inability, to pay its debts as they become due; or
 - (iii) makes a general assignment for the benefit of creditors; or
 - (iv) is adjudicated bankrupt or insolvent; or
 - (v) files a voluntary petition in bankruptcy or a petition seeking reorganization or arrangement with creditors or takes advantage of any insolvency law or admits to the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or initiates a corporate action for the purpose of effecting any of the foregoing; or
 - (b) if the Borrower uses the Property for a purpose other than one set forth in Article 2 hereof; or
 - (c) if the Borrower fails to pay promptly any sum which may be lawfully owing to Her Majesty under this Loan Agreement; or
 - (d) if the Borrower assigns or purports to assign this Loan Agreement, or permits a third party to take possession of the Property without obtaining the prior written consent of the Minister; or
 - (e) should the Borrower cease to make diligent use of the Property consistent with the purposes set forth in Article 2 hereof; or
 - (f) if the Borrower fails to remedy or take reasonable steps to remedy any material default or breach under this Loan Agreement, other than a default or breach otherwise specified in this Article, within thirty (30) days from the date of receipt of notice of such default or breach from the Minister; or
 - (g) if the Borrower is in default of its obligation under any of its license agreement with the Canadian Space Agency.
- (3) The Minister may, at his option, immediately terminate the whole or any part of this Loan

Agreement by notice to the Borrower should the Parties fail to reach an understanding in accordance with paragraph (2) of Article 29 hereof, in which case the provisions of Article 24 hereof shall apply.

ARTICLE 24 – EVENTS UPON END OR TERMINATION

- (1) Upon expiry of this Loan Agreement, or its earlier termination in whole or in part for any of the reasons set forth in Articles 22 and 23 hereof:
 - (a) The Minister shall have an immediate right to possession of the Property, exercisable without further notice or demand;
 - (b) the Borrower shall pay to Her Majesty forthwith, but in any event upon demand, any amount that is still due under this Loan Agreement, if any;
 - (c) the Borrower shall, at its own expense, return the Property to CSA at Saint-Hubert, Quebec, or at such other place within Canada as the Minister and the Borrower may agree in writing;
 - (d) should, for any reason not otherwise provided for in this Loan Agreement, the Borrower fail to return all of the Property to CSA pursuant to paragraph (b) of this Article, or should the Property have been so damaged or altered as to render it unfit for further use by the CSA, then upon the written request of the Minister, the Borrower shall pay to Her Majesty such amount as the Minister deems to be the reasonable value, but not to exceed replacement value as set forth in Schedule "A" hereto, of the Property which has not been returned or which has been so damaged or altered;
 - (e) the Minister may enter upon any premises upon which the Property, or any part of it, may be situated, and take possession thereof and remove the same from the custody or control of the Borrower;
 - (f) the Borrower shall be liable for and shall pay to Her Majesty forthwith, but in any event upon demand, any cost or expense (including reasonable legal expenses) incurred by Her Majesty, the Minister or the CSA in taking possession of the Property or in transporting the Property to the place referred to in paragraph (c) of this paragraph; and

- (2) If the Minister decides to terminate this Loan Agreement for reasons other than those set

forth in paragraphs (2) and (3) of Article 23 hereof, then the Minister will be responsible for all expenses associated with shipping, handling and storage related to returning the Property to the place or places where it is to be used by the Minister.

ARTICLE 25 – CAPABILITY OF THE PROPERTY UPON RETURN

- (1) Upon the expiry of this Agreement or its earlier termination under the provision hereof, the Borrower warrants that, on the return of the Property, the Property will be in good repair condition and working order, reasonable wear and tear excluded.
- (2) The Borrower agrees to fulfill the said warrantee by demonstrating to the Minister the proper operation of the Property as part of the Borrower's operating system immediately prior to returning the Property to CSA at Longueuil, Quebec.

ARTICLE 26 – NOTICES

- (1) When either Party is obligated or entitled to give any notice, request, approval, demand, consent, direction or any other communication, hereinafter referred to as "Notice", to the other, such Party shall first communicate the substance thereof as expeditiously as possible. Such Notice however shall only be effective as stipulated below.
- (2) Any Notice pursuant to this Loan Agreement shall be in writing and shall be given by hand delivery, telex or facsimile to the appropriate official as identified hereinafter.
- (3) If hand delivered, such Notice shall be deemed to have been validly received on the date of its reception and if sent by telex or facsimile on the date of its transmittal.
- (4) Any Notice or correspondence related to this Loan Agreement shall be addressed to the respective Parties at the following addresses:

To the Minister: **TBD**
Canadian Space Agency
6767 Route de l'Aéroport
Longueuil, Québec
J3Y 8Y9
Fax No.: (450) 926-XXXX

To The Borrower: **TBD**
Address

Initials:

Fax No.: **TBD**

- (5) Either Party may, by Notice, change any of the above designations.

ARTICLE 27 – AMENDMENTS AND WAIVERS

- (1) This Loan Agreement shall not be amended except expressly, in writing, by authorized representatives of the Parties. No variation of any nature to this Loan Agreement and no representation, agreement, arrangement or other communication shall be binding on the Minister or the Borrower unless such is expressly contained in writing and executed by authorized representatives of the Parties, as an amendment to this Loan Agreement.
- (2) No waiver shall be valid, binding or affect the rights of the Parties, unless such waiver is given or made by the waiving Party by Notice.
- (3) A waiver by a Party of any provision of this Loan Agreement shall not constitute a continuing waiver nor a waiver of any other provision, unless such waiver expressly provides otherwise.

ARTICLE 28 – LOAN AGREEMENT TO ENURE

This Loan Agreement shall ensure to the benefit of, and shall be binding upon, the successors and permitted assignees of the Minister and of the Borrower.

ARTICLE 29 – REPORTS

- (1) The Borrower shall promptly provide to CSA every year, on the anniversary date of the Agreement, reports which shall, at a minimum, include:
- (a) a description of the activities that were conducted by the Borrower in which the Property was used including, but not limited to, use for further research and development, in-house demonstrations, **TBD** (in accordance with Article 2 hereof), production of **TBD** in support of commercialization;
 - (b) a description of the operational status of the Property and any limitations to its future use;
 - (c) recent photographs of the Property, video footage or animation, if so requested by CSA;

Initials:

- (d) a description of the maintenance and repairs performed on the Property during the reporting period and the expected maintenance and repairs to be performed on the Property in the forthcoming reporting period (note that any modifications and improvements to the equipment fall under Article 17 hereof - Improvements by Borrower);
 - (e) an updated list of personnel involved in the usage, further development maintenance and repair of the Property; and
 - (f) a measure of the monthly usage of the Property. Usage is defined as the process hours of operation (Process Hours) divided by the total hours the Property is available for use (Available Hours). Process Hours is defined as the time that the Property is used to perform a process such as thin film coating or etching and includes the time required to set up for the process and clean up after the process. Available Hours is defined as the time that the Property is available to be used to perform a process and is equal to the total time in a given period less time required to perform maintenance and the time an operator is required but not available.
- (2) The Borrower shall submit within one month of signing the Agreement, a Maintenance Plan for approval by CSA which describes the maintenance activities to be performed by the Borrower on the Property for the duration of the Agreement. Failure to reach an understanding on the content of the Maintenance Plan within 6 months of signing the Loan Agreement shall be grounds for terminating this Loan Agreement pursuant to Article 23 hereof.

ARTICLE 30 – EFFECTIVE DATE AND RENEWAL

- (1) The Effective Date of this Loan Agreement shall be **TBD**.
- (2) The term of this Loan Agreement may be extended by way of a written amendment pursuant to Article 27 hereof.

ARTICLE 31 – CONFLICT OF INTEREST AND VALUES AND ETHICS CODE FOR THE PUBLIC SECTOR

The Borrower acknowledges that individuals who are subject to the provisions of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2), the Conflict of Interest Code for Members of the House of Commons, the Values and Ethics Code for the Public Sector, the Policy on Conflict of Interest and

Post-Employment or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from this Loan Agreement unless they comply with the applicable post-employment conditions.

ARTICLE 32 – NO BRIBE

The Borrower hereby declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of the Government of Canada or to a member of the family of such person, with a view to influencing the entry into this Loan Agreement or its administration.

ARTICLE 33 – CONTINGENCY FEES

The Borrower certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining the loan of the Property to any person, other than an employee of the Borrower in the normal course of the employee's duty. In this Article, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the loan of the Property and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbying Act* (R.S.C., 1985, c. 44 (4th supp.))

ARTICLE 34 – DISPUTE RESOLUTION

- (1) In the event of any dispute between the Parties arising out of the construction, meaning or effect of any clause or matter contained in this Agreement or of the rights and liabilities of the Parties, the Parties shall endeavor to settle the matter through *bona fide* negotiations.
- (2) Failing an amicable settlement to any such dispute, each Party may request, by sending a written notice to the other Party, that the dispute shall be referred to binding arbitration pursuant to the Commercial Arbitration Act and the Commercial Arbitration Code. This arbitration shall be subject to the following rules:
 - (a) The Parties shall jointly appoint a single Arbitrator. If the Parties cannot agree on the choice of an Arbitrator, each Party shall appoint an Arbitrator, and both Arbitrators shall jointly appoint a third Arbitrator.

- (b) Each Party shall pay its own costs and shall bear an equal share of all other arbitration costs as well as the fees of the Arbitrator.
- (c) The Parties may jointly determine, by written agreement, the procedure to be followed by the Arbitrator in conducting the proceedings, or may request the Arbitrator to do so.
- (d) The hearing shall take place in the City of Montreal.
- (e) The Arbitrator shall issue a written award within thirty days following the completion of the hearing. This award cannot include punitive damages or an award for costs.
- (f) Subject to the provisions of the Commercial Arbitration Code, the award shall be final and binding on the Parties.

ARTICLE 35 – ENTIRE AGREEMENT

This Loan Agreement constitutes the entire and sole agreement between the Parties regarding the loan of the Property and supersedes all previous communications, negotiations, representation or warranty, arrangements and agreements of any nature between them in relation with the loan of the Property. There are no terms, covenants, representations, statements or conditions binding on the Parties in relation with the loan of the Property other than those set out in this Loan Agreement.

ARTICLE 36 – SURVIVAL

- (1) The rights, obligations, disclaimers and waivers contained in Article 10 (No Warrantee), Article 12 (Limitation of Liability) and Article 13 (Indemnity) shall survive the expiry or termination of this Loan Agreement.
- (2) The provisions contained in Article 24 (Events Upon Termination) shall also survive the expiry or termination of this Loan Agreement, as long as may be required for their full implementation.

ARTICLE 37 – APPLICABLE LAW

This Loan Agreement, including all matters relating to its validity and performance, shall be interpreted, construed and governed by, and all relations between the Parties shall be fully determined in accordance with, the laws in force in the Province of **TBD**.

Initials:

ARTICLE 38 – LANGUAGE OF CHOICE

This Loan Agreement has been prepared in English in accordance with the wishes of the Parties hereto. Cet accord a été rédigé en anglais à la demande expresse des parties.

Initials:

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED ON BEHALF OF THE CANADIAN SPACE AGENCY BY ITS AUTHORIZED REPRESENTATIVES AND HAS BEEN DULY EXECUTED BY **TBD** UNDER ITS CORPORATE SEAL AFFIXED HERETO BY ITS DULY AUTHORIZED OFFICERS..

SIGNED, SEALED AND DELIVERED.

CANADIAN SPACE AGENCY

Signature

Date

Name of signatory

Function/Position

Signature of witness

Name of witness

TBD

Signature of authorized officer

Date

Name of authorized officer

Function/position

Signature of witness

Name of witness

Initials:

SCHEDULE "A"

The description of the Property, the borrowing dates and the replacement value should be indicated in this page.

Initials: _____