

License Number: \_\_\_\_\_

## **TELECOMMUNICATIONS LICENSE AGREEMENT**

for

**1590 Fairfield Road, Victoria, B.C.**

Between

**GT GROUP TELECOM SERVICES CORP.**  
(Licensee)

**RUTH SINGER INVESTMENTS LTD. (Reg. No. A4949)**  
(Licensor)

Effective Date: 1 July, 2001

Termination Date: 30 June, 2011

Renewal Dates: 1 April, 2011 - Reference Paragraph 1 ("Grant") and Paragraph 14 ("Renewal Options")

## TELECOMMUNICATIONS LICENSE AGREEMENT

License # \_\_\_\_\_

This License Agreement (the "Agreement") made as of this 1st day of July, 2001, between Ruth Singer Investments Ltd. (Reg. No. A4949) with its principal office at 800-1040 West Georgia Street, Vancouver, B.C. ("Licensor"), and GT Group Telecom Services Corp., a Canadian corporation, with its principal office at 20 Bay Street, Suite 700, Toronto, Ontario M5J 2N8 ("Licensee").

### RECITALS

A. Licensor is the owner of the building commonly known as Thrifty Food, located at 1590 Fairfield Road, Victoria, B.C. (the "Building"). Licensor represents and warrants that it has the full right and authority without further consent from any other party to grant to Licensee the license and rights contained in this Agreement.

B. Licensee represents and warrants to Licensor that Licensee is authorized to provide public utility telecommunications services in the Building under the conditions described herein and that it has full authority without further consent from any other party to negotiate and execute this Agreement with Licensor.

NOW THEREFORE, in consideration of the mutual covenants herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Licensor agree as follows:

#### I. Grant

(a) Licensor hereby grants to Licensee a non-exclusive license:

(1) To install, operate, replace, and remove, at Licensees sole expense and risk, certain "Communications Equipment" (defined as the cabinets, racks, and other electronic equipment specified in Exhibit A), on and in the "Equipment Room" (as hereinafter defined and as described in Exhibit B);

(2) To install, maintain, operate, and replace at Licensee's sole expense and risk, certain "Connecting Equipment" (the cables, conduits, inner ducts and connecting hardware as specified and described in Exhibit A), together with the right to pull such Connecting Equipment from the lotline through the Building's "Entrance Link" (defined as the core sleeve penetration through the Building foundation) and through other "Building Communications Spaces" (defined as the telecommunications pathways necessary to reach from the Entrance Link to Licensee's Equipment Room in the Building and from the Equipment Room to Licensee's customers, as described in Exhibit Q as may be necessary to provide communications services to Licensee's customers and as designated and approved by Licensor, acting reasonably. Licensee's Communications Equipment and Licensee's Connecting Equipment are collectively referred to in this Agreement as "Licensee's Equipment"; and

(3) To use Licensor's existing communications wiring, if available, at prevailing rates for use of such wiring in order to connect Licensee's Equipment to Licensee's customers located in the Building. Licensor may permit use of existing Building Entrance Link and existing Building wiring only to the extent that Licensor has the possession of and authority to allow such use of said facilities. In no event shall Licensor be obligated to provide such allowed use of facilities to the extent that it does not own, control, or have authority to allow such usage, but shall assist and cooperate with the Licensee, at the Licensee's expense, in obtain any required approval for such use.

(b) Licensor shall provide approximately 40 square feet of floor space in the Building (the equipment Room"), in the location designated in Exhibit B. The Equipment Room will be used by Licensee as the Building service site, and for only that purpose. The Licensee is expressly forbidden to serve other properties from this location without the express written permission of the Licensor except as support or backup for Licensee's ring technology in the event of an interruption of

service. Additional fees may be required, as agreed to between the parties, for using Licensee's Equipment Room as a service point for other properties outside the Building except as set out above.

(c) Licensor shall have the right in its sole and reasonable discretion to reasonably limit the type, size and location of Licensee's Equipment located in the Building provided that all other licensee's in the Building are similarly limited. Further, Licensor may in its sole and reasonable discretion, require Licensee, at Licensee's expense, to relocate within the Building any or all of Licensee's Equipment, including the Equipment Room, provided that all costs incurred by Licensee to accommodate a third party will be paid to Licensee by the third party being so accommodated. The substitute Equipment Room shall contain at least as much area as the Equipment Room from which Licensee is being relocated, and shall also, in Licensor's sole and reasonable judgement, be suitable for Licensees operations. In the event that Licensor requires Licensee to relocate Licensee's Equipment and/or the Equipment Room, Licensee shall within ninety (90) days either: (i) terminate this Agreement upon written notice to Licensor; or (ii) relocate the Licensee's Equipment and/or the Equipment Room (the time period for relocation shall be extended to one hundred twenty (120) days if Licensee has begun but not yet completed the relocation within the required ninety (90) day period). Licensor shall allow Licensee to perform a standard cutover procedure, if required by said relocation, which will insure that the relocated equipment is operational for service prior to discontinuing service from old service location.

(d) Licensor and Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents, or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other. Licensee hereby accepts and assumes full and exclusive liability for, and shall hold Licensor harmless from, the payment of all taxes, monies and other expenses arising from the conduct of Licensees business in the Building, including without limitation, contributions required under provincial and federal law providing for local and federal payroll taxes or contributions for unemployment insurance or old age pensions, or annuities which are measured by wages, salaries, or other remuneration paid to Licensee or by Licensee to its employees for any and all activities in connection with this Agreement.

(e) Licensee shall not have the right to permit tenants or other occupants of the Building to locate telecommunications equipment in the Equipment Room.

(f) Except for the CDS, Licensor makes no warranty or representation that the Equipment Room, the Building Communications Spaces or the Building are suitable for Licensees use, it being assumed that Licensee has satisfied itself thereof. Licensee has inspected the Equipment Room, the Building Communications Spaces and the Building and accepts the same "as is" and agrees that Licensor is under no obligation to perform any work or provide any materials to prepare the Equipment Room, the Building Communications Spaces or the Building for Licensee.

(g) The License granted herein is not exclusive. Licensor hereby reserves the right to grant, renew or extend similar licenses to others. The License granted herein is revocable only in accordance with the express terms of this Agreement

## **2. Fees**

(a) Licensee shall pay to Licensor an annual fee (the "License Fee") of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00), each year of the Agreement, adjusted annually on the anniversary of the Commencement Date of each year by the percentage increase in the Consumer Price Index ("CPI") over the rate in effect on the Commencement Date of the prior year, which increase shall not be less than 3% nor more than 5%.

(b) The annual fee shall be payable in advance as one annual payment, commencing on the date herein shown as the date of this Agreement. All payments shall be made to Licensor at the address given in Paragraph 19 of this Agreement and shall be in addition to any charges for use of Cable Distribution System ("CDS") cable-pair assignments ("CDS Fees") under Paragraph 13 ("Establishment of MPOE") below.

(c) As used in the foregoing subparagraph, the CPI shall be the Consumer Price Index as published by the Canadian Government or if none, such other measure of increases in consumer prices as may be designated by Licensor.

(d) Licensor and Licensee agree to use their good faith efforts to refrain from disclosing the financial terms of this Agreement. Either party may disclose the financial terms of this Agreement when required by law, regulation or prior agreement. No recourse, action or penalty shall be associated with the good faith effort of non - disclosure herein embodied.

### **3. Term**

The term of this Agreement (the "License Term") shall commence as of the day first written above ("Commencement Date"). The initial term hereof shall be 10 years (the "Initial Term"), beginning on the Commencement Date, subject to extension or earlier termination in accordance with the provisions hereof. Provided that Licensee is not in default of this Agreement, Licensee shall have the option to renew and extend this Agreement upon the same terms and conditions set forth herein, except as specifically stated herein, for one additional 5 year period (the "First Renewal") by giving written notice of such an intent to Licensor no more than one-hundred and eighty (180) days and no less than ninety (90) days prior to the end of the term of this Agreement (the "Initial Term" and the "First Renewal" are collectively referred to as the "License Term"). Further renewals shall require the mutual agreement of both Licensor and Licensee, as set forth in Paragraph 14 ("Renewal Options").

### **4. Use**

Licensee shall use the Building Communications Spaces and the Equipment Room solely for the purpose of providing Building tenants and occupants with telecommunications services for which it has been certified to provide by either local or state franchising or public utility governing bodies, or Canadian Radio and Television Commission ("CRTC"). To the extent that Licensee is providing communications services to any tenant or occupant (other than Licensee) within the Building, Licensee shall make available such communications services to all tenants and occupants of the Building. Licensee hereby acknowledges that this Agreement prohibits the installation or operation of all forms and types of rooftop communications equipment or wireless communications equipment (except on a temporary basis) unless negotiated under a separate agreement.

### **5. Electric Utilities**

Unless a flat fee is agreed to by the Licensor, acting reasonably, Licensee shall install, at its own cost, a separate electrical panel and meter for the Equipment in the Equipment Room and shall be responsible to the local electric utility for the electrical costs attributable to the use of such Equipment. Licensor shall use reasonable efforts to notify Licensee in advance of any planned utility outages that may interfere with Licensee's use. Licensee further agrees that the Licensor has no obligation or responsibility to provide emergency or "backup" power to Licensee, and Licensee acknowledges that any such provision of emergency or "backup" power shall be the sole responsibility of Licensee.

### **6. Construction.**

(a) Prior to the commencement of any work or installation of any equipment, Licensee shall, at its sole cost and expense, prepare and deliver to Licensor working drawings, plans and specifications for such work or installation, as contained in Exhibits A, B and C detailing the type, size and location of Licensee's Equipment, the Building Communication Spaces to be used by Licensee and the Equipment Room, all specifically describing the proposed construction and work. No work shall commence until Licensor has approved, in writing, Exhibits A, B and C, and any other applicable construction or installation plans, which approval will not be unreasonably withheld or unduly delayed. Approval or disapproval and required changes shall be delivered to Licensee within twenty (20) working days after the receipt of such plans from Licensee. In no event shall Licensor's approval of such plans be deemed a representation that Licensee's Equipment will not cause interference with other systems in the Building or that Licensee's plans comply with applicable laws, rules or regulations, such responsibility shall remain with Licensee.

(b) Licensee warrants that the installation of Licensee's Equipment shall be in strict compliance with the approved plans and specifications prepared in connection with Exhibits A, B and C.

(c) Licensee agrees that installation and construction shall be performed in a neat, responsible, and workmanlike manner, using generally accepted construction standards, consistent with such reasonable requirements as shall be imposed by Licensor. Licensee shall, at its sole cost and expense, repair or refinish any surface of the Building that is damaged by or during the installation of Licensee's Equipment and caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors, or invitees. If Licensee fails to repair or refinish any such damage within ten (10) days after receipt by Licensee of written notice of such damage from Licensor (or such longer period as may be necessary in the circumstances), Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor of all reasonable costs and expenses incurred in such repair or refinishing.

(d) Licensee shall label each cable placed in the telecommunications pathways, in each telephone closet through which said cables pass, with identification information including, but not limited to, Licensee's name (to serve as identification), floor where cable originates and floor where cable terminates and any other information as may be reasonably required by Licensor's Building rules.

(e) Licensee shall obtain, at its sole cost and expense, prior to construction and work, any necessary federal, provincial, and municipal permits, licenses and approvals, copies of which will be delivered to Licensor prior to commencement of construction and work. Licensor shall, at the Licensee's sole cost and expense, assist and cooperate with Licensee in obtaining such permits, licenses and approvals. Licensee's Equipment shall comply with all applicable safety standards, as modified from time to time, of any governing body with jurisdiction over Licensee's operations.

(f) Licensee shall not during construction or otherwise, in Licensor's sole and reasonable judgment, block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, the sidewalks around the Building or any entrance ways thereto. If such conditions shall occur, Licensee take corrective action as promptly as feasible, but in no event more than twenty four (24) hours following written notice by Licensor of such conditions.

(g) Licensee shall have the right to amend Exhibits A and C, from time to time, with the express written consent of Licensor, which consent shall not be unreasonably withheld, for the purpose of serving additional occupants of the Building. All terms and conditions of this Construction Section (Paragraph 6) shall apply.

## **7. Licensee's Covenants**

(a) Licensee shall at its sole cost and expense, maintain Licensee's Equipment in proper operating condition and to maintain same in satisfactory condition as to safety.

(b) Licensee shall, at its sole cost and expense, repair any damage to the Building, Building Communications Spaces, and/or to any other property owned by Licensor or by any lessee or licensee of Licensor or by any other occupant of the Building where such damage is caused by Licensee or any of its agents, representatives, employees, contractors or subcontractors. If Licensee fails to repair or refinish any such damage within ten (10) days after receipt by Licensee of written notice of such damage from Licensee (or such longer period as may be reasonably necessary in the circumstances), Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor of all costs and expenses reasonably incurred in such repair or refinishing.

(c) Licensee shall not materially interfere with the use and enjoyment of the Building by Licensor or by other lessees, or licensees of the Licensor or other tenants or occupants of the Building. If such interference shall occur, Licensor shall give Licensee written notice thereof and Licensee shall correct the same within twenty-four (24) hours after receipt of such notice. In the event Licensee fails to correct such conditions after proper notification and waiting period, Licensor reserves the right to take any reasonable actions to correct the same.

(d) Licensee's Equipment shall not materially disrupt, adversely affect or interfere with other providers of

communications services in the Building or with any tenant's or occupant's use or operation of communications or computer devices provided such devices meet Industry Canada Standards. Licensee shall correct such interference within twenty-four (24) hours after receiving written notice of such interference and after such interference has been positively identified as being caused by Licensee's Equipment. Licensor reserves the right to disconnect power to any such Licensee's Equipment which Licensee fails to correct such interference after proper notification and waiting period.

(e) Licensee agrees to comply with all Building rules (Exhibit E), as adopted and altered by Licensor from time to time, and will cause its agents, employees, contractors, invitees and visitors to do so. Licensee shall not be bound by any changes in the Building Rules until after it has received written notice of such changes. No Building Rules or revision shall materially adversely affect Licensees rights or increase Licensee's financial obligations under this Agreement.

(f) Licensee agrees to comply with all applicable rules and regulations of the CRTC and other applicable city, provincial, and federal codes and regulations pertaining to the installation and operation of Licensee's Equipment, and to the Licensee's provision of services in the Building.

(g) Licensee agrees that Licensor shall not be liable for damage to Licensee's Equipment or theft, misappropriation or loss thereof, unless due to Licensor's sole negligence or willful misconduct or those for whom Licensor is in law responsible.

## **8. Access**

(a) Licensor agrees that Licensee's authorized representatives shall have access to the Equipment Room (as specified in Exhibit B) at all times, for the purposes of installing, replacing, supplementing, maintaining, operating, and repairing Licensee's Equipment, and Licensor further agrees to give Licensee ingress and egress to the Building Communications Spaces (as specified in Exhibit C) at all times, during regular building hours and times, during the term of this Agreement, including non-exclusive use of an elevator. It is agreed, however, that only authorized engineers, employees or properly authorized contractors, subcontractors, and agents of Licensee, other authorized regulatory inspectors, or persons under their direct supervision and control will be permitted to enter the Building Communications Spaces, and only upon conditions set forth herein.

(b) Except in the event of an emergency, Licensee agrees to give at least twenty-four (24) hours notice to Licensor of its intent to enter Building Communications Spaces. At the time that such notice is given, Licensee shall inform Licensor of the names of the persons who will be accessing the Building Communications Spaces, the reasons for entry, and the expected duration of the work to be performed. Licensor shall provide such information substantially in the form attached hereto as Exhibit D whenever feasible. In the event of an emergency, Licensee shall give to Licensor as much advance notice as reasonably possible of its intent to enter the Building Communications Spaces and, within five (5) days following such entry, shall provide to Licensor a written report detailing the nature of such emergency, the corrective actions taken, and other such information as contained in Exhibit D.

(c) Permission for all entries upon the Building Communications Spaces (including entries for maintenance and/or installation) must be received from Licensor in advance, unless such entry is of an emergency nature and permission cannot be obtained in a timely fashion. Licensor shall not be obligated to provide elevator service during emergency situations and under emergency conditions, which emergency situations and conditions shall be reasonably determined by Licensor.

(d) Licensor and its representatives shall have the right to enter the Equipment Room for any of the following purposes; provided, however, that (except in the event of an emergency) Licensor shall give Licensee at least twenty-four (24) hours advance notice before entry and use reasonable efforts to minimize any interference with Licensee's operations or Licensee's Equipment: (i) to maintain the Equipment Room and the Building; (ii) to make inspection, repairs, alterations, improvements or additions, in or to the Equipment Room; (iii) to perform any acts related to the safety,

protection, preservation, or improvement of the Equipment Room or the Building; and (iv) for such other purposes as Licensors deems reasonably necessary.

## **9. Insurance**

(a) Licensee shall maintain in force, at its expense, during the term of this Agreement, a policy of Commercial General Liability Insurance issued by a company acceptable to Licensors, acting reasonably, and licensed to do business within the province where the Building is located, insuring Licensee and, as additional insured, the Licensors and any additional parties that Licensors may reasonably designate by written notice, with a combined single limit of Two Million Dollars (\$2,000,000.00) for injury or death or property damage, and excess "Umbrella" liability coverage of not less than Two Million Dollars (\$2,000,000.00). Licensee shall maintain all risk property insurance on its Equipment in sufficient amounts to cover any loss thereof.

(b) Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance in so far as Licensors and Licensee are concerned, with any other insurance maintained by Licensors being excess and non-contributing with the insurance of Licensee required hereunder and providing coverage for the contractual liability of Licensee to indemnify Licensors pursuant to Paragraph 10 below. Licensee shall obtain the agreement of Licensee's insurers to provide proof of such insurance to Licensors at the Building office prior to commencement of any construction and to notify Licensors, in writing, that a policy is due to expire at least 30 days prior to such expiration. Licensee shall add Licensors and any additional parties that Licensors may reasonably designate by written notice as additional insured to the policies.

(c) Licensee shall maintain in force all required workers compensation or other similar insurance pursuant to all applicable provincial and local statutes.

## **10. Indemnification**

Licensee shall exercise due care to avoid any action that may cause damage to any part of the Building or Licensors's other tenants or occupants. Licensee shall indemnify, exonerate and hold Licensors its principals, officers, directors, agents, employees and servants harmless from and against any damage and expense of whatever kind arising from the construction, installation, operation, maintenance, repair, and removal of Licensee's Equipment or from Licensee's breach of this Agreement.

## **11. Release and Waiver of Subrogation Rights**

To the extent allowable under the laws and regulations governing the writing of insurance within the province in which the Building is located, Licensors and Licensee each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Agreement, pursuant to insurance policies carried by the parties which are in force at the time of the loss or damage. Licensors and Licensee will each request its insurance carrier to include policies provided pursuant to this Agreement an endorsement recognizing this waiver of subrogation. waiver of subrogation endorsement need not be obtained if it incurs an additional cost for the affected policy, unless following written notice, the other party elects to pay that additional cost to obtain the waiver of subrogation endorsement. The provisions of this Paragraph 11 shall survive termination of this Agreement.

## **12. Liens**

Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Licensors against any such liens, including the reasonable fees of Licensors's attorney. Such liens shall be discharged by Licensee within thirty (30) days after notice of filing thereof by bonding payment or otherwise, provided that Licensee may

contest, in good faith and by appropriate proceedings any such liens. The provisions of this Paragraph 12 shall survive termination of this Agreement.

### **13. Establishment of MPOE**

(a) Licensee recognizes that Licensor may desire to provide access to existing and future telecommunications service providers for tenants of the Building, and Licensor may deem it desirable to achieve this objective by providing a central telecommunications cable distribution system (CDS) in the Building for use by all TCS Providers of telecommunications services (the "TCS Providers"). The CDS will include a main cross-connect ("MC") for use by all TCS Providers in order to reach tenant demarcation points in the Building. The MC shall serve as the minimum point of entry ("MPOE") demarcation point for TCS Providers, including Licensee. The MC shall also serve as the origination point of the CDS. The telephone closet demarcation block on each floor of the Building will serve as the termination point of the CDS on that floor. Licensor shall charge all TCS Providers (including Licensee) the same fee for each CDS cable-pair used ("CDS Fee"), in accordance with Exhibit F, which will be attached hereto and incorporated herein as it may be amended from time to time if the CDS is installed by Licensor.

(b) If Licensor installs a CDS and provided that all other TCS Providers are so obligated:

(1) Licensor may purchase from Licensee those portions of Licensee's Connecting Equipment that Licensor, in its sole discretion, determines is necessary to incorporate into the CDS. The purchase price of such portions of Licensee's Connecting Equipment shall be an amount equal to the greater of Licensee's then unamortized cost (amortized over a 15 year period) of Licensee's Connecting Equipment and then "as is" fair market value as agreed to by the parties, or as determined by a third party reasonably acceptable to both parties who is experienced in the valuation of such equipment. Licensee shall, at Licensor's option and expense, remove any remaining Licensee Connecting Equipment that is not purchased by Licensor.

(2) Licensee shall at Licensee's expense, relocate its existing services and demarcation facilities to the CDS, if such a frame is installed.

(3) Licensee shall utilize the CDS for providing all service to Licensee's customers once Licensor notifies Licensee that the MC is ready for service.

(4) Licensor agrees to allow Licensee a reasonable amount of time (not to exceed 90 days) for proper planning, engineering and cutover in this regard. Cutover to the CDS will be accomplished at times other than Normal Business Hours.

(c) In the event that Licensor enters into a similar agreement with another telecommunications service provider and charges such other provider for the use of cable pair within the CDS, ordered for similar terms and in similar quantities, at rates that are preferable to the rates charged to Licensee according to the attached Exhibit F, then Licensee may thereafter substitute such preferable CDS fees for its then prevailing rates. Such substitution shall be effective immediately upon receipt by Licensor of notice from Licensee regarding Licensee's desires to make such a substitution of applicable CDS rates. Licensor shall inform Licensee of any modifications to the attached Exhibit F and of any agreement to offer preferable CDS fees (including the effective dates of revisions to existing rate schedules) to any other telecommunications service provider for use of the CDS within the Building, and shall ensure that such notice is provided to Licensee prior to the commencement of the next monthly billing cycle following any such agreement. Upon at least ten (10) days notice to Licensor, Licensee may audit that portion of Licensor's books and records that pertains to CDS rates charged to telecommunications service providers in the Building and may do so at Licensor's offices or the place at which such records are normally maintained during regular business hours. In the event that Licensee finds, through an audit or otherwise, that Licensor has failed to provide Licensee with timely notice of the availability of such preferable CDS fees, Licensor shall pay to Licensee the difference between the most favorable fees charged for use of the CDS within the Building and the CDS fees actually paid by Licensee from the time of the effective date of the more favorable fee structure to the date at which the adjustment of CDS fees is made available to Licensee upon an ongoing basis.



(d) Licensor shall promptly repair or replace the CDS as necessary to eliminate any interruption or other adverse effects caused by malfunction, damage or destruction of the CDS, the cost of which shall be borne by Licensee to the extent the problem was caused directly or indirectly by the act or omission of Licensee, its agents, representatives, employees or invitees. In limitation of the foregoing, Licensor's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by tenants after the malfunction, damage or destruction or that, if damaged or destroyed, will be again used by tenants upon the completion of restoration or repair thereof. In no event shall Licensee have any right to make any claim against Licensor for any damages whatsoever, including, without limitation, consequential damages in any such circumstance. The foregoing limitation or liability for damages is predicated on Licensor hereby granting to Licensee unlimited access to the CDS on an escorted basis (unescorted in the case of an emergency) to permit Licensee to provide services directly to its customers. In the event of malfunction of, damage to, or destruction of the CDS, as Licensee's sole remedy, the annual License Fee and CDS Fee paid by Licensee under the Agreement shall equitably abate (to the degree related to the defect) from the date of such malfunction, damage or destruction until the date upon which Licensor completes its repair or replacement of the CDS

("Completion Date"), to the extent that Licensor is required to do so by this Agreement provided that nothing precludes Licensee from claiming against any third party retained by the Licensor to create, manage or control the CDS. The abated amount shall be refunded to Licensee within thirty (30) days of the Completion Date. Licensor shall promptly provide to Licensee the phone number(s) for the person or persons responsible for the operation and maintenance of the CDS.

(e) Licensee shall endeavor to include in each of its contracts with tenants in the Building a statement that Licensee's services are entirely independent, separate and distinct from any contract Licensee has with Licensor and that no party with whom Licensee contracts shall have any rights against, and none shall seek recourse against, Licensor as a result of, or in reliance upon, such contracts.

(f) Notwithstanding the foregoing elements of this Paragraph 13, in the event that Licensor installs a CDS, Licensee may, in its sole option and within ninety (90) days after such installation, terminate this Agreement upon written notice to Licensor.

#### **14. Renewal Options**

At least one-hundred and twenty (120) days prior to the termination of the First Renewal License Term, Licensee shall advise Licensor in writing if it requests to extend the License Term, setting forth its proposed extension term and the amount of the fees it believes to be appropriate. Within thirty (30) days after the receipt of such notice, Licensor shall advise Licensee, whether the proposed fees are acceptable or Licensor shall set forth the amount of the fees which would be required by Licensor. If Licensor shall fail to respond to Licensee's extension request within such thirty (30) day period, then Licensor shall be deemed to have rejected the proposed fees. If the Licensee object to the Licensor's response, the amount of fees shall be determined by arbitration. If Licensor and Licensee agree on an extended term, this Agreement shall be amended by a writing signed by both parties setting forth those terms and incorporating all of the other terms and conditions of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, nothing herein shall be construed to impose any obligation on Licensor to agree to any extension of the License Term, other than the single 5 year First Renewal as authorized by Paragraph 3, above.

#### **15. Assignment and Subletting by Licensee**

(a) Licensee shall have the right, without Licensor's consent, but upon written notification to Licensor, to assign this License in connection with a sale of all or substantial part in Licensee's business, or to any parent or subsidiary corporation or to any corporation or partnership which is then controlled by, under the control of, or under common control with Licensee, or to the Licensee's primary lenders. As of the effective date of this Agreement, Licensee is a wholly owned subsidiary of.

(b) Except as provided in paragraph 15(a) above, Licensee shall not assign this License without obtaining the prior written consent of Licensor, which consent shall not be unreasonably withheld, delayed or conditioned,

(c) No assignment shall release Licensee from any liability or obligation under this Agreement, unless Licensor provides such release in writing.

## **16. Hazardous Materials**

(a) Licensee shall not install any hazardous substance or material into the Building. In the event that any hazardous materials are installed or brought into the Building by or on behalf of Licensee, then Licensee shall cause the removal of same within twenty-four (24) hours of Licensor's written demand and shall indemnify and hold Licensor and Licensor's Parties (as defined in Paragraph 32, below) harmless from any claim, loss, cost, damage, or expense resulting from such hazardous materials or from Licensor's removal thereof except to the extent caused by the sole negligence or willful misconduct of Licensor or those for whom Licensor may in law be responsible. In the event that Licensee shall discover, uncover, disturb or otherwise reveal any existing hazardous materials within the Building, Licensee shall immediately stop any work in progress and report such findings to Licensor within twenty-four (24) hours. Licensee shall not conduct any further work in the reported area without Licensor's written approval, which shall not be unreasonably withheld or delayed.

(b) Licensee shall have three options upon discovery of hazardous material and cessation of work as described above:

(i) Reroute its planned access route to avoid such hazardous material areas; (ii) Terminate this Agreement according to the procedure set forth in Paragraph 18 (Termination/Remedies); (iii) Reschedule its installation work to a period after Licensor has completed corrective action in regard to such hazardous materials; provided, however, that Licensee may terminate this Agreement upon written notice to Licensor if such corrective action has not been commenced and diligently pursued within thirty (30) days after Licensor's receipt of notice of Licensee's discovery of the hazardous materials.

(c) Licensee is hereby released and indemnified from any responsibility for managing, monitoring, or abating, and shall not be deemed to have ownership of hazardous materials, including asbestos, preexisting within the Building and undisturbed by Licensee, or brought on the Premises, into the Building, on, in or under the land upon which the Building is located, by any other tenant or by Licensor.

## **17. Events of Default**

(a) Each of the following events shall be deemed to be an event of default by Licensee under this Agreement ("Licensee Event of Default"):

(1) If Licensee shall default in the payment of any License Fees or CDS Fees or other sum or money due Licensor hereunder and such default shall continue for a period of ten (10) days after receipt of written notification by Licensor to Licensee of such default;

(2) Except where different cure periods are expressly provided in this Agreement to the contrary, if Licensee shall default in the observance or performance of any of Licensee's non-monetary obligations under this Agreement and such default shall continue for more than thirty (30) days after written notification of such default by Licensor to Licensee (unless such default cannot reasonably be cured within such thirty (30) day period, in which case such cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that Licensee shall promptly commence and prosecute such cure to completion with all reasonable diligence);

(3) If there shall be interference with the telecommunications or computer equipment of Licensor, tenant or any other occupant of the Building or any other telecommunications or computer devices provided in the Building solely by reason

of, or as a result of, the installation, operation, maintenance, repair or removal of Licensee's Equipment, which interference is not cured within seventy-two (72) hours of Licensee's receipt of written notice by Licensor of such interference;

(4) If Licensee shall fail to remove any hazardous materials installed in the Building by or on behalf of Licensee within forty - eight (48) hours of written notice of such condition by Licensor to Licensee;

(5) The revocation of Licensee's permission to provide regulated or non-regulated telecommunications services in the Building by any governing entity authorized to franchise or regulate Licensee's provisioning of telecommunications services where such revocation is not rescinded within thirty (30) days thereafter; and

(6) The filing, execution, or occurrence of a petition in bankruptcy or other insolvency proceeding by or against Licensee; or an assignment for the benefit of creditors; or a petition or proceeding by or against the Licensee for the appointment of a trustee, receiver or liquidator of Licensee or of any of the Licensee's property or a proceeding by any governmental authority for the dissolution or liquidation of Licensee.

(b) An event of default under this Agreement by Licensor ("Licensor Event of Default") shall occur where Licensor defaults in the observance or performance of any of Licensor's obligations under this Agreement and such default shall continue for more than thirty (30) days after written notification of such default by Licensee to Licensor (except where different cure periods are expressly provided in this Agreement to the contrary), unless such default cannot reasonably be cured within such thirty (30) day period, in which case the cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that Licensor shall promptly commence and prosecute such cure to completion with all reasonable diligence.

## **18. Termination/Remedies**

(a) Upon or after the occurrence of an Event of Default, the non-defaulting party shall give written notice to the defaulting party, setting forth the nature of the Event of Default. If the defaulting party fails to demonstrate within ten (10) days after receipt of the written notice of default that it took all actions necessary to avoid default under Paragraph 17 within the time period specified by the relevant subparagraph of Paragraph 17, then the non-defaulting party may elect to terminate this Agreement.

(b) At the expiration or earlier termination of this Agreement (the "Termination Date") Licensee shall, at Licensee's sole cost and expense, without liens, remove Licensee's Equipment and all of Licensee's personal property from the Building. Any property not so removed within sixty (60) days after the Termination Date may at Licensor's sole option (i) be removed and stored by Licensor at Licensee's expense or (ii) become the property of Licensor without compensation to Licensee. As of the date of such removal, neither party shall have any claim against the other, except for claims or obligations that may have arisen or accrued prior to such termination or arise by reason of such Equipment and other equipment or property removal, which claims or obligations shall survive such termination. Further, Licensee agrees, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal of Licensee's Equipment, excepting damage caused by ordinary wear and tear. If Licensee fails to repair or refinish any such damage within thirty (30) days of receiving written notice of the Licensor's request for the Licensee to repair or refinish such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor of all reasonable costs and expenses incurred in such repair or refinishing. Notwithstanding the foregoing:

(1) Licensee's Connecting Equipment shall, at Licensor's option and upon written notice to Licensee, become the property of Licensor and remain in the Building. If Licensor elects to retain some or all of Licensee's Connecting Equipment, Licensee shall execute a bill of sale or other document necessary to effect such transfer of ownership, at no additional cost or consideration from Licensor to Licensee, within thirty (30) days after receiving such written notice.

(2) Licensor may elect, by written notice to Licensee, to retain Licensee's Communications Equipment in the Building, in which case Licensee's Communications Equipment shall become the property of Licensor, and Licensee shall

execute a bill of sale or other document necessary to effect such transfer of ownership within thirty (30) days after receiving such written notice. If Licensor elects to retain Licensee's Communications Equipment, Licensor will pay to Licensee an amount equal to the then "as-is" fair market value of Licensee's Communications Equipment including labour and installation costs, as agreed to by Licensor and Licensee, or determined by a third party reasonably acceptable to both parties who is experienced in the valuation of similar equipment.

(c) Except where this Agreement is terminated due to a Licensee Event of Default, following the expiration or termination of this Agreement, Licensor and Licensee agree to negotiate in good faith towards an agreement granting to Licensee a temporary license in the Building for the purpose of allowing Licensee to temporarily continue serving then existing customers in the Building pursuant to existing contractual obligations. Licensor may charge Licensee reasonable fees, which shall be negotiated in good faith between the parties, for the temporary license (such fees shall be no less than the License Fees and the CDS Fees established herein). Throughout any such period, Licensee shall cooperate with Licensor in all reasonable efforts to provide continuing reliable telecommunications services to all tenants and other occupants of the Building.

(d) In any suit or legal proceeding arising out of this Agreement or the underlying transaction the prevailing party shall be indemnified by the unsuccessful party for all reasonable expenses and costs including attorneys fees, which obligation shall survive the termination of the Agreement. In the event of a Licensee Event of Default or a Licensor Event of Default, as the case may be, the non-defaulting party shall have all rights available in equity or at law.

(e) Licensee shall not be liable for indirect, special, incidental or consequential damages or for any business or economic loss in connection with or arising out of this Agreement or its termination.

## 19. Notices

Any or all notices or demands by or from Licensor to Licensee, or Licensee to Licensor, shall be in writing and shall be deemed given upon (a) personal delivery to the addressee, (b) five (5) days after deposit into Canada Post mail, postage prepaid, certified mail, return receipt requested, or (c) one day after delivery to Canada Post Express Mail or similar overnight delivery service. Until notified of a different address, as provided herein, all notices shall be addressed to the parties as follows:

Licensor:

Licensor:

Mailing Address for Notices:

20 Bay Street, Suite 700  
Toronto, Ontario M5J 2N8

Mailing Address for Notices:

800-1040 W GEORGIA ST  
VAN BC V6E4H1

Attention: Director, Facilities

Facsimile: (416) 848-2834 Tel: (416) 848-2076

Attention: W SMITHIES

Facsimile: \_\_\_\_\_

Tel: \_\_\_\_\_

604-681-5114

604-681-6544

## 20. No Implied Waiver

The waiver by Licensor or Licensee, as the case may be, of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such terms, covenant, or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

## 21. Subordination

Licensee accepts this Agreement subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the land or the Building and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Licensee agrees that any such mortgagee shall have the right at any time to subordinate such

mortgage, deed of trust or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement. At the request and expense of the Licensee, Licensor shall make reasonable efforts to obtain non-disturbance agreement in favour of Licensee from the holder of any such mortgage, deed of transfer or lien.

## **22. Legal Fees**

In the event of any action filed in relation to this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney's fees and other reasonable, court costs.

## **23. Casualty Damage; Licensee's Termination Option**

In the event of any fire, casualty, physical calamity or physical damage to the Building, which makes it impossible for Licensee to carry out the purposes of its installation, maintenance, and operation in the Building, or if the Building becomes unfit or undesirable for Licensee's use, Licensor, at its sole option and expense, may attempt to remedy such problem within one-hundred and eighty (180) days, or any such period deemed reasonable under the circumstances, provided Licensee may terminate this Agreement upon ninety (90) days prior written notice to Licensor, in which event, Licensee shall remove Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 10. Licensee shall have no obligation to pay fees during the ninety (90) day notice period of Licensee's intent to terminate this Agreement and all prepaid License Fee will be refunded. If the Licensee elects to maintain this Agreement because the Licensor plans to rebuild, License Fees shall abate from the date of destruction until the majority of the Building is occupied again with multiple tenancies.

## **24. Certification of Sale for Resale of Telecommunications Services**

In order to assist Licensor in fulfilling any relevant tax obligations, Licensee shall, within thirty (30) days of written request, provide Licensor with a written certification that it will be using any services provided under this License for the purpose of providing or reselling communication services to other parties. Such certification shall be made in a form acceptable to relevant tax or franchise authorities and upon forms provided by such authorities, if available.

## **25. Equipment to Remain Personality**

Except as otherwise provided herein, Licensee's Equipment shall remain personality ("Personalty") of the Licensee notwithstanding the fact that it may be affixed or attached to the Building, and shall, during this term of Agreement, or any extension or renewal thereof, and upon termination thereof, belong to and be removable by Licensee.

## **26. Severability**

If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted so as to give the greatest effect possible thereto.

## **27. Governing Law**

The construction, interpretation and performance of this Agreement shall be in accordance with the laws of the province in which the Building is located.

## **28. Survival of Provisions**

Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

## **29. Force Majeure**

(a) Whenever a period of time is herein prescribed for the taking of any action by Licensor or Licensee, Licensor or Licensee shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials (not caused by the party seeking the benefit of this paragraph), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Licensor or Licensee. The provisions of this paragraph shall not apply to the payment of fees or the payments of other monies to be paid by Licensor or Licensee under this Agreement.

(b) Without limiting Clause (a) of this Paragraph, , the party claiming such excuse shall endeavor to promptly give written notice to the other party hereto of any event or occurrence which it believes falls within the contemplation of this Paragraph 29.

## **30. Recordation**

Licensee agrees not to record this Agreement or any memorandum thereof unless required to do so by law (in which event Licensee agrees to execute, upon termination of this Agreement, a recordable instrument evidencing such termination in form reasonably satisfactory to Licensor).

## **31. License Only**

This Agreement creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Building, Building Communications Spaces, or Equipment Room by virtue of this Agreement or Licensee's use of the Building, Building Communications Spaces or Equipment Room pursuant hereto. In connection with the foregoing, Licensee further acknowledges that in no event shall the relationship between Licensor and Licensee be deemed to be a so-called landlord-tenant relationship and that in no event shall Licensee be entitled to avail itself of any rights afforded to tenants under the laws of the province in which the Building is located.

## **32. Successors in Licensor's Interest/Limitation of Liability**

(a) The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Licensor and Licensee and, except as otherwise provided in this Agreement to the contrary, their respective heirs, distributees executors, administrators, successors and assigns.

(b) The obligations of Licensor under this Agreement shall no longer be binding upon Licensor in the event that Licensor sells, assigns or otherwise transfers its interest in the Building as owner or lessee (or upon any subsequent licensor after the sale, assignment or transfer by such subsequent licensor), provided that in the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence.

(a) Neither the partners (direct or indirect) comprising Licensor, nor the shareholders of Licensor (nor any of the partners comprising same), nor any of the partners, shareholders, directors or officers of any of the foregoing nor any agent or person acting on the Licensor's or such persons behalf (collectively, the "Licensor's Parties") shall be personally liable for the performance of Licensor's obligations under this Agreement. Licensee shall look solely to Licensor to enforce Licensor's obligations hereunder and shall not seek any damages against any of the Licensor's Parties.

- (b) Notwithstanding anything contained in this Agreement to the contrary, Licensee acknowledges and agrees that Licensee shall look solely to the estate and interest of Licensor, its successors and assigns, in the Building, and the real property on which it is situated, for the collection of any judgment recovered against, or liability of, Licensor by reason of Licensor's breach of this Agreement or otherwise, and no other property or assets of Licensor or any of Licensor's Parties shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Licensee's remedies under or with respect to either this Agreement, the relationship of Licensor and Licensee hereunder, or Licensee's use of space licensed to Licensee hereunder.

### 33. Entire Agreement

The terms and conditions contained herein supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by authorized representatives of the parties.

### 34. Headings

The descriptive heading of the several paragraphs of this Agreement are inserted for convenience and ease of reference only and do not constitute part of this Agreement.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement in multiple original counterparts as of the day and year first above written.

**Licensee:**

Dated: July 11, 2001

**GT Group Telecom Services Corp.**

Per: \_\_\_\_\_

Name:

Title: Director, National Facilities

I have the authority to bind the corporation

**Licensor:**

Dated: July 19/01

**Landlord:**

Title: AGENT

I have the authority to bind the corporation

Don't forget to complete and attach the exhibits referenced in the TLA and re-listed below.

**EXHIBIT A**

Specifications of Licensee's  
Equipment

**EXHIBIT B**

Specifications of Equipment  
Room

**EXHIBIT C**

Specifications of Building  
Communications Spaces

**EXHIBIT D**

Access Request Form

(see next page for  
suggested language.)

**EXHIBIT E**

Building Rules and  
Regulations

**EXHIBIT F**

CDS Fee Schedule



## EXHIBIT D - Access Request Form

a) Mr. or Ms. \_\_\_\_\_, of \_\_\_\_\_ (company), requests permission to access the telecommunications equipment within the Building Communications Spaces of \_\_\_\_\_ on \_\_\_\_\_ (date), at approximately \_\_\_\_\_ am/pm.

b) For the purpose of \_\_\_\_\_ (detail below if necessary). The expected number of existing House cable pairs effected by this action is \_\_\_\_\_.

c) Will new or additional equipment located within the telephone closets? \_\_\_\_\_ (yes)(no). Please describe any new/additional equipment being placed in the telephone closet on floor(s) \_\_\_\_\_.

d) License Agreement # \_\_\_\_\_.

e) The expected duration of this visit is \_\_\_\_\_ (hours/days).

Licensee \_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Authorized Agent)

Date: \_\_\_\_\_