

# **TELECOMMUNICATIONS MASTER LICENSE AGREEMENT**

**BETWEEN:**

**OXFORD DEVELOPMENT GROUP INC.**

**(the "Licensor")**

**- and -**

**GT GROUP TELECOM SERVICES CORP.**

**(the "Licensee")**

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# TELECOMMUNICATIONS MASTER LICENSE AGREEMENT

This Agreement is dated the 1st day of January, 2000 and is made

**B E T W E E N:**

**OXFORD DEVELOPMENT GROUP INC.**

(the "Licensor")

- and -

**GT GROUP TELECOM SERVICES CORP.**

(the "Licensee")

**Whereas**

- A. The Licensor owns or manages commercial office buildings in various locations and the tenants and occupants of those buildings require telecommunication services;
- B. The Licensee wishes to gain access to the buildings owned or managed by the Licensor for the sole purpose of installing, maintaining and operating equipment to provide telecommunication services to the tenants and occupants of those buildings; and
- C. The Licensor and the Licensee intend for this Agreement to be a master agreement that specifies the terms and conditions for the installation and operation of the Licensee's telecommunication equipment, on a building by building basis, so that, except as indicated in the specific "Building Schedule" (defined in Article 1 below) for each particular building, the provisions of this Agreement will apply uniformly to all buildings to which access is given to the Licensee for the purpose referred to above;

**THEREFORE**, the Licensor and Licensee agree as follows:

## ARTICLE 1 - DEFINITIONS

### 1.01 Definitions

In this Agreement the following definitions apply:

✓ "Affiliate": a company that is affiliated with another within the meaning of the Canada Business Corporations Act.

"Agreement": this agreement and its Exhibits and Schedules.

"Annual Basic Fees": the Fees referred to in Schedule "A" as "Annual Basic Fees" and stipulated in a Building Schedule.

"Application": an application by the Licensee submitted in accordance with Schedule "B" of this Agreement, requesting permission from the Licenser for the installation or modification of the Licensee's Equipment.

"Authorized Individual" has the meaning set out in Section 5.03.

"Broadcasting": any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of any device.

"Building": a building in which a Licensed Area is located.

"Building Schedule": a Schedule to this Agreement, in the form of Exhibit "1" identifying a Licensed Area and Demarcation Point for any particular Building, and setting out the Term during which this Agreement applies to that Licensed Area, and the Fees payable for the Licensed Area,

"Business Taxes": all taxes, rates, duties, levies and assessments that are levied, rated, charged or assessed with respect to any and every business carried on by the Licensee in the Licensed Area, or in exercising the access privileges granted under this Agreement.

"Cabling": cable (whether copper, fibre optical or coaxial), wires, cords and connecting hardware and any combination of those items.

"Carrier": a Telecommunications common carrier that is subject to the legislative authority of Parliament.

"Commencement Date": the Commencement Date specified in a Building Schedule for any particular Licensed Area.

"Common Infrastructure": telecommunication wiring, or cables that are installed in a Building for use by more than one Carrier.

"Cross Connection": the connection of one wire or cable under the management and control, or ownership of a Carrier to a wire or cable under the management and control or ownership of another Carrier by anchoring each wire to a connecting block and placing a third wire between the two, or by any other means, and whether at the Demarcation Point or elsewhere; and any other connection of the Telecommunication system or any of its components, that is under the management, control or ownership of a Carrier, to a Telecommunication system, or any of its components that is under the management, control or ownership of another Carrier will also be considered as a Cross Connection.

"CRTC": the Canadian Radio-television Telecommunication Commission, or any other governmental body with jurisdiction over matters within, or formerly within, the jurisdiction of that last mentioned Commission.

"Customer": a tenant or occupant of premises in a Building who purchases Services from the Licensee.

"Demarcation Point": the physical location (typically in the meter room) where the wires and facilities on one side of the point are under the responsibility and control of the Licensee and the wires and facilities on the other side of the point may be under the responsibility and control of a different party, which location is depicted in a Building Schedule. The Demarcation Point and the POP Room may be in the same location or located in separate locations within a Building depending upon the configuration of the Building.

"Duct": a pipe, tube or conduit through which Cabling is passed and includes, where applicable, the Entrance Duct and Risers.

"Entrance Duct": a Duct, the whole or a portion of which is designated for use by the Licensor for use by the Licensee, that runs from the property line of the Lands to the Building and terminates in the POP Room.

"Exclusive Use Area": the part, or parts, if any, of the Licensed Area designated on a Building Schedule as an "Exclusive Area".

"Fees": the fees and charges payable by the Licensee to the Licensor under this Agreement.

"G.S.T.": Goods and Services Tax as levied and assessed under lawful authority by the Federal Government of Canada.

"In-building Wire": Cabling that runs from the Demarcation Point to the telephone closet on each floor of a Building and from there to the Customer's premises.

"Lands": those lands identified in a Building Schedule.

"Licensee": the "Licensee" identified above, and any permitted successor or assignee,

and the directors, officers, employees, contractors, agents of the Licensee and those persons for whom the Licensee is, at law, responsible.

"Licensor": the "Licensor" identified above and its successors and assigns.

"Licensee's Equipment": the Cabling and POP Room Equipment.

"Licensed Area": (a) the Pop Room, (b) that portion of the Entrance Ducts shown on a Building Schedule, and (c) the parts of the Risers and other parts of the Building, the location, dimensions and area of which are as shown on a Building Schedule.

"Licensor's Premises": a Building and the Lands on which it is situated.

"Plans" has the meaning ascribed to that term in Article 6.01.

"POP Room": a room or area (often referred to in the Telecommunications industry as a "point of presence room") where the Licensee's Cabling terminates within a Building, and the location and dimensions of which are shown on a Building Schedule.

"POP Room Equipment": the equipment, Cabling, apparatus, fixtures and ancillary attachments that are installed or are to be installed by the Licensee in a POP Room.

"Realty Taxes": all real property taxes or charges (including local improvement, municipal or similar charges if applicable and commercial concentration taxes) from time to time imposed in respect of all or any part of a Building or a Licensed Area by a taxing authority, and any other amount that may be imposed instead of or in addition to them, whether against the Licensor, the Licensee, and whether or not similar, in existence at the Commencement Date or within the contemplation of the parties.

"Releasee": a person or entity referred to in Section 7.01(e) as a "Releasee".

"Riser": a Duct that begins at the POP Room and travels from there to each of the floors in a Building and through which Cabling is passed, or is to be passed.

"Schedule": a schedule to this Agreement.

✓ "Services": the provision of Telecommunications to Customers within a Building.

"Signals": signs, signals, writing, images, sounds or intelligence of any nature including, without limitation, Telecommunications and Broadcasting.

"Telecommunications": any transmission, emission or reception of Signals by wire, visual, fibre optic or other system, excluding microwave and Broadcasting receiving apparatus.

"Term": the initial term described in a Building Schedule.

"Use": the use of a Licensed Area and other parts of a Building for the purposes permitted pursuant to Article 5.

## ARTICLE 2 - GRANT OF LICENSE

### 2.01 Application of this Agreement

This Agreement applies to a Licensed Area when a Building Schedule is completed for the Building in which it is situated, and the Building Schedule is signed by the parties to this Agreement.

### 2.02 License and Term

The Licensors grants to the Licensee a limited, non-exclusive right to access solely for the Use, each Licensed Area, and the right of exclusive use of the Exclusive Use Areas (if any) subject to the Licensors' rights set out in this Agreement during the Term stipulated in the applicable Building Schedule.

### 2.03 Option to Renew

✓ If the Licensee does not default under this Agreement, the Licensee shall have the right to renew the Term, for any particular Licensed Area, for the period, or periods if any, stated in the applicable Building Schedule but in each case the Licensee must give written notice of its exercise of this right at least twelve (12) months, and not more than fifteen (15) months prior to the expiration of the Term, or the renewal period, as the case may be, and the right to renew, in each case, is subject to the following:

- ✓ (a) The Fees payable during each renewal period shall be equal to those prevailing in the municipality where the Building is situated, for comparable buildings in connection with comparable Services, and for areas and facilities comparable to the Licensed Area. Failing agreement by the parties as to the prevailing Fees, the Fees will be determined by a single arbitrator in Ontario under the Arbitrations Act of Ontario.
- (b) There shall be no further renewal right following the expiry of the last renewal period provided for in the applicable Building Schedule.



## **ARTICLE 3 - LICENSOR'S CAPACITY**

### **3.01 Basis of Licensor's Execution**

In executing this Agreement the Licensor does so (a) on its own behalf in connection with each Building that is owned by the Licensor, and (b) without liability on its part, as agent for, and on behalf of the owner or owners of each Building that is not owned by the Licensor.

## **ARTICLE 4 - LICENSE FEES**

### **4.01 Fees**

The Licensee shall pay to the Licensor the fees provided for in Schedule "A" of this Agreement plus G.S.T. The Annual Basic Fee, which applies for each Licensed Area, is payable in advance without any deduction, set-off, or abatement, in equal quarterly installments, with the first instalment being due on the applicable Commencement Date. The Annual Basic Fee will be adjusted at the end of the second year of the Term to be effective commencing the third year of the Term so that it is equal to that rate which prevails in the municipality where the Building is situated, for comparable buildings in connection with comparable Services, and for areas and facilities comparable to the Licensed Area. In any case, the Annual Basic Fee after the second year of the Term will at least equal the Annual Basic Fee payable at the end of the second year of the Term. If there is a dispute concerning the prevailing rates referred to above, it will be determined by a single arbitrator, in Ontario, under the Arbitrations Act of Ontario.

## **ARTICLE 5 - LICENSE TERMS**

### **5.01 Access Privileges**

Subject to the provisions of this Agreement, the Licensor grants to the Licensee a non-exclusive and limited right to enter the Licensor's Premises, to use the Licensed Area (and to have exclusive use of any Exclusive Use Area) for the following purposes (the "Use") only:

- (a) to install Cabling into the Entrance Duct, or the part of it, that is designated by the Licensor pursuant to this Agreement, commencing at the property line of the Lands and terminating at the POP Room or the Demarcation Point and to operate, maintain and repair that Cabling;
- (b) to install the POP Room Equipment and to operate, maintain and repair it;
- (c) to install Cabling from the POP Room or the Demarcation Point to the Riser and to operate, maintain and repair that Cabling;

- (d) to install Cabling through the part of the Riser, specifically permitted by the Licensor, terminating in specified telephone closets or locations on specified floors within the Building and to operate, maintain and repair that Cabling;
- (e) to make the improvements required, and approved by the Licensor in accordance with Article 6, to provide Services to the Customers. These improvements may include, but shall not be limited to heating, air conditioning, walls, ventilation and electrical wiring in conduits;
- (f) subject to the Licensor's security procedures, including the availability of a representative of the Licensor (an "Escort"), to access the Licensed Area, twenty-four (24) hours a day seven (7) days a week to perform any installation, operation or maintenance, as may be approved by the Licensor, of the Licensee's Equipment including access to those portions of the Building that are from time to time designated by the Licensor as being available for common access and egress for occupants of the Building such as driveways, walkways, hallways and exits and entrances. Access keys and combinations shall be provided by the Licensor to the Licensee at the Licensee's expense if and when they are necessary and the Licensee shall return them to the Licensor at the end of the Term or any renewal of it;
- (g) ✓ to use the Licensed Area only for the purpose of providing Services to the Customers at their respective premises in the Building; and
- (h) to protect the POP Room Equipment and other improvements permitted under this Section 5.01 against damage, in such manner as the Licensor may reasonably require

all at the sole cost and expense of the Licensee.

The location, installation, alteration and modification of the Licensee's Equipment and other improvements shall be subject to such conditions and covenants as the Licensor requires as outlined in Article 6.

✓ The Licensor may at any time require the Licensee to modify or relocate the POP Room and the Licensee's Equipment, or any part of it. The Licensor will pay the reasonable direct costs (which exclude, without limitation, costs and compensation for disruption of service) of relocating the POP Room and POP Room Equipment and the Licensee will pay for all other costs of relocation and modification. If there is such a relocation, the "Licensed Area" will be construed accordingly. The Licensor will give the Licensee reasonable prior written notice (but in no case will more than one hundred and twenty (120) days' written notice be required) of the required relocation or modification.

## 5.02 Conditions of Access

- (a) The Licensee's rights under this Agreement are non-exclusive. This Agreement does not grant to the Licensee an exclusive right to offer or provide Services in the Building. The Licensee is an invitee only and the Licensee's rights are restricted to those that are expressly set out in this Agreement.
- (b) The Licenser may, in its sole discretion, limit the type, size, configuration and/or location of the POP Room and the Licensee's Equipment.
- (c) The Licensee shall not use the Licensee's Equipment for purposes other than those that are expressly provided for in this Agreement.
- (d) The Licensee shall not permit any other person to share or use the Licensee's Equipment, or access the Licensed Area without the express written consent of the Licenser.
- (e) The Licensee shall not Cross Connect or permit the Cross Connection of its Cabling to that of any other Carrier without the express written consent of the Licenser.
- (f) The Licensee is only permitted to use the Licensed Area for the purposes that are expressly provided for in this Agreement. The Licensee must not use the Licensed Area for a Network HUB, switching system, or switch hotel or for installing any public communications system or public cordless telecommunications system as those terms are defined by the CRTC, or as those terms are otherwise commonly used in the Telecommunications industry in Canada.
- (g) The Licensee is prohibited from installing, modifying, adding to or removing any part of the Licensee's Equipment without first:
  - (i) obtaining the Licenser's approval in writing for all Plans;
  - (ii) obtaining the Licenser's approval concerning the start date and completion date of whatever work is involved; and
  - (iii) complying with the requirements of Schedule "B".
- (h) The Licensee accepts the Building, including all Ducts "as is" and "where is". The Licenser does not, through the provisions of this Agreement, or otherwise, guarantee or warrant that any part of the Building, including the Ducts, is or will be fit or adequate for the Licensee's purposes even though the Licensee may have indicated the nature of its intended use, or provided Plans to the Licenser for its review and approval. The Licenser's review and approval of any Plans is limited to satisfying the Licenser that the installation will not generally compromise the

integrity or value of the Licensor's Premises.

- (i) The Licensee is solely responsible for obtaining and negotiating any and all required municipal access agreements.
- (j) The Licensee shall not interfere with any tenants or occupants of a Building or conduct any sales or promotional campaign specifically directed to any tenants or occupants of a Building without the Licensor's prior written consent.
- (k) The Licensee shall maintain at all times, as-built drawings identifying all Cabling and other improvements that it installs in the Building and, shall ensure that each item of the Licensee's Equipment, and in particular Cabling, is physically labeled in a manner and in locations, approved by the Licensor.
- (l) Security services and security requirements imposed by the Licensor are provided solely for the benefit of the Licensor and not for the Licensee. The Licensee is not entitled to rely upon any security services, Escort services, or similar services provided by the Licensor for protection and should any damage to the Licensee's property or to the Licensee occur in connection with the conduct of its activities under this Agreement, it will make no claim against the Licensor or the provider of the security services.

#### **5.03 Access Procedure**

- (a) Prior to requesting access to the Licensed Area for any purpose whatsoever, the Licensee shall identify those of its employees, contractors and contractors' employees who require access to the Licensor's Premises. Only an individual who has been so identified and approved by the Licensor for access to the Licensor's Premises (the "Authorized Individual") will be permitted access to the Licensor's Premises.
- (b) When access to the Licensor's Premises is required, the Licensee shall ensure that any Authorized Individual, while on the Licensor's Premises, abides by the Licensor's building rules and regulations as well as all other applicable laws, rules and regulations and security measures in effect. The Licensor reserves the right, in its sole discretion, to deny access to or expel any Authorized Individual from the Licensor's Premises.
- (c) Where access to the Licensor's Premises is requested, the Licensor will permit the Authorized Individual to access the Licensed Area only in accordance with the provisions of this Agreement. While the Authorized Individual is within the Licensor's Premises, the Authorized Individual shall display identification in a manner and form that is satisfactory to the Licensor.
- (d) While in the Licensor's Premises the Licensor may, at its sole discretion, require

that the Authorized Individual be escorted in the following instances:

- (i) where the Authorized Individual wishes to install Cabling into any Duct, whether or not the Duct is used by any other Carrier;
  - (ii) where the Authorized Individual requires access to the Demarcation Point, or to any telephone closet on any floor of the Building; or
  - (iii) where the Authorized Individual requires access to other areas within the Building to which the Licensor requires the Authorized Individual to be escorted.
- (e) Where the Authorized Individuals may require an Escort, such access will be permitted "by appointment only". The Authorized Individual shall contact the Licensor to arrange the appointment. The Licensor will use commercially reasonable efforts to arrange for an Escort for the Authorized Individual. The Licensee shall pay those charges for the Escort that are prescribed in Schedule "B".
- (f) Where emergency repair or maintenance of the Licensee's Equipment is required, and where access might require the Licensor to provide an Escort, the Licensor will use commercially reasonable efforts to make an Escort available upon request by the Authorized Individual.
- (g) The Licensor reserves the right to enter for the purpose of performing periodic inspections and to limit access to the Licensed Area and the Licensee's Equipment at all times. Where practical, the Licensor will notify the Licensee in advance of the Licensor's intention to inspect the Licensee's Equipment and the Licensee shall attend such inspections.
- (h) Where any of the Licensee's Equipment is determined by the Licensor not to comply with the provisions of this Agreement, the Licensee shall immediately, upon notification (specifying the period of time within which the equipment must be modified), modify the installation or operation of the non-conforming equipment. Where compliance is not achieved within the specified period of time, the Licensor may, without further notice to the Licensee, take such action as the Licensor determines necessary to remove or remedy such non-compliance at the Licensee's sole cost and expense without limiting any of the other remedies that may be available to the Licensor at law or in equity.
- (i) Installation, modification, removal and other work in respect of the Licensee's Equipment, or the Licensed Area will only be performed during Normal Business Hours. "Normal Business Hours" are the hours specified by the Licensor for each Building.

#### **5.04 Licensor's Alteration**

Despite anything else in this Agreement, the Licensor may, at any time, make any changes in, additions to or relocations of any part of the Licensor's Premises; may grant, modify or terminate easements and any other agreements pertaining to the use or maintenance of all or any part of the Licensor's Premises may close all or any part of the Licensor's Premises to such extent as the Licensor considers necessary to prevent the accrual of any rights in them to any persons; and the Licensor may also make changes or additions to the pipes, Ducts, utilities and any other building services in the Building (including the Licensed Area) which serve any part of the Building. In so doing, the Licensor may enter upon the Licensed Area. Neither the Licensor nor any Releasee shall be liable for any damage caused to the Licensee's property, except if due to the gross negligence or willful acts of the Licensor or the Releasee or those for whom the Licensor is at law responsible. No claim for compensation shall be made by the Licensee by reason of any inconvenience, nuisance or discomfort arising from work done by the Licensor but the work will be done as expeditiously as is reasonably possible.

Except where the POP Room is an Exclusive Use Area, the Licensor may require the Licensee to co-occupy the POP Room to accommodate other Carriers, without any abatement in the Fees paid by the Licensee, and the Licensee may be required to reconfigure the Licensee's Equipment as may be requested by the Licensor to accommodate such co-occupation.

Where the Licensor requires the Licensee to reconfigure the Licensee's Equipment to accommodate co-occupation by another Carrier, the Licensee shall, within ninety (90) days notice to the Licensee by the Licensor:

- (a) terminate this Agreement upon thirty (30) days written notice to the Licensor; or
- (b) reconfigure the Licensee's Equipment in accordance with the Licensor's request.

Where the Licensee decides to terminate this Agreement pursuant to this Section 5.04(a), the Licensee will be permitted thirty (30) days within which to remove the Licensee's Equipment. Any Fees that have been pre-paid by the Licensee may be refunded by the Licensor or set-off against any other Fees owed by the Licensee to the Licensor.

#### **5.05 Restoration**

At the end of the Term, and any renewal of the Term, or on early termination, the Licensee will remove any and all chattels and personal property that the Licensee has installed, and any of the Licensee's Equipment that the Licensor requires to be removed, and will either, at the Licensor's option: (i) promptly, to the extent and within the time frame reasonably specified by the Licensor, restore the Building to its condition prior to the installation of the Licensee's

✓ Equipment and other improvements, (in any case, the restoration and removal to be completed within no more than thirty (30) days of any request by the Licensor), or (ii) pay all costs to the Licensor for the removal and restoration. The Licensor may also, in lieu of requiring or permitting the removal of the Licensee's cabling, require that the Cabling be left in place at no cost to the Licensor, and may require the title to the Cabling be transferred to the Licensor without compensation to the Licensee.

#### **5.06 Licensor's Assumption of Control**

The Licensor may at any time, on at least thirty (30) days' prior written notice to the Licensee, assume responsibility and control of all or any Cabling installed by the Licensee in the Building, without compensation to the Licensee. This responsibility and control may also include, but not be limited to administrative responsibility, and the right to assign Cabling for the use of the Licensee, or other Carriers and occupants of the Building. This responsibility may also include combining the Cabling installed by the Licensee with a Common Infrastructure.

#### **5.07 Common Infrastructure**

The Licensor may undertake to provide or install a Common Infrastructure to satisfy the collective Cabling requirements of all Carriers and occupants of the Building or any of them. In that case, the Licensee must use the Common Infrastructure for delivering its Services from the POP Room or Demarcation Point to its Customers. Use of the Common Infrastructure may also be required of other licensees who are Carriers. Usage of the Common Infrastructure will be subject to connection and usage fees determined by the Licensor in its sole discretion, which will be posted and applied on a reasonable basis to the Carriers in the Building. The Licensor may take any action or actions allowed as a result of rulings or decisions (future or otherwise) that may be made by the CRTC and those actions may be taken at any time by the Licensor, in its sole discretion, following any ruling. However, this right will not entitle the Licensor to take any action that conflicts with the basic intent of this Agreement and if there is a dispute in that regard, it will be determined by a single arbitrator in accordance with the Arbitrations Act of Ontario. Subject to compliance with any relevant decisions or rulings imposed by the CRTC after the activation of the Common Infrastructure, the Licensee will no longer be permitted to install its own Cabling within the Building.

If the Licensor establishes a Common Infrastructure, (i) it will maintain, repair, replace and operate the Common Infrastructure in order to maintain appropriate service standards, and (ii) it will act expeditiously to repair or correct any problems that the Licensee may report with respect to the Licensee's use of the Common Infrastructure.

Should the Licensee be permitted to continue its use of the Cabling which it installs for the duration of the Term and any renewal period despite the Licensor's establishing of a Common Infrastructure, the Licensee's Cabling will become part of the Common Infrastructure and also be subject to connection and usage fees at the end of the Term, renewal of the Term, or on early termination as the case may be, unless the Licensor requires it to be removed by the Licensee in

accordance with this Agreement.

## **ARTICLE 6 - INSTALLATIONS, MODIFICATIONS, REPAIRS AND MAINTENANCE**

### **6.01 Approval of Installations**

Prior to the commencement of the installation or construction of the Licensee's Equipment on, at, or in the Licensor's Premises, the Licensee shall obtain the written approval of the Licensor of the plans, specifications, working drawings, blueprints, schedules and similar renderings for the construction and installation (the "Plans") in accordance with the procedure set forth in Schedule "B". Notwithstanding any approval of the Plans by the Licensor, the Licensor makes no warranty or representation to the Licensee that the Licensor's Premises, the Ducts or any other components are, or will remain adequate or suitable for the Licensee's purposes during the Term.

### **6.02 Application to Amend**

Should the Licensee wish to modify the Licensee's Equipment or the Services that it provides to a Customer, the Licensee shall submit an Application, including the Plans for the proposed modification. An Application will only be approved if, in the opinion of the Licensor, there are available POP Rooms, and Ducts and the Licensee is in good standing in respect to all of its obligations under this Agreement. If the Licensor approves the Application, this Agreement will be considered to be amended accordingly.

### **6.03 Review of Plans**

The submission of the Plans shall be in accordance with Schedule "B" and shall show, in detail satisfactory to the Licensor, the design, color, construction, technical specifications and installation of the Licensee's Equipment in the Building including the connection of the Licensee's Equipment with the electrical, structural, communication and mechanical systems of the Building. The Licensor shall have the absolute discretion to require changes and revisions in and to the Plans and the Licensee shall (even if the Licensee is to incur additional costs to comply with the Licensor's requirements) promptly, and with due diligence, give effect to any such changes or revisions. The Licensee shall be responsible for and shall reimburse the Licensor for all costs associated with or arising from review of the Plans as provided herein.

Notwithstanding any approval of the Plans by the Licensor, the Licensor makes no warranty or representation to the Licensee that the Licensor's Premises, the Ducts or any components are, or will remain adequate or suitable for the Licensee's purposes. The Licensee shall at all times remain liable and responsible for the Plans, including any and all damages suffered by the Licensor and the tenants and occupants of the Building as a result of the installation of the Licensee's Equipment as well as the Licensee's use of the Licensor's Premises.



#### **6.04 Construction and Installation**

After the Licenser has given its written approval of the Plans, the Licensee shall at its sole risk, cost and expense commence and diligently proceed with and complete the installation, construction and connection of the Licensee's Equipment in strict accordance with the Plans as approved and to the satisfaction of the Licenser, including all work or construction which is necessary for the proper installation, construction and interconnection of the Licensee's Equipment for the Use. All construction, alteration, maintenance, repair, replacement, installation and removal shall be carried out in a good and workmanlike manner, shall comply with all applicable laws, regulations, by-laws, orders, rules and ordinances of any competent authority, shall be subject to supervision by the Licenser and shall be performed only by persons approved or designated by the Licenser. All of the Licensee's Equipment shall comply with Bellcore, CSA standards as well as such other standards as are commonly followed within the Canadian Telecommunications industry. The Licensee shall, at the request and direction of the Licenser, restore the Licenser's Premises to its former condition if any such work or construction does not comply with Plans approved by the Licenser.

#### **6.05 Repairs and Maintenance**

✓ The Licensee shall, at its own expense, keep the Licensed Area in a safe and properly maintained condition in compliance with all applicable laws, and should the Licensee fail to do so, the Licenser may effect any required repairs, replacements or maintenance if it gives the Licensee ten (10) days' written notice of its intention to do so. In order to preserve or protect life or property in emergency situations, the Licenser may immediately repair the Licensed Area and the Licensee's Equipment. All costs and expenses incurred by the Licenser in this regard together with an administration fee of fifteen percent (15%) of those costs and expenses must be paid by the Licensee within thirty (30) days from the receipt of an invoice therefor.

#### **6.06 No Interference with the Licenser and Building Tenants**

The Licensee, and each Authorized Individual shall co-ordinate all construction, installation, maintenance, alteration, replacement or removal of the Licensee's Equipment at, on, or near the Building with the similar activities of the Licenser or others, as may be necessary and as directed by the Licenser. All work shall be performed so that it does not interfere or conflict with any activity of the Licenser or of any tenant, occupant or other licensee in the Building. Neither the Licensee nor any Authorized Individual shall endanger any other work or facility at or near the Licenser's Premises or forming part of the Building by altering, cutting, digging or otherwise. The cost of repairing, replacing or otherwise remediating any improvements, work, or conditions made necessary by the Licensee or an Authorized Individual in breach of this Section will be paid by the Licensee on demand plus an administration fee equal to fifteen percent (15%) of the cost, without limitation to the Licenser's other remedies.

#### **6.07 Workers' Compensation - Construction Liens**

The Licensee will not permit any contractor or subcontractor to do any work in the Building if an up to date, valid clearance certificate issued by the applicable regulatory body for the contractor or subcontractor is not produced to the Licensor, or if the Licensor is not satisfied that the contractor or subcontractor is in good standing in respect of its obligations under the applicable "Worker Compensation" legislation.

The Licensee shall promptly pay all charges incurred by or on behalf of the Licensee for any work, materials or services furnished or supplied to the Licensee or an Authorized Individual in respect of the Licensee's Equipment. If any lien is filed or registered against the Lands or the Building or any part of them as a result of any work done or materials furnished or supplied for the account of the Licensee, its employees, agents and contractors whether used or specifically prepared with the view of being used in respect of the Licensor's Premises or any part of them or otherwise, the Licensee shall promptly cause any such lien to be discharged or commence legal proceedings to have the lien vacated or canceled. If the Licensee fails to do so, then, in addition to any other right or remedy the Licensor may have, on ten (10) days' written notice to the Licensee, the Licensor may, but shall not be obligated to discharge the lien or obtain its removal and shall then charge the Licensee with the cost thereof, plus an administration fee equal to fifteen percent (15%) of the cost.

#### **6.08 Damage to Licensor's Premises**

The Licensee shall, at its sole cost and expense, have all damage caused by it to the Licensor's Premises or any improvements or property of others repaired immediately. If the Licensee causes damage such as that described above, the Licensor may elect to repair the damage at the Licensee's cost and may recover that cost from the Licensee plus an administration fee equal to fifteen percent (15%) of the cost.

### **ARTICLE 7 - LICENSEE'S COVENANTS**

#### **7.01 Licensee's Covenants**

Throughout the Term and any renewals of the Term the Licensee will satisfy the following obligations:

(a) **Fees**

The Licensee will pay the Fees as required by this Agreement.

(b) **Taxes**

✓ The Licensee will pay Realty Taxes, Business Taxes and G.S.T. and any taxes

imposed upon the Licensor by reason of the Licensee's use of the Licensed Area or the exercise of its rights under this Agreement.

**(c) Electricity**

The Licensee shall be responsible for the payment of its own electrical consumption based on the Licensee's connected load as reasonably estimated by the Licensor and in this connection the Licensee shall at the Licensor's request install a meter, or meters, at its own expense to record its power consumption, when requested by the Licensor to do so, if the Licensor, acting reasonably, determines that the Licensee's electrical consumption is sufficient to warrant the installation of such meter or meters. Alternatively, the Licensor may require the Licensee to obtain electricity directly from the electricity supplier and to install or pay for the installation of whatever separate meters, or other equipment may be required.

**(d) Indemnity**

The Licensee will indemnify and save harmless the Licensor and each Releasee from and against any and all actions, causes of action, suits, claims, damages, awards, proceedings, costs (including the Licensor's legal costs on a solicitor and his own client basis) and liabilities or claims (collectively "Claims") by any third party (including, without limitation, any Authorized Individual and the directors, officers, employees, agents, representatives or customers of the Licensee and each Releasee) arising in respect of:

- (i) the placement, installation, use (or the inability to use), operation, maintenance or removal of the Licensee's Equipment by the Licensee or an Authorized Individual in, on, or from the Licensor's Premises;
- (ii) the performance of this Agreement by the Licensee, including the installation of the Licensee's Equipment, or its use or misuse by the Licensee;
- (iii) any breach, violation, act or omission or non-performance of any condition, covenant, obligation, representation or warranty by or on the part of the Licensee;
- (iv) damage to the Licensor's Premises or any personal property (including the loss thereof) of the Licensor, or any third party, or physical injury (including death resulting therefrom) caused directly or indirectly by the Licensee, or its agents, servants or employees;
- (v) any act or omission of the Licensee in connection with the presence, installation, use, operation or maintenance of the Licensee's Equipment;

- (vi) the proximity of the Licensee's Equipment to any facilities or equipment of the Licenser, any tenant of the Licenser, whether or not a Customer, or other Carriers within the Licenser's Premises as a result of the presence, installation, use, operation or maintenance of the Licensee's Equipment;
- (vii) any act or omission of or by the Licensee in or while providing any Services to any Customer, or in respect to any service interruption, failure or impairment;
- (viii) any actual or attempted seizure or repossession of the Licensee's Equipment or any other equipment or property of the Licensee in any of the Licenser's properties by any creditor of the Licensee or by any other party;
- (ix) the infringement of patents or other intellectual property rights arising from the use of the Licensee's Equipment or the combining or using the Licensee's Equipment with other equipment or facilities of the Licensee within the Building; or
- (x) any claim of ownership, right or title by any third party in respect of the Licensee's Equipment (the Licensee represents and warrants it is the sole owner of all of the Licensee's Equipment) or any claim arising from any alleged lack of authority by the Licensee to enter into this Agreement.

The Licenser shall not be liable for the quality of transmission, or for any damages arising from omissions, interruptions, delays, errors or defects in transmissions suffered by the Licensee, or any of its Customers, caused by failures or defects within the Licenser's Premises. To the extent that any of the Licensee's Customers suffer damages arising from any of the circumstances mentioned above for which the Licenser may be at law responsible, the Licensee hereby indemnifies and holds harmless the Licenser from and against any such claims, regardless of whether the Licenser is alleged or found to be negligent.

(e) **Release and Waiver**

The Licensee does hereby release the Licenser, and each owner of a Building, the Affiliates of the Licenser and the Affiliates of each owner of a Building, as well as their respective directors, officers, servants, agents, employees, contractors and those for whom all or any of them is, or are, in law responsible (hereinafter, individually, the "Releasee" and, collectively, the "Releasees"), from all actions, suits, damages, costs and liabilities for:

- (i) any damage to the Licensed Area or Licensee's Equipment;
- (ii) any injury to, or death of any person; and

(iii) damage to any person's property or loss of use of such property,

arising out of any act or omission by any Releasee in respect of the Licensed Area or the Licensee's Equipment. This release extends to negligent or grossly negligent acts or omissions, but not to willful acts of any Releasee.

The Licensee further waives any claim that it may now have or may in the future have in tort, contract law, under any other theory of law, under statute, common law or in equity and confirms that its rights, obligations, rights of indemnity and measure and type of damages are limited to those that are expressly provided for in this Agreement.

(f) **Insurance**

- (i) (A) The Licensee shall at all times during the Term and any renewals thereof maintain an insurance policy covering all of its undertaking and in particular, public liability and property damage insurance coverage in an amount not less than Five Million Dollars (\$5,000,000.00), for each occurrence involving bodily injury, death or property damage, personal injury liability, products liability, contractual liability, contingent liability, and non-owned automobile liability, such policy to be written on a comprehensive basis. Upon request, the Licensee shall provide a certificate that such insurance is in force.
- (B) The Licensee's insurance coverage shall include all risks direct damage insurance, covering the Licensee's Equipment and all of the Licensee's chattels in an amount equal to the full replacement value thereof.
- (C) In addition, the Licensee's insurance coverage shall include business interruption insurance in such amounts as will reimburse the Licensee for direct or indirect loss of earnings attributable to all perils insured against in subsections 7.01(f)(i)(A) and (B) above.
- (ii) Each insurance policy referred to herein shall add the Licensor, any owner of a Building, and any mortgagee of the Licensor as additional named insureds, as their respective interests may appear and shall contain as appropriate:
  - (A) a severability of interests and a cross liability clause;
  - (B) a waiver of subrogation in favor of the Licensor and those for whom in law it is responsible; and

- (C) a clause stating that the Licensee's insurance policy will be considered as primary insurance and not as excess to any other insurance that may be available to the Licensor, any owner of a Building or any mortgagee of the Licensor.

The Licensee shall provide certificates of insurance to the Licensor, on or prior to the commencement of the Term. All insurance policies shall contain an undertaking by the Licensee's insurer to notify the Licensor upon not less than thirty (30) day's prior written notice of any material change to the prejudice of the Licensor in terms, cancellation or termination.

**(g) Non-Liability for Loss, Injury or Damage**

In no event will the Licensor or any Releasee be liable to the Licensee (or any other party claiming through the Licensee) for:

- (i) lost profits, loss of revenue, failure to realize expected savings, loss of data, loss of use or any other commercial or economic loss of any kind, or punitive, exemplary, indirect, incidental, consequential or special damages or third party claims arising out of the use by the Licensee of the Licensor's Premises even if the Licensor was aware of or had been advised by the Licensee of the possibility of such potential losses or damages; and the Licensee releases, holds harmless and indemnifies the Licensor in respect of the same;
- (ii) the quality, adequacy, compatibility or sufficiency of any Duct or Cabling provided to the Licensee hereunder, it being acknowledged by the Licensee that all Duct and any supplied Cabling is provided "as is" and "where is", the use of which is at the sole risk of the Licensee;
- (iii) the activities of any third party, whether or not that party is on the Licensor's Premises under the terms of another Telecommunications access license or similar agreement, whether or not the activities of the party have been supervised by the Licensor, or whether or not the party has been escorted while within the Licensor's Premises;
- (iv) any Claims resulting from lightening or other electrical current passing through the Licensor's Premises or facilities that cause any damage to the Licensee's Equipment or result in the interruption of any Service by the Licensee;
- (v) any Claims resulting from any fire, explosion or other occurrence involving the Licensor's Premises;
- (vi) the inadequacy of any utility service, or the loss of or the failure to provide any utility service; or

- (vii) the Licensors failure to perform any of its obligations hereunder where such failure is due, directly or indirectly, to fire, flood, explosion, earthquake, other disaster, power failure, accident, civil disturbance, riot, sabotage, laws imposed after the fact, war, rationing, embargo, strike or labor problem, acts of God or acts of government.

If for any reason, despite the foregoing limitations, the Licensors or any Releasee becomes liable to the Licensee or any other third party arising out of or in any way connected to this Agreement, in no event, regardless of the form of the action, whether in contract, tort or under any other theory of law, shall the aggregate liability of the Licensors or any Releasee to the Licensee, or to any third party, exceed the amount of One Thousand Dollars (\$1,000.00).

Other than as expressly provided for in this Agreement, there are no other warranties, representations, conditions or guarantees of any kind provided by the Licensors to the Licensee, either express or implied, whether by statute, agreement, tort, product liability, other theory of law, or otherwise, regarding this Agreement or the privileges afforded to the Licensee pursuant to this Agreement.

## **7.02 Agency and Trust Provision**

Wherever an indemnity or an exculpatory provision benefits the Licensors under this Agreement, the provision will be considered also to apply to and to benefit each Releasee.

For the purposes of permitting each Releasee to enforce the benefit of the indemnity provided for in Section 7.01(d), the benefit of the release and waiver provided for in Section 7.01(e), and the benefit of each other exculpatory provision included in this Agreement (including Section 7.01(g)) which is expressed or intended to be in favour of a Releasee, or the Licensors, the Licensors acts as agent or trustee for the benefit of the Releasee.

## **7.03 Compliance with Laws**

The Licensee will comply with all applicable governmental laws, regulations, by-laws and other governmental requirements to the extent they apply to the Licensees Equipment, each Licensed Area, each of the Licensors Premises, and the Licensees activities in, or in respect of all and any of them. Without limiting the Licensees obligation stated in the preceding sentence:

### **(a) Environmental Compliance**

The Licensee will comply with all laws pertaining to protection of the natural environment, and with occupational health and safety, and laws pertaining to personal safety and protection and shall indemnify the Licensors and each Releasee in respect of every loss, cost or expense which the Licensors suffers as

the result of its failure to do so.

**(b) Occupational Health and Safety**

The Licensee represents and warrants that, it will comply with the provisions of health and safety legislation in force in the province where the Licensor's Premises are located. The Licensee acknowledges that it is solely responsible as employer for the health and safety of all its employees and workers, as well as for the continuing safe conditions in the Licensed Area and while on the Licensor's Premises to the extent it has access thereto for the purposes of installing and maintaining the Licensee's Equipment. The Licensee shall comply with and shall require all of its employees and workers to comply with the provisions of all applicable laws, statutes, rules, regulations, notices and orders including but not limited to all federal, provincial and local laws, statutes, rules, regulations, notices, orders and amendments respecting occupational health and safety, the environment, worker's compensation and the safe condition of the Licensed Area and the Licensor's Premises. All materials and supplies used by the Licensee's personnel in the Licensed Area and in the Licensor's Premises shall be used, handled, stored, otherwise dealt with and properly labeled in accordance with the Workplace Hazardous Materials Information System.

**ARTICLE 8 - LICENSOR'S CO-OPERATION**

**8.01 Co-Operation**

At the request of the Licensee and at the Licensee's cost, the Licensor will cooperate with the Licensee in obtaining all necessary consents, permits and licenses of the municipality, Industry Canada, Transport Canada and other governmental authorities having jurisdiction with respect to the construction, operation, maintenance, repair and replacement of Licensee's Equipment and to this end will, without restricting the foregoing, execute all necessary authorizations to enable the Licensee to obtain building permits and to obtain any information acceptable to the Licensor with respect to the Licensor's Premises which the Licensee may require from any such authorities and to enable the Licensee, at the Licensee's cost, to obtain plans and drawings from the municipality, or any architect or engineer. The Licensee will provide copies of all such consents, permits and licenses to the Licensor when obtained. Notwithstanding the foregoing, no authorizations will permit any organization, authority or agency whatsoever to inspect the Licensor's Premises.

**ARTICLE 9 - TERMINATION OF LICENSE**



### **9.01 Interference with Signals**

Should the operation of the Licensee's Equipment cause any interference with or disruption to any equipment or system of a Building or of any of its occupants, the Licensee shall immediately upon notification from the Licensor in writing, cause the interference or disruption to cease. The Licensee shall be considered in default if it fails to resolve the material interference or disruption within five (5) days after receipt of that notice from the Licensor.

### **9.02 Other Rights of Termination by the Licensor**

The Licensor may elect to terminate this Agreement, in whole or in part, and as it relates to any particular Building, in each of the following circumstances, subject to giving at least thirty (30) days' prior written notice to the Licensee:

- (a) where the Licensor determines that the Licensor's Premises have been destroyed, or damaged to such an extent that it is not feasible to repair them within a period of one hundred and eighty (180) days after the damage;
- (b) where the Licensed Area becomes damaged and, in the Licensor's opinion, it is not feasible to restore the Licensed Area within ninety (90) days after the damage;
- (c) where the Licensor's Premises are expropriated in whole or in part by a lawful authority;
- (d) where the Licensor wishes to redevelop, or otherwise alter the Licensor's Premises in such a manner as to, in the Licensor's opinion, make the relocation of any part of the Licensed Area not feasible; or
- (e) where the Licensor elects to change the primary use of the Licensor's Premises to a use other than that in effect as of the date of the applicable Building Schedule.

## **ARTICLE 10 - DEFAULT**

### **10.01 Default**

Without limiting its other rights and remedies:

- (a) the Licensor shall be permitted to terminate this Agreement, in whole or in part, and in respect of all or any of the Buildings, where the Licensee commits any of the following defaults:

- (i) the Licensee fails to pay any amount due and owing to the Licensors under this Agreement; or
- (ii) the Licensee fails to comply with any of the terms or conditions of this Agreement;

if the Licensors have provided to the Licensee written notice of the default and the Licensee has failed to cure the default within ten (10) days after the written notice; and

- (b) regardless of any other provision of this Agreement, the Licensors shall be entitled, at its option, to terminate this Agreement, in whole or in part, and in respect of all or any of the Buildings immediately upon written notice to the Licensee if any of the following defaults occurs:

- (i) where the Licensee becomes bankrupt or insolvent,
- (ii) upon the filing by the Licensee of any petition, request for reorganization, readjustment or arrangement of the business of the Licensee under any laws relating to bankruptcy or insolvency;
- (iii) upon the Licensee ceasing to carry on business in the ordinary course;
- (iv) upon the appointment of a receiver or receiver-manager for all or substantially all of the property of the Licensee;
- (v) upon any notice of, or actual or attempted seizure or repossession of the Licensee's Equipment or any part of it;
- (vi) upon the making of any assignment or attempted assignment for the benefit of creditors;
- (vii) where the Licensee fails to procure, maintain and pay for or keep in force any insurance required to be maintained by the Licensee pursuant to this Agreement;
- (viii) the activities of the Licensee pose a threat to the health or safety of the Licensors or any of its tenants or other occupants of the Licensors' Premises or endanger the safety or integrity of the Building, and
- (ix) the Licensee commits a default under Section 9.01

such termination to be effective in the date specified in the notice of termination.

Expiration or termination of this Agreement, in whole or in part, as provided above shall not relieve the Licensee of any of its obligation to pay any amounts due to the Licensor or to become due to the Licensor, and shall not deprive the Licensor of any of its rights or remedies or actions against the Licensee that accrue up to and including the effective date of the termination or expiration.

Notwithstanding and in addition to any other claims or actions that the Licensor may have against the Licensee, in the event of the termination of this Agreement for any of the reasons specified in this Section 10.01, any Fees pre-paid by the Licensee to the Licensor shall remain the sole property of the Licensor.

The Licensee waives its right to trial by jury in respect of any matter pertaining to any claim, default, or other action arising in connection with this Agreement. The Licensor will be entitled to recover costs on a solicitor and client basis in respect of any action, proceeding, or claim that it makes against the Licensee in respect of any breach of the Licensee's obligations under this Agreement.

## **ARTICLE 11 - EFFECT OF TERMINATION**

### **11.01 Licensee Obligations**

Upon the termination or expiration of this Agreement for any reason by either party, the Licensee shall:

- (i) pay any outstanding Fees, Taxes and other charges for which the Licensee is or may be liable;
- (ii) follow the procedures set forth in Schedule "B" before removing any of the Licensee's Equipment;
- (iii) arrange for the de-installation and removal of the Licensee's Equipment if required by the Licensor. Where the Licensor requires that the Licensee's Equipment be deinstalled, the Licensee shall continue to pay all Fees until the Licensee's Equipment has been removed and the Licensed Area restored to the Licensor's satisfaction;
- (iv) if for any reason the deinstalled Licensee's Equipment is not removed from the Licensor's Premises within thirty (30) days of the date specified for removal by the Licensor, or as arranged by the Licensee with the Licensor, the Licensee will be deemed to have abandoned it and the Licensor may, at its sole discretion, dispose of it as it sees fit. The Licensor shall not be liable to the Licensee for any proceeds of the disposition nor for any losses, costs or damages whatsoever in connection with the disposition. The Licensee shall be responsible for all costs of removal, restoration and disposition; and

- (v) indemnify and save harmless the Licensor from any and all third party claims arising from or in connection with the removal and disposition of the Licensee's Equipment.

Regardless of what is stated above, the Licensor reserves the right to remove the Licensee's Equipment on the day following the expiration or termination of this Agreement and to store it until removed by the Licensee, or until disposed of by the Licensor as provided above. In that case, Licensee shall be responsible for all costs of removal, restoration, storage and disposition, and the Licensee will have no liability to the Licensor in connection with the Licensee's Equipment.

## ARTICLE 12 - ASSIGNMENT, SUB-LICENSING, TRANSFER AND FINANCING

### 12.01 Assignment, Sub-Licensing, Transfers ✓

- (a) The Licensee shall not assign its rights under this Agreement, in whole or in part, or sub-license all or any part of the Licensed Area, or enter into any co-usage or sharing arrangement in respect of the Licensed Area or any part of it without the prior written consent of the Licensor, which may not be unreasonably withheld. The transactions referred to in the preceding sentence are referred to as "Transfers" and "Transferee" has a corresponding meaning. In determining whether to give its consent to a Transfer, it will be considered reasonable (whether or not any other reasonable ground exists) for the Licensor to withhold its consent if amounts or other value are paid or provided to the Licensee in connection with any Transfer and the amount or value reflects benefits associated with the size, nature or location, the number and types of occupants of any Building, or the volume of pedestrian traffic associated with a Building.
- (b) The following terms and conditions shall apply in respect of a consent given by the Licensor to a Transfer by the Licensee to which the Licensor may elect to consent:
  - (i) the Transferee will execute an agreement directly with the Licensor agreeing to be bound by this Agreement as if it had originally executed this Agreement as Licensee, but the Licensee will not be released from its obligations under this Agreement;
  - (ii) the consent by the Licensor shall not constitute a waiver of the requirement for consent to subsequent Transfers;
  - (iii) any request for consent shall be in writing and accompanied by a true copy of the proposed Transfer, and the Licensee shall furnish to the Licensor all information available to the Licensee and requested by the Licensor as to the responsibility, reputation, financial standing and business of the proposed Transferee; and
  - (iv) in the event of Transfer by the Licensee by virtue of which the Licensee

receives a fee in the form of cash, goods or services from the Transferee which is greater than the Fees payable hereunder to the Licensor in respect of any particular Licensed Area, the Licensee will pay such excess to the Licensor in addition to the Fees payable under this License.

## **12.02 Licensee's Financing**

The Licensee may, without the consent of but on prior written notice to the Licensor, grant security by way of a mortgage, charge, general security agreement or otherwise in respect of the Licensee's Equipment (but not in respect of In-Building Wire or conduits associated with it or, nor in respect of any part of the Building, any permanent fixtures, or any improvements to the Licensor's Premises) to a bank or other financial institution. The Licensee will not cause or permit any charge, security interest, mortgage, or encumbrance, or any notice of them to be registered against title to the Licensor's Premises or any part of them except a "fixtures notice" as provided for in the personal property security legislation of the Province. Any "fixtures notice" must be approved as to form and content by the Licensor.

## **12.03 Special Financing Arrangements**

The Licensee will be permitted to assign its rights under this Agreement to a bona fide lender (a "Lender") in respect of all or any of the Buildings, as collateral security for any bona fide, first priority secured financing of all or part of its business undertaking if the following requirements are satisfied:

- (a) the Lender must enter into an agreement with the Licensor (a "Comfort Agreement") in respect of each Building, in a form acceptable to the Licensor, acting reasonably, in which the Lender agrees:
  - (i) the exculpatory clauses contained in this Agreement bind the Lender;
  - (ii) if the Lender, in realizing on its security seeks to enforce its rights as assignee of the Licensee's rights under this Agreement, the Lender will be responsible for performance of all of the Licensee's obligations under this Agreement, and will be required, as a prerequisite to its enforcing any of the Licensee's rights, to remedy all those defaults under this Agreement that are capable of remedy;
  - (iii) the Lender will not have any greater rights to effect Transfers than are provided to the Licensee under this Agreement;
  - (iv) the Lender must acknowledge that the Licensor does not, and will not waive rights or remedies available to it at law or under this Agreement;
  - (v) the Licensor will not be restricted from dealing with the Licensee or any Transferee of the Licensee's rights and may amend this Agreement, waive,

postpone, or otherwise alter its rights and obligations without any obligation to the Lender prior to the Lender becoming entitled to deal with the Licensee's rights or its other collateral;

- (vi) the Lender's rights in respect of the Licensee's Equipment and in particular in respect of removal of the Licensee's Equipment, restoration of damage, and compliance with Building Rules and Regulations are subject to this Agreement, except, however, that the Lender will be entitled to remove all or any part of the Licensee's Equipment but not the In-building Wire or conduits associated with it (since it must not be encumbered) in accordance with its rights vis a vis the Licensee where the Licensee defaults under its loan or security agreement with the Lender; and
  - (vii) the Licenser will give to the Lender written notice of any default in respect of which it intends to effect a right of termination and the Lender will be given the same length of time to cure the default after receipt of the notice as the Licensee is entitled to after its receipt of notice of default from the Licenser, and the Lender will give notice of all defaults by the Licensee under its loan agreement or security agreements and the Licenser may elect to obtain a discharge in respect of the Lender's security interest in all or any of the Licensee's Equipment, by paying to the Lender the amount, to be reasonably apportioned to the Building, having regard to the value of the Licensee's Equipment in the Building that is subject to the security interest of the Lender, as compared to the value of all of the equipment that is subject to the security interest of the Lender.
- (b) The Licenser's reasonable legal costs for preparation of the Comfort Agreement will be paid by the Licensee,
  - (c) So long as a Lender holds a security interest in respect of the Licensee's rights under this Agreement or the Licensee's Equipment, the Licensee will not effect a Transfer.

The Licenser will execute a form of acknowledgment to a Lender if requested to do so by the Licensee in writing, if the acknowledgment is in a form that is satisfactory to the Licenser, and includes a provision that confirms that the rights of the Licenser under the Comfort Agreement take precedence.

#### **12.04 Assignment by Licenser**

The Licenser may, at any time assign its rights under this Agreement or assign its rights in respect of any Building. Upon assignment of this Agreement as aforesaid, the Licenser will be released from its obligations in respect of such Building.

## ARTICLE 13 - ADDITIONAL PROVISIONS

### 13.01 No Registration of this Agreement

The Licensee shall not register this Agreement or any short form thereof or any notice in respect of it on title to the Building or the Lands.

### 13.02 Notice

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission, to the Licensee at the following address:

GT Group Telecom Services Corp.  
20 Bay Street  
Suite 700  
Toronto, Ontario  
N5H 2N8

Attention: Robert M. Fabes, Senior Vice-President and General Counsel  
FAX No. (416) 943-1265

and to the Licensors at the following address:

Oxford Properties Group Inc.  
120 Adelaide St. West  
Suite 1700  
Toronto, Ontario  
M5H 1P1

✓ Attention: Greg Cockburn, Director, Strategic Sourcing  
FAX No. (416) 868-0701

Any notice may also be given (a) by prepaid registered mail mailed within the Province in which the Licensed Area is situated and such notice shall be effective on the third day following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effected by personal delivery or a facsimile transmission as stated above, or (b) by delivery using a courier such as those known as "Federal Express", "Purolator", or other comparable courier, and such notice shall be effective upon receipt. The Licensors and Licensee may change their respective addresses by notice in writing to each other.

### 13.03 Interpretation

Words importing the singular number shall include the plural and vice versa. Words importing the neuter gender shall include the masculine and feminine genders, and words importing person shall include firms and corporations, and vice versa.

#### **13.04 Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings whether written or oral relative to the subject matter hereof. Except as otherwise specifically set forth in this Agreement neither party makes any representation or warranty express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written agreement executed by both parties.

#### **13.05 Subordination**

The Licensee's rights under this Agreement are subordinate to the rights of any mortgagee, chargee, trustee for bondholders, or other encumbrance holder with a security interest, or other encumbrance on or in respect of the Licensors' Premises.

#### **13.06 Amendment or Waiver**

No provision of this Agreement shall be deemed amended or waived by a course of conduct unless the amendment or waiver is in writing signed by all parties and stating specifically that it was intended to modify this Agreement.

#### **13.07 Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of its parties and their respective successors and assigns, heirs and personal representatives, subject in the case of the Licensee to the provisions of Article 12.

#### **13.08 Governing Law**

This Agreement shall be governed by the laws of Ontario.

#### **13.09 Invoices to Licensee**

All invoices from the Licensors to be paid by the Licensee shall be sent to:

GT Group Telecom Services Corp.  
20 Bay Street  
Suite 700  
Toronto, Ontario  
N5H 2N8

Attention: Robert M. Fabes, Senior Vice-President and General Counsel  
FAX No. (416) 943-1265



### **13.10 Nature of Licensee's Rights**

The rights granted to the Licensee are by way of a non-exclusive License only and shall not under any circumstances constitute a right by the Licensee to have exclusive possession of any part of the Lands or the Building, and this Agreement shall not constitute or be interpreted to be either a partnership agreement, employment agreement, lease or joint venture agreement made between the parties.

The Licensee does not and shall not at any time claim any interest or estate of any kind in the Licensor's Premises or any part of them, or in any Cabling or other equipment or facilities that is, are, or may be provided to the Licensee by the Licensor. The nature of this relationship shall not be characterized as that of a "landlord" and "tenant" relationship and the Licensee waives any claim to any rights that might be afforded to tenants under any provincial legislation where the Building is located.

### **13.11 Licensor's Authority - Binding Effect**

The Licensor, on execution of this Agreement, and on signing each Building Schedule, executes on behalf of either itself or as agent for the owner or owners of the applicable Building. The liability of the Licensor, and of each owner, as the case may be, is several and not joint, or joint and several and is limited to the interest of the Licensor, or the owner or owners from time to time in the Building. The Licensee acknowledges that it shall deal only with Oxford Development Group Inc. ("Oxford") in respect of this Agreement until such time as Oxford gives notice to the Licensee of an assignment of this Agreement pursuant to Section 12.03 or Oxford otherwise directs the Licensee to deal directly with an owner of a Building.

### **13.12 Estoppel Certificates**

✓ The Licensee will provide to the Licensor from time to time, within ten (10) days of the Licensor's written request in each case, at no cost to the Licensor, a statement duly executed by the Licensee confirming that this Agreement is in good standing as it relates to the Buildings identified in the Licensor's request, confirming the Fees payable and the Fees actually paid to any date specified by the Licensor for the statement, in respect of each Building, confirming the Commencement Date for each Building, the Term, any renewal rights to which it claims to be entitled, and any other information that the Licensor reasonably requests pertaining to this Agreement or to all or any of the Buildings or Building Schedules.

### **13.13 Application of Funds**

No acceptance of part payment of Fees or other amounts owed to the Licensor will be considered as an accord and satisfaction; the Licensor despite any direction or restriction endorsed on any cheque or accompanying any payment, may apply any payment, in whole or in part against any amounts owed to the Licensor or owed by the Licensee in respect of all or any Buildings in its sole discretion; and no acceptance of any payment, even if it purports to be for any subsequent

period, is to be construed as a waiver by the Licensor of its right of termination for pre-existing defaults.

#### **13.14 Unauthorized Continued Use**

If the Licensee continues to use any part of a Licensed Area after the expiry of the Term as it applies to the particular Licensed Area without the Licensor's prior written consent, the Annual Basic Fees payable in respect of the Licensed Area will be double that which applied during the last year of the Term or renewal term, as the case may be, subject to pro-rating, however, should the unauthorized use continue for less than the full year.

#### **13.15 Public Announcements**

The Licensee will not issue any press release, public notice or make any public disclosure, nor make any announcement to persons in a Building without the Licensor's prior written consent concerning the announcement and its wording.

### 13.16 Survival of Obligations

It is acknowledged that, in addition to any other provisions that may properly be construed to continue to apply after expiration or termination of the Term, Article 7, (except Section 7.01(f)), and Article 11 will survive the expiration or termination of this Agreement.

The parties hereto have executed this Agreement.

#### OXFORD DEVELOPMENT GROUP INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: G SENIOR VICE PRESIDENT  
ONTARIO REGION c/s

And: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I am/We are authorized to bind the Corporation

#### GT GROUP TELECOM SERVICES CORP.

Per: \_\_\_\_\_  
Name: RJ  
Title: VP, NATIONAL FACILITIES c/s

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE "A" - FEES

<b><u>Annual Basic Fees</u></b>		
Entrance Conduit:	Charge from the property line to the POP Room. Per fiber strand per meter and/or copper pair, per meter.	Site specific
POP Room:	Charge for use of the POP Room (includes associated costs such as maintenance, lighting and environmental controls).	Site specific
Riser:	Charge for Riser space from POP Room to the Customer premises, per fiber strand and/or copper pair, per meter.	Site specific
<b><u>Other Fees</u></b>		
Application:	To determine availability of Ducts and POP Room Space.	\$1,250
Engineering:	Additional charges for engineering, review of submitted plans, specifications and drawings.	Cost +
Escort:	Hourly charge for the escort of Licensee's personnel while within the Building.	Cost +
Power Consumption Fee:	Charged on a monthly recurring basis in accordance with Licensor's usual practices.	site specific
Processing Charge:	To process any request by the Applicant/Licensee.	\$175.00
Construction Fee:	For any required building modifications (demising wall, rooms, architectural changes, electrical, heating, ventilation, security installation and air-conditioning).	Cost +
Power Delivery:	For rearrangement of power required by the Licensee.	Cost +
Site Preparation Fee:	For pre-conditioning of the Building, including additional Entrance Conduit to the POP Room, and Riser cable holes.	Cost +
Other Consulting:	Specialty legal, technical and consulting fees.	Cost +
Management Fees:	Ongoing management fees.	Cost +

All "Cost +" charges are subject to an overhead charge of 25%.

Any charge that is not paid in advance is payable, net fourteen (14) days. Thereafter, interest on any outstanding amount payable by the Licensee to the Licensor shall accrue interest at the rate of one and on half per cent (1 ½%) per month on any outstanding amount then due and owing, both before and after any judgment for enforcement.

## SCHEDULE "B" - APPLICATION FOR INSTALLATION OR AMENDMENT (the "APPLICATION")

The procedures specified in this Schedule apply where a Licensee wishes to install or modify any of the Licensee's Equipment covered by this License, including any amendments.

1. Only Licensee's Equipment that is satisfactory to the Licensor may be placed in the Building.
2. The Licensor reserves the right to specify the type of Licensee's Equipment that may be installed in the Building including all modifications to, construction, installation, maintenance, and repair standards so as to ensure compliance with the Licensor's Building rules and regulations as well as general and safety construction standards.
3. When the Licensor specifies standards or requests changes, it will do so in writing and the Licensee shall, at its sole cost and expense, comply with such standards. If the Licensee installs any Licensee's Equipment and/or Cabling that does not comply with the Licensor's standards, the Licensee shall achieve compliance of the same within fifteen (15) working days or such other period of time as the Licensor may specify. If the Licensee fails to correct any non-compliance with such standards within the specified compliance period the Licensor may, without further notification to the Licensee, render the non-compliant Licensee's Equipment compliant through construction, installation, maintenance and/or repair standards, as the case may be, at the Licensee's sole cost and expense.
4. All Applications shall be submitted in the form specified by the Licensor and contain the information requested by the Licensor. Without limiting the generality of the foregoing, the Licensee is required to provide the following information:
  - Serial number(s), make, model(s), power consumption(s), heat generated, footprint(s) and value(s) calculated by the Licensee of the Licensee's Equipment;
  - Proposed equipment layout;
  - The Licensor may require the Licensee to provide copies of all Plans in a form that is satisfactory to the Licensor;
  - Detailed drawing of proposed Cabling (including addition or removal), proposed termination point; and
  - Identify the Customer and location within the Building to be served.
5. Upon receipt of the Application and payment of the Application Fee, the Licensor will conduct a preliminary review of the Application. The Licensor will then advise the Licensee as to the expected cost of reviewing the Application in detail. If the Licensee wants the Licensor to review the Application, the Licensee shall advise the Licensor accordingly and (unless other arrangements are made between the parties) must provide to the Licensor a certified cheque or money order covering the expected cost to review

the Application.

6. The Licensor will advise the Licensee of acceptance or rejection of the Application within fifteen (15) working days of receipt of the duly completed Application.
7. In the event that the Licensor rejects the Application, the Licensor will provide to the Licensee written reasons for the rejection. Any Application that is resubmitted by the Licensee to the Licensor will be treated as an amended Application and will be subject to a Processing Charge plus any costs of reviewing the amended Application.
8. Any request by the Applicant for amendments to any License, including additions, upgrades modifications, re-locations or rearrangements to the Licensee's Equipment must be submitted to the Licensor and will be treated as a new Application where, in the Licensor's reasonable judgment, the same will require reconfiguration or modification of the Building or will result in a change to the Licensee's power consumption or heat generation.

**EXHIBIT "1" - BUILDING SCHEDULE**  
**For \_\_\_\_\_ (the "Building")**

This Schedule is dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ and is entered into

**B E T W E E N:**

**OXFORD DEVELOPMENT GROUP INC.**

(the "Licensor")

- and -

**GT GROUP TELECOM SERVICES CORP.**

(the "Licensee")

**WHEREAS:**

This Schedule is intended as a "Building Schedule" referred to in the Telecommunications Master License Agreement (the "Agreement") dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, and made between the Licensor and the Licensee. On signature by the Licensor and the Licensee, it forms part of the Agreement and the provisions of the Agreement apply as provided for in Section 2.01 of the Agreement, except that the Agreement is amended to the extent it applies to the Building, by the provisions set out on Schedule "BS-1" attached to and forming part of this Building Schedule.

1. Licensor's Premises - The Licensor's Premises, for the purposes of this Building Schedule, are comprised of the Lands described on Exhibit "BS-2", upon which the Building, being the office building municipally known as \_\_\_\_\_ is situated and, in which the Licensed Area is situated.
2. The Licensed Area is comprised of: the Entrance Duct, the Riser, and the POP Room, identified or depicted on Exhibits "BS-3", "BS-4" and "BS-5" respectively.
3. The Demarcation Point is depicted on Exhibit "BS-6".
4. The Exclusive Use Area is the part or parts, if any, of the Licensed Area designed as "Exclusive Use Area" on Exhibit "BS-7".
5. The Term is the period of \_\_\_\_ years, \_\_\_\_ months and \_\_\_\_ days, commencing on the

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Commencement Date") and ending on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

6. Renewal Options - The Licensee will be entitled, subject to the Agreement to renew the Term for \_\_\_\_\_ renewal periods of \_\_\_\_\_ years each, on the terms and conditions set out in the Agreement.
7. The Annual Basic Fees are as follows:
  - (a) Entrance Conduit - \_\_\_\_\_ Dollars;
  - (b) POP Room - \_\_\_\_\_ Dollars; and
  - (c) Riser - \_\_\_\_\_ Dollars.

The Power Consumption Fee is \_\_\_\_\_.

8. If the Licensor does not own the Building, or if the consent of the owner, or any co-owner of the Building is required for the Licensor to sign this Building Schedule on behalf of, and as agent for the Owner, or Co-owner, as the case may be, this Agreement is conditional for \_\_\_\_\_ days upon the Licensor obtaining in writing any required consent from any such owner or Co-owner. If the Licensor does not deliver within the last mentioned period written confirmation to the Licensee advising that the required consent has been obtained, this Building Schedule is void.



9. The Licensor and the Licensee have duly executed this Building Schedule.

**OXFORD DEVELOPMENT GROUP INC.**  
(Licensor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_ c/s  
Title: \_\_\_\_\_

And: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_ c/s  
Title: \_\_\_\_\_

And: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "1" - BUILDING SCHEDULE

For Calgary Place - Mobil Tower (Tower I) located at 320 - 5 Avenue S.W., Calgary, Alberta - T2P 0L4, 414 - 3 Street S.W., Calgary, 330 - 5 Avenue S.W., Calgary and 345 - 4 Avenue S.W., Calgary (the "Building")

This Schedule is dated the 20<sup>th</sup> day of June, 2000 and is entered into

B E T W E E N:

OXFORD PROPERTIES GROUP INC.

and

735832 ALBERTA LTD.

(hereinafter collectively called the "Licensor")

- and -

GT GROUP TELECOM SERVICES CORP.

(the "Licensee")

WHEREAS:

Oxford Development Group Inc. ("ODGI") together with the Licensee executed the Telecommunications Master License Agreement (the "Agreement") dated the 1<sup>st</sup> day of January, 2000, and Section 3.01 of the Agreement states that in executing the Agreement ODGI did so without liability on its part, as agent for and on behalf of the owner or owners of each building that is not owned by ODGI.

The Licensor is the Owner of the Building described below in paragraph 1 and if more than one entity signs this building schedule as "Licensor" the word "Licensor" will be construed as referring to each of them severally.

The Licensor and the Licensee in executing this Building Schedule do so with the intent that the provisions of the Agreement will bind them as though they had executed the Agreement in relation to the Building except that the provisions of the Agreement will be amended, to the extent they apply to the Building, by the provisions set out in this Building Schedule "BS-1" attached to and forming part of this Building Schedule.

1. Licensor's Premises - The Licensor's Premises, for the purposes of this Building Schedule, are comprised of the Lands described on Exhibit "BS-2", upon which the Building, Calgary Place - Mobil Tower (Tower I), being the office building municipally known as 330 - 5 Avenue S.W., Calgary, Alberta - T2P 0L4, 414 - 3 Street

S.W., Calgary, 330 - 5 Avenue S.W., Calgary and 345 - 4 Avenue S.W., Calgary, in which the Licensed Area is situated.

2. The Licensed Area is comprised of: the Entrance Duct, the Riser, and the POP Room, identified or depicted on Exhibits "BS-3", "BS-4" and "BS-5" respectively.
3. The Demarcation Point is depicted on Exhibit "BS-6".
4. The Exclusive Use Area is the part or parts, if any, of the Licensed Area designated as "Exclusive Use Area" on Exhibit "BS-7".
5. The Term is the period of four (4) years, six (6) months and eleven (11) days, commencing on the 20<sup>th</sup> day of June 2000 (the "Commencement Date") and ending on the 31<sup>st</sup> day of December 2004.
6. Renewal Options - The Licensee will be entitled, subject to the Agreement to renew the Term for two (2) renewal periods of five (5) years each, on the terms and conditions set out in the Agreement.
7. The Annual Basic Fees are as follows:

(a)	Entrance Conduit -	N/A;
(b)	POP Room	
(i)	June 20, 2000 to December 31, 2000	\$ 2,988.02, plus GST
(ii)	January 1, 2001 to December 31, 2001	\$ 5,636.33, plus GST
(iii)	January 1, 2000 to December 31, 2004	rate to be determined in accordance with s. 4.01 of the Agreement
(iv)	Renewal Terms (if applicable)	rate to be determined in accordance with s. 2.03 of the Agreement
(c)	Riser -	N/A
(d)	Power Consumption Fee -	N/A - power is metered.

8. The Licensor and the Licensee have duly executed this Building Schedule.

**OXFORD PROPERTIES GROUP INC.**

(Licensor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_ c/s  
Title: \_\_\_\_\_

And: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
LEGAL COUNSEL & ASST. SECRETARY

**735832 ALBERTA LTD.**

(Licensee)

BY ITS AGENT  
OXFORD DEVELOPMENT GROUP INC  
WITHOUT PERSONAL LIABILITY

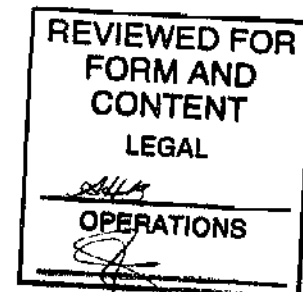
By: \_\_\_\_\_  
Name: \_\_\_\_\_ c/s  
Title: \_\_\_\_\_

And: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
LEGAL COUNSEL & ASST. SECRETARY

**GT GROUP TELECOM SERVICES CORP.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_ c/s  
Title: DIRECTOR NATIONAL FACILITIES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT "BS-1" attached to and forming part of the Building  
Schedule for the Building known as Calgary Place - Mobil Tower (Tower 1) located at  
330 - 5 Avenue S.W., Calgary, Alberta - T2P 0L4, signed by**

**OXFORD PROPERTIES GROUP INC.**

and

**735832 ALBERTA LTD.**

(hereinafter collectively called the "Licensor")

- and -

**GT GROUP TELECOM SERVICES CORP.**

(the "Licensee")

The following Sections of the Telecommunications Master License Agreement dated January 1, 2000 are amended as they apply to the Building:

<u>Section No.</u>	<u>Amendment</u>
2.03	Replace "does" with "is" in the first line. Replace "twelve (12) months" with "six (6) months" and "fifteen (15) months" with "twelve (12) months" in the fourth line.
5.06	Add: "If the Licensor assumes responsibility and control of Cabling, the Licensor will not interfere with the operation of the Licensee's service to the Building".
6.02	Delete "or the services" in the first line.
6.03	Insert "acting reasonably" after "The Licensor shall have the absolute discretion" in the second sentence.

7.01(d)(x)

Replace the phrase in brackets with:

“(the Licensee represents and warrants that it is the sole owner of all In-building Wire that forms part of the Lessee’s Equipment, and all Cabling installed by it in each Customer’s premises (except if the Customer owns the Cabling) and is the sole owner or sole lessee of all of the rest of the Licensee’s Equipment).”

7.01(e)

Replace the last sentence of the first paragraph with:

“This release extends to negligent, but not grossly negligent acts or omissions, or willful acts of any Releasee.”

7.01(f)(ii)

Delete “named” before “insureds” in the second line.

12.04

Add at the end:

“to the extent the assignee agrees to be bound by the terms of this Agreement”.

EXHIBIT "BS-2"

LEGAL DESCRIPTION OF LANDS KNOWN AS 330 - 5 AVENUE S.W., CALGARY,  
ALBERTA - T2P 0L4

PLAN 5633 JK  
BLOCK 25  
LOTS A TO E INCLUSIVE  
EXCEPTING THEREOUT ALL MINES AND MINERALS

EXHIBIT "BS - 4" RISER

There is no exhibit "BS - 4". Installation of "Riser" is not approved at this time. The Licensor and the Licensee agree that the installation of "Riser" and/or "Cabling" if, as and when required shall be done separately in accordance with the procedures set forth in the Telecommunications Master License Agreement Schedule "B" - Application for Installation or Amendment (the "Application"). Such Application to be submitted by the Licensee directly to the designated representative of the Licensor of the "Building".

For Group Telecom at Calgary Place I on April 25 2001

Director, Engineering Services