

## TELECOMMUNICATIONS LICENSE AGREEMENT

**THIS AGREEMENT** dated this 7<sup>th</sup> day of September, 2001.

**BETWEEN:**

**INVESTORS GROUP TRUST CO. LTD. as trustee for  
INVESTORS REAL PROPERTY FUND**

(the "Owner")

**AND:**

**GT GROUP TELECOM SERVICES CORP., a subsidiary of  
GT Group Telecom Inc.**

(the "Licensee")

**WHEREAS:**

(A) The Owner is the owner of a certain building as more particularly described in this Agreement;

(B) The Owner has agreed to grant to the Licensee a license to install, operate, maintain, repair and replace certain communications equipment in the Owner's building in order to provide communications services to the Owner's tenants, subject to their consent and subject to the Landlord's prior approvals as to each tenant served and the location of such installations, such approval not to be unreasonably withheld, on the terms and conditions set out in this Agreement;

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

### PART 1

#### DEFINITIONS AND INTERPRETATION

##### Definitions

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

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

**"Building"** means the building owned by the Owner and located on the Lands and having a civic address of 815 West Hastings Street, Vancouver, British Columbia;

**"Building Risers"** means the vertical communications pathways in the Building designated and approved by the Owner for use by the Licensee from time to time in order to provide the Services;

**"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

**"Commencement Date"** means the earlier of December 1, 2001 or the first day of the month after the date installation of Licensee's Equipment commences;

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

**"Communications Equipment"** means the communications equipment of the Licensee and its affiliates, successors and permitted assigns, including, without limitation, cabinets, racks, electronic equipment and other similar equipment, all as more particularly described in the attached Schedule A;

**"Connecting Equipment"** means the cables, conduits, inner ducts and connecting hardware of the Licensee that is connected to the Communications Equipment all as more particularly described in the attached Schedule A;

**"Entrance Link"** means the core sleeve penetration through the foundation of the Building or any other Building entry point designated or approved by the Owner;

**"Equipment Room"** means the enclosed premises located on the basement level of the Building and shown hatched on the floor plan attached to this Agreement as Schedule A, comprising approximately 50 square feet, or such other premises to which the Owner may relocate the Licensee from time to time, acting reasonably, to an equally suitable site within the Building. Such premises shall be provided by the Owner to the Licensee for the non-exclusive use of the Licensee;

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

**"Lands"** means the lands situated in the City of Vancouver, in the Province of British Columbia, on which the Building is constructed, as more particularly described in the attached Schedule B;

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

**"Licensed Areas"** means all areas of the Building licensed to the Licensee pursuant to this Agreement, including the Equipment Room and the Building Risers;

**“Licensee”** means GT Group Telecom Services Corp. and its successors and permitted assigns;

**“Licensee’s Equipment”** means, collectively, the Communications Equipment and the Connecting Equipment;

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

**“Owner”** means Investors Group Trust Co. Ltd., as trustee for Investors Real Property Fund, and its successors and assigns;

**“Plans”** has the meaning set out in section 7.1;

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

**“Services”** means the communications services to be provided by the Licensee to tenants of the owner at their respective premises;

**“Term”** means a period of five (5) years, commencing on the Commencement Date and expiring on the earlier of:

- (a) the day which immediately precedes the fifth anniversary of the Commencement Date; and
  - (b) the termination of this License Agreement pursuant to the terms hereof;
- and

**“Work”** has the meaning set out in section 6.6.

## **Interpretation**

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

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

- (d) this Agreement shall be interpreted and governed by the laws of the Province of British Columbia, and the laws of Canada applicable therein.

### **Schedules**

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

Schedule A – Equipment Room Plan and Communications  
Equipment/Connecting Equipment  
Schedule B – Legal Description of Lands

## **PART 2**

### **LICENCE**

#### **License**

- 2.1 Subject always to section 7.1, the Owner grants to the Licensee a non-exclusive license, at the Licensee's sole expense and risk, to:

- (a) install, operate, maintain, repair and replace the Communications Equipment in the Equipment Room;
- (b) install, operate, maintain, repair and replace the Connecting Equipment in the areas of the Building designated or approved by the Owner from time to time, together with the right to pull the Connecting Equipment through the Entrance Link and through the Building Risers as necessary to reach from the Entrance Link to the Equipment Room and from the Equipment Room to the Owner's tenants' premises; and
- (c) use the Entrance Link and existing Building wiring, only to the extent that the Owner has the possession of, and authority to allow the use of, the Entrance Link and the existing Building wiring, as required by the Licensee for the purpose of connecting the Licensee's Equipment to the Owner's tenants' premises, it being acknowledged and agreed by the Licensee that such existing Building wiring is made available to the Licensee on an "as is" basis and that the Owner shall not be responsible to the Licensee for any damages suffered or costs incurred by the Licensee as a result of its use of such existing Building wiring. The Licensee further acknowledges and agrees that the use of any existing Building wiring shall be subject at all times to the Owner's present or future plans or requirements for the use of such wiring for telecommunications purposes. The Licensee further acknowledges that providing services to the Owner's tenants in the building shall be subject to the tenants' consent and subject to the Landlord's prior approvals as to each tenant served and the location of such installations, such approval not to be unreasonably withheld

### **Equipment Room**

2.2 The Owner may, in its sole discretion, acting reasonably, relocate the Equipment Room from time to time. The Licensee shall not use the Equipment Room or any other part of the Building for serving customers other than the Owners tenants at their premises.

### **Sublicense**

2.3 The Licensee shall not be entitled to sublicense all or any portion of the Equipment Room without the Owner's prior written consent, which consent may be arbitrarily withheld.

### **Nature of Interest**

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

### **Non-Exclusivity**

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

### **Rooftop Rights**

2.6 In no event shall the Licensee be entitled to have access to, or to install any Licensee's Equipment or any other property on, the roof of the Building.

## **PART 3**

### **TERM**

#### **Term**

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

#### **Option to Renew**

3.2 Provided that the Licensee is not in default under this Agreement, the Licensee shall have two (2) options to renew and extend this Agreement for a period of three (3) years (the "**Renewal Terms**"), upon the Licensee providing at least six (6) months' written notice but not more than nine (9) months' written notice to the Owner. The Renewal Terms shall be on the same terms and conditions as contained in this Agreement, except that the License Fee shall be mutually agreed by the parties in writing based on the then current market rates for similar telecommunications license agreements for similar buildings. Where the parties are unable to

agree on the License Fee payable during the Renewal Term prior to the expiration of the Term, as the case may be, the matter in dispute shall be determined by alternate dispute resolution or by a single arbitrator appointed under the Commercial Arbitration Act (British Columbia). In no event shall the License Fee payable during the Renewal Term be less than the License Fee payable to the Owner during the immediately prior Term or Renewal Term, as applicable.

### **Overholding**

3.3 If the Licensee remains in occupation of the Equipment Room following the expiration of the Term or a Renewal Term, such continued occupation by the Licensee shall not have the effect of renewing or extending this Agreement for any period of time, and the Licensee shall be deemed to be occupying the Equipment Room as a licensee on a month to month basis upon the same terms and conditions as set out in this Agreement except that the then applicable License Fee shall be increased by 200% in respect of such period of overholding.

## **PART 4**

### **LICENSE FEE**

#### **License Fee**

4.0 The Licensee shall pay to the Owner an annual License Fee in an amount of Two Thousand dollars (\$2,000.00) plus applicable taxes which License Fee shall be paid in advance on the Commencement Date and, thereafter, on each anniversary of the Commencement Date during the Term. If this Agreement is terminated or expires prior to any such anniversary, the License Fee payable to the Owner shall be pro-rated (unless this Agreement is terminated under section 9.2 hereof in which case the entire License Fee shall be forfeited to the Owner).

#### **GST**

4.1 The Licensee shall pay GST as applicable on the License Fee, which GST shall be paid at the time the License Fee is payable. The Owner's GST registration number is 122048382.

#### **Non-Disclosure**

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

#### **Net License/Taxes**

4.3 The Licensee shall pay all taxes, costs, fees, expenses and other levies relating to the use of the Licensed Areas or the provision of the Services including, without limitation, the costs of performing any Work. Without limiting the generality of the foregoing, the Licensee shall be responsible for and shall pay or reimburse the Owner for all taxes, levies and assessments levied by any federal, provincial, municipal or other competent authorities in respect

of the Licensed Areas, the Licensee's Equipment, the provision of the Services and any improvements to the Licensed Areas including, without limitation, local improvement taxes and business taxes, but excluding any realty taxes or federal and provincial income taxes of the Owner. For greater certainty, the Licensee agrees that it will pay or reimburse the Owner for any increase in any taxes (including any realty taxes), levies or assessments payable by the Owner in respect of the Lands or Building which may result, directly or indirectly, from the Licensee exercising its rights hereunder.

### **Permits/Approvals**

4.4 The Licensee shall obtain at its sole cost and expense all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal government authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of the Licensee's Equipment and shall provide copies of such consents, approvals, permits and authorizations to the Owner upon request and, in any event, prior to the Commencement Date of the Term.

## **PART 5**

### **USE**

#### **Use of Equipment Room**

5.1 The Licensee shall use the Equipment Room only for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Equipment as required by the Licensee for the purpose of providing the Services.

#### **Title**

5.2 Subject to section 5.3, the Owner acknowledges and agrees that title to, and ownership of, the Licensee's Equipment shall remain with the Licensee at all times notwithstanding that the Licensee's Equipment may be affixed to a part of the Building for the time being.

#### **Option to Purchase**

5.3 Intentionally deleted

#### **No Representations**

5.4 The Licensee accepts the Licensed Areas on an "as is" basis. The Licensee acknowledges that the Owner has made no representations or warranties whatsoever to the Licensee with respect to any matters related to this Agreement including, without limitation, whether the installation of the Licensee's Equipment and the provision of the Services is permitted under applicable municipal bylaws, whether the Licensed Areas are suitable for the purposes for which the Licensee wishes to use them and whether the Licensee's Equipment will operate effectively and without interference within the Building. Owner shall be responsible for

any pre-existing environmental contamination of the Building and indemnifies and holds harmless Licensee therefrom.

## **PART 6**

### **ACCESS AND ELECTRIC UTILITIES**

#### **Access**

6.1 In order to enable the Licensee to install, operate, maintain, repair and remove the Licensee's Equipment, the Owner shall provide the Licensee and its authorized agents with unimpeded access to the Licensed Areas:

- (a) during the normal business hours of the Building designated by the Owner, for the purposes of installing, operating, maintaining, repairing and removing the Licensee's Equipment, provided that the Licensee may not access the Licensed Areas for any other purposes, unless the Licensee provides the manager of the Building with 24 hours' notice; and
- (b) after the normal business hours of the Building designated by the Owner, for the purposes of installing, operating, maintaining, repairing and removing the Licensee's Equipment, provided that the Licensee may not access the Licensed Areas unless it obtains the prior written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed.

Notwithstanding the foregoing, the Licensee may access the Licensed Areas in the event of an emergency upon providing notice to the Owner or the manager of the Building. All entry and access to the Licensed Areas and the Building shall be subject to the Owner's reasonable security procedures.

#### **Electrical Power**

6.2 The Licensee shall have the right to connect the Licensee's Equipment to the electric power distributing system within the Building at the sole cost and expense of the Licensee. The Owner may require the Licensee to pay for all electricity consumed by the Licensee on a load and usage basis. If required by the Owner, the Licensee, at its sole cost and expense, shall install a separate electrical panel and meter to determine the Licensee's electricity consumption. The Licensee agrees that the Owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or backup power to the Licensee on such terms and conditions as mutually agreed between the parties. The Licensee shall immediately inform the Owner as to the installation or use of any electrical power consuming equipment or facilities in or on the Licensed Areas or in any way related to the operation of the Licensee's Equipment.



### **Telephone Service**

6.3 The Licensee, at its sole cost and expense, shall have the right to install a telephone in the Equipment Room if required by the Licensee. The Licensee shall be responsible for dealing with the telephone service provider and for all charges associated with obtaining and maintaining such telephone service.

### **Nuisance**

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

### **Compliance with Laws**

6.5 The Licensee, in installing, maintaining, operating, repairing and replacing the Licensee's Equipment in the Equipment Room and the Building Risers or performing any other Work shall perform such Work in a responsible and workmanlike manner and comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC.

### **No Interference**

6.6 The Licensee, its employees, agents, invitees and contractors shall co-ordinate all construction, installation, maintenance, alteration, replacement or removal of the Licensee's Equipment or any other work performed by or on behalf of the Licensee in connection with this Agreement (collectively, the "**Work**") with the similar activities of the Owner or others, as may be necessary and as directed by the Owner. All Work shall be performed in a manner that shall not interfere or conflict with any activity of the Owner or of any tenant, occupier or other licensee of all or any portion of the Building. The Licensee, its employees, agents, invitees and contractors shall not endanger any other work or facility at or near the Licensed Areas or forming part of the Building in any manner whatsoever. The costs of repairing or replacing any altered or endangered work or facility caused by the Licensee, its employees, agents, invitees and contractors shall be borne entirely by the Licensee.

## **PART 7**

### **INSTALLATION, MAINTENANCE AND REPAIRS**

#### **Approval of Plans**

7.1 Prior to the commencement of any Work (including the Work described in section 2.1 of this Agreement but excluding routine maintenance), the Licensee shall provide detailed plans, specifications and working drawings (collectively the "**Plans**") to the Owner in respect of

such Work. The Licensee may not commence any such Work without first obtaining the prior written approval of the Owner, such approval not to be unreasonably withheld. The Owner, acting reasonably, may require changes and revisions to such Plans, and the Licensee shall promptly and with due diligence give effect to any such changes or revisions. The Licensee shall be responsible for and shall reimburse the Owner for all reasonable costs associated with or arising from the review of such Plans by the Owner or any of its professional consultants. Until such time as the Plans have been approved in writing by the Owner, the Licensee shall not be permitted to carry out any of the Work.

### **Installation**

7.2            Provided this Agreement has been executed by both parties and the Owner has provided its written approval pursuant to section 7.1, the Licensee, at its sole expense and risk, shall be entitled to commence the installation of the Licensee's Equipment, which installation shall be performed in accordance with section 6 of this Agreement.

### **Cables**

7.3            The Licensee shall label each cable placed by the Licensee in the Building Risers and any telecommunications closets through which the Licensee's cable passes with an identification number assigned by the Owner to the Licensee. The installation and placement of any cables by the Licensee shall conform to any guidelines established by the Owner's telecommunications consultant. The Licensee, at its own risk and expense, shall become responsible for reinstating or providing fire stopping at all areas of cable penetration particular to the Licensee.

### **Repairs and Maintenance**

7.4            The Licensee covenants and agrees that it shall, at its sole risk and expense, keep the Licensed Areas and the Licensee's Equipment in a safe and properly maintained condition. The Owner shall have the right to inspect the Licensed Areas (including the Equipment Room), the Licensee's Equipment and all Work performed by or on behalf of the Licensee in any of the Licensed Areas throughout the Term and any Renewal Term, and require that the Licensee perform any necessary repairs. If the Licensee does not perform any such repairs within fifteen (15) days of receipt of written notice from the Owner, the Owner shall be entitled to make such repairs. In the event of an emergency, the Owner may immediately carry out any repairs to the Licensed Areas (including the Equipment Room), the Licensee's Equipment or any Work performed by or on behalf of the Licensee which it deems necessary, without notice to the Licensee. All costs and expenses incurred by the Owner for any repairs made by it pursuant to this section 7.4 shall be for the account of the Licensee and shall be payable by the Licensee within thirty (30) days from receipt of an invoice for such repairs from the Owner.

### **Liens**

7.5            The Licensee shall promptly pay all charges incurred by or on behalf of the Licensee for any work, materials or services furnished or supplied to the Licensee, its employees, servants, contractors, subcontractors and agents in respect of the Work or the installation, repair, restoration, maintenance or upgrading of the Licensee's Equipment. If any lien is filed or

registered against the Building or the Lands, or any part thereof, as a result of any Work done by or materials furnished or supplied for the account of the Licensee, its employees, servants, contractors, subcontractors and agents, the Licensee shall promptly cause any such lien to be discharged forthwith or commence legal proceedings to have the said lien vacated or cancelled and, if the Licensee fails to do so, then, in addition to any other right or remedy the Owner may have, the Owner may, but shall not be obliged to, discharge the lien and the Licensee shall on demand pay to the Owner the Owner's reasonable cost of discharging the lien, plus an administration fee equal to fifteen percent (15%) of the cost of discharging the lien.

## **HVAC**

7.6 All costs of providing, designing, installing and operating any additional heating, ventilating and air conditioning equipment which may be required to adequately service the Equipment Room shall be borne entirely by the Licensee or, if any other parties are also using the Equipment Room, proportionately between the Licensee and such other parties.

## **PART 8**

### **INSURANCE AND INDEMNIFICATION**

#### **Insurance**

8.1 The Licensee, at its own expense, shall take out and maintain in force while this Agreement is in effect, comprehensive general liability insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence for injury, death or property damage arising out of the Licensee's operations pursuant to this Agreement, which insurance shall provide a waiver of subrogation in favour of the Owner, contain cross-liability and severability of interests endorsements, and include the Owner as an additional insured. The Licensee shall furnish the Owner with evidence of such insurance, as well as evidence of due payment of premiums therefor, if requested. The Licensee shall not do or permit or omit to be done upon the Licensed Areas or anywhere in the Building, anything which shall cause the rate of insurance or insurance premiums in respect of the Building to be increased, or any policy of insurance in respect of the Building to be cancelled, by reason of the use made of the Licensed Areas or any parts of the Building by the Licensee or by reason of anything done or permitted to be done or omitted to be done by the Licensee or by anyone permitted by the Licensee to be upon the Licensed Areas or within the Building. If the rate of insurance or insurance premiums shall be so increased, the Licensee shall pay to the Owner, forthwith upon the delivery of an invoice by the Owner to the Licensee, the amount of any such increase, if any.

#### **Indemnification**

8.2 The Licensee shall indemnify and save harmless the Owner, its principals, officers, directors, agents, employees and servants from and against any liability, loss, suit, claim, action, damage or expense arising directly or indirectly out of, from or by reason of, the installation, operation, maintenance, repair or removal of the Licensee's Equipment in the Licensed Areas, or damage to property or injury to persons related to the use of the Licensed Areas by the Licensee, or those for whom the Licensee is in law responsible, except to the extent

that any such liability, loss, suit, claim, action, damage or expense is due to the gross negligence or wilful misconduct of the Owner or those for whom the Owner is in law responsible, such indemnification to survive the termination or expiration of this Agreement.

### **Limitation of Owner's Liability**

8.3 The Owner shall not be liable nor in any way responsible for any death or injury of any nature whatsoever sustained by the Licensee or any employee, agent, contractor, subcontractor or invitee of the Licensee, or any loss or damage of any nature whatsoever to any property belonging to the Licensee (including the Licensee's Equipment), its employees, contractors, subcontractors or invitees in or about the Licensed Areas, the Building or the Lands, unless such death, bodily injury, loss or damage directly results from the gross negligence or wilful misconduct of the Owner. Notwithstanding the foregoing, in no event (including the gross negligence or wilful misconduct of the Owner) shall the Owner be liable or in any way responsible for any death, injury, loss or damage suffered by the Licensee, its employees, agents, contractors, subcontractors and invitees in respect of:

- (a) any loss or damage to the property of the Licensee, its employees, agents, contractors, subcontractors or invitees from theft;
- (b) indirect or consequential damage or damages or personal discomfort or illness or loss of business resulting from the interruption or failure of heating, ventilation and air conditioning services as may be applicable, or any electrical, mechanical, structural or any other utility service provided by the Owner;
- (c) death, injury, loss or damage caused by anything done or omitted to be done by other tenants, licensees, occupants or persons in or about the Licensed Areas or other premises in the Building or by occupants of the property adjacent thereto, or caused by the public, or caused in the course of construction or operation of any private public or quasi-public work; or
- (d) death, injury, loss or damage to persons or property resulting from fire, lightning, tempest, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks in any part of the Building, including the Licensed Areas, or from the pipes, appliances or plumbing works, or from the roof, street or subsurface or from any other place or by dampness; and
- (e) any act or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or person from time to time employed to perform janitorial services or security services in or about the Licensed Areas, the Building or the Lands.

## **PART 9**

### **TERMINATION**

#### **Termination by Licensee**

9.1 The Licensee shall have the right to terminate this Agreement upon thirty days written notice to the Owner in the event of the occurrence of any of the following:

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

#### **Termination by the Owner**

9.2 The Owner shall have the right to terminate this Agreement upon written notice to the Licensee in the event of the occurrence of any of the following:

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than five (5) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) subject to section 9.2(a), the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence;
- (c) the Licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of and becomes subject to, the legislation in force relating

to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency; or

(d) the Licensee ceases to provide the Services for longer than three (3) consecutive months and does not remedy such condition within sixty days after receipt of written notice by the Owner to the Licensee.

The termination of the Licensee's rights and license under this Agreement shall be without prejudice to any other rights or remedies of the Owner, whether at law or in equity.

### **Surrender**

9.3 Subject to section 5.3, upon the expiration or earlier termination of this Agreement, the Licensee shall, at its sole expense and to the Owner's satisfaction, remove the Licensee's Equipment, including all assets owned by Group Telecom (and cabling if so directed by the Owner) from the Equipment Room and the Building and restore the Building to the state and form in which it existed prior to the installation of the Licensee's Equipment, all such work to commence within fifteen (15) days, and to be completed within forty-five (45) days, of such expiration or earlier termination. The Licensee shall be responsible for repairing any damage caused by such removal, except damage caused by ordinary wear and tear.

### **Interest Rate**

9.4 If payment of any amount is not made when required hereunder, interest shall accrue at the rate of 18% per annum on such amount and such amount shall not be considered to have been paid unless and until interest to the date of such payment is also paid.

### **Legal Expenses**

9.5 If the Owner successfully claims against the Licensee for an alleged breach of covenant or condition in this License Agreement to be complied with by the Licensee, the Licensee shall pay to the Owner all reasonable expenses incurred by the Owner in connection therewith including all legal costs on a solicitor and own client basis.

## **PART 10**

### **DAMAGE OR DESTRUCTION OF BUILDING**

#### **Right to Terminate**

10.1 In the event the Building is damaged to such an extent that the Licensee is unable to exercise its rights pursuant to the license granted by the Owner under this Agreement, the Owner, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days. In the event the Owner elects not to repair the damage within one hundred eighty (180) days, either party shall have the right to terminate this Agreement upon providing thirty (30) days prior written notice to the other party, in which event the Licensee shall, subject

to section 5.3, remove the Licensee's Equipment in accordance with the provisions of section 9.3 of this Agreement. The Licensee shall have no obligation to pay the License Fee or any other amounts under this Agreement during the thirty (30) day notice period, and the portion of the License Fee paid by the Licensee in advance shall be refunded by the Owner to the Licensee on a pro-rated basis to the date of damage to the Building.

## **PART 11**

### **FORCE MAJEURE**

#### **Force Majeure**

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

## **PART 12**

### **NOTICES**

#### **Notices**

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

(a) If to the Owner:

Investors Group Trust Co. Ltd.  
as trustee for Investors Real Property Fund  
c/o Colliers International  
Granville Square  
Suite 1500, 200 Granville Street  
Vancouver, B.C. V6C 2R6  
Attention: Rod Fram  
Facsimile: (604) 681-2911

(b) If to the Licensee:

20 Bay Street  
Suite 700  
Toronto, Ontario  
M5J 2N8  
Attention: Director, Facilities

### **Receipt**

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

### **Change of Address**

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

## **PART 13**

### **MISCELLANEOUS**

#### **CRTC Decision**

13.1 The Owner and the Licensee acknowledge that the access rights of telecommunications providers in multi-tenant buildings is presently subject to a regulatory proceeding initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this Agreement is in effect, this Agreement shall be amended in writing by the parties in such a manner so as to give effect to such ruling or decision, and all appropriate adjustments in respect of any amounts paid under this Agreement shall immediately be made between the parties to ensure that this Agreement is brought into conformity with such ruling or decision, including, without limitation, the termination of this Agreement if necessary. Notwithstanding the foregoing, in no event shall the Owner be required to agree to any amendment to this Agreement which, in the Owner's opinion, acting reasonably, may be detrimental to the Owner, the Building or the Lands, unless the Licensee provides the Owner with compensation satisfactory to the Owner, acting reasonably.

#### **Entire Agreement**

13.2 This Agreement cancels, replaces and supersedes as of its effective date all existing agreements and understandings, written or oral, between the parties relating to the



subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.

### **Waiver**

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

### **Successors and Assigns**

13.4 This Agreement shall not be assigned by the Licensee, in whole or in part, without the express written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, provided that the Licensee shall be entitled to assign this Agreement to an affiliate or successor of the Licensee, as defined in the Canada business Corporations Act, or to its senior lenders or their collateral agents, or to a purchaser of a material portion of its business, upon written notice to the Owner. Any such assignment consented to by the Owner shall in no way release the Licensee from its obligations hereunder. As a condition of granting consent, the proposed assignee shall enter into an agreement with the Owner agreeing to be bound by the terms of this License Agreement. All costs in connection with the assignment (including any legal costs incurred by the Owner) shall be borne by the Licensee. This Agreement shall be binding upon, and shall enure to, the benefit of the parties and their respective successors and permitted assigns.

### **Legal/Consulting Fees**

13.5 The Licensee agrees to reimburse the Owner for all reasonable legal fees and disbursements incurred by the Owner in connection with the preparation, negotiation and execution of this Agreement, within thirty (30) days after receipt of an invoice with respect thereto, such fees not to exceed \$750.00.

### **Status Certificate**

13.6 The Licensee agrees that, within ten (10) days after a written request by the Owner in connection with any proposed sale or mortgage of the Building or the Lands, the Licensee shall execute and deliver a certificate to any proposed purchaser or mortgagee certifying (if such be the case) that this Agreement is in full force and effect, that it is either modified or unmodified, and that there are no breaches by the Owner under this Agreement of which the Licensee is aware (or stating any breaches claimed by the Licensee), and such other matters as may be required by any proposed purchaser or mortgagee.

### **Obligation of the Fund**

13.7 This Agreement is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of the unitholders of

Investors Real Property Fund (the “**Fund**”), trustees, directors, officers, employees or agents of the trustee or manager of the fund, it being intended and agreed that only the property of the Fund shall be bound by this Agreement.

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

**INVESTORS GROUP TRUST CO. LTD. as  
trustee for INVESTORS REAL PROPERTY  
FUND**

Per:

Per:

**GT GROUP TELECOM SERVICES CORP.**

Per:

Per:

**Director, National Facilities**

\_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**

**PAGES A-1 TO A-<sup>6</sup>~~7~~**

**EQUIPMENT ROOM PLAN &  
COMMUNICATIONS EQUIPMENT/CONNECTING EQUIPMENT**

**SCHEDULE B**

**LEGAL DESCRIPTION OF LANDS**

Parcel Identifier: 011-282 177

Lot B of Lot 6 Block 16 District Lot 541 Plan 490