

Contract No. \_\_\_\_\_

Date: **December 1, 2000****POINT OF PRESENCE LICENCE**

TORONTO DOMINION CENTRE, WINNIPEG, MANITOBA

This AGREEMENT entered into between **Bentall Real Estate Services (Canada) Ltd.**, (the "Licensor") and **GT Group Telecom Services Corp.** (the "Licensee")

NOW THIS AGREEMENT WITNESSES that in consideration of the mutual promises and covenants contained in this Licence, the sufficiency of which is agreed to by the parties, the parties agree as follows:

**1. PREMISES**

- (a) The Licensor is the authorized agent for **Portage & Main Development Ltd.** (the "Owner") who is the registered owner of those lands situated in the City of **Winnipeg** in the Province of **Manitoba**, which are municipally described as **201 Portage Avenue, Winnipeg, Manitoba** and legally described in detail in Schedule "B" (the "Lands");
- (b) There is erected on the Lands a building commonly known as the **Toronto-Dominion Centre** (the "Building");
- (c) The Licensee wishes access to that portion of the Owner's Building containing approximately **100** square feet of rentable area outlined in red on the attached Schedule "A" (the "Premises") for use by the Licensee for installation, maintenance and operation of the Licensee's communications systems in accordance with the terms of this License and the Licensee wishes to have non-exclusive access to other portions of the Lands and the Building to operate the Licensee's communications systems; and;
- (d) This agreement and the attached schedules (the "Licence") contains the terms and conditions upon which the Licensor shall permit access to the Premises by the Licensee for the use by the Licensee and grant to the Licensee non-exclusive access to portions of the Lands and the Building.

**2. TERM**

The term of the Licence shall be for ten (10) years, commencing **January 1, 2001** (the "Commencement Date") and expiring **December 31, 2010**, (the "Initial Term"), unless earlier terminated according to this Licence.

**3. LICENCE FEE**

The Licensee shall pay to the Licensor, for the licence of access to the Premises by the Licensee for use by the Licensee and for the non-exclusive access to portions of the Lands and the Building, an annual fee being the greater of the minimum amount of **Five Thousand Dollars (\$5,000.00)** or, the aggregate of the following amounts:

- (a) A fee of **One and One-Half Cents (\$0.015)** per square foot of the gross rentable area of the Building (or group of Buildings, if the Licensee connects the Equipment within the Premises to more than one Building owned by the Licensor) in consideration of the licence of access to the portions of the Building and the Lands set out in Section 8(f) hereof; plus
- (b) If the Licensee directly serves from the Premises other buildings which are not owned by the Licensor, a fee of **Five Hundred Dollars (\$500.00)** per additional building served per year,

plus all applicable government taxes (collectively the "License Fee")

The License Fee shall be reviewed at the option of the Licensor at the conclusion of the second (2<sup>nd</sup>), fifth (5<sup>th</sup>) and seventh (7<sup>th</sup>) years of the Term, and if not consistent with then fair market rates payable for similar licenses in similar buildings in downtown **Winnipeg**, will be revised accordingly. The Licensor shall be permitted to request that the Licensee test meter the Equipment's hydro consumption from time to time and provide the Licensor with the results. The Licensor may require the Licensee to separately meter such electrical consumption if the Licensor's estimate of the electrical consumption is higher per square foot per year than is estimated and paid by the other tenants in the Building. The Licensee will pay the reasonably determined or metered allocation of electricity charges applicable to the installation in the Building.

For the purposes of (b), above, the Licensor confirms that the gross rentable area of the Building (or group of Buildings, as the case may be) is **471,273** square feet.

#### 4. LICENSEE'S COVENANTS

- (a) On the Commencement Date, the Licensee shall pay to the Licensor the pro-rated portion of the License Fee for the period from the Commencement Date through December 31st of that year. Thereafter, the Licensee shall pay to the Licensor the License Fee on or before January 1st for that calendar year. All License Fee payments shall be made payable to Bentall Real Estate Services (Canada) Ltd. at the following address: **Suite 509, 201 Portage Avenue, Winnipeg, Manitoba R3B 3K6**.
- (b) The Licensee agrees to observe and perform all the covenants and obligations of the Licensee herein.

#### 5. LICENSOR'S COVENANTS

- (a) Given that the parties recognize and understand the activities that take place in a shared (if applicable) telecommunications area, the Licensor covenants with the Licensee to take such actions as it reasonably can to provide for uninterrupted access to the Premises by the Licensee and nondisturbance of the Equipment by the Licensor and those over whom the Licensor can reasonably exercise control.
- (b) The Licensor shall maintain in good order and condition the Premises and the Building, including providing, if available, access to heat, hydro and cooling, to the extent required having regard to the Licensee's intended purpose therein. Any modifications shall be to the Licensee's account and under the approval process as described in Section 7 of this Licence.
- (c) The Licensor agrees to negotiate in good faith with the Licensee and third parties, where requested by the Licensee, for roof-top access to the Building, if available and at market rates, and access to any and all existing steam tunnels and underground passageways in and about the Lands.
- (d) The Licensor agrees to cooperate with Licensee in obtaining all necessary consents of the municipality, the Department of Industry Canada, the Department of Transport and other governmental authorities having jurisdiction with respect to the construction, operation, maintenance, repair and replacement of the Cable, Equipment and Trade Fixtures and to this end, provided that it is not considered confidential or private and that it is understood that this is not a Licensor cost, the Licensor will, without restricting the foregoing, execute all necessary authorizations to enable the Licensee to obtain building permits, site plan approvals,

zoning and by-law amendments and to obtain the release of information with respect to the Premises, Building or Lands from any such authorities and to enable the Licensee to obtain any plans or drawings from the municipality or any architect or engineer. All costs related to the foregoing shall be borne by the Licensee.

- (e) The Licensor agrees to observe and perform all the covenants and obligations of the Licensor herein.

#### **6. PERMISSION TO PERFORM WORK**

The Licensor shall permit the Licensee, its employees, contractors and agents, in accordance with the approval process described in Section 7 and at the Licensee's sole expense, to:

- (a) install fiber optic or copper cable ("Cable") and such equipment, apparatus, fixtures and attachments within the Premises ("Equipment") as may be necessary for the Licensee to operate its communications system; and
- (b) install Cable and such equipment, apparatus, fixtures and attachment in or on the Building and in or on the Lands ("Trade Fixtures") as may be necessary for the Licensee to operate its communications system, electric power and communications lines, in order for the Licensee to operate its communications system. All Cable installed shall be clearly coded as to its purpose at each end and all appropriate points throughout the Building.
- (c) No work shall be performed prior to approval as described in Section 7.
- (d) All work shall be performed strictly in accordance with the Plans approved by the Licensor, and will comply with all applicable permits, licenses, bylaws or like requirements of municipal, provincial, federal or other applicable authorities. The Licensee shall, in performing the work, be responsible for and pay all reasonable costs related to clean-up of the Building and the Premises and reasonable security during the construction process. In addition, the Licensee shall provide the Licensor with proof of applicable insurance as required by Section 12 hereof prior to commencing such work.

#### **7. APPROVAL PROCESS**

The Licensee will submit to the Licensor, for approval by the Licensor, detailed plans of location and installations (the "Plans") of the matters contemplated in Section 6 and provide details on the anticipated contractors and their union affiliation. The Licensor will notify the Licensee within seven (7) business days, or as reasonably negotiated between the parties, whether the Plans have been approved. The approval by the Licensor shall not be unreasonably withheld, delayed or conditioned, however, it is hereby understood that the Licensor may withhold approval when the proposed installation is, in the opinion of the Licensor, unsightly, excessive relative to a fair allocation of space and resources among competing service providers and/or the business conducted by the Licensee, or likely to interfere with the operations of the Building or its tenants. If any installation is not approved by the Licensor acting reasonably and the Licensee in its opinion acting reasonably cannot continue operating in the Building, the Licensee may terminate this Licence on 30 days notice.

#### **8. USE BY LICENSEE AND GRANT OF ACCESS**

The Licensor shall permit the Licensee, its employees, contractors and agents, at the Licensee's sole expense and in accordance with CRTC regulations, to:

- (a) use the Premises for the purposes of providing communications services to tenants and other occupants of the Building;
- (b) provide communications services to tenants and other occupants of the Building;

- (c) connect the Equipment to other equipment in the Building provided the equipment is either owned by the Licensee or appropriate permission has been granted by the owner;
- (d) in the instance of an emergency or power outage, access the Premises 24 hours per day, 365 days per year by notifying the Licensee of same at **416-848-2000**. If the Licensee becomes aware of an emergency situation it shall notify the Licensor of same at **204-988-1066**. The Licensee shall file a report with the Licensor detailing the emergency and its remedy in a timely manner;
- (e) access the Premises 24 hours per day, 365 days per year, subject to the Licensor's reasonable security requirements (to that end Licensee may receive any keys or access cards required for such access), along with the right to perform installation, maintenance and subsequent service, testing, repairs, connects and/or disconnects on the Licensee's communications systems, as may be required; and
- (f) access portions of the Building and the Lands, including, but not limited to, existing risers, cables, chases, pedways, raceways and above-ceiling common areas, as may be necessary to enable the Licensee to install, use and maintain the Cable, Equipment, Trade Fixtures, interior or exterior grounding, electric power and communications lines, in order for the Licensee to operate its communications system. The Licensee shall be subject to the same rules and procedures governing work in the Building as the Licensor imposes on contractors working on or about the Building.

The Licensee acknowledges and agrees that access to the existing risers, chases, pedways, raceways and above-ceiling common areas shall be on an "as is, where is" basis and that the Licensor makes no representation or warranty as to the suitability of such areas for the Licensee's intended use. The Licensee shall be solely responsible for determining the suitability of such areas for the Licensee's intended use and for performing, at its own cost and expense, any modifications to such areas to suit the Licensee's purposes hereunder, in compliance with Sections 6 and 7 hereof.

## 9. EQUIPMENT AND TRADE FIXTURES

- (a) The Licensor and the Licensee agree that the Cable, Equipment and Trade Fixtures are for the exclusive use of the Licensee and the Licensee's customers and will remain the property of the Licensee during the Term and any renewals or extensions.
- (b) The Licensee will maintain the Cable, Equipment and Trade Fixtures in proper condition and will promptly repair any damage.
- (c) Subject to the following provisions of this Section 9, all installations in the Building(s), excluding the Equipment, Cable and Trade Fixtures, will remain the property of the Licensor at the expiry or earlier termination of this Agreement. In addition, the Licensor shall have the option of requiring the Cable to be left in place at the expiry or earlier termination of this Agreement, provided the Licensor so notifies the Licensee by written notice at least thirty (30) days prior to the expiration of this Agreement or within thirty (30) days of termination of this Agreement where this Agreement is terminated by either party. The Equipment and Trade Fixtures may be removed by the Licensee at the expiry or earlier termination of this Agreement, and shall be removed if the Licensor so notifies the Licensee in writing.
- (d) Save to the extent the Licensee is permitted or required to leave installations, Equipment, Cable and/or Trade Fixtures in place at the expiry or earlier termination of this Agreement, the Licensee shall at its own cost and expense remove all installations, Equipment, Cable and Trade Fixtures from the Premises at the expiration or earlier termination of this Agreement, and shall make good any damage caused to the Premises or the Building as a result of the installation or removal thereof.
- (e) If the CRTC rules, at any time, that the wire and Cable outside of the Premises shall be deemed to be the property of the Licensor, the Licensee and the Licensor agree that this Agreement shall be modified to reflect such ruling, but no such modification shall affect the obligations of the Licensee under Section 9(d)

above. The Licensee shall have the use of such Cable during the Initial Term of this Agreement and all extensions without interference.

#### **10. DEFAULT BY LICENSEE**

- (a) The Licensor and the Licensee agree that in the event that the Licensee fails to perform its obligations as set out in this Licence, the Licensor shall notify the Licensee of the default.
- (b) The Licensee will have thirty (30) calendar days or a mutually agreed to period from receipt of the notice provided in Section 10(a), to remedy the default. If the Licensee does not remedy the default within such time frame, the Licensor may immediately terminate this Licence and notify the Licensee of the termination, provided the Licensee shall have additional time to cure defaults reasonably requiring more time to be cured, save and except in the case where the Licensee's operations are causing interference or disruption with other telecommunications service providers, where no extension beyond the aforesaid thirty (30) calendar days shall be permitted for the Tenant to cure such default.

#### **11. INDEMNITY**

The Licensee shall defend, indemnify and hold harmless the Licensor and its property manager and their respective affiliates, and their directors, officers, employees and agents against any and all fines, liabilities, claims, costs, expenses (including attorneys' fees), liens, demands and causes of action of any kind or nature, including without limitation any judgement, penalty, interest, charge or fee, in any way arising out of or resulting from:

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Licensee to be fulfilled, kept, observed and performed;
- (b) any damage to or destruction of property, including property of the Licensee, occasioned by the operations of the Licensee's business on, or the Licensee's occupation of the Lands or the Premises, or the acts or omissions (whether negligent, wilful or otherwise) of the Licensee, its contractors, servants, agents and employees, including the loss of use resulting therefrom;
- (c) injury of any nature whatsoever to person or persons, including bodily injury, personal injury, sickness, disease or death, and the resulting loss of income, arising at any time therefrom, occasioned by the operations of the Licensee's business, or the Licensee's occupation of the Lands or the Premises, or the acts or omissions (whether negligent, wilful or otherwise) of the Licensee, its contractors, servants, agents and employees; or
- (d) any loss or damage including personal injury or death, against which the Licensee is required to insure hereunder or has in fact insured, whether or not the same arises as a result of the negligence or wilful act of the Licensor or those for whom the Licensor is in law responsible.

Without limiting the generality of the foregoing, the Licensee further acknowledges and agrees that the Cable, Equipment and other Trade Fixtures are installed by the Licensee at its own risk and that in no event shall the Licensor be responsible for any cost, loss, damage or expense suffered by the Licensee with respect to such Cable, Equipment or Trade Fixtures howsoever caused or occurring and whether or not the Licensee carries insurance with respect to the same and whether or not the same arises as a result of the negligence or wilful act of the Licensor or those for whom the Licensor is in law responsible.

#### **12. INSURANCE**

The Licensee agrees that it shall, during the Initial Term and any renewals or extensions, purchase and maintain the following insurance at the Licensee's sole expense in such form and with such insurance companies as the Licensor shall reasonably approve:

- (a) Property Insurance on an "All Risks" policy form to the full replacement cost on Cable, Equipment, Trade Fixtures, leasehold improvements and all other property owned by the Licensee. The Property Insurance shall include a clause providing a waiver of subrogation in favour of the Licensor and its property manager, and their respective directors, officers, employees, agents and those for whom they are responsible in law;
- (b) Comprehensive Boiler and Machinery Insurance of not less than \$500,000 if the Licensee operates a boiler or pressure vessel; and
- (c) Comprehensive General Liability Insurance against claims for bodily injury, including death, personal injury and property damage and loss of use thereof, arising out of the use and/or occupation of the Lands and Premises. Such insurance shall be in an amount of not less than \$5,000,000 inclusive limits and shall contain Blanket Contractual Liability, Broad Form Property Damage, Contingent Employers' Liability Cross Liability/Severability of Interest, Employees as Additional Insureds, Independent Contractors, Non-Owned Automobile and Personal Injury endorsements and clauses. The policy shall also contain "All Risks" Tenant's Legal Liability Insurance to the extent of eight times the annual License Fee.

Such policies of insurance shall not be cancelled or materially changed without the insurers providing to the Licensor and its property manager thirty (30) days prior written notice by registered mail stating when such cancellation shall be effective. Evidence of all such insurance coverage shall be provided to the Licensor within seven (7) days of the renewal of the policies and upon reasonable request.

Notwithstanding anything contained herein, in the event that any loss or damage is not fully covered by such insurance because of the existence of deductible provisions or because the amount of the loss or damage exceeds the policy limit, the Licensor shall not be liable for and the Licensee shall release and save the Licensor harmless from and against all claims for the portion of the amount of loss or damage which is not so covered.

The Licensee shall not do, permit to be done, or omit to do anything upon the Premises that shall cause or have the effect of causing the cost of insurance of the property or any part of the property to be increased, whether such insurance has been taken out by the Licensor or by any other tenant or occupant. If the insurance rate is thereby increased, the Licensee shall not store or permit to be stored upon or in the Premises anything of a dangerous, flammable or explosive nature nor anything that would have the effect of increasing the Licensor's insurance costs or of leading to the cancellation of insurance. It is agreed that if any insurance policy upon the Premises or the Building be cancelled by the insurer(s) by reason of the use and occupation of the Premises by the Licensee or by any assignee, subtenant, concessionaire or licensee of the Licensee or by anyone permitted by the Licensee to be upon the Premises, the Licensor may at its option terminate this Agreement by written notice to the Licensee, whereupon this Agreement shall forthwith terminate (notwithstanding Section 10 hereof) and the provisions of Section 9 shall apply.

### **13. 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 the Licensee to carry out the purposes of its installation, maintenance, and operation in the Building, or if the Building becomes unfit or undesirable for the Licensee's use, the Licensor, at its sole option and expense, may attempt to remedy such problem within one-hundred and eighty (180) days, or any such period deemed reasonable under the circumstances, after written notice thereof. In the event that the Licensor 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, the Licensee may terminate this Agreement upon thirty (30) days prior written notice to the Licensor, in which event, the Licensee shall remove the Licensee's Equipment from the Building and neither party shall have any further liability hereunder, except as provided in Paragraph 10. The Licensee shall have no obligation to pay fees during the thirty (30) day notice period of the Licensee's intent to terminate this Agreement if the Building is rendered unfit for the Licensee's use due to fire, casualty, physical calamity or physical damage to the Building, and the Licensor has elected not to cure such physical calamity or damage.

**14. ASSIGNMENT**

- (a) The Licensor may sell, convey, assign, pledge or otherwise deal with the Building, subject only to the rights of the Licensee pursuant to this Licence, without the consent of the Licensee.
- (b) Whether or not the Building is affected, the Licensor may sell, convey, assign, pledge or otherwise deal with its rights under this Licence, without the consent of the Licensee, provided the rights of the Licensee pursuant to this Licence are unaffected. For greater certainty, the Licensor shall have the right, without the consent of the Licensee, to sell, assign or convey its rights and responsibilities under this Licence to a third party, who will hold the overall rights to the risers, chases, pedways, raceways, above-ceiling common areas and POP site rooms within the Building, whereupon this Licence shall in effect become a Sublicence granted by such third party.
- (c) The Licensee may assign this Licence with the consent of the Licensor, which shall not be unreasonably withheld, delayed or conditioned.
- (d) Notwithstanding Section 14(c), the Licensee may assign its rights or obligations in this Licence to any affiliate or by way of security to a creditor without the consent of the Licensor, but with notice to the Licensor.
- (e) A change of control of the Licensee is considered an assignment for the purposes of this Licence and approval shall not be unreasonably withheld.
- (f) The Licensee shall remain liable for the performance of the obligations in the event that an assignment takes place. No assignment shall be effective unless the assignee enters into an agreement with the Licensor to observe and perform the obligations of the Licensee hereunder.

**15. INTERFERENCE**

- (a) If the operation of the Cable or Equipment is causing interference to the electronic equipment of the Licensor or tenants of the Building, then the Licensor will immediately notify the Licensee, and, notwithstanding Section 10, the Licensee will immediately act to rectify the situation. If the situation is incapable of being remedied or is not, in fact, remedied within a reasonable period of time (not to exceed ten (10) business days), the Licensor may at its option terminate this Agreement.
- (b) The Licensor agrees to immediately notify the Licensee at **416-848-2000** if at any time the Licensor becomes aware of any occurrence or event which results in, or could be expected to result in, interference with the operation of the Licensee's communications systems, the Cable, Equipment or Trade Fixtures. And, for greater clarity, in instances of scheduled power outages, the Licensor will provide the Licensee with timely notice (as it would for any other tenant in the building) of such scheduled power outages. To this end, the Licensee requests that it be placed on any mailing, fax, e-mail and/or telephone notification lists.
- (c) If the interference referred to in Section 15(b) is the result of the wilful act or negligence of the Licensor, its employees, contractors or agents, then, notwithstanding Section 10 and if the actions are not necessary for the proper operation of the Building assuming the Licensor is acting reasonably, the Licensor will immediately act to rectify the situation.

**16. GOVERNMENT REGULATIONS**

- (a) The parties to this Licence shall comply with and conform to all laws, by-laws, legislative and regulatory requirements of any governmental authority relating to the matters contemplated by this Licence. Such governmental authorities shall include but not be limited to the City of **Winnipeg**, the Province of **Manitoba**. Should any provision of this Licence be illegal or unenforceable, that provision shall be considered separate and severable from the remaining provisions of this Licence and the remaining

provisions shall remain in force and be binding upon the parties. Where the Licensor incurs any cost, expense or fees arising out of a CRTC decision connected with this Licence, the Licensor shall be entitled to recover such costs from the Licensee.

- (b) Notwithstanding Section 16(a), should a government decision, law, bylaw or regulation, prohibit, or curtail the Licensee's commercial viability the Licensee may terminate this Licence at any time by providing the Licensor with 180 days notice.

#### **17. NOTICE**

Except in the instance of an emergency or power outage as described in Sections 8(d) and 15(b), any notice, request, demand, consent or other communication provided or permitted by this Licence shall be in writing and given by personal delivery, or sent by single-registered mail, or transmitted by facsimile, addressed to the party for which it is intended at the address on the below, provided, however, that either party may change its address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party in the manner prescribed above. Any notice so given shall be deemed to have been received on the date on which it was delivered or transmitted by facsimile,

to the Licensor at the following address:

Address: **Suite 509 - 201 Portage Avenue, Winnipeg, Manitoba R3B 3K6**  
Attention: **Property Manager - Toronto-Dominion Centre**  
Telephone: **(204) 988-1066**  
Facsimile: **(204) 956-1643**

with a copy to:

Address: **Suite 1800 - 4 Bentall Centre P.O. Box 49001 Vancouver, B.C. V7X 1B1**  
Attention: **Vice President - Real Estate Services**  
Telephone: **(604) 661-5056**  
Facsimile: **(604) 661-5055**

and to the Licensee at the following address:

Address: **7th Floor - 20 Bay Street, Toronto, Ontario M5J 2N8**  
Attention: **Director, Facilities**  
Telephone: **(416) 848-2000**  
Facsimile: **(416) 848-2832**

#### **18. OPTION TO EXTEND**

The Licensee has the option to extend the Licence for an additional one (1) term of five (5) years (the "Option Term"), subject to and in accordance with the following terms and conditions:

- (a) upon the same terms and conditions as are contained in this Licence, excepting the License Fee and excepting any other provisions applicable only to the Initial Term. For the Option Term, the License Fee shall be consistent with the then market rate charged to similar communications systems providers in similar sized Building in the vicinity of the Building and in accordance with the foregoing guidelines.
- (b) The Licensee shall notify the Licensor of the Licensee's intention to exercise the Licensee's option to extend this Licence no less than six (6) months prior to the expiry of the current term. Where the parties are unable to agree on the License Fee payable during a Renewal Term prior to the expiration of the Term or a Renewal Term, as the case may be, the matter in dispute shall be determined by alternate dispute resolution or by a single arbitrator appointed under provincial arbitration legislation.



## 19. 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, 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.

## 20. SCHEDULES

The Schedules referred to in this Licence and attached herewith are deemed to be incorporated herein and includes the following:

Schedule "A"	-	Plan of Premises
Schedule "B"	-	Description of Lands

## 21. GENERAL

- (a) Time is of the essence of this Licence.
- (b) This Licence, together with the schedules attached hereto, constitutes the entire agreement of the parties and supersedes all previous and contemporaneous communications, representations, understandings or agreements related to the subject matter of this Licence.
- (c) The invalidity or unenforceability of any provision of this Licence or any covenant herein contained shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid or unenforceable provision or covenant shall be deemed to be severable.
- (d) This Licence shall be governed by and construed under the laws of the Province of **Manitoba**. The parties hereby attorn to the jurisdiction of the **Manitoba** courts.
- (e) The parties confirm that it is their wish that this Licence, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

## 22. CENTRAL DISTRIBUTION SYSTEM AND MANAGED RISERS

The Licensee acknowledges that the Licensor may, in future, consider the installation and management of a shared central telecommunications cable distribution system ("CDS") to be used by all telecommunications service providers, except for i) the incumbent local exchange carrier (ILEC) for plain old telephone service (POTS); and ii) the "building-centric" service provider, if any, with which the landlord has entered into a service agreement for the purpose of distributing telecommunications services throughout the Building. The Licensor may undertake this CDS on its own or may engage a third party company. The commencement date for installation of the CDS is not presently known, however, if or when this CDS is available and is capable of providing similar services to those that the Licensee is providing under this Agreement, then the Licensor shall provide written notice to the Licensee and both the Licensee and the Licensor agree to act in good faith to negotiate a transfer of services, under reasonable terms and condition, to the CDS. The parties understand that such terms and conditions shall include, among other things: (a) that the Licensor shall charge all competitive

service providers (including Licensee) the same fee for each connection to the CDS, whether by cable-pair, fiber optic link or otherwise ("CDS Fee"), (b) that such CDS Fees shall be non-discriminatory among competitive service providers for connection to the CDS, ordered for similar terms and in similar quantities, and (c) all competitive service providers other than as outlined in this paragraph 22, will be required to transfer their services to the CDS on equal terms. In the event that the parties are unable to reasonably agree to such a transfer of services to the CDS within 120 days of such notice by the Licensor, at the request of either party, the parties agree that the terms and condition of such a transfer shall be 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 such matters. Notwithstanding the provisions of this paragraph, the Licensee will not be required to transfer to the CDS if it can demonstrate to the Licensor's satisfaction that the CDS is unsuitable for the Licensee's intended use.

IN WITNESS WHEREOF the parties hereto have executed this Licence.

**LICENSOR:**  
**BENTALL REAL ESTATE SERVICES (CANADA) LTD.**

**LICENSEE :**  
**GT GROUP TELECOM SERVICES CORP.**

\_\_\_\_\_  
Authorized Signature, Senior Vice President  
and General Manager Western Canada  
\_\_\_\_\_  
Name and Title of Signatory

\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Vice President and General Manager  
Name and Title of Signatory  
Group Telecom

\_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Name and Title **Executive Vice President &**  
**Chief Operating Officer, Canadian Operations**  
\_\_\_\_\_  
Date *March 12/01*

\_\_\_\_\_  
Date

**SCHEDULE "B"**

*DESCRIPTION OF LANDS*

**PART 1 - FREEHOLD INTERESTS**

1. The Toronto-Dominion Bank is the registered owner of a freehold interest in the following described land:

Parcel B, Plan 26139, WLTO

In RL 5 and 6 Parish of Saint John

2. Bentall Properties Ltd. is the registered owner of a freehold interest in the following described land:

(a) Parcels C, D, E, F, G, H, J, K, L, M, N, P and Q Plan 26139 WLTO

Exc out of said parcels H, J, K, L, M and N Air Space Plan 26363 WLTO

Exc out of said parcels F, G, J, K, L, M and Q Air Space Plan 26364 WLTO

And exc out of said parcels M, N, P and Q Air Space Plans 26365 WLTO,  
26366 WLTO, 26367 WLTO, 26368 WLTO and 26369 WLTO

In RL 5 and 6 Parish of Saint John

(b) Parcels R, S, T, U, V, V1, V2, W, X, Y, Z, Z1, Z2, Z3 and Z4 Plan 26139  
WLTO

Exc out of said parcels U, V, V1, V2, X, Y, Z, Z1, Z2, Z3 and Z4 Air Space  
Plan 26363 WLTO

Exc out of said parcels S, U, V, V1, V2, W, X, Y, Z and Z1 Air Space Plan  
26364 WLTO

Exc out of said parcels S, T, U, V, V1, V2, W, X, Y and Z Air Space Plan 26365  
WLTO

And exc out of said parcels S, T, U, V, V1, V2, W, X and Y Air Space Plans  
26366 WLTO, 26367 WLTO, 26368 WLTO and 26369 WLTO

In RL 5 and 6 Parish of Saint John

3. Bentall (Winnipeg) Ltd. is the registered owner of a freehold interest in the following described land:

(a) Parcels Z28, Z29 and Z30 Plan 26139 WLTO

Exc out of said parcel Z28 Air Space Plan 26364 WLTO

Exc out of said parcel Z29 Air Space Plans 26365 and 26366 WLTO

In RL 5 and 6 Parish of Saint John

- (b) Parcels Z5, Z6, Z7, Z8, Z9, Z10, Z11, Z12, Z13, Z14, Z15, Z16, Z17, Z18, Z19, Z20, Z21, Z22, Z23, Z24, Z25, Z26 and Z27 Plan 26139 WLTO

Exc out of said parcels Z5, Z6, Z7, Z8, Z9, Z11 and Z25 Air Space Plan 26363 WLTO

Exc out of said parcels Z7, Z8, Z9, Z10, Z11, Z12, Z20, Z21, Z22 and Z26 Air Space Plan 26364 WLTO

Exc out of said parcels Z8, Z9, Z10, Z11, Z12, Z13, Z19, Z20, Z21 and Z27 Air Space Plan 26365 WLTO

Exc out of said parcels Z9, Z10, Z11, Z12, Z13, Z19, Z20 and Z27 Air Space Plan 26366 WLTO

And exc out of said parcels Z9, Z10, Z11, Z12, Z13, Z18, Z19, Z20 Air Space Plans 26367 WLTO, 26368 WLTO and 26369 WLTO

In RL 5 and 6 Parish of Saint John

## **PART 2 - LEASEHOLD INTERESTS**

Portage & Main Development Ltd. is the registered owner of leasehold estates in the following described lands:

- (a) A Leasehold Estate for 99 years, from the 18th day of December, 1990, in Parcel B Plan 26139 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 1404288 WLTO

- (b) A Leasehold Estate for 99 years, from May 1, 1987, in Parcels D, F, G, H, J, K, L, M, N, P and Q Plan 26139 WLTO

Exc out of said parcels H, J, K, L, M and N Air Space Plan 26363 WLTO

Exc out of said parcels F, G, J, K, L, M and Q Air Space Plan 26364 WLTO

And exc out of said parcels M, N, P and Q Air Space Plans 26365 WLTO, 26366 WLTO, 26367 WLTO, 26368 WLTO and 26369 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 87-142244 WLTO

- (c) A Leasehold Estate for 99 years from May 1, 1987, in  
Parcels R, S, T, U, V, V1, V2, W, X, Y, Z, Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z9,  
Z10, Z11, Z12, Z13 and Z14 Plan 26139 WLTO

Exc out of said parcels U, V, V1, V2, X, Y, Z, Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8,  
Z9 and Z11 Air Space Plan 26363 WLTO

Exc out of said parcels S, U, V, V1, V2, W, X, Y, Z, Z1, Z7, Z8, Z9, Z10, Z11  
and Z12 Air Space Plan 26364 WLTO

Exc out of said parcels S, T, U, V, V1, V2, W, X, Y, Z, Z8, Z9, Z10, Z11, Z12  
and Z13 Air Space Plan 26365 WLTO

And exc out of said parcels S, T, U, V, V1, V2, W, X, Y, Z9, Z10, Z11, Z12 and  
Z13 Air Space Plans 26366 WLTO, 26367 WLTO, 26368 WLTO and 26369  
WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 87-  
142244 WLTO

- (d) A Leasehold Estate for 99 years from May 1, 1987 in  
Parcels Z17, Z18, Z19, Z20, Z21, Z22, Z23, Z24, Z25, Z26 and Z27 Plan 26139  
WLTO

Exc out of said parcel Z25 Air Space Plan 26363 WLTO

Exc out of said parcels Z20, Z21, Z22 and Z26 Air Space Plan 26364 WLTO

Exc out of said parcels Z19, Z20, Z21 and Z27 Air Space Plan 26365 WLTO

Exc out of said parcels Z19, Z20 and Z27 Air Space Plan 26366 WLTO

And exc out of said parcels Z18, Z19, Z20 Air Space Plans 26367 WLTO,  
26368 WLTO and 26369 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 87-  
142243 WLTO

- (e) A Leasehold Estate for 99 years from May 1, 1987, in  
Parcels Z28, Z29 and Z30 Plan 26139 WLTO

Exc out of said parcel Z28 Air Space Plan 26364 WLTO

Exc out of said parcel Z29 Air Space Plans 26365 and 26366 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 87-142243 WLTO

- (f) A Leasehold Estate for 95 years and 8 months from the 1st day of September, 1990, in Parcels E, Z15 and Z16 Plan 26139 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 1364585 WLTO

- (g) A Leasehold Estate for 95 years, 4 months and 14 days, from the 18th day of December, 1990, in Parcel C Plan 26139 WLTO

In RL 5 and 6 Parish of Saint John

Subject to the conditions, provisos and agreements contained in Lease No. 1404290 WLTO