

VIA FAX OR E-MAIL

June 10, 2004

The Receiver General for Canada  
c/o PWGSC  
1000-9700 Jasper Ave  
Edmonton AB T5J 4E2

GT 5-117

Dear Sir or Madam,:

Re: Request to Extend/Renew current POP (Point of Presence) Agreement between The Receiver General for Canada and GT Group Telecom Services Corp. for POP space located in 9777 102 AVE NW, EDMONTON. – Agreement No. 02002.702

This letter serves as formal written request to extend/renew our agreement for a further term of 2 year period commencing on July 1, 2004 under the same terms and conditions except for the POP fees which shall be set at a rate of \$2,500 per annum.

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, The Receiver General for Canada, hereby accepts the above Terms and Conditions stated herein.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**The Receiver General for Canada**

By: \_\_\_\_\_  
Having authority to bind the Corporation  
Name:  
Title:

**CONSENT TO ASSIGNMENT AGREEMENT (the "Agreement")**

**THIS AGREEMENT** made effective as of February 4, 2003 (the "Effective Date").

**BETWEEN:**

**HER MAJESTY THE QUEEN AS REPRESENTED  
BY THE MINISTER OF PUBLIC WORKS AND  
GOVERNMENT SERVICES CANADA  
(the "Owner")**

-and-

**GT GROUP TELECOM SERVICES CORP.  
(the "Assignor")**

- and -

**LONDONCONNECT INC. jointly with  
GT GROUP TELECOM SERVICES CORP.  
(collectively called the "Assignee")**

**WHEREAS:**

- A. By a License Agreement dated May 31<sup>st</sup>, 1999 (the "License"), entered into between TrizecHahn Office Properties Ltd. ("Trizec") and Videon Cablesystems Alberta Inc. ("Videon"), which sold its interest in the License to the Assignor, effective April 29<sup>th</sup>, 2000, Trizec granted a non-exclusive license to Videon for the installation, operation, maintenance, replacement and removal of certain telecommunication equipment in the space defined in the License as "P1 Space," in the Building commonly known as "Canada Place," located in the City of Edmonton, Alberta, for a term of three (3) years, ending May 30<sup>th</sup>, 2002;
- B. By a purchase agreement made effective January 31<sup>st</sup>, 2001, Trizec sold its interest in the License and the Building to the Owner;
- C. By a renewal and amending agreement, made effective May 31, 2002 (the "Renewal Agreement"), the Assignor exercised its option to renew the License for a further period of two (2) years and the parties also made certain revisions to the License as set out therein;

- D. The Assignee and the Assignor have agreed that the Assignor will transfer and assign to the Assignee, subject to the Landlord's consent, the balance of the First Renewal term; and
- E. The Assignor has requested that the Owner consent to such transfer and assignment pursuant to section 15(a) of the License.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants, terms and conditions hereinafter contained, the parties agree with one another as follows:

1. Unless otherwise defined in this Agreement, the capitalized terms contained herein shall have the same meanings as ascribed to them in the License.
2. Pursuant to section 15(a) of the License, the Owner hereby consents to the assignment of the License from the Assignor to the Assignee, such consent to be effective as of the Effective Date.
3. The Assignee hereby covenants and agrees with the Landlord that as of and from the Effective Date, the Assignee shall be, jointly and severally, bound by and liable to pay all fees and other monies reserved by the License and for the observation and due performance of all the terms, covenants, provisos and conditions on the part of the Licensee, as set forth in the License, as if the Assignee were the original party to the License.
4. Notwithstanding this Agreement, and the Owner's consent to the assignment of the License from the Assignor to the Assignee, the Assignor shall continue to be bound by, and to remain liable to the Owner, for the observation and due performance of all of the terms, covenants, provisos and conditions on the part of the Licensee, as set forth in the License, for the remainder of the First Renewal term.
5. The consent of the Owner to the assignment described in this Agreement is given without prejudice to any or all of the Owner's rights granted by the License, in equity or at law and shall not be a waiver of the requirement for obtaining the Owner's prior consent to any subsequent assignment, sale or other transfer of the License and all terms, conditions and restrictions relating to assigning, as contemplated in section 15 of the License shall remain in full force and effect.
6. Subject to the provisions of Paragraphs 2, 3, 4 and 5 hereof, the Owner hereby accepts the Assignee as a party to the License, as if the Assignee were the original party thereto.
7. The License, as previously amended by the Renewal Agreement, shall remain unchanged and is hereby ratified and confirmed and shall continue in full force and effect.

**THE ASSIGNOR:****GT GROUP TELECOM SERVICES CORP.**

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

Name: \_\_\_\_\_

Title: VP, DEPUTY GENERAL COUNSEL,  
(I have authority to bind the corporation)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(I have authority to bind the corporation)

**THE ASSIGNEE:****LONDONCONNECT INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(I have authority to bind the corporation)

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

Name: \_\_\_\_\_

Title: Vice President  
(I have authority to bind the corporation)**GT GROUP TELECOM SERVICES CORP.**

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

Name: \_\_\_\_\_

Title: VP, DEPUTY GENERAL COUNSEL  
(I have authority to bind the corporation)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(I have authority to bind the corporation)

This signature page forms part of the CONSENT TO ASSIGNMENT AGREEMENT between HER MAJESTY THE QUEEN, AS REPRESENTED BY THE MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA and GT GROUP TELECOM SERVICES CORP. and LONDONCONNECT INC.

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of the <sup>TOWN</sup> City of RICHMOND HILL, in the Province of  
ONTARIO, make oath and say:

1. I am a VICE PRESIDENT at GT Group Telecom Services Corp. in the City  
of ~~MISSISSAUGA~~ in the Province of ONTARIO, named in the within or annexed  
instrument.
2. I am authorized by GT Group Telecom Services Corp. to execute the instrument  
without affixing a seal.

SWORN before me at <sup>MISSISSAUGA</sup> Toronto,  
Ontario, this 28<sup>th</sup> day of AUGUST, )  
2003. )  
)  
)

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of Ontario

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of the City of Vancouver, in the Province of BRITISH COLUMBIA, make oath and say:

1. I am a Vice President at LondonConnect Inc. in the City of Vancouver, in the Province of British Columbia named in the within or annexed instrument.
2. I am authorized by LondonConnect Inc. to execute the instrument without affixing a seal.

BC SWORN before me at Vancouver,  
Ontario, this 20th day of August,  
2007 )

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of Ontario  
British Columbia

**JENNIFER A. FARAC**  
Barrister and Solicitor  
1066 WEST HASTINGS STREET  
VANCOUVER, B.C. V6E 3X1

**JENNIFER A. FARAC**  
Barrister and Solicitor  
15th FLOOR  
1066 WEST HASTINGS STREET  
VANCOUVER, B.C. V6E 3X1

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, make oath and say:

1. I am a \_\_\_\_\_ at GT Group Telecom Services Corp. in the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, named in the within or annexed instrument.
2. I am authorized by GT Group Telecom Services Corp. to execute the instrument without affixing a seal.

SWORN before me at Toronto, )  
Ontario, this \_\_\_\_ day of \_\_\_\_\_, )  
2003. )

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of Ontario

\_\_\_\_\_

8. The terms "Owner", "License", "Assignor" and "Assignee" and the pronouns relating thereto, where used herein shall, where the context makes it possible, include the heirs, executors, administrators, successors and the assigns of the parties hereto, and shall include the feminine and plural and the body corporate where the context or the party or parties hereto so require and, where there is more than one Assignee or more than one Assignor, all covenants shall be deemed joint and several as between such assignees or assignors. The terms "herein", "hereof", "hereunder" and like terms where they appear in this Agreement refer to this Agreement. The preamble hereto shall form an integral part hereof.
9. Time shall be of the essence.
10. This Agreement and the terms and provisions hereof shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns, subject however, to compliance by the Assignee with the provisions of the License in respect of the assignment thereof.
11. The obligations of the Assignee under this Agreement and the License shall be joint and several.
12. Pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, no member of the House of Commons or the Senate will be admitted to any share or part of this Agreement or to any benefit to arise from this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**THE OWNER:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA AS REPRESENTED BY THE  
MINISTER OF PUBLIC WORKS AND  
GOVERNMENT SERVICES CANADA** /

For the Minister of Public Works and  
Government Services Canada:

Name: \_\_\_\_\_

Title: ~~ASSET~~ MANAGER

*Property*



**LICENCE RENEWAL AND AMENDING AGREEMENT (the "Agreement")**

**THIS AGREEMENT** dated and made effective as of May 31<sup>st</sup>, 2002.

**BETWEEN:**

**HER MAJESTY THE QUEEN AS REPRESENTED  
BY THE MINISTER OF PUBLIC WORKS AND  
GOVERNMENT SERVICES CANADA  
(the "Owner")**

**-and-**

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

**WHEREAS:**

- A. By a License Agreement dated May 31<sup>st</sup>, 1999 (the "License"), entered into between TrizecHahn Office Properties Ltd. ("Trizec") and Videon Cablesystems Alberta Inc. ("Videon"), as the previous Licensee, which sold its interest in the License to the Licensee set out above, effective April 29<sup>th</sup>, 2000, Trizec granted a non-exclusive license to Videon for the installation, operation, maintenance, replacement and removal of certain telecommunication equipment in the space defined in the License as "P1 Space," in the Building commonly known as "Canada Place," located in the City of Edmonton, Alberta, for a term of three (3) years, ending May 30<sup>th</sup>, 2002;
- B. By a purchase agreement made effective January 31<sup>st</sup>, 2001, Trizec sold its interest in the License and the Building to the Owner;
- C. Pursuant to section 3(a) of the License, the Licensee has exercised its option to renew the License for a further period of two (2) years; and
- D. The parties hereto have agreed to renew the Term of the License and to amend the License on the terms and conditions hereinafter set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Licensee to be respectively paid, observed and performed, the Owner hereby agrees to extend the term of the License for a further term of two (2) years, from May 31<sup>st</sup>, 2002 to and including May 30<sup>th</sup>, 2004 (the "Renewal Term"), and the parties hereby agree to amend the License as follows:

1. Unless amended by this Agreement, the capitalized terms contained herein shall have the same meanings as ascribed to them in the License.

2. The definition of "Owner" in the License is deleted in its entirety and replaced with the following:

"Her Majesty the Queen in right of Canada as represented by the Minister of Public Works and Government Services Canada"

3. The address for notice for the Owner, in section 19 of the License, is deleted in its entirety and replaced with the following:

"Owner:

Public Works and Government Services Canada  
Asset and Facilities Management  
#1000 - 9700 Jasper Avenue  
Edmonton AB T5J 4E2

4. The Owner and the Licensee acknowledge that the Licensee has exercised the option to renew contemplated by section 3(a) of the License. Further renewals of the License shall require the mutual agreement of both the Owner and the Licensee, as set forth in paragraph 14 ("Renewal Options") of the License.
5. Except as specifically amended by the terms of this Agreement, the terms and conditions of the License, including the fees paid by the Licensee thereunder, remain unchanged and are hereby ratified and confirmed and shall continue in full force and effect.
6. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

7. Pursuant to the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, no member of the House of Commons or Senate will be admitted to any share or part of this Agreement or to any benefit to arise from this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA AS REPRESENTED BY THE  
MINISTER OF PUBLIC WORKS AND  
GOVERNMENT SERVICES CANADA,**

\_\_\_\_\_  
For the Minister of Public Works and  
Government Services Canada

**GT GROUP TELECOM SERVICES CORP.**

PER: \_\_\_\_\_

Name: \_\_\_\_\_

Title: CORPORATE SECRETARY ; VP DEPUTY GENERAL COUNSEL

(I have authority to bind the corporation)

PER: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(I have authority to bind the corporation)

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_ of the TOWN OF RICHMOND HILL, in the Province of  
ONTARIO, make oath and say:

- CORPORATE SECRETARY
1. I am a VP, DEPUTY GENERAL COUNSEL at GT Group Telecom Services Corp., ~~an~~  
~~NO [scribbles]~~ named in the within or annexed instrument.
  2. I am authorized by GT Group Telecom Services Corp. to execute the instrument without affixing a seal.

NO SWORN before me at MISSISSAUGA )  
ONTARIO ~~Alberta~~, this 25<sup>th</sup> day of JUNE, )  
2003. )  
)  
)

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of ~~Alberta~~ Ontario

Law Society of Upper Canada

**AFFIDAVIT VERIFYING  
CORPORATE SIGNING AUTHORITY**

I, \_\_\_\_\_, of the \_\_\_\_\_, in the Province of \_\_\_\_\_, make oath and say:

1. I am a \_\_\_\_\_ at GT Group Telecom Services Corp., ~~an~~  
*named in the within or annexed instrument.*
2. I am authorized by GT Group Telecom Services Corp. to execute the instrument without affixing a seal.

*VANCOUVER.*

SWORN before me at ~~Edmonton,~~ )  
*B.C.* ~~Alberta,~~ this \_\_\_\_ day of \_\_\_\_\_, )  
2003. )

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of ~~Alberta~~ *BRITISH COLUMBIA.*

COPY

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

AGREEMENT

**TELECOMMUNICATIONS  
LICENSE AGREEMENT**

for

**CANADA PLACE**  
9777 - 102<sup>nd</sup> Avenue  
Edmonton, Alberta

Between

**VIDEON CABLESYSTEMS ALBERTA INC.**  
as Licensee

And

**TRIZECHAHN OFFICE PROPERTIES LTD.**  
as Owner

Commencement Date: May 31, 1999  
Initial Term: Three Years  
Renewal Term: Two Years

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Rev. 5/12/99

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## TELECOMMUNICATIONS LICENSE AGREEMENT

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

This Telecommunications License Agreement (the "Agreement") made as of the 31 day of May, 1999 (the "Commencement Date") between TrizecHahn Office Properties Ltd., a body corporate having an office at Suite 2200, 335-8<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 1C9 ("Owner"), and Videon CableSystems Alberta Inc., an Alberta corporation, with its principal office at 10450 178 St. Edmonton, Alberta T5S 1S2 ("Licensee").

### RECITALS

- A. Owner is the owner of the building commonly known as Canada Place, located at 9777 - 102<sup>nd</sup> Avenue, Edmonton, Alberta (the "Building"). Owner represents and warrants that it has the full right and authority without further consent from any other party to grant to Licensee the license and rights contained in this Agreement.
- B. Licensee represents and warrants to Owner that Licensee is authorized to provide public utility telecommunications services in the Building under the conditions described herein and that it has full authority without further consent from any other party to negotiate and execute this Agreement with Owner.

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

#### 1. Grant

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

- (1) To install, operate, replace, and remove, at Licensee's sole expense and risk, certain "Communications Equipment" (defined as the cabinets, racks, and other electronic equipment specified in Exhibit A), on and in the "Equipment Rooms" (as hereinafter defined and as described in Exhibit B); and
- (2) To install, maintain, operate, and replace, at Licensee's sole expense and risk, certain "Connecting Equipment" (the cables, conduits, innerducts and connecting hardware as specified and described in Exhibit A), together with the right to pull such Connecting Equipment through the Building's "Entrance Link" (defined as the core sleeve penetration through the Building foundation) and through other "Building Communications Spaces" (defined as the telecommunications pathways necessary to reach from the Entrance Link to Licensee's P1 Space (as defined below) and from the P1 Space to Licensee's 7<sup>th</sup> Floor Space (as defined below), as described in Exhibit C) as may be necessary to provide communications services to Licensee's customers in the Building and as designated and approved by Owner. Licensee's Communications Equipment and Licensee's Connecting Equipment are collectively referred to in this Agreement as "Licensee's Equipment".

- (b) Owner shall provide approximately 7/- 24 square feet of floor space in the P1-55 Sub Telephone Room in the Building (the "P1 Space"), and approximately 0 square feet of floor space in the 7<sup>th</sup> floor riser telephone room in the Building (the "7<sup>th</sup> Floor Space") (the P1 Space and the 7<sup>th</sup> Floor Space together being referred to herein as the "Equipment Rooms"), in the locations designated in Exhibit B. The Equipment Rooms will be used by Licensee as the Building service site, and for only that purpose. Licensee is expressly forbidden to serve other properties or any person or facility not located in the Building from this location without the express written permission of Owner, which permission may be unreasonably withheld or made



subject to whatever conditions Owner deems to be necessary or advisable. Additional fees may be required, as agreed to between the parties, for using Licensee's Equipment Rooms as a service point for other properties, persons or facilities outside the Building.

- (c) Owner shall have the right, in its sole discretion, to reasonably limit the type, size and location of Licensee's Equipment located in the Building. Further, Owner may, in its sole discretion, require Licensee, at Licensee's expense, to relocate within the Building any or all of Licensee's Equipment, including the Equipment Rooms. The substitute Equipment Rooms shall contain at least as much area as the Equipment Rooms from which Licensee is being relocated, and shall also, in Owner's sole judgement, be suitable for Licensee's operations. In the event that Owner requires Licensee to relocate Licensee's Equipment and/or the Equipment Rooms, Licensee shall, within ninety (90) days, either: (i) terminate this Agreement upon written notice to Owner; or (ii) relocate Licensee's Equipment and/or the Equipment Rooms (the time period for relocation shall be extended to one-hundred and twenty (120) days if Licensee has begun but not yet completed the relocation within the required ninety (90) day period). Owner shall allow Licensee to perform a standard cutover procedure, if required by said relocation, which will insure that the relocated equipment is operational for service prior to discontinuing service from the old service location.
- (d) Owner and Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents, or representatives, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other. Licensee hereby accepts and assumes full and exclusive liability for, and shall hold Owner harmless from, the payment of all taxes, monies and other expenses arising from the conduct of Licensee's business in the Building, including without limitation, all federal and provincial income taxes, Canada Pension Plan deductions an Employment Insurance premiums and all other withholdings or deductions required by law with respect to the wages, salaries, or other remuneration paid to Licensee or by Licensee to its employees for any and all activities in connection with this Agreement.
- (e) Subject to having received the prior written consent of the Owner (such consent not to be unreasonably withheld but may be made subject to whatever conditions Owner may deem to be necessary or advisable) Licensee shall have the right to permit tenants or other occupants of the Building to locate telecommunications equipment in the Equipment Rooms required for such tenants' or other occupants' use of their premises in the Building.
- (f) Owner makes no warranty or representation that the Equipment Rooms, the Building Communications Spaces or the Building are suitable for Licensee's use, it being assumed that Licensee has satisfied itself in respect thereof. Licensee has inspected the Equipment Rooms, the Building Communications Spaces and the Building and accepts the same "as is" and agrees that Owner is under no obligation to perform any work or provide any materials to prepare the Equipment Rooms, the Building Communications Spaces or the Building for Licensee.
- (g) The License granted herein is not exclusive. Owner hereby reserves the right to grant, renew or extend similar licenses to others. The License granted herein is revocable only in accordance with the express terms of this Agreement.

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## 2. Fees

- (a) Licensee shall pay to Owner an annual fee (the "License Fee") of FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00) plus GST thereon, each year of the Initial Term (as defined below) of this Agreement, increased annually on the anniversary of the Commencement Date of each year by any positive percentage increase in the Consumer Price Index ("CPI") as hereinafter

+CPI

defined, over the rate in effect on the Commencement Date of the prior year, which increase shall be deemed not to be less than 3% nor more than 10%.

- (b) The License Fee shall be payable by Licensee in advance in one annual payment. All payments shall be made to Owner at Suite 1640, Canada Place, 9777 - 102<sup>nd</sup> Avenue, Edmonton, Alberta T5J 4G9, and shall be in addition to any charges for use of Cable Distribution System ("CDS") cable-pair assignments ("CDS Fees") under Paragraph 13 ("Establishment of a Cable Distribution System") below.
- (c) As used in the foregoing Paragraph 2(a), the CPI shall be the All-Item Consumer Price Index for the city in which the Building is located, as published by Statistics Canada. The increase in the fee payable pursuant to this Paragraph 2 shall be calculated on the anniversary of the Commencement Date of this Agreement in each year, using the CPI most recently published prior to such anniversary date, and the CPI most recently published prior to such Commencement Date. If the Statistics Canada ceases to quote a CPI, adjustments to the fee payable pursuant to this paragraph shall be based on such substitute index of consumer prices as may be published by the Statistics Canada in replacement of the CPI, or if none, such other measure of increases in consumer prices as may be designated by Owner.
- (d) Owner and Licensee agree to use their good faith efforts to refrain from disclosing the financial terms of this Agreement. Either party may disclose the financial terms of this Agreement when required by law, regulation or prior agreement. No recourse, action or penalty shall be associated with the good faith effort of non-disclosure herein embodied.
- (e) Owner may, at its sole discretion, charge to Licensee such reasonable out-of-pocket expenses that may be incurred by Owner in connection with this Agreement, including, but not limited to, consulting and technical service fees. Owner shall submit to Licensee invoices relating to such out-of-pocket expenses. Payment is due thirty (30) days from the date of the invoice.

NON-DISCLOSURE  
OF RATE

### 3. Term

- (a) The term of this Agreement (the "License Term") shall commence as of the Commencement Date. The initial term hereof shall be three years (the "Initial Term"), beginning on the Commencement Date, subject to extension or earlier termination in accordance with the provisions hereof. Provided that Licensee is not in default of this Agreement, and subject to the provisions of Paragraph 3(b), Licensee shall have the option to renew and extend this Agreement upon the same terms and conditions set forth herein, except as specifically stated herein, for one additional two year period (the "First Renewal") by giving written notice of such an intent to Owner no more than one-hundred and eighty (180) days and no less than ninety (90) days prior to the end of the Initial Term of this Agreement (the "Initial Term" and the "First Renewal", if any, are collectively referred to as the "License Term"). Further renewals shall require the mutual agreement of both Owner and Licensee, as set forth in Paragraph 14 ("Renewal Options").
- (b) At the same time as Licensee gives notice of its intent to exercise its option for the First Renewal under Paragraph 3(a), Licensee shall advise Owner of the amount of the license fees it believes to be appropriate, which proposed amount shall be not less than the amount of the License Fees actually due for the third year of the Initial Term, increased on the third and fourth anniversaries of the Commencement Date by any positive percentage increase in the CPI, over the rate in effect on the Commencement Date of the prior year, which increase shall be deemed not to be less than 3% nor more than 10%. Within thirty (30) days after the receipt of such notice, Owner shall advise Licensee whether the proposed license fees are acceptable or Owner shall set forth the amount of the fees which would be required by Owner. If Owner shall fail to respond to Licensee's license fee proposal within such thirty (30) day period, then Owner shall be deemed to have refused to consent to Licensee's license fee proposal. If Owner and Licensee agree on the license fees for

3 YEARS  
+  
OPTION  
1 x 2 yrs  
+

future renewals  
AS AGREED BY  
OWNER & LICENSEE

the First Renewal, this Agreement shall be amended by a writing signed by both parties setting forth those terms and incorporating all of the other terms and conditions of this Agreement. If Licensee and Owner fail to agree in writing on the amount of license fees payable by Licensee during such First Renewal by the end of the Initial Term, this Agreement shall expire as of the last day of the Initial Term.

**4. Use**

Licensee shall use the Building Communications Spaces and the Equipment Rooms solely for the purpose of providing Building tenants and occupants with telecommunications services for which it has been certified to provide by the appropriate municipal, provincial and federal governmental authorities ("GA"). To the extent that Licensee is providing communications services to any tenant or occupant (other than Licensee) within the Building, Licensee shall make available such communications services to all tenants and occupants of the Building. Licensee hereby acknowledges that this Agreement prohibits the installation or operation of all forms and types of rooftop communications equipment or wireless communications equipment.

**5. Electric Utilities**

Licensee shall install, at its own cost, a separate electrical panel and meter for the Equipment in the Equipment Rooms and shall be responsible to the Owner for the electrical costs attributable to the use of such Equipment plus an administrative fee equal to fifteen percent (15%) of such electrical costs. Owner shall use reasonable efforts to notify Licensee in advance of any planned utility outages which may interfere with Licensee's use. Licensee further agrees that Owner has no obligation or responsibility to provide emergency or "backup" power to Licensee, and Licensee acknowledges that any such provision of emergency or "backup" power shall be the sole responsibility of Licensee.

**6. Construction**

- (a) Prior to the commencement of any work or installation of any equipment, Licensee shall, at its sole cost and expense, prepare and deliver to Owner working drawings, plans and specifications for such work or installation, as contained in Exhibits A, B and C detailing the type, size and location of Licensee's Equipment, the Building Communications Spaces to be used by Licensee and the Equipment Rooms, all specifically describing the proposed construction and work. All such working drawings, plans and specifications shall be prepared and stamped by an architect or engineer duly licensed to practice in the Province in which the Building is located. No work shall commence until Owner has approved, in writing, Exhibits A, B and C, and any other applicable construction or installation plans, which approval will not be unreasonably withheld. Approval or disapproval and required changes shall be delivered to Licensee within twenty (20) working days after the receipt of such plans from Licensee. If such approval is not received within such twenty (20) working day period, Owner shall be deemed to have disapproved of the drawings, plans and specifications submitted on reasonable grounds. In no event shall Owner's approval of such plans be deemed a representation that Licensee's Equipment will not cause interference with other systems in the Building or that Licensee's plans comply with applicable laws, rules or regulations or a representation regarding the design of such plans, such responsibility remains with Licensee.
- (b) Licensee warrants that the installation of Licensee's Equipment shall be in strict compliance with the approved plans and specifications prepared in connection with Exhibits A, B and C.
- (c) Licensee agrees that installation and construction shall be performed in a neat, responsible, and workmanlike manner, using generally accepted construction standards, consistent with such reasonable requirements as shall be imposed by Owner. Licensee shall, at its sole cost and expense, repair or refinish any surface of the Building that is damaged by or during the installation of Licensee's Equipment and caused by Licensee or any of its agents, representatives, employees,

contractors, subcontractors, or invitees. If Licensee fails to repair or refinish any such damage, Owner may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Owner of all costs and expenses incurred in such repair or refinishing and pay to Owner an administration fee equal to fifteen percent (15%) of such costs and expenses.

- (d) Licensee shall label each cable placed in the telecommunications pathways, in each telephone closet through which said cables pass, with identification information including, but not limited to, License Agreement Number (to serve as identification), floor where cable originates and floor where cable terminates and any other information as may be required from time to time by the Owner.
- (e) Licensee shall obtain, at its sole cost and expense, prior to construction and work, any necessary permits, licenses and approvals required by GAs, copies of which will be delivered to Owner prior to commencement of construction and work. Licensee's Equipment shall comply with all applicable safety standards, as modified from time to time, of any governing body with jurisdiction over Licensee's operations.
- (f) Licensee shall not during construction or otherwise, in Owner's sole judgment, block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, the sidewalks around the Building or any entrance-ways thereto. If such conditions shall occur, Licensee shall take corrective action as promptly as feasible, but in no event more than twenty-four (24) hours following notice by Owner of such conditions.
- (g) Licensee shall have the right to amend Exhibits A and C, from time to time, with the express written consent of Owner, which consent shall not be unreasonably withheld, for the purpose of serving additional occupants of the Building. All of the terms and conditions of this Construction section (Paragraph 6) shall apply.

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

- (a) Licensee shall, at its sole cost and expense, maintain Licensee's Equipment in proper operating condition and maintain same in satisfactory condition as to safety.
- (b) Licensee shall, at its sole cost and expense, repair any damage to the Building, Building Communications Spaces, and/or to any other property owned by Owner or by any lessee or licensee of Owner or by any other occupant of the Building where such damage is caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors, invitees or any person for whom Licensee may be legally responsible or whom Licensee may supervise, exercise control or direction over. If Licensee fails to repair or refinish any such damage, Owner may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Owner of all costs and expenses incurred in such repair or refinishing and pay to Owner an administration fee equal to fifteen percent (15%) of such costs and expenses.
- (c) Licensee shall not interfere with the use and enjoyment of the Building by Owner or by other lessees, or licensees of the Owner or other tenants or occupants of the Building. If such interference shall occur, Owner shall give Licensee written notice thereof and Licensee shall correct the same within twenty-four (24) hours after receipt of such notice. In the event Licensee fails to correct such conditions after proper notification and the specified curative period, Owner reserves the right to take any reasonable actions to correct the same whereupon Licensee shall reimburse Owner for all costs and expenses incurred by Owner to take such corrective actions and pay to Owner an administration fee equal to fifteen percent (15%) of such costs and expenses.
- (d) Licensee's Equipment shall not disrupt, adversely affect or interfere with other providers of communications services in the Building or with any tenant's, licensee's or other occupant's use

or operation of communications or computer devices. Licensee shall correct such interference within twenty-four (24) hours after receiving written notice of such interference. Owner reserves the right to disconnect power to any such Licensee's Equipment where Licensee fails to correct such interference after proper notification and waiting period.

- (e) Licensee agrees to comply with all rules and regulations as adopted and altered by Owner from time to time, and generally applicable to the tenants, licensees and other occupants of the Building (the "Building Rules") and will cause its agents, employees, contractors, invitees, visitors and all persons for whom Licensee is legally responsible and whomever Licensee may supervise or exercise control or direction over, to do so. Licensee shall not be bound by any changes in the Building Rules until after it has received written notice of such changes. No revision of the Building Rules shall materially adversely affect Licensee's rights or increase Licensee's financial obligations under this Agreement.
- (f) Licensee shall include in each of its contracts with tenants in the Building a statement that no party with whom Licensee contracts shall have any rights against, and none shall seek recourse against, Owner as a result of, or in reliance upon, such contracts or this Agreement.
- (g) Licensee agrees to comply with all applicable rules and regulations of GA's and other applicable municipal, provincial, and federal codes and regulations pertaining to the installation and operation of Licensee's Equipment, and to Licensee's provision of services.
- (h) Unless and to the extent directly caused by Owner's negligence or willful misconduct, Licensee agrees that Owner, its employees, officers, directors and those persons for whom Owner is legally responsible, shall not be liable for any loss or damage to Licensee's Equipment howsoever caused including, without limitation, loss or damage caused by theft, misappropriation or mysterious loss.

#### 8. Access

- (a) Owner agrees that Licensee's authorized representatives shall have access to the Equipment Rooms (as specified in Exhibit B) at all times, for the purposes of installing, maintaining, operating, and repairing Licensee's Equipment, and Owner further agrees to give Licensee ingress and egress to the Building Communications Spaces (as specified in Exhibit C) at the times during the License Term specified by Owner in its sole discretion, including non-exclusive use of an elevator. It is agreed, however, that only authorized engineers, employees or properly authorized contractors, subcontractors, and agents of Licensee, other authorized regulatory inspectors, or persons under their direct supervision and control will be permitted to enter the Building Communications Spaces, and only upon conditions set forth herein.
- (b) Except in the event of an emergency, Licensee agrees to give at least twenty-four (24) hours written notice to Owner of its intent to enter Building Communications Spaces. In such notice, Licensee shall inform Owner of the names of the persons who will be accessing the Building Communications Spaces, the reasons for entry, and the expected duration of the work to be performed. Licensee shall provide such information substantially in the form attached hereto as Exhibit D whenever feasible. In the event of an emergency, Licensee shall give to Owner as much advance notice as reasonably possible of its intent to enter the Building Communications Spaces and, within twenty-four (24) hours following such entry, shall provide to Owner a written report detailing the nature of such emergency, the corrective actions taken, and other such information as contained in Exhibit D.
- (c) Permission for all entries upon the Building Communications Spaces (including entries for maintenance and/or installation) must be received from Owner in advance, unless such entry is of an emergency nature and permission cannot be obtained in a timely fashion. Owner shall not be

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obligated to provide elevator service during emergency situations and under emergency conditions, which emergency situations and conditions shall be reasonably determined by Owner.

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

## **9. Insurance**

- (a) Licensee shall maintain in force, at its expense, during the term of this Agreement, a policy of Commercial General Liability Insurance issued by a company acceptable to Owner, and licensed to do business within the province where the Building is located, insuring Licensee and, as additional insureds, the Owner and any additional parties that Owner may reasonably designate by written notice, with a combined single limit of one million dollars (\$1,000,000.00) for injury or death or property damage, and excess "Umbrella" liability coverage of not less than five million dollars (\$5,000,000.00). Such insurance shall contain cross liability and severability of interest endorsements. Licensee shall also place and maintain all risk property insurance on its Equipment in sufficient amounts to cover any loss thereof.
- (b) Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as Owner and Licensee are concerned, with any other insurance maintained by Owner being excess and non-contributing with the insurance of Licensee required hereunder and providing coverage for the contractual liability of Licensee to indemnify Owner pursuant to Paragraph 10 below. Licensee shall obtain the agreement of Licensee's insurers to provide proof of such insurance to Owner at the Building office prior to commencement of any construction and to notify Owner, in writing, that a policy is to be cancelled or is due to expire at least thirty (30) days prior to such cancellation or expiration. Licensee shall name Owner and any additional parties that Owner may reasonably designate by written notice as additional insureds to the policies.
- (c) Licensee shall maintain in force all required workers' compensation or other similar insurance pursuant to all applicable law.

## **10. Indemnification**

Licensee shall exercise due care to avoid any action that may cause damage to any part of the Building or Owner's other tenants, licensees or other occupants. Licensee shall indemnify, exonerate and hold Owner, its principals, officers, directors, agents, employees, servants and all persons for whom Owner is legally responsible harmless from and against any loss, cost, damage and expense of whatever kind arising directly or indirectly from the construction, installation, operation, maintenance, repair, and removal of Licensee's Equipment or from Licensee's breach of this Agreement, including, but not limited to, legal fees, disbursements and expenses on a solicitor and his own client basis, except to the extent such loss, damage, cost or expense is directly due to the negligence or willful misconduct of Owner or any person for whom Owner is legally responsible. The provisions of this Paragraph 10 shall survive termination of this Agreement insofar as any claims with respect to such indemnification are filed prior to, or within three (3) years of the expiration or termination of the Agreement.

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

To the extent allowable under the laws and regulations governing the writing of insurance within the Province in which the Building is located, Owner and Licensee each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Agreement, pursuant to insurance policies carried by the parties which are in force at the time of the loss or damage. Owner and Licensee will each request its insurance carrier to include in policies provided pursuant to this Agreement an endorsement recognizing this waiver of subrogation. The provisions of this Paragraph 11 shall survive termination of this Agreement.

**12. Liens**

Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Owner against any costs, fees, liabilities or expenses of any kind related to such liens or to the discharge of such liens, including any legal fees, disbursements and expenses on a solicitor and his own client basis incurred by Owner. Such liens shall be discharged by Licensee within fifteen (15) days after notice of filing thereof by bonding, payment or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings, any such liens. The provisions of this Paragraph 12 shall survive termination of this Agreement.

**13. Establishment of a Cable Distribution System ("CDS")**

- (a) Licensee recognizes that Owner may desire to provide access to existing and future telecommunications service providers for tenants, licensees or other occupants of the Building, and Owner may deem it desirable to achieve this objective by providing a central telecommunications cable distribution system ("CDS") in the Building for use by certain providers of telecommunications services. The CDS, which may be installed by the Owner, or agent of the Owner, or a tenant in the Building, will include a main cross-connect ("MC") for use by certain service providers in order to reach tenant demarcation points in the Building. The MC shall serve as the minimum point of entry ("MPOE") demarcation point for service providers, including Licensee. The MC shall also serve as the origination point of the CDS. The telephone closet demarcation block on each floor of the Building will serve as the termination point of the CDS on that floor. Owner may charge each or any of the certain service providers (including Licensee) a fee for each CDS cable-pair used ("CDS Fee"), in accordance with Exhibit F, which will be attached hereto and incorporated herein as it may be amended from time to time if the CDS is installed by Owner.
- (b) If Owner, Owner's agent, or a tenant in the Building installs a CDS:
  - (1) Owner may purchase from Licensee those portions of Licensee's Connecting Equipment that Owner or such tenant in the building, in its sole discretion, determines is necessary to incorporate into the CDS. The purchase price of such portions of Licensee's Connecting Equipment shall be an amount equal to the then "as is" fair market value as agreed to by the parties, or as determined by a sole arbitrator who is reasonably acceptable to both parties or is appointed by the arbitration legislation in effect in the Province where the Building is located, in any event, such person shall be experienced in the valuation of such equipment. The fees and expenses of the sole arbitrator shall be borne equally between Owner and Licensee. Licensee shall, at Owner's option and expense, remove any remaining Licensee Connecting Equipment that is not purchased by Owner.



- (2) Licensee shall, at Licensee's expense, relocate its existing services and demarcation facilities to the CDS, if such a frame is installed.
  - (3) Licensee shall utilize the CDS for providing all service to Licensee's customers once Owner notifies Licensee that the MC is ready for service.
  - (4) Owner agrees to allow Licensee a reasonable amount of time (not to exceed ninety (90) days) for proper planning, engineering and cutover in this regard. Cutover to the CDS will be accomplished at times other than normal business hours of the Building as established from time to time by Owner.
- (c) Owner shall repair or replace the CDS as necessary to eliminate any interruption or other adverse effects caused by malfunction, damage or destruction of the CDS, the cost of which shall be borne by Licensee if the problem was caused directly or indirectly by the act or omission of Licensee, its agents, representatives, employees or invitees. In limitation of the foregoing, Owner's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by tenants, licensees or other occupants of the Building serviced by Licensee after the malfunction, damage or destruction or that, if damaged or destroyed, will be again used by such tenants, licensees or other occupants of the Building upon the completion of restoration or repair thereof. In no event shall Licensee have any right to make any claim against Owner or against any person for whom Owner is legally responsible for any damages whatsoever, including, without limitation, direct or consequential damages in any such circumstance. In the event of malfunction of, damage to, or destruction of the CDS, as Licensee's sole remedy, the annual License Fee and CDS Fee paid by Licensee under the Agreement shall equitably abate (to the degree related to the defect) from the date of such malfunction, damage or destruction until the date upon which Owner completes its repair or replacement of the CDS ("Completion Date"), to the extent that Owner is required to do so by this Agreement. The abated amount shall be credited to Licensee's account within thirty (30) days of the Completion Date. Owner shall promptly provide to Licensee the phone number(s) for the person or persons responsible for the operation and maintenance of the CDS.
- (d) Notwithstanding the foregoing elements of this Paragraph 13, in the event that Owner installs a CDS, Licensee may, in its sole option and within ninety (90) days after such installation, terminate this Agreement upon written notice to Owner.

#### 14. Renewal Options

At least one-hundred and eighty (180) days prior to the termination of the first Renewal License Term, Licensee shall advise Owner in writing if it requests to extend the License Term, setting forth its proposed extension term and the amount of the fees it believes to be appropriate. Within thirty (30) days after the receipt of such notice, Owner shall advise Licensee whether it will consent to an extension of the License Term and if so, whether the proposed extension term and fees are acceptable or Owner shall set forth the length of the extension term and the amount of the fees which would be required by Owner. If Owner shall fail to respond to Licensee's extension request within such thirty (30) day period, then Owner shall be deemed to have refused to consent to Licensee's request for such extension. If Owner and Licensee agree on an extended term, this Agreement shall be amended by a writing signed by both parties setting forth those terms and incorporating all of the other terms and conditions of this Agreement. If Licensee and Owner fail to agree in writing on the length of the extension term and the amount of fees payable by Licensee during such extension term by the end of the Initial Term or the First Renewal, as applicable, this Agreement shall expire as of the last day of the Initial Term or the First Renewal, if exercised. Notwithstanding anything contained in this Agreement to the contrary, nothing herein shall be construed to impose any obligation on Owner to agree to any extension of the License Term, other than the single two year First Renewal as authorized by Paragraph 3, above.

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**15. Assignment and Subletting by Licensee**

- (a) Licensee shall not assign this License without obtaining the prior written consent of Owner, which consent may be unreasonably withheld, delayed or made subject to whatever condition Owner may deem to be necessary or appropriate.
- (b) No assignment shall release Licensee from any liability or obligation under this Agreement, unless Owner provides such release in writing.

**16. Hazardous Materials**

- (a) Licensee shall not install or bring any hazardous substance or material into the Building. In the event that any hazardous materials are installed or brought into the Building by or on behalf of Licensee, then Licensee shall cause the removal of same within twenty-four (24) hours of Owner's demand and shall indemnify and hold Owner and Owner's Parties (as defined in Paragraph 32, below) harmless from any claim, loss, cost, damage, or expense resulting from such hazardous materials or from Owner's removal thereof including, without limitation, legal fees, disbursements and expenses on a solicitor and his own client basis. In the event that Licensee shall discover, uncover, disturb or otherwise reveal any existing hazardous materials within the Building, Licensee shall immediately stop any work in progress and report such findings to Owner within twenty-four (24) hours. Licensee shall not conduct any further work in the reported area without Owner's written approval.
- (b) Licensee shall have three options upon discovery of hazardous material and cessation of work at the request of Owner as described above: (i) reroute its planned access route to avoid such hazardous material areas; (ii) terminate this Agreement according to the procedure set forth in Paragraph 18; (iii) reschedule its installation work to a period after Owner has completed corrective action in regard to such hazardous materials; provided, however, that Licensee may terminate this Agreement upon written notice to Owner if such corrective action has not been commenced and diligently pursued within thirty (30) days after Owner's receipt of notice of Licensee's discovery of the hazardous materials.
- (c) Licensee is hereby released from any responsibility for managing, monitoring, or abating, and shall not be deemed to have ownership of hazardous materials, including asbestos, pre-existing within the Building and undisturbed by Licensee, or brought into the Building, on, in or under the land upon which the Building is located, by any other tenant or by Owner.

**17. Events of Default**

- (a) Each of the following events shall be deemed to be an event of default by Licensee under this Agreement (a "Licensee Event of Default"):
  - (1) If Licensee shall default in the payment of any License Fees or CDS Fees or other sum or money due Owner hereunder and such default shall continue for a period of five (5) days after receipt of written notification by Owner to Licensee of such default;
  - (2) Except where different cure periods are expressly provided in this Agreement to the contrary, if Licensee shall default in the observance or performance of any of Licensee's non-monetary obligations under this Agreement and such default shall continue for more than thirty (30) days after written notification of such default by Owner to Licensee (unless such default cannot reasonably be cured within such thirty (30) day period, in which case such cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that Licensee shall promptly commence and prosecute such cure to completion with all reasonable diligence);

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- (3) If there shall be interference with the telecommunications or computer equipment of Owner, tenant, Licensee or any other occupant of the Building or any other telecommunications or computer devices provided in the Building by reason of, or as a result of, the installation, operation, maintenance, repair or removal of Licensee's Equipment, which interference is not cured within twenty-four (24) hours of Licensee's receipt of written notice by Owner of such interference;
  - (4) If Licensee shall fail to remove any hazardous materials installed in the Building by or on behalf of Licensee within forty-eight (48) hours of written notice of such condition by Owner to Licensee;
  - (5) The revocation of Licensee's permission to provide regulated or non-regulated telecommunications services by any governing entity authorized to franchise or regulate Licensee's provisioning of telecommunications services;
  - (6) The filing, execution, or occurrence of a petition or proposal in bankruptcy or other insolvency proceeding by or against Licensee; or an assignment for the benefit of creditors; or a petition or proceeding by or against Licensee for the appointment of a trustee, receiver or liquidator of Licensee or of any of Licensee's property or a proceeding by any governmental authority for the dissolution or liquidation of Licensee; and
  - (7) The cancellation of or failure to obtain and maintain any of the insurance coverage or policies specified in this Agreement.
- (b) An event of default under this Agreement by Owner ("Owner Event of Default") shall occur where Owner defaults in the observance or performance of any of Owner's obligations under this Agreement and such default shall continue for more than thirty (30) days after written notification of such default by Licensee to Owner (except where different cure periods are expressly provided in this Agreement to the contrary), unless such default cannot reasonably be cured within such thirty (30) day period, in which case the cure period shall be extended for the minimum period of time reasonably required to effect such cure provided that Owner shall promptly commence and prosecute such cure to completion with all reasonable diligence.

#### 18. Termination/Remedies

- (a) Upon or after the occurrence of an Event of Default, the non-defaulting party shall give written notice to the defaulting party, setting forth the nature of the Event of Default. If the defaulting party fails to demonstrate that it took all actions necessary to avoid default under Paragraph 17 within the time period specified by the relevant subparagraph of Paragraph 17, then the non-defaulting party may elect to terminate this Agreement and it may sue for any other damages to which the non-defaulting party may be entitled at law or in equity (except that no claim for fees due after the date of termination shall be made if Licensee's Event of Default is solely that listed in Paragraph 17(a)(5), above, and such revocation has not been caused by the specific omission or improper act of Licensee).
- (b) At the expiration or earlier termination of this Agreement (the "Termination Date") Licensee shall, at Owner's request and at Licensee's sole cost and expense, without liens, remove Licensee's Equipment and all of Licensee's personal property from the Building. Any property not so removed within ten (10) days after the Termination Date may, at Owner's sole option: (i) be removed and stored by Owner at Licensee's expense and, at the option of the Owner; (ii) become the property of Owner without compensation to Licensee. As of the date of such removal, neither party shall have any claim against the other, except for claims or obligations that may have arisen or accrued prior to such termination or arise by reason of this Agreement, such

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Equipment and other equipment or property removal, which claims or obligations shall survive such termination. Further, Licensee agrees, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal of Licensee's Equipment, excepting damage caused by ordinary wear and tear. If Licensee fails to repair or refinish any such damage, Owner may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Owner for all costs and expenses incurred in such repair or refinishing and pay to Owner an administration fee equal to fifteen percent (15%) of such costs and expenses. Notwithstanding the foregoing:

- (1) Licensee's Connecting Equipment shall, at Owner's option and upon written notice to Licensee, become the unencumbered property of Owner and remain in the Building. If Owner elects to retain some or all of Licensee's Connecting Equipment, Licensee shall execute a bill of sale or other documents necessary to effect such transfer of ownership and to discharge all encumbrances upon or in respect of Licensee's Connecting Equipment, at no additional cost or consideration from Owner to Licensee, within thirty (30) days after receiving such written notice.
  - (2) Owner may elect, by written notice to Licensee, to retain Licensee's Communications Equipment in the Building, in which case Licensee's Communications Equipment shall become the unencumbered property of Owner, and Licensee shall execute a bill of sale or other documents necessary to effect such transfer of ownership and to discharge all encumbrances upon or in respect of Licensee's Communications Equipment, within thirty (30) days after receiving such written notice. If Owner elects to retain Licensee's Communications Equipment, Owner will pay to Licensee an amount equal to the then "as-is" fair market value of Licensee's Communications Equipment, as agreed to by Owner and Licensee, or determined by a sole arbitrator reasonably acceptable to both parties or is appointed by the arbitration legislation in effect in the Province where the Building is located, in any event, such person shall be experienced in the valuation of similar equipment. The fees and expenses of the sole arbitrator shall be borne equally between Owner and Licensee.
- (c) Licensee shall not have the right to hold over at any time and Owner may exercise any and all remedies at law and in equity to recover possession of the Equipment Rooms and Building Communications Spaces, as well as any damages incurred by Owner due to Licensee's failure to vacate the Equipment Rooms and Building Communications Spaces and deliver possession to Owner as required by this Agreement. If Licensee holds over after the Termination Date with Owner's prior written consent, Owner may charge Licensee reasonable fees, which shall be negotiated in good faith between the parties, provided, however, that such fees shall be not less than one-hundred and fifty percent (150%) of the monthly License Fees payable during the last year of the Term (plus the additional CDS Fees, if any, established herein) and Licensee will be bound by all of the other terms, covenants and conditions of this Agreement as the same may apply to a month-to-month tenancy. Throughout any such period, Licensee shall cooperate with Owner in all reasonable efforts to provide continuing reliable telecommunications services to tenants and other occupants of the Building. If Licensee holds over after the Termination Date without Owner's prior written consent, Licensee shall be deemed a Licensee at sufferance, at daily License Fees, payable in advance, equal to two-hundred percent (200%) of the License Fees per day payable during the last year of the Term (plus the additional CDS Fees, if any, established herein), and Licensee will be bound by all of the other terms, covenants and conditions of this Agreement as the same may apply to a tenancy at sufferance.
- (d) In any suit or legal proceeding arising out of this Agreement or the underlying transaction, the prevailing party shall be indemnified by the unsuccessful party for all reasonable expenses and costs including attorneys' fees, which obligation shall survive the termination of the Agreement. In the event of a Licensee Event of Default or an Owner Event of Default, as the case may be, the non-defaulting party shall have all rights available in equity or at law.

- (e) Neither party shall be liable to the other party for any special, incidental, or consequential damages, including, but not limited to, lost profits, provided, however, that the foregoing exclusion shall not apply to any damages suffered, incurred or paid by Owner with respect to which Licensee is obligated to indemnify Owner under this Agreement.

**19. Notices**

Any or all notices or demands by or from Owner to Licensee, or Licensee to Owner, shall be in writing and shall be deemed given upon personal delivery to the addressee including facsimile. Until notified of a different address, as provided herein, all notices shall be addressed to the parties as follows:

Licensee:

Videon FiberLink  
10450 178 St.  
Edmonton, Alberta T5S 1S2  
Attention: Telecom Manager  
Facsimile: 780-486-6506

Owner:

TrizecHahn Office Properties Ltd.  
Suite 2200, Royal Bank Building  
335 - 8<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 1C9  
Attention: Law Department  
Facsimile: 403-269-0733

With a copy to:

TrizecHahn Office Properties Ltd.  
Suite 1640, 9777 - 102<sup>nd</sup> Avenue  
Edmonton, Alberta T5J 4G9  
Attention: Building Manager

**20. No Implied Waiver**

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

**21. Subordination**

Licensee accepts this Agreement subject and subordinate to any ground lease, mortgage, deed of trust or other similar financial charge or lien presently existing or hereafter arising upon the land upon which the Building has been constructed or the Building and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Licensee agrees that any such mortgagee or other financial encumbrancer shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Agreement on such terms and subject to such conditions as such mortgagee or other financial encumbrancer may deem appropriate in its absolute discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.

**22. Attorney's Fees**

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

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

In the event of any fire, casualty, physical calamity or physical damage to the Building, which makes it impossible for Licensee to carry out the purposes of its installation, maintenance, and operation in the Building, or if the Building becomes unfit or undesirable for Licensee's use, Owner, at its sole option and expense, may attempt to remedy such problem within one-hundred and eighty (180) days, or any such period deemed reasonable under the circumstances, after written notice thereof. In the event that Owner either (a) elects not to attempt to cure or remedy such a problem, or (b) fails to provide an adequate remedy within such one-hundred and eighty (180) day period, or any such period deemed reasonable under the circumstances, Licensee may terminate this Agreement upon ninety (90) days' prior written notice to Owner, in which event, Licensee shall remove Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 10. Licensee shall have no obligation to pay fees during the ninety (90) day notice period of Licensee's intent to terminate this Agreement if the Building is rendered unfit for Licensee's use due to fire, casualty, physical calamity or physical damage to the Building, and the Owner has elected not to cure such physical calamity or damage.

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

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

**25. Equipment to Remain Personalty**

Except as otherwise provided herein, Licensee's Equipment shall remain personalty ("Personalty") of Licensee, notwithstanding the fact that it may be affixed or attached to the Building, and subject to the provisions to the contrary set out in this Agreement, shall, during the License Term, or any extension or renewal thereof, and upon termination thereof, belong to and be removable by Licensee.

**26. Severability**

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

**27. Governing Law**

The construction, interpretation and performance of this Agreement shall be in accordance with the laws of the Province in which the Building is located and the Owner and Licensee irrevocably attorn to the jurisdiction of the courts of the Province in which the Building is located.

**28. Survival of Provisions**

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

**29. Force Majeure**

- (a) Whenever a period of time is herein prescribed for the taking of any action by Owner or Licensee, Owner or Licensee shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials (not caused by the party seeking the benefit of this Paragraph 29), war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Owner or Licensee. The provisions of this paragraph shall not apply to the payment of fees or the payments of other monies to be paid by Owner or Licensee under this Agreement.
- (b) In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this Paragraph 29, the party claiming such excuse shall promptly give written notice to the other party hereto of any event or occurrence which it believes falls within the contemplation of this Paragraph 29.

**30. Recordation**

Licensee agrees not to record or register this Agreement or any memorandum thereof or any caveat in respect hereof in any land titles or registry office unless specifically required to do so by law (in which event Licensee agrees to prepare and execute, at Licensee's expense, upon termination of this Agreement, a recordable or registerable instrument evidencing such termination and effecting the discharge of such record or registration in form reasonably satisfactory to Owner).

**31. License Only**

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

**32. Successors In Owner's Interest/Limitation of Liability**

- (a) The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Owner and Licensee and, except as otherwise provided in this Agreement to the contrary, their respective heirs, distributees, executors, administrators, successors and assigns.
- (b) The obligations of Owner under this Agreement shall no longer be binding upon Owner in the event that Owner sells, assigns or otherwise transfers its interest in the Building as owner or lessee (or upon any subsequent Owner after the sale, assignment or transfer by such subsequent Owner). In the event of any such sale, assignment or transfer, such obligations shall thereafter be binding upon the grantee, assignee or other transferee of such interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed such obligations. A lease of the entire Building shall be deemed a transfer within the meaning of the foregoing sentence.
- (c) Neither the partners (direct or indirect) comprising Owner, nor the shareholders of Owner (nor any of the partners comprising same), nor any of the partners, shareholders, directors or officers of any of the foregoing, nor any agent or person acting on Owner's or such person's behalf (collectively, the "Owner's Parties") shall be personally liable for the performance of Owner's obligations under this Agreement. Licensee shall look solely to Owner to enforce Owner's

obligations hereunder and shall not seek any damages against any of the Owner's Parties. Notwithstanding anything contained in this Agreement to the contrary, Licensee acknowledges and agrees that Licensee shall look solely to the estate and interest of Owner, its successors and assigns, in the Building, and the real property on which it is situated, for the collection of any judgment recovered against, or liability of, Owner by reason of Owner's breach of this Agreement or otherwise, and no other property or assets of Owner or any of Owner's Parties shall be subject to levy, execution, or other enforcement procedures for the satisfaction of Licensee's remedies under or with respect to either this Agreement, the relationship of Owner and Licensee hereunder or Licensee's use of space licensed to Licensee hereunder.

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**33. Estoppel Certificates**

Within ten (10) days following any written request which Owner may make from time to time, Licensee shall execute and deliver to Owner or to the holder of any mortgage ("Holder"), or prospective Holder or purchaser a sworn statement certifying: (a) the date of commencement of this Agreement; (b) the fact that this Agreement is unmodified and in full force and effect (or, if there have been modifications to this Agreement, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which License Fees and other sums payable under this Agreement have been paid; (d) the fact that there are no current defaults under this Agreement by either Owner or Licensee except as specified in Licensee's statement; and (e) such other matters as may be requested by Owner. Owner and Licensee intend that any statement delivered pursuant to this paragraph may be relied upon by Owner or any Holder or purchaser and Licensee shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such estoppel certificate. Licensee irrevocably agrees that if Licensee fails to execute and deliver such certificate within such ten (10) day period, Owner or Owner's beneficiary or agent may execute and deliver such certificate on Licensee's behalf, and that such certificate shall be fully binding on Licensee.

**34. Entire Agreement**

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

**35. Headings**

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

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

**VIDEON CABLESYSTEMS ALBERTA INC.**

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

**TRIZECHAHN OFFICE PROPERTIES LTD.**

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

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



**EXHIBIT A - Specifications of Licensee's Equipment**

[See specifications on next page]

Canada Place

cct # GOC001DS3NX



**FiberLink Equipment  
List For DS3 Order**

2 6' x 23" equipment racks

Fiber Optic Riser cable FT - 4 Rated 12 count

Coaxial 735 cable to customer FT - 4 Rated

2 Ground bars for racks

1 24 position rack mounted fiber entry cabinet

1 Fujitsu rack mount equipment heat baffle

4 Fiber optic 3 meter patch cords

1 Fujitsu FLM 150 OC3 Add/Drop/Multiplexer chassis c/w card layout for UPSR and customer DS3

1 Argus dual -48V dc rectifier

1 Rack mount battery shelf

4 Batteries 12V 45 AH


TITLE

Canada Place Equipment List

FULL FILENAME

DATE

04/05/99

TIME

09:18

REVISED

REVISION TIME

09:19

DRAWN BY

DPK

PAGE

1 OF 1

Management Systems, L.P.

**EXHIBIT B - Specifications of Equipment Rooms**

[See plan on next page]

### **EXHIBIT C - Specifications of Building Communications Spaces**

Licensee has existing single mode fibre in the P1 Space. Licensee will use existing conduit/raceways from the P1 Space up "Cor 3" to the 7th Floor Space, and then use existing industry practice to get to the customer location, subject to all applicable provisions of Paragraph 6 of this Agreement.

**EXHIBIT D - Access Request Form**

<BUILDING OWNER COMPANY>

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

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

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

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

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

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

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

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

**EXHIBIT E - Building Rules and Regulations**