

C. 201.047
11/19

BUILDING ACCESS AGREEMENT

THIS AGREEMENT made as of the **17 day of December, 1998**

BETWEEN: **THE STANDARD LIFE ASSURANCE
COMPANY**

(hereinafter referred to as the "Owner")

AND: **GT GROUP TELECOM NETWORKS INC.**

(hereinafter referred to as the "Supplier")

NOW THEREFORE in consideration of the covenants herein contained the parties hereto agree as follows:

1. Right of Access

- (i) The Owner hereby grants to the Supplier the right to construct, install, operate, maintain, repair, replace, service, upgrade and modify (collectively, "Install and Maintain") fibre optic cables and related equipment for the provision of telecommunication services (collectively, the "System"), from time to time in the building and on the lands located at **625 Howe Street**, Vancouver, B.C. and all units therein (collectively, the "Premises"). The Owner further grants to the Supplier the exclusive right to the use and possession of a part of the Premises (the "Supplier's Area"), the location, dimensions and/or area of which is to be Mutually agreed between the Owner and the Supplier. The location of the Supplier's Area shall be more particularly described and set out in Schedule "A" which will be attached to this Agreement at a later date. Said Schedule "A" shall be initialed by the Owner and the Supplier for purposes of identification. The Supplier shall use the Supplier's Area to Install and Maintain telecommunications equipment used in connection with the operation of the System (the "Equipment").

- (ii) The Owner grants to the Supplier ongoing access to and permission to enter the Premises and grants such rights of access to the Premises as may be necessary for it to Install and Maintain the System. The Owner further grants to the Supplier the right on a non-exclusive basis to provide telecommunication services to tenants and occupants of the Premises from time to time. Installation of the System and the provision of telecommunication services at the Premises may include, but shall not be limited to, the use and access to the Premises' ground level, basement or other subterranean levels of the Premises, any adjoining lands to the Premises owned by the Owner, riser closets, chases, available conduits, pedways, above ceiling common areas and the roof, as may be approved for use by the Owner from time to time pursuant to the provisions of section 2(iii) of this Agreement.
- (iii) The Supplier agrees that the access granted to the Premises and to the Supplier's Area by the Owner hereunder shall be on a twenty-four (24) hours per day/seven (7) days per week basis but shall, at all times be subject to and in accordance with the Owner's reasonable security requirements.
- (iv) The rights of access granted by the Owner to the Supplier hereunder are on a non-exclusive basis. The Supplier acknowledges and agrees that the Owner may, at any time, grant similar rights of access to other providers of services which are the same or similar to those offered by the Supplier.

2. Obligations of the Supplier

- (i) The Supplier agrees that it will Install and Maintain the System in accordance with then applicable federal, provincial or municipal laws, regulations, policies or guidelines. The Supplier shall, at all times and at its own expense, maintain the System in good order and condition. The System may be modified and reconfigured, at the sole cost and discretion of the Supplier, so as to more adequately service the Premises.
- (ii) The Supplier shall be solely responsible for all costs, expenses, fees and liabilities including, without limitation, all applicable taxes and levies, related in any way to the construction, installation, operation, maintenance, repair, replacement, servicing, upgrading, relocation and/or modification of or to the System.
- (iii) Prior to any installation, the Supplier shall submit a detailed plan specifying the location and method of entry and/or installation of the System at the Premises and the Supplier's Area for approval by the Owner, which approval shall not be unreasonably withheld or delayed. The Supplier shall install, construct and use the System and the Supplier's

Area in a manner so as not to materially conflict with or interfere with the normal functioning of the Premises in any way.

Should interference develop at any time between the installations of other users of THE SITE and those of GTN, GTN shall promptly agree to cooperate in determining the cause of such interference and shall take immediate steps to resolve the interference at its own expense should GTN be at fault and without prior rights.

- (iv) At all times during the Term and upon the termination of this Agreement the Supplier shall maintain or leave the Premises and the Supplier's Area in a neat, clean and safe condition.
- (v) The System and all equipment and material installed in or on the Premises and/or in or on the Supplier's Area by the Supplier, including wiring and fibre optic cable, are and shall at all times remain the property of the Supplier and be the exclusive use of the Supplier and its customers. The Supplier may remove and/or replace at its option any such property at any time during the Term; however, the Supplier agrees to forthwith repair any damage caused by such removal at its expense. Any System or Equipment, including all conduits and fibre optic cable installed or used in the Premises by the Supplier shall, at the termination of this Agreement be removed by the Supplier, subject to the Supplier's obligation to repair any damage caused by such removal. Notwithstanding the foregoing, any System or Equipment including all conduits and fibre optic cable installed or used on the Premises by the Supplier shall at the option of the Owner, upon abandonment by the Supplier, become the property of the Owner thirty (30) days after the termination of this Agreement.

3. Term of the Agreement

The term of this Agreement shall commence on the **1st** day of **January , 1999** (the "Commencement Date") and shall end Ten (10) years thereafter (the "Term"), subject to renewal as hereinafter provided.

4. Electrical Service

The Supplier shall have the right to use the Premises' electrical service in respect of the System. The cost of wiring associated with connecting the System to the Owner's electrical service shall be borne solely by the Supplier. The cost of any electrical service delivered by the Owner to the Supplier shall be based on the prevailing market electrical utility rates in existence at the time payment for such services is due and shall be due and payable by the Supplier on the Commencement Date and thereafter annually on the anniversary date of the Commencement Date. The Owner, acting reasonably, shall estimate the amount of electrical service required

by the Supplier at the beginning of each year of the Term and shall notify the Supplier of the amount payable for the ensuring year. At the end of the each year of the Term, the Owner shall determine the amount of electrical service consumed by the Supplier during the past year and shall determine the amount payable by the Supplier for such year and shall also estimate the amount payable during the next year and shall notify the Supplier of both such amounts. If the amount payable for the past year based on consumption is less than the amount paid by the Supplier, the Supplier shall immediately pay the difference to the Owner. If the amount payable for the past year based on consumption is more than the amount paid by the Supplier, the Owner shall deduct the excess from the amount payable by the Supplier for the ensuring next year.

5. Access Fee

- (i) The Supplier shall pay to the Owner an Access Fee at the rate of **Fifteen Hundred (\$1,500.00) per year** plus any applicable provincial and federal taxes (the "Access Fee"). The Access Fee shall be paid in advance and prior to the initial installation and thereafter paid annually in the amount of \$1,500.00 per year on each anniversary date of the Commencement Date during the Term. Rate shall be reviewed at three, five, and seven year intervals and be determined upon prevailing market rates.

The Access Fee for the rate review term shall be agreed upon between the parties and shall be based on the fair market rental for similar access and opportunities. The parties shall commence making bona fide efforts twelve (12) months prior to the commencement date of the Renewal Term as to the Fair Market Rent with respect to the leased premises or facilities. If, however, the parties have not agreed as to the amount of rent by the sixtieth [60th] day prior to the commencement of the Renewal Term, or Rate Review date, then the rent shall be determined either;

[a] by an arbitrator mutually agreed upon by the parties who shall be a person currently active in the Province of British Columbia as an accredited Real Estate appraiser having not less than five years experience as an appraiser; or

[b] if the parties are unable to agree as to an arbitrator pursuant to clause [a] of this paragraph, then such Fair Market Rent shall be determined by a single arbitrator in accordance with the provisions if the commercial Arbitration Act S.B.C. 1986, c3 and amendments thereto or legislation in substitution therefore.

6. Termination of Agreement

[a] If the Supplier is in default of any term or condition of this Agreement, the Owner may terminate this Agreement by giving the Supplier ten (10) days written notice of such default. Notwithstanding the foregoing, if the Supplier remedies such default to the satisfaction of the Owner during such ten (10) day period or commences to remedy such default during such period and diligently works to completely remedy such default, then this Agreement shall not terminate.

[b] This Agreement may also be terminated forthwith by the Owner in the event that the Supplier makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors or if an order is made for the winding-up of the Supplier or if an order is made for a receiver or a receiver and manager of the Supplier's assets.

[c] This Agreement may also be terminated forthwith by the Owner in the event that the Supplier has not fully completed the installation of the System (including the removal of the antenna and the repairing of any damage referred to in section 1 (ii) hereof) and commenced operation at the Premises within (6) six months of the Commencement Date

[d] If the Owner is in default of any term or condition of this Agreement, the Supplier may terminate this Agreement by giving the Owner ten (10) days written notice of such default. In addition, if the Supplier determines, at any time during the Term, that the terms and conditions of this Agreement or the technologies of the Supplier are not economically viable, the Supplier may terminate this Agreement by giving ninety (90) days written notice to the Owner. Notwithstanding such notice or the expiration of the said period of ninety (90) days, all obligations of the Supplier hereunder shall remain in full force and effect until the Supplier has removed all the Equipment from the Premises and restored the Premises in accordance with section 2(v) hereof.

7. Indemnity

The Supplier shall indemnify, defend and hold harmless the Owner, its directors, officers, employees, agents, contractors and tenants from and against any costs, claims, actions, suits, proceedings, damages, expenses and liabilities (including reasonable legal fees and expenses) caused directly or indirectly, by the installation, maintenance and/or operation of the System, a breach of the Agreement by the Supplier or a negligent or willful act or omission by the Supplier, its directors, officers, employees, agents or contractors. Any damage to the Premises for which the Supplier

must indemnify the Owner hereunder shall be promptly repaired to the reasonable satisfaction of the Owner and the Owner may, in its sole discretion, undertake such repairs but at the sole cost of the Supplier. The Supplier shall pay for such repairs forthwith upon demand by the Owner.

8. Insurance

The Supplier shall, at all times, throughout the Term and any renewal thereof, maintain in force Commercial General Liability Insurance in an amount of not less than five million dollars (\$5,000,000) per occurrence for bodily injury, death and property damage. Such policy shall include the Owner as an additional insured. All such insurance shall be without deduction for depreciation and shall be placed with an insurance company acceptable to the Owner, acting reasonably. The insurance policy shall contain a waiver of any right of subrogation or recourse by the Supplier's insurer against the Owner or the Owner's directors, officers, employees, agents and contractors. The Supplier shall obtain an undertaking in favour of the Owner from its insurer that the insurance policy shall not be cancelled or allowed to lapse or be materially changed, as against the Owner, until at least thirty (30) days prior written notice has been given by the insurer to the Owner to that effect.

9. Assignment

The Supplier may not convey, transfer or assign this Agreement or any interest therein without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed.

10. Notice

Any notice required by this Agreement shall be sent by personal delivery, or registered mail, postage prepaid, or by telecopier addressed to the parties at the following addresses:

To the Owner: The Standard Life Assurance Company
Suite 1025-625 Howe Street
Vancouver, B.C.
V6C 2T6
Attention: Property Management Department
Telecopier: (604) 664-8050

To the Supplier: GT Group Telecom Inc.

840 Howe Street
Third Floor
P.O. Box 40
Vancouver, B.C.
V6Z 2L2
Telecopier: (604) 688-3011

Any notice given in accordance with this section 10 shall be conclusively deemed to have been given: in the case of personal delivery, upon personal delivery to an officer of the Owner or Supplier as the case may be, in the case of delivery by mail, on the third (3rd) business day following the day on which such notice was mailed and in the case of delivery by telecopier, on the day received in the receiving party's telecommunication device, unless such day is not a business day in which case receipt shall be deemed to be on the next business day. Either party may, by notice to the other, designate another address in Canada to which notices sent more than ten (10) days thereafter may be addressed.

11. Option to Renew

If the Supplier regularly pays the Access Fee and charges for electrical service and regularly and fully performs its covenants and obligations hereunder, the Supplier shall have the right to renew this building access agreement for a further term of Five (5) years provided the Supplier give to the Owner twelve (12) months written notice prior to the expiration of the Term of its exercise of this option to renew. The building access agreement for the renewal term shall be on the same terms and conditions as contained herein, save as to the Access Fee which shall be determined in accordance with prevailing rates in effect at the time of renewal.

12. Miscellaneous

- (i) This Agreement enures to the benefit of, and is binding upon the Owner and the Supplier and their respective successors and permitted assigns.
- (ii) This Agreement shall be governed by and construed in accordance with the laws of the province where the Premises are located and, to the extent that they are applicable, the laws of Canada.
- (iii) This Agreement represents the full understanding of the parties with respect to the subject matter hereof. Any modifications to it must be in writing and signed by each of the parties hereto.
- (iv) The parties hereto have expressly required this Agreement to be drafted in the English language. Les parties aux présentes ont expressement convenus que la présente convention soit rédigée en anglais.

- (v) Time is of the essence throughout the Term of this Agreement and any renewals thereof.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the date and year first above written.

**THE STANDARD LIFE ASSURANCE
COMPANY**

Per:

Title: *MANAGER, PACIFIC PROPERTY
MANAGEMENT*

GT GROUP TELECOM INC.

Per:

Title: *DIRECTOR OF SITE FACILITIES*