

## Confidentiality Agreement

**TO:** Toronto Transit Commission and the City of Toronto and CreateTO (collectively “CreateTO”)

**FROM:** \_\_\_\_\_ (the “Undersigned”)

**RE:** Proposed lease (the “Proposed Lease”) of 640 Lansdowne Avenue, Toronto, ON (the “Property”)

**WHEREAS** CreateTO intends to disclose to the Undersigned various documents, materials and other information related to the Proposed Lease and the Property, which information is highly confidential to CreateTO, for the purposes of undertaking due diligence in connection with the Proposed Lease and the Property (the “**Permitted Purpose**”).

**NOW THEREFORE**, for good and valuable consideration (the receipt and sufficiency of which is acknowledged), the Undersigned agrees and covenants with CreateTO as follows:

### 1. Definitions

For the purposes of this Agreement, the following definitions will apply:

- a. “**Confidential Information**” means any and all information and data of a technical, scientific, engineering, business, operations, financial or like nature, in whatever form, including oral, whether or not patentable and whether or not proprietary in nature, which is held by CreateTO as confidential information and is not generally known to the public and which the Undersigned or its representatives may receive in connection with the Permitted Purpose, the Proposed Lease or the Property. Without limiting the generality of the foregoing, Confidential Information shall specifically include the following, whether in existence now or arising in the future during the term of this Agreement:
  - i. Any information relevant to the Proposed Lease, the Property and/or the Permitted Purpose;
  - ii. such information as a director, officer, shareholder or employee of the CreateTO may from time to time, during the term of this Agreement, specifically designate to the Undersigned as being included in the expression “Confidential Information”;
  - iii. information encompassed in all business plans, valuations, marketing plans and sales plans;
  - iv. all financial information, pricing information, profit information, cost information, client information, strategies, plans, proposals, economic policies and any intellectual property, patents, trademarks, techniques, conceptual drawings,

architectural plans, drawings, renderings, process descriptions, formula, development, experimental work, idea, secret, trade secret and/or know-how related to the CreateTO, or its activities, processes and operations and the proposed activities, processes and operations of CreateTO, whether developed by CreateTO, or by others;

- v. all contracts, agreements, memoranda, opinions, or other documents pertaining to the business or organization of the CreateTO;
  - vi. any information received from CreateTO related to any person or persons, firm, association, syndicate, company, corporation or other entity which is a client or customer of CreateTO, or with which CreateTO does business, which has not previously been released publicly by such person or persons, firm, association, syndicate, company, corporation or other entity or by duly authorized representatives of CreateTO, including the identity of clients or customers of CreateTO, client lists, personal financial reviews, portfolio receipts, listings, confirmation cards, data files, financial information and summary of client transactions;
  - vii. the information that discussions, negotiations and/or investigations are taking place in connection with the Proposed Lease or the Property, including the issuance of a request for proposals, the preparation or issuance of a confidential information memorandum, the identity of any person, the terms, conditions or any other facts with respect to the Proposed Lease or the Property (including the status thereof), and the fact that the Undersigned has been provided with the Confidential Information; and
  - viii. any information, analysis, reports or other documents or works derived from Confidential Information.
2. Notwithstanding Section 1, Confidential Information does not include information known by the Undersigned prior hereto or obtained elsewhere other than through a breach of this Confidentiality Agreement. Nothing in this Confidentiality Agreement obligates CreateTO to disclose any Confidential Information to the Undersigned nor constitutes any warranty or representation as to the accuracy or otherwise of the Confidential Information. The Confidential Information and all copies thereof which are supplied to the Undersigned shall be held in trust by the Undersigned for the benefit of CreateTO only. The Undersigned hereby specifically acknowledges that this Confidentiality Agreement shall in no way detract from or limit the power of CreateTO to carry on any other negotiations or otherwise deal with its Confidential Information in any manner whatsoever.
3. The Undersigned shall maintain all Confidential Information in the strictest of confidence and shall not disclose any Confidential Information to a third party without the prior written consent of CreateTO (which consent may be withheld in its sole discretion). The Confidential Information is intended solely for and will be used by the undersigned solely for the Permitted Purpose. The Undersigned shall ensure that any employee, representative or agent of the Undersigned which is provided with any Confidential Information by the Undersigned (collectively, the “**Team**”) shall act as if bound to

CreateTO by the terms of this Confidentiality Agreement, and the Undersigned shall be fully responsible for any breach of this Agreement by any of its Team members.

4. The Undersigned agrees that the Confidential Information is confidential, proprietary and the exclusive property of CreateTO and that CreateTO is the sole owner of all right, title and interest in the Confidential Information, and any and all goodwill arising therefrom. The Undersigned further agrees not to reproduce any Confidential Information received from CreateTO in whole or in part, nor to discuss or disclose any of the contents of such Confidential Information in whole or in part, to any person (save and except other members of the Team), without the written authorization of CreateTO. The Undersigned further agrees that it will not use or permit the Confidential Information to be used in any fashion or manner detrimental to CreateTO or the Proposed Lease or the Property or in conflict in any way with CreateTO's interest.
5. On completion of the Permitted Purpose, the Undersigned shall return to CreateTO all Confidential Information in written form and destroy and delete from all electronic or other media and cause all others to destroy and delete from all electronic or other media all electronic or other versions thereof and all materials derived from or based upon all or any part of the Confidential Information including, without limitation, all extracts, summaries, drawings, working papers, analyses, reports, compilations, studies or interpretations.
6. The Undersigned hereby agrees to indemnify CreateTO from any loss or damage which CreateTO may suffer or incur as a result of the breach of the terms and conditions of this Confidentiality Agreement by the Undersigned or any Team member. This indemnification shall survive the termination of this Confidentiality Agreement and shall not detract in any way from any other right or remedy with CreateTO may have under this Confidentiality Agreement or otherwise in law or in equity. The Undersigned acknowledges and agrees that:
  - a) all restrictions in this Confidentiality Agreement are reasonable and valid and all defences to the strict enforcement thereof by CreateTO are hereby waived;
  - b) a violation of any of the provisions of this Confidentiality Agreement will result in immediate and irreparable harm and damage to CreateTO; and
  - c) in the event of any violation by the Undersigned of any provision of this Confidentiality Agreement, CreateTO shall, in addition to any other right to relief, be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.
7. CreateTO reserves the right to make any changes, to add, delete, or modify the Confidential Information. Neither the Confidential Information nor this Confidentiality Agreement is to be construed as an offer, an expression of intent, an obligation, or as part of any contract or commitment, to enter into any agreement relating to the Permitted Purpose.
8. The Undersigned agrees that the terms, conditions and obligations of confidentiality under this Confidentiality Agreement shall continue until all of the Confidential Information enters the public domain, provided that the same is not in the public domain

as a result of breach of this Confidentiality Agreement, and shall survive the completion, fulfillment, termination, or expiration of any aspect or matter related hereto, including the return, destruction and deletion of the Confidential Information as referred to above. This Confidentiality Agreement may not be modified or terminated, in whole or in part, except in writing signed by an authorized representative of each party. This Confidentiality Agreement may not be assigned.

9. The Undersigned acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56, as amended may apply to the Confidential Information.
10. This Confidentiality Agreement shall be governed by and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Undersigned attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to matters arising under this Confidentiality Agreement.
11. Notice may be given hereunder to CreateTO only by delivery, fax or e-mail in writing, addressed, in the case of CreateTO to CreateTO, 200 King Street West, Suite 200, Toronto, Ontario, M5H 3T4, Attention: General Counsel, Fax: 416-981-3800.
12. The invalidity or unenforceability of any part hereof shall not affect the validity or enforceability of any other part hereof.
13. This Confidentiality Agreement is binding on the parties hereto and their respective successors and assigns.
14. This Agreement may be signed in counterparts and a facsimile or pdf copy shall be deemed to be as legally binding as an original copy.

DATED as of this \_\_\_\_ day of \_\_\_\_\_, 2018.

[INSERT UNDERSIGNED NAME]

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Per:  
Name:  
Title:

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Per:  
Name:  
Title:  
I/We have authority to bind the Undersigned