

# group telecom.

A Bell Canada DIVISION

VIA EMAIL

[kclarke@boultonbee.ca](mailto:kclarke@boultonbee.ca)

March 30, 2005

Willowglen Business Park Ltd.  
c/o Boultonbee Realty Ltd.  
2100-650 Georgia St W  
Vancouver BC V6B 4N7

Attn: Karen Clarke

Dear Ms. Clarke:

**Re: Notice to Extend/Renew Building Access Agreement dated November 2, 2000 between Willowglen Business Park Ltd. ("Landlord") and Group Telecom, a Bell Canada DIVISION. ("Tenant") for buildings located at 801/802/803/805/807/808/809/811 Manning Rd NE, Calgary AB and 4/8/12 Manning Close NE, Calgary AB – Our Agreement Code: 02001.072**

Please be advised that this letter serves as formal written notice of our intent to extend/renew the subject agreement for a further 5 year period commencing October 1, 2005 with the same terms and conditions including Rent.

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,  
**Group Telecom**



\_\_\_\_\_  
Associate Director, National Facilities

cc:

Agreed and acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**Willowglen Business Park Ltd.**

\_\_\_\_\_  
A.S.O.

**BUILDING ACCESS AGREEMENT  
TELECOMMUNICATIONS SERVICES**

THIS AGREEMENT made as of the 2nd day of November, 2000.

BETWEEN:

**WILLOWGLEN BUSINESS PARK LTD.**  
c/o Boulton Realty Ltd.  
Suite 2100 – 650 West Georgia Street  
P.O. Box 11558  
Vancouver, B.C.  
V6B 4N7

(hereinafter referred to as the “Owner”)

AND:

**GT GROUP TELECOM SERVICES CORP.**  
20 Bay Street, Suite 700  
Toronto, Ontario  
M5J 2N8

(hereinafter referred to as the “Supplier”)

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

**1. Right of Access**

- (i) The Owner hereby grants to the Supplier the right to construct, install, operate, maintain, repair, replace, service, upgrade and modify (collectively, “Install and Maintain”) fibre optic cables and related equipment for the provision of telecommunication services (collectively, the “System”), from time to time in the building and on the lands generally known as Willowglen Business Park, and all units therein (collectively, the “Premises”) and more particularly described in Schedule “B”. The Owner further grants to the Supplier the exclusive use and possession of a part of the Premises (the “Supplier’s Area”), the location, dimensions and/or area of which is to be mutually agreed between the Owner and the Supplier. The location of the Supplier’s Area shall be more particularly described and set out in Schedule “A” attached to this Agreement. Said Schedule “A” shall be initialed by the Owner and the Supplier for purposes of identification. The Supplier shall use the Supplier’s Area to Install and Maintain telecommunications equipment used in connection with the operation of the System (the “Equipment”).

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

## **2. Obligations of the Supplier**

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

Should interference develop at any time between the installations or equipment of other telecommunications suppliers or tenants of the Owner at the Premises and those of the Supplier, the Supplier shall promptly agree to cooperate in determining the cause of such interference and shall take immediate steps to resolve the interference at its own expense should the Supplier be at fault and without prior rights. Should the Owner at its sole discretion deem it necessary for the Supplier to cease operations of the Systems due to

continued and unremediated interference with other installations or equipment, upon written request, the Supplier shall immediately cease operations of the System in the Premises.

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

### **3. Term of the Agreement**

The term of this Agreement shall commence on the 1st day of October, 2000 (the "Commencement Date") and shall end Five (5) years thereafter (the "Term"), subject to renewal as hereinafter provided.

### **4. Electrical Service**

The Supplier shall have the right to use the Premises' electrical service in respect of the System. The cost of wiring associated with connecting the System to the Owner's electrical service shall be borne solely by the Supplier. The cost of any electrical service delivered by the Owner to the Supplier shall be based on the prevailing market electrical utility rates in existence at the time payment for such services is due and shall be due and payable by the Supplier on the Commencement Date and thereafter annually on the anniversary date of the Commencement Date. The Owner, acting reasonably, shall estimate the amount of electrical service required by the Supplier at the beginning of each year of the Term and shall notify the Supplier of the amount payable for the ensuing year. At the end of each year of the Term, the Owner shall determine the amount of electrical service consumed by the Supplier during the past year and shall determine the amount payable by the Supplier for such year and shall also estimate the amount payable during the next year and shall notify the Supplier of both amounts. If the amount payable for the past year based on consumption is less than the amount paid by the Supplier, the Supplier shall immediately pay the difference to the Owner. If the amount payable for the past year based on consumption is more than the amount paid by the Supplier, the Owner shall deduct the excess from the amount payable by the Supplier for the ensuing next year, except in the last year of the Term, in which case the Owner shall reimburse the Supplier for such difference.

## 5. Access Fee

- (i) The Supplier shall pay to the Owner an Access Fee at the rate of **Three Thous. Dollars (\$3,000.00) per year**, for the first three (3) years of the Term, plus any applicable provincial and federal taxes (the "Access Fee"). The Access Fee shall be paid in advance and prior to the initial installation and thereafter paid annually on each anniversary date of the Commencement Date during the Term. The rate for year 4 and year 5 of the term (the "Rate Review Term") shall be determined upon prevailing market rates.

The Access Fee for the Rate Review Term shall be agreed upon between the parties and shall be based on the fair market rental for similar access and opportunities. The parties shall commence making bona fide efforts twelve (12) months prior to the commencement date of the Rate Review Term as to the Fair Market Rent with respect to the Supplier's Area and Equipment. If, however, the parties have not agreed as to the amount of rent by the sixtieth (60th) day prior to the commencement of the Rate Review Term or Rate Review Date, then the rent shall be determined either:

- (a) by an arbitrator mutually agreed upon by the parties who shall be a person currently active in the Province of Alberta as an accredited Real Estate appraiser having not less than five years experience as an appraiser; or
- (b) if the parties are unable to agree as to an arbitrator pursuant to clause (a) of this paragraph, then such fair market rent shall be determined by a single arbitrator in accordance with the provisions of the Alberta Arbitration Act, and amendments thereto or legislation in substitution thereof.

## 6. Termination of Agreement

With respect to all monies that are due and owing by the Supplier to the Owner, the same are due, owing and payable as stipulated herein. With respect to any breaches by the Supplier of a non-monetary nature, the Supplier shall have ten (10) days from the date of notice from the Owner from within which to cure such breach, unless such breach is incapable of remedy within such period and the Supplier has diligently commenced to remedy such breach within ten (10) days of receipt of notice from the Owner. The Owner shall be entitled to terminate this agreement forthwith upon notice to the Supplier in the event that:

- (i) Any damage to property or injury shall occur as contemplated in Section 7 hereinafter set forth.
- (ii) In the reasonable opinion of the Owner, the Supplier has harassed other tenants of the Owner.
- (iii) The Owner intends to redesign or redevelop or demolish the Premises within which the System and the Equipment are located.
- (iv) All or part of the Premises are expropriated.
- (v) For a period of one year, no tenants of the Owner in the Premises are using the service provided by the Supplier.

- (vi) The Supplier is in breach and the same has not been rectified by the allowable time periods hereinbefore set forth, if any.
- (vii) The installation of the Supplier's System or Equipment is deemed, by an appropriate regulatory body, to be an environmental hazard.
- (viii) This Agreement may also be terminated forthwith by the Owner in the event that the Supplier makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of legislation now or hereafter in force for bankrupt or insolvent debtors or if an order is made for the winding-up of the Supplier or if an order is made for a receiver or a receiver and manager of the Supplier's assets.
- (ix) This Agreement may also be terminated forthwith by the Owner in the event that the Supplier has not fully completed the installation of the System (including removal of the antenna and the repairing of any damage referred to in section 1(ii) hereof) and commenced operations at the Premises within six (6) months of the Commencement Date.
- (x) If the Owner is in default of any term or condition of this Agreement, the Supplier may terminate this Agreement by giving the Owner ten (10) days written notice of such default. In addition, if the Supplier determines at any time during the Term, that the terms and conditions of this Agreement or the technologies of the Supplier are not economically viable, the Supplier may terminate this Agreement by giving six (6) months notice to the Owner. Notwithstanding such notice or the expiration of the said period of six (6) months, all obligations of the Supplier hereunder shall remain in full force and effect until the Supplier has removed all Equipment from the Premises and restored the Premises in accordance with section 2(v) hereof.

## **7. Indemnity**

The Supplier shall indemnify and hold the Owner harmless from any and all claims, losses actions, suits, proceedings, causes of actions, demands, damages (direct, indirect, consequential, or otherwise), penalties, judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses, including without limitation, any professional consultant and legal fees (on a solicitor and client basis) in connection with any injury, personal or otherwise, or any loss or damage to property arising from or out of this lease or any occurrence in, upon or at the Premises, or the occupancy or use by the Supplier of the Premises, or any part thereof, or occasioned wholly or in part by any fault, default, negligence, act or omission of the Supplier or by any of the directors, officers, servants, employees, contractors, agents, invitees, and licensees of the Supplier and all other persons over whom the Supplier may be reasonably expected to exercise control or who the Supplier is responsible for in law. Such indemnity shall include, without limitation any injury or damage as aforesaid to the Owner, other tenants of the Owner, or any third parties whatsoever, and further without limiting the generality of the foregoing, the Supplier agrees to insure against all such risks and add the Owner to the Supplier's policy as an additional insured. Notwithstanding anything contained herein, nothing in this agreement shall or be deemed to create any obligations on the part of the Owner to any other tenants or third party.

## **8. Repairs**

Any damage to the Premises for which the Supplier must indemnify the Owner hereunder shall be promptly repaired to the reasonable satisfaction of the Owner and the Owner may,

in its sole discretion, undertake such repairs but at the sole cost of the Supplier. The Supplier shall pay for such repairs forthwith upon demand by the Owner.

**9. Insurance**

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

**10. Assignment**

The Supplier may not convey, transfer or assign this Agreement or any interest therein without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed, provided that the Supplier may, with notice to the Owner but without need for the Owner's consent, assign its rights and benefits under this Agreement to a corporation which controls, is controlled by, or is under common control with the Supplier or its lenders provided the Supplier remains liable under this Agreement and the use of the licensed site does not change.

**11. Notice**

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

To the Owner: **WILLOWGLEN BUSINESS PARK LTD.**  
 c/o Boulton Realty Ltd.  
 Suite 2100 – 650 West Georgia Street  
 P.O. Box 11558  
 Vancouver, B.C. V6B 4N7  
 Attention: Manager, Property Services

To the Supplier: **GT GROUP TELECOM SERVICES CORP.**  
 20 Bay Street, Suite 700  
 Toronto, Ontario M5J 2N8  
 Attention: Director, Facilities

Any notice given in accordance with this section 10 shall be conclusively deemed to have been given: in the case of personal delivery, upon personal delivery to an officer of the Owner or Supplier as the case may be, in the case of delivery by mail, on the third (3rd) business day following the day on which such notice was mailed and in the case of delivery by telecopier, on the day received in the receiving party's telecommunication device, unless such day is not a business day in which case receipt shall be deemed to be

on the next business day. Either party may, by notice to the other, designate another address in Canada to which notices sent more than ten (10) days thereafter may be addressed.

**12. Option to Renew**

If the Supplier regularly pays the Access Fee and charges for electrical service and regularly and fully performs its covenants and obligations hereunder, the Supplier shall have the right to renew this building access agreement for a further term of Five (5) years provided the Supplier gives to the Owner six (6) months written notice prior to the expiration of the Term of its exercise of this option to renew. The building access agreement for the renewal term shall be on the same terms and conditions as contained herein, save as to the Access Fee which shall be determined in accordance with prevailing market rates in effect at the time of renewal and more particularly set out in Section 5(i) herein.

**13. Miscellaneous**

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



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

**WILLOWGLEN BUSINESS PARK LTD.**

Per: [Signature]  
Name: \_\_\_\_\_  
Title: President

I / We have the authority to bind the Corporation.

**GT GROUP TELECOM SERVICES CORP.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I / We have the authority to bind the Corporation.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I / We have the authority to bind the Corporation.

**SCHEDULE "A"**

**Supplier's Area**

**TO BE COMPILED AND APPROVED**

**SCHEDULE "B"**

**Legal Description of Land:** ALL AND SINGULAR those certain premises situate, lying and being in the City of Calgary, in the Province of Alberta, and more particularly described as follows:

Condominium Plan 9011648

Units 5 to 33 inclusive and all respective undivided shares in the common property therein, excepting thereout all mines and minerals.

**Municipal Addresses:**

801 Manning Road N.E.  
802 Manning Road N.E.  
803 Manning Road N.E.  
805 Manning Road N.E.  
807 Manning Road N.E.  
808 Manning Road N.E.  
809 Manning Road N.E.  
811 Manning Road N.E.  
4 Manning Close N.E.  
8 Manning Close N.E.  
12 Manning Close N.E.