

# **TELECOMMUNICATIONS LICENSE AGREEMENT**

**BM Pension Realty "2" Inc.**

**(the "Owner")**

**-and-**

**GT GROUP TELECOM SERVICES CORP.**

**(the "Licensee")**

## TELECOMMUNICATIONS LICENSE AGREEMENT

THIS AGREEMENT dated this 11<sup>th</sup> day of August, 2000.

BETWEEN:

**BM Pension Realty "2" Inc.**

(the "Owner")

- and -

**GT GROUP TELECOM SERVICES CORP.**

(the "Licensee")

### PREAMBLE:

- (a) The Owner is the owner of a certain building as more particularly described in this Agreement.
- (b) The Owner has agreed to grant to the Licensee a license to install, operate, maintain, repair and replace certain communications equipment in the Owner's building as more particularly described in this Agreement on the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the Owner and the Licensee agree as follows:

### ARTICLE 1 - DEFINITIONS AND INTERPRETATION

**1.1 Definitions** In this Agreement, unless the context requires otherwise, the following terms shall have the following meanings, respectively:

**"Agreement"** means this Agreement and the attached Schedule A and all subsequent changes, modifications and amendments to this Agreement and the attached Schedule A made in accordance with the provisions of this Agreement.

**"Building"** means the building owned by the Owner and located on the Lands.

**"Building Risers"** means the vertical electrical, mechanical or communications spaces or other pathways in the Building.

**"Business Day"** means a day other than a Saturday, Sunday and any other day on which the principal commercial banks in Alberta are not open for business during normal banking hours.

**"Commencement Date"** means the date on which the Term commences, which shall be September 1, 2000 or the date, on which the construction of the Equipment Location commences, whichever is earlier.

**"CRTC"** means the Canadian Radio-television and Telecommunications Commission or its successor.

**"Communications Equipment"** means the communications equipment of the Licensee and its affiliates, including, without limitation, cabinets, racks, electronic equipment and other similar equipment.

**"Connecting Equipment"** means the cables, conduits, inner ducts and connecting hardware of the Licensee that is connected to the Communications Equipment.

**"Entrance Link"** means installation of cables and connecting hardware from the lot line of the Lands to the foundation of the Building and the core sleeve penetration through the foundation of the Building.

**"Equipment Location"** means the enclosed premises located on P3 parkade level of the Building, comprising approximately 80 square feet, more or less, at 909 – 11<sup>th</sup> Avenue SW and shown on the floor plan attached to this Agreement as Schedule A, which premises shall be provided by the Owner to the Licensee for the sole and exclusive use of the Licensee.

**"GST"** means the Goods and Services Tax established under the *Excise Tax Act* (Canada) or a successor tax imposed by the Government of Canada under lawful authority.

**"Lands"** means the lands situated in the City of Calgary, in the Province of Alberta, on which the Building is constructed, as more particularly described in the attached Schedule B.

**"License Fee"** means the annual fee specified in section 4.1 of this Agreement which is payable by the Licensee to the Owner under this Agreement.

**"Licensee's Equipment"** means, collectively, the Communications Equipment and the Connecting Equipment.

**"Notice"** means any notice, request, consent or other communication provided, required or permitted under this Agreement as contemplated in section 12.1 of this Agreement.

**"Term"** means the continuous period of one (1) year, commencing on the Commencement Date.

**"Renewal Term"** means the period after the Term for which this Agreement may be renewed and extended as described in section 3.2 of this Agreement.

**1.2 Interpretation** For the purposes of this Agreement, except as otherwise expressly provided, the following shall apply:

- (a) Words importing the singular include the plural and vice versa and words importing gender include all genders and firms or corporations where applicable.
- (b) Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.
- (c) The headings inserted in this Agreement are for convenience of reference only and in no way define, limit or enlarge the scope or meaning of any of the provisions of this Agreement.
- (d) This Agreement shall be interpreted and governed by the laws of the Province of Alberta, and the laws of Canada applicable therein.

1.3 **Schedules** The following are the Schedules attached to and forming part of this Agreement:

Schedule A – Equipment Location Plan  
Schedule B – Legal Description of Lands

## ARTICLE 2 - LICENSE

2.1 **License** The Owner grants to the Licensee a non-exclusive license to:

- (a) install, operate, maintain, repair and replace the Communications Equipment in the Equipment Location, at the Licensee's sole expense and risk;
- (b) install, operate, maintain, repair and replace the Connecting Equipment in the Building, at the Licensee's sole expense and risk, together with the right to pull the Connecting Equipment through the Entrance Link and through the Building Risers as necessary to reach from the Entrance Link to the Equipment Location and from the Equipment Location to the Licensee's customers in the Building, as required by the Licensee from time to time to provide communications services to the Licensee's customers in the Building; and
- (c) use the Entrance Link and existing Building wiring, only to the extent that the Owner has the possession of, and authority to allow the use of, the Entrance Link and the existing Building wiring, as required by the Licensee for the purpose of connecting the Licensee's Equipment to the Licensee's customers in the Building.

2.2 **Equipment Location** The Owner shall provide the Equipment Location to the Licensee "as is", for the sole and exclusive use of the Licensee, which Equipment Location shall be used by the Licensee for the provision of communications services to the Licensee's customers in the Building. All renovations including costs for renovations to the Equipment Location are the sole responsibility of the Licensee. Detailed installation drawings shall be provided in accordance with Clause (7.1) herein.

2.3 **Sublicense** Notwithstanding section 13.4 of this Agreement, and subject to the prior written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, the Licensee shall have the right to sublicense a portion of the Equipment Location to a third party for the purpose of permitting such third party to provide communications services to its customers in the Building.

2.4 **Nature of Interest** The right granted to the Licensee under this Agreement is a license only, and shall not constitute a partnership or joint venture between the parties.

2.5 **Non-Exclusivity** The Licensee acknowledges and agrees that the license granted to the Licensee pursuant to section 2.1 of this Agreement is not exclusive to the Licensee, and that the Owner has the right to grant similar rights and privileges in respect of the Building to other parties.

2.6 **Owner's Right to Relocate** The Owner shall have the right, at any time and for any reason throughout the Term of this License Agreement, to relocate the Equipment Location to a new location of the Building at Owner's cost and expense, provided that such new location will not detrimentally affect the quality of equipment performance enjoyed by the Licensee's Equipment at the original Equipment Location.

### ARTICLE 3 - TERM

3.1 **Term** Notwithstanding the date of its execution, this Agreement shall come into effect on the Commencement Date, and, subject to the provisions of this Agreement, shall remain in effect for the Term.

3.2 **Option to Renew** Provided that the Licensee is not in default under this Agreement, the Licensee shall have **three** (3) annual options to renew and extend this Agreement for consecutive period(s) of **one** (1) year each (the "Renewal Term"), conditional upon the Licensee providing at least sixty (60) days prior written notice to the Owner and the License Fee shall be mutually agreed upon by the parties in writing based on the then current market rates for similar telecommunications license agreements for similar buildings, however, not less than the License Fee for the initial term. The Renewal Term shall be on the same terms and conditions as contained in this Agreement, with the exception of the License Fee. If the Owner and Licensee are unable to agree on such License Fee at least 30 days prior to the expiry of the Term, either of them may refer the determination of such annual License Fee to arbitration under the arbitration statute of the Province where the Building is located. The arbitrator's determination will be conclusive and binding on the Owner and the Licensee. The arbitration cost will be awarded in the arbitrator's discretion. Until the arbitrator has determined such annual License Fee, the Licensee will continue to pay the monthly installments of the License Fee in the same amount it was paying prior to the expiry of the Term or Renewal Term, as the case may be. Forthwith after the arbitrator's determination, the Licensee will pay to the Owner the difference, if any, between the License Fee installments which it has then paid to date and the License Fee installments pursuant to such determination.

3.3 **Overholding** If the Licensee remains in occupation of the Equipment Location following the expiration of this Agreement, such continued occupation by the Licensee shall not have the effect of renewing or extending this Agreement for any period of time, and the Licensee shall be deemed to be occupying the Equipment Location as a licensee on a month-to-month basis upon the same terms and conditions as set out in this Agreement, except as to the amount of the License Fee. During the period of overholding the Licensee shall be required to pay one hundred and fifty (150%) of the License Fee paid by the Licensee under the terms hereof during the month immediately preceding the expiration of this agreement.

### ARTICLE 4 - LICENSE FEE

4.1 **License Fee** The Licensee shall pay to the Owner an annual License Fee in an amount of **Two Thousand Four Hundred Dollars (\$2,400.00)**, excluding GST, which annual License Fee shall be paid in advance on the Commencement Date. Thereafter, the Licensee shall pay to the Owner the annual License Fee on the first day of each year of the Term or Renewal Term, as the case may be. All License Fee payments shall be made to the Owner's Agent, ATCO Frontec Corp.

4.2 **GST** The Licensee shall pay GST as applicable on the License Fee, which GST shall be paid at the time the License Fee is payable. The Owner's GST registration number is R100558998.

4.3 **Non-Disclosure** The Owner and the Licensee each agree to use good faith efforts to refrain from disclosing the financial terms of this Agreement, except that either party may disclose the financial terms of this Agreement if required by law or regulation.

## ARTICLE 5 - USE

**5.1 Use of Equipment Location** The Licensee shall use the Equipment Location only for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Equipment as required by the Licensee for the purpose of providing communications services to the Licensee's customers in the Building.

**5.2 Title** The Owner acknowledges and agrees that title to, and ownership of, the Licensee's Equipment shall remain with the Licensee at all times notwithstanding that the Licensee's Equipment may be affixed to a part of the Building for the time being.

## ARTICLE 6 - ACCESS AND ELECTRIC UTILITIES

**6.1 Access** The Licensee and its authorized representatives shall have access to the Entrance Link and Equipment Location on a seven (7) days a week, twenty-four (24) hours per day basis for the purpose of installing, operating, maintaining, repairing and removing the Licensee's Equipment. The Licensee and its authorized representatives further shall have such access to the driveways, walkways, entrances, exits and hallways associated with the Building as may be required in order for the Licensee and its authorized representatives to access the Equipment Location. The Owner acknowledges that the nature of the Licensee's communications services requires such access for servicing purposes and in emergency situations. The Licensee and its authorized representatives shall have ingress and egress to the Building Risers at such times as specified by the Owner, acting reasonably, provided that in the event of an emergency, the Licensee shall have the right to enter the Building Risers upon notification to the Owner. All entry and access to the Entrance Link, Equipment Location and the Building, including the Building Risers, by the Licensee and its authorized representatives shall be subject to the Owner's reasonable security procedures. The Licensee shall deliver to the Owner a complete list of all its authorized representatives.

**6.2 Electrical Power** The Licensee shall have the right to connect the Licensee's Equipment to the electric power distributing system within the Building at the sole cost and expense of the Licensee. Where the Licensee's Equipment consumes more than approximately one (1) kilowatt per hour, the Owner may require the Licensee to pay for all electricity consumed by the Licensee on a load and usage basis. If required by the Owner, acting reasonably, the Licensee, at its sole cost and expense, shall install a separate meter, which shall be connected to the Building energy management system, to determine the Licensee's electricity consumption. The Owner shall use reasonable commercial efforts to notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's use. The Licensee agrees that the Owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or backup power to the Licensee on such terms and conditions as mutually agreed between the parties.

**6.3 Telephone Service** The Licensee, at its sole cost and expense, shall have the right to install a telephone in the Equipment Location if required by the Licensee.

**6.4 Nuisance** The Licensee shall not use nor permit the Licensee's Equipment or any part of the Equipment Location to be used in such a manner as to annoy, disturb or cause nuisance to the Owner or the occupiers, tenants or other licensees of the Building, or in a manner that constitutes a contravention of law.

**6.5 Compliance with Laws** The Licensee, in installing, maintaining operating, repairing and replacing the Licensee's Equipment in the Equipment Location and the Building Risers shall comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC.

## **ARTICLE 7 - INSTALLATION, MAINTENANCE AND REPAIRS**

**7.1 Approval of Plans** Prior to the commencement of the installation of the Licensee's Equipment in the Equipment Location and in the Building Risers, the Licensee shall prepare and submit plans, specifications, and working drawings to the Owner in respect of such installation for the approval of the Owner, which approval shall not be unreasonably withheld or delayed.

**7.2 Installation** Upon receipt of the Owner's written approval pursuant to section 7.1 above, the Licensee, at its sole expense and risk, shall be entitled to commence the installation of the Licensee's Equipment, which installation shall be performed in a responsible and workmanlike manner and in accordance with all applicable laws, regulations, by-laws, orders, rules and ordinances of all federal, provincial and municipal governmental authorities having jurisdiction.

**7.3 Cables** The Licensee shall label each cable placed by the Licensee in the Building Risers and any telecommunications closets through which the Licensee's cable passes with an identification number assigned by the Licensee.

**7.4 Repairs and Maintenance** The Licensee, at its own cost and expense, shall keep the Equipment Location and the Licensee's Equipment in a safe and properly maintained condition.

**7.5 Liens** The Licensee shall be responsible for the satisfaction or payment of any liens registered against the Building by any supplier of labour, material or services to the Licensee. Any such liens shall be discharged by the Licensee, provided that the Licensee may contest, in good faith, any such liens.

## **ARTICLE 8 - INSURANCE AND INDEMNIFICATION**

**8.1 Insurance** The Licensee, at its own expense, shall take out and maintain in force while this Agreement is in effect, comprehensive general liability insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence for injury, death or property damage arising out of the Licensee's operations pursuant to this Agreement, which insurance shall contain cross liability and severability of interest clauses.

**8.2 Indemnification** The Licensee shall indemnify and save harmless the Owner from and against any loss, suit, claim, action, damage or expense arising out of, from or by reason of, the installation, operation, maintenance, repair or removal of the Licensee's Equipment in the Equipment Location and the Building communications space pursuant to this Agreement, except to the extent that any such loss, suit, claim, action, damage or expense is due to the negligence or willful misconduct of the Owner or those for whom the Owner is in law responsible.

## **ARTICLE 9 - TERMINATION**

**9.1 Termination by Licensee** After the first (1<sup>st</sup>) year of this Agreement, the Licensee shall have the right to terminate this Agreement by providing the Owner with ninety (90) days prior written notice in the event of the occurrence of any of the following, but not excluding any unforeseen circumstances:



- (a) the Licensee is unable to secure, on terms and conditions reasonably satisfactory to the Licensee, all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal governmental authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of the Licensee's Equipment;
- (b) the Licensee's Equipment is damaged or destroyed and the Licensee determines that it will not effect repairs to, or replace, the Licensee's Equipment;
- (c) the Owner defaults in the observance or performance of any of the Owner's obligations under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Licensee to the Owner, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Owner promptly commences such cure with reasonable diligence; or
- (d) the Owner makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Owner is conclusive evidence of insolvency.

**9.2 Termination by the Owner** After the first (1<sup>st</sup>) year of this Agreement, the Owner shall have the right to terminate this Agreement by providing ninety (90) days written notice to the Licensee in the event of the occurrence of any of the following, but not excluding any unforeseen circumstances:

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence; or
- (c) the Licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency.

**9.3 Surrender** Upon the expiration or earlier termination of this Agreement, the Licensee shall remove the Licensee's Equipment from the Equipment Location, Building Risers and the Building, except at the Owner's option, upon compensating the Licensee in an amount equal to the replacement cost, the cables and Entrance Link may remain in the Building and shall become the sole property of the Owner. The Licensee shall be responsible for repairing any damage caused by the removal of the Licensee's Equipment not purchased by the Owner, except damage caused by ordinary wear and tear.



## ARTICLE 10 - DAMAGE OR DESTRUCTION OF BUILDING

**10.1 Right to Terminate** In the event the Building is damaged to such an extent that the Licensee is unable to effectively exercise its rights pursuant to the license granted by the Owner under this Agreement, the Owner, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days. In the event the Owner elects not to repair the damage within one hundred eighty (180) days, the Licensee shall have the right to terminate this Agreement upon providing thirty (30) days prior written notice to the Owner, in which event the Licensee shall remove the Licensee's Equipment in accordance with the provisions of section 9.3 of this Agreement. The Licensee shall have no obligation to pay the License Fee or any other amounts under this Agreement during the thirty (30) day notice period, and the portion of the License Fee paid by the Licensee in advance shall be refunded by the Owner to the Licensee on a pro rated basis to the date of damage to the Building.

## ARTICLE 11 - FORCE MAJEURE

**11.1 Force Majeure** Without limiting or restricting the applicability of the law governing frustration of contracts, in the event either party fails to meet any of its obligations under this Agreement within the time prescribed, and such failure shall be caused, or materially contributed to, by force majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances. For the purpose of this Agreement, force majeure shall mean any acts of God, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of such party, and which, by the exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure.

## ARTICLE 12 - NOTICES

**12.1 Notices** Any Notice pursuant to this Agreement shall be sufficiently given if in writing and personally served, or sent by facsimile or registered mail, and addressed or sent as specified below:

- (a) If to the Owner:  
BM Pension Realty "2" Inc.  
c/o ATCO Frontec Corp.  
Property Management  
Atrium, 919 - 11 Avenue SW  
Calgary, Alberta T2R 1P3  
Attention: Property Manager  
Facsimile: (403) 245-7595  
Telephone: (403) 245-7545

(b) If to the Licensee:

GT Group Telecom Services Corp.  
20 Bay Street  
Suite 700  
Toronto, Ontario M5J 2N8

Attention: Director, Facilities  
Facsimile: (416) 848-2834  
Telephone: (416) 848-2000

**12.2 Receipt** Where a Notice is delivered personally or by facsimile, it shall be deemed to have been received the same Business Day, or if the day on which the Notice was sent is not a Business Day, the Notice shall be deemed to have been received on the next Business Day. Where a Notice is sent by registered mail, it shall be deemed to have been received three (3) Business Days after the date of mailing. In no event should any Notice be sent by mail during any period of interrupted or threatened interruption of postal service.

**12.3 Change of Address** Either party may change its address or particulars for purposes of the receipt of any Notices in connection with this Agreement by giving notice in the same manner as provided in this Article 12.

## ARTICLE 13 - MISCELLANEOUS

**13.1 CRTC Decision** The Owner and the Licensee acknowledge that the access rights of telecommunications providers in multi-tenant buildings is presently subject to a regulatory proceeding initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this Agreement is in effect, this Agreement shall be amended by the parties in such a manner so as to give effect to such ruling or decision from the date of such ruling or decision going forward, but without retroactive effect despite the wording of such ruling, and all appropriate adjustments in respect of any amounts paid under this Agreement shall immediately be made between the parties to ensure that this Agreement is brought into conformity from the date of such ruling or decision as aforesaid, including, without limitation, the termination of this Agreement if necessary.

**13.2 Entire Agreement** This Agreement cancels, replaces and supersedes as of its effective date all existing agreements and understandings, written or oral, between the parties relating to the subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.

**13.3 Waiver** No failure by either to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will constitute a waiver of any provision of this Agreement. No waiver shall be effective unless made in writing by an authorized officer of the party.

**13.4 Successors and Assigns** This Agreement shall not be assigned by the Licensee, in whole or in part, without the express written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, provided that the Licensee shall be entitled to assign this Agreement to an affiliate, lenders or purchaser of all or a part of the network of the Licensee, as defined in the *Canada Business Corporations Act*, a purchaser of a material portion of its business or a senior lender upon written notice to the Owner. This Agreement shall be binding upon, and shall enure to, the benefit of the parties and their respective successors and permitted assigns. Provided that pursuant to the sale or transfer of substantially all of the Tenant's assets, the transferee expressly agrees with Owner to observe the covenants of Tenant.

**IN WITNESS WHEREOF** the parties have executed this Agreement by the hands of their respective officers duly authorized in that behalf.

BM Pension Realty #2" Inc. / 1 1 ✓

Per:

Title: PRESIDENT

**GT GROUP TELECOM SERVICES CORP.**

Per:

U.D. NATIONAL FACILITIES

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

**LEGAL DESCRIPTION OF LANDS**

**LEGAL DESCRIPTION:**

PLAN A 1 CALGARY BLOCK SEVENTY FOUR (74) THE EAST FIVE HUNDRED SIXTY THREE THOUSANDTHS (0.563) METRES THROUGHOUT OF LOT FOURTEEN (14) AND ALL OF LOTS FIFTEEN (15) TO TWENTY (20) INCLUSIVE

EXCEPTING AS TO SURFACE ONLY, OUT OF SAID PORTION OF LOT FOURTEEN (14), AND LOTS FIFTEEN (15) TO TWENTY (20) INCLUSIVE, A PORTION FOR THE STREET WIDENING ON PLAN 8311888.

**MUNICIPALLY DESCRIBED AS:**

ATCO CENTRE  
909 - 11th Avenue SW, Calgary, Alberta

**ASSIGNMENT OF LEASES  
(CALGARY)**

THIS ASSIGNMENT dated as of the 2<sup>nd</sup> day of April, 2002 is made

BETWEEN:

**EDCAL (2002) HOLDINGS LIMITED**, a body corporate having an office at Suite 909, 2 Carlton Street, Toronto, Ontario, M5B 1J3 (hereinafter called the "Purchaser")

OF THE FIRST PART

AND

**BM PENSION REALITY "2" INC.**, a body corporate having an office at 100 King Street West, 20<sup>th</sup> Floor Corporate Real Estate, Toronto, Ontario M5X 1A1 (hereinafter called the "Vendor")

OF THE SECOND PART

WHEREAS by an agreement of purchase and sale made March 8, 2002 between the Vendor and Northam Properties (III) Inc., as purchaser (the "Purchase Agreement"), the entire purchaser's interest in which was assigned to the Purchaser, the Vendor agreed to sell and the Purchaser agreed to purchase those lands and premises described in Schedule "A" hereto on the terms and conditions set forth in the Purchase Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties) the Vendor and the Purchaser covenant and agree as follows:

**1. DEFINITIONS**

In this Agreement:

- (a) Terms which are defined in the Purchase Agreement, which are used and capitalized in this Assignment shall have the respective meanings specified in the Purchase Agreement unless otherwise defined herein; and
- (b) "Leases" means the leases described in Schedule "B" hereto.

**2. ASSIGNMENT**

The Vendor hereby absolutely assigns, transfers and sets over unto the Purchaser:

- (a) all of the Vendor's right, title and interest in and to the Leases and the reversion thereof;

- (b) any and all rents and other monies payable under the Leases in respect of the period from and after the Closing Date;
- (c) the benefit arising from and after the Closing Date of all guarantees and indemnities contained within or delivered in conjunction with the Leases;
- (d) the benefit arising from and after the Closing Date of all covenants by the Tenant or any covenantor of the Leases;

with full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for all rents and other moneys payable thereunder and to enforce payment thereof or performance of covenants.

### 3. ASSUMPTION

APRIL 12/02

- (a) As of the Closing Date, the Purchaser hereby assumes those obligations of the Vendor under the Leases which are to be observed or performed on or after the Closing Date (which obligations are herein called the "Assumed Obligations") and covenants and agrees with the Vendor that from and including the Closing Date, the Purchaser will duly and faithfully observe and perform the Assumed Obligations.
- (b) The Vendor will remain liable for failure to observe and perform its obligations under the Leases prior to the Closing Date.

### 4. INDEMNITIES

- (a) The Vendor agrees to indemnify and save harmless the Purchaser with respect to any claim, demand, account, suit, action, liability and costs whatsoever made or brought against the Purchaser by any present or past tenant of the Lands by reason of any breach by the Vendor of any duty owed by the Vendor to any such tenant, if such breach of duty occurred on or prior to the time of Closing.
- (b) The Purchaser hereby agrees to indemnify and save harmless the Vendor with respect to any and all actions, suits, costs, losses, charges, damages and expenses in respect of the non-observance, non-performance or breach of the Assumed Obligations occurring from and after the time of Closing.

### 5. FURTHER ASSURANCES

Each of the parties shall at all times hereafter execute and deliver all such further documents and instruments, and shall do such further acts and things as may be reasonably required to give full effect to this Assignment.

### 6. GOVERNING LAW

This Assignment shall be governed by and construed in accordance with the laws of the Province of Alberta.

### 7. ENUREMENT

This Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. **COUNTERPARTS**

This Assignment may be executed in counterparts and when each party has executed a counterpart each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF this Assignment has been executed as of the day and year first above written.

**BM PENSION REALTY "2" INC.**

Per:

Per:

**I/We have authority to bind the Corporation**

**EDCAL (2002) HOLDINGS LIMITED**

Per:

Per:

**I/We have authority to bind the Corporation**



**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF LANDS**

Civic Address:

909 - 11<sup>th</sup> Avenue S.W.  
Calgary, Alberta

Legal Description:

Plan A-1  
Block 74

The East 0.563 metres throughout of Lot 14 and all of Lots 15 to 20 inclusive excepting thereout as to surface only, a portion for street widening on Plan 8311888

## SCHEDULE "B" (TO ASSIGNMENT OF LEASES)

### LEASES

1. Amended and Restated Lease Agreement dated March 1, 1987 between BM Pension Realty "2" Inc. (the "Landlord") and Canadian Utilities Limited (the "Tenant") to lease nine thousand, five hundred and fifty two (9,552) square feet of space on the 16th floor of the building for a term of 27 Years and 5 Months to expire on September 30, 2011 with no renewal option at a net rental rate of twenty-one dollars and fifty cents (\$21.50) per sq. ft./annum from May 1, 1984 to September 30, 2002 and sixteen dollars (\$16.00) per sq. ft./annum from October 1, 2002 to September 30, 2011.
2. Amended and Restated Lease Agreement dated March 1, 1987 between BM Pension Realty "2" Inc. (the "Landlord") and ATCO Ltd. (the "Tenant") to lease nine thousand, nine hundred and ninety one (9,991) square feet of space on the 15th floor of the building and to lease ten (10) parking stalls located in the ATCO Centre Parkade for a term of 27 Years and 5 Months to expire on September 30, 2011 with no renewal option at a net rental rate of twenty-one dollars and fifty cents (\$21.50) per sq. ft./annum from May 1, 1984 to September 30, 2002 and sixteen dollars (\$16.00) per sq. ft./annum from October 1, 2002 to September 30, 2011 and \$110.00/month per stall subject to adjustment to fair market value.
3. Amended and Restated Lease Agreement dated March 1, 1987 between BM Pension Realty "2" Inc. (the "Landlord") and ATCO Gas (the "Tenant") to lease one hundred and fifty seven thousand and seventeen (157,017) square feet of space on the main, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, and 14th floors of the building and to lease one hundred and five (105) parking stalls located in the ATCO Centre Parkade for a term of 27 Years and 5 Months to expire on September 30, 2011 with no renewal option at a net rental rate of twenty-one dollars and fifty cents (\$21.50) per sq. ft./annum from May 1, 1984 to September 30, 2002 and sixteen dollars (\$16.00) per sq. ft./annum from October 1, 2002 to September 30, 2011 and \$110.00/month per stall subject to adjustment to fair market value.
4. Amended and Restated Lease Agreement dated March 1, 1987 between BM Pension Realty "2" Inc. (the "Landlord") and ATCO Gas (the "Tenant") to lease eleven thousand, one hundred and thirty seven (11,137) square feet of space on the 9th floor of the building for a term of 27 Years and 5 Months to expire on September 30, 2011 with no renewal option at a net rental rate of twenty-one dollars and fifty cents (\$21.50) per sq. ft./annum from May 1, 1984 to September 30, 2002 and sixteen dollars (\$16.00) per sq. ft./annum from October 1, 2002 to September 30, 2011.
5. Lease Agreement dated September 11, 2000 between BM Pension Realty "2" Inc. (the "Owner") and Dean's Snack & Smoke Shop Ltd. (the "Tenant"), to lease seven hundred and sixty four (764) square feet of space on the main floor of the building for a term of 5 Years to expire on November 30, 2005 with no renewal option at a net rental rate of fourteen (\$14.00) per sq. ft./annum
6. Telecommunications License Agreement dated August 11, 2000 between BM Pension Realty "2" Inc. (the "Owner") and GT Group Telecom Services Corp. (the "Licensee"), granting a license to install, operate, maintain, repair and replace communications equipment within the building and to lease a one hundred and ten (110) square foot equipment room located in the NorthEast end of P3 of the ATCO Centre Parkade for one year terms commencing September 1, 2000, with three one-year renewal terms at an annual license fee of two thousand, four hundred dollars (\$2,400.00).

7. Automated Banking Machine License Agreement dated February 8, 2000 between BM Pension Realty "2" Inc. (the "Licensor") and Alberta Treasury Branches (the "Licensee"), granting a license to install, operate, maintain, repair and replace an automated banking machine within the building and to lease approximately twelve (12) square feet located in the lobby area of the building for a term of 5 Years to expire on February 8, 2005, with one additional five year renewal option at an annual license fee of three thousand dollars (\$3,000.00).

**group telecom**  
COMPLETELY CONNECTED™

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VIA FACSIMILE  
403-245-7595

September 14, 2004

Edcal (2002) Holdings Ltd.  
c/o ATCO Frontec Corp.  
Atrium 919 11 Ave SW  
Calgary AB T2R 1P3

Attn: Kay Jones

Dear Ms. Jones.

Re: Request to Extend/Renew current POP (Point of Presence) Agreement between Edcal (2002) Holdings Ltd. and GT Group Telecom Services Corp. for POP space located in 909 11 AVE SW, CALGARY. - Agreement No. 02001.059

This letter serves as formal written request to extend/renew our agreement for a further 1 year period commencing on September 1, 2004 under the same terms and conditions.

Please acknowledge your agreement by signing and executing this letter and returning one fully executed copy back to my attention via fax or courier. Should you have any questions or concerns please do not hesitate to contact me at your earliest convenience.

Yours truly,  
GT Group Telecom

Director, National Facilities

ACCEPTANCE

The undersigned, Edcal (2002) Holdings Ltd., hereby accepts the above Terms and Conditions stated herein.

Dated at CALGARY this 20 day of SEPTEMBER 2004  
ALBERTA

Edcal (2002) Holdings Ltd.

By \_\_\_\_\_  
Having  
Name

Title: BUILDING OPERATIONS MANAGER - CALGARY  
ATCO FRONTEC CORP., PROPERTY MANAGEMENT