

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended December 31, 1996

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_ .

Commission File Number 0-25346

TRANSACTION SYSTEMS ARCHITECTS, INC.  
(Exact name of registrant as specified in its charter)

Delaware 47-0772104  
(State or other jurisdiction of (I.R.S. Employer  
incorporation or organization) Identification No.)

330 South 108th Avenue  
Omaha, Nebraska 68154  
(Address of principal executive offices, including zip code)

(402) 390-7600  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No .  
---- ----

Indicate the number of shares outstanding of each of the issuers classes of common stock as of the latest practicable date:

24,004,708 shares of Class A Common Stock at January 31, 1997  
2,171,252 shares of Class B Common Stock at January 31, 1997

TRANSACTION SYSTEMS ARCHITECTS, INC.  
FORM 10-Q  
FOR THE QUARTERLY PERIOD ENDED DECEMBER 31, 1996  
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TRANSACTION SYSTEMS ARCHITECTS, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(unaudited and in thousands)

	December 31, 1996	September 30, 1996
	-----	-----
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 31,012	\$ 31,546
Receivables, net	59,345	49,135
Deferred income taxes	1,688	4,348
Other	1,269	1,010
	-----	-----
Total current assets	93,314	86,039
Property and equipment, net	13,797	13,001
Software, net	4,913	5,424
Intangible assets, net	7,294	7,236
Installment receivables	1,789	1,593
Investment and notes receivable	8,796	8,105
Other	1,712	1,761
	-----	-----
Total assets	\$ 131,615	\$ 123,159
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 1,309	\$ 1,147
Current portion of capital lease obligations	303	342
Accounts payable	7,815	8,322
Accrued employee compensation	3,395	5,210
Accrued liabilities	8,655	7,631
Income taxes	3,493	4,383
Deferred revenue	23,394	17,987
	-----	-----
Total current liabilities	48,364	45,022
Long-term debt	1,574	1,431
Capital lease obligations	294	256
	-----	-----
Total liabilities	50,232	46,709
	-----	-----
Stockholders' equity:		
Class A Common Stock	120	119
Class B Common Stock	11	11
Additional paid-in capital	96,868	96,062
Accumulated translation adjustments	258	(236)
Accumulated deficit	(15,862)	(19,494)
Treasury stock, at cost	(12)	(12)
	-----	-----
Total stockholders' equity	81,383	76,450
	-----	-----
Total liabilities and stockholders' equity	\$ 131,615	\$ 123,159
	=====	=====

See notes to condensed consolidated financial statements.

TRANSACTION SYSTEMS ARCHITECTS, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(unaudited and in thousands, except per share amounts)

	Three Months Ended December 31	
	1996	1995
	-----	-----
Revenues:		
Software license fees	\$ 25,251	\$ 17,217
Maintenance fees	9,961	8,409
Services	11,877	8,618
Hardware, net	553	1,239
	-----	-----
Total revenues	47,642	35,483
	-----	-----
Expenses:		
Cost of software license fees:		
Software costs	5,397	3,905
Amortization of purchased software	801	788
Cost of maintenance and services	12,473	8,771
Research and development	3,955	3,537
Selling and marketing	10,282	8,404
General and administrative:		
General and administrative costs	7,666	5,695
Amortization of goodwill and purchased intangibles	217	150
	-----	-----
Total expenses	40,791	31,250
	-----	-----
Operating income	6,851	4,233
	-----	-----
Other income (expense):		
Interest income	427	568
Interest expense	(57)	(44)
Other	(317)	(30)
	-----	-----
Total other	53	494
	-----	-----
Income before income taxes	6,904	4,727
Provision for income taxes	(3,096)	(1,798)
	-----	-----
Net income	\$ 3,808	\$ 2,929
	=====	=====
Net income per common and equivalent share	\$ 0.14	\$ 0.11
	=====	=====
Weighted average shares outstanding	26,998	26,908
	=====	=====

See notes to condensed consolidated financial statements.

TRANSACTION SYSTEMS ARCHITECTS, INC.  
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY  
For the three months ended December 31, 1996  
(unaudited and in thousands)

	Class A Common Stock	Class B Common Stock	Additional Paid-in Capital	Accumulated Translation Adjustments	Accumulated Deficit	Treasury Stock	Total
	-----	-----	-----	-----	-----	-----	-----
Balance, September 30, 1996	\$ 119	\$ 11	\$ 96,062	\$ (236)	\$ (19,494)	\$ (12)	76,450
Adjustment for Open Systems Solutions, Inc. pooling of interests	1		5		(176)		(170)
Issuance of Class A Common Stock			196				196
Exercise of stock options			165				165
Tax benefit of stock options exercised			440				440
Net Income					3,808		3,808
Translation adjustments				494			494
	-----	-----	-----	-----	-----	-----	-----
Balance, December 31, 1996	\$ 120	\$ 11	\$ 96,868	\$ 258	\$ (15,862)	\$ (12)	81,383
	=====	=====	=====	=====	=====	=====	=====

See notes to condensed consolidated financial statements.

TRANSACTION SYSTEM ARCHITECTS, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(unaudited and in thousands)

	Three months ended December 31,	
	1996	1995
Cash flows from operating activities:		
Net income	\$ 3,808	\$ 2,929
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	1,273	997
Amortization	1,637	1,429
(Increase) decrease in receivables, net	(8,394)	463
Decrease in other current assets	2,431	813
(Increase) decrease in installment receivables	(196)	867
Increase in other assets	(97)	(61)
Increase (decrease) in accounts payable	(823)	1,065
Decrease in accrued employee compensation	(1,919)	(1,097)
Increase (decrease) in accrued liabilities	1,458	(1,142)
Decrease in income tax liabilities	(585)	(628)
Increase (decrease) in deferred revenue	4,472	(1,136)
	-----	-----
Net cash provided by operating activities	3,065	4,499
	-----	-----
Cash flows from investing activities:		
Purchases of property and equipment	(1,802)	(2,235)
Additions to software	(643)	(1,020)
Other	33	-
Acquisition of businesses, net of cash acquired	-	(1,536)
Additions to investment and notes receivable	(1,691)	(1,000)
	-----	-----
Net cash used in investing activities	(4,103)	(5,791)
	-----	-----
Cash flows from financing activities:		
Proceeds from issuance of Class A Common Stock	197	-
Purchase of Treasury Stock	-	(7)
Proceeds from exercise of stock options	161	194
Payments of long-term debt	-	(130)
Payments on capital lease obligations	(32)	(126)
	-----	-----
Net cash provided by (used in) financing activities	326	(69)
	-----	-----
Effect of exchange rate fluctuations on cash	178	(39)
	-----	-----
Decrease in cash and cash equivalents	(534)	(1,400)
Cash and cash equivalents, beginning of period	31,546	35,511
	-----	-----
Cash and cash equivalents, end of period	\$ 31,012	\$ 34,111
	=====	=====

See notes to condensed consolidated financial statements.

TRANSACTION SYSTEMS ARCHITECTS, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Consolidated Financial Statements

The condensed consolidated financial statements at December 31, 1996 and 1995 and for the three months then ended are unaudited and reflect all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the financial position and operating results for the interim periods. The condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto, together with management's discussion and analysis of financial condition and results of operations, contained in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 1996. The results of operations for the three months ended December 31, 1996 are not necessarily indicative of the results for the entire fiscal year ending September 30, 1997.

The condensed consolidated financial statements include all domestic and foreign subsidiaries which are more than 50% owned and controlled. Investments in companies owned less than 20% are carried at cost.

2. Net Income Per Common and Equivalent Share

Net income per common and common equivalent share is determined by dividing net income by the weighted average number of shares of common stock and dilutive common equivalent shares outstanding during each period using the treasury stock method.

3. Stock Split

On June 7, 1996, the Company's Board of Directors authorized a two-for-one stock split effected in the form of a 100% stock dividend to be distributed on July 1, 1996 to shareholders of record on June 17, 1996. All references in the condensed consolidated financial statements to number of shares and per share amounts have been restated to retroactively reflect the stock split.

4. Acquisition

On October 8, 1996, the Company completed the acquisition of Open Systems Solutions, Inc. (OSSSI). Stockholders of OSSSI received 209,993 shares of TSA Class A Common Stock in exchange for 100% of OSSSI's common stock. The stock exchange was accounted for as a pooling of interests. OSSSI's results of operations prior to the acquisition were not material.

5. Investment and Notes Receivable

The Company has entered into a transaction with Insession, Inc. (Insession) whereby the Company acquired a 7.5% minority interest in Insession for \$1.5 million. In addition, the Company has loaned Insession \$4.8 million under promissory notes. The promissory notes bear an interest rate of prime plus 0.25%, are payable in January 1999 (\$1.0 million), January 2000 (\$1.0 million) and January 2001 (\$1.5 million). The remaining \$1.3 million of promissory notes are payable upon demand. The promissory notes are secured by future royalties owed by the Company to Insession.

The Company has extended a \$4.5 million line of credit to U. S. Processing, Inc. (USPI), a start-up transaction processing business, and has the right to acquire the start-up venture. USPI has borrowed \$4.5 million under the credit facility. Borrowings under the credit facility bear interest at prime plus 1.0% and are payable in quarterly installments of \$250,000 commencing in June 1998.

TRANSACTION SYSTEMS ARCHITECTS, INC.  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS

Results of Operations

The following table sets forth certain financial data and the percentage of total revenues of the Company for the periods indicated:

	Three Months Ended December 31,			
	1996	%	1995	%
	Amount	of Revenue	Amount	of Revenue
<b>Revenues:</b>				
Software license fees	\$ 25,251	53.0 %	\$ 17,217	48.5 %
Maintenance fees	9,961	20.9	8,409	23.7
Services	11,877	24.9	8,618	24.3
Hardware, net	553	1.2	1,239	3.5
<b>Total Revenues</b>	<b>47,642</b>	<b>100.0</b>	<b>35,483</b>	<b>100.0</b>
<b>Expenses:</b>				
Cost of software license fees:				
Software costs	5,397	11.3	3,905	11.0
Amortization of purchased software	801	1.7	788	2.2
Cost of maintenance and services	12,473	26.2	8,771	24.7
Research and development	3,955	8.3	3,537	10.0
Selling and marketing	10,282	21.6	8,404	23.7
General and administrative:				
General and administrative costs	7,666	16.1	5,695	16.0
Amortization of goodwill and purchased intangibles	217	0.5	150	0.4
<b>Total expenses</b>	<b>40,791</b>	<b>85.6</b>	<b>31,250</b>	<b>88.1</b>
<b>Operating income</b>	<b>6,851</b>	<b>14.4</b>	<b>4,233</b>	<b>11.9</b>
<b>Other income (expense):</b>				
Interest income	427	0.9	568	1.6
Interest expense	(57)	(0.1)	(44)	(0.1)
Other	(317)	(0.7)	(30)	(0.1)
<b>Total other</b>	<b>53</b>	<b>0.1</b>	<b>494</b>	<b>1.4</b>
<b>Income before income taxes</b>	<b>6,904</b>	<b>14.5</b>	<b>4,727</b>	<b>13.3</b>
<b>Provision for income taxes</b>	<b>(3,096)</b>	<b>(6.5)</b>	<b>(1,798)</b>	<b>(5.1)</b>
<b>Net income</b>	<b>\$ 3,808</b>	<b>8.0 %</b>	<b>\$ 2,929</b>	<b>8.3 %</b>

#### Revenues

Total revenues for the first quarter of fiscal 1997 increased 34.3% or \$12.2 million over the comparable period in fiscal 1996. Of this increase, \$8.0 million of the growth resulted from a 46.7% increase in software license fee revenue, \$3.3 million from a 37.8% increase in services revenue and \$1.6 million from a 18.5% increase in maintenance fee revenue.

The growth in software license fee revenue is the result of increased demand for the Company's BASE24 products and continued growth of the installed base of customers paying monthly license fee (MLF) revenue. Contributing to the strong demand for the Company's products is the continued world-wide growth of electronic payment transaction volume and the growing complexity of electronic payment systems. MLF revenue was \$6.8 million in the first quarter of fiscal 1997 compared to \$4.5 million in the first quarter of fiscal 1996.

The growth in services revenue for the first quarter of fiscal 1997 is the result of increased demand for technical and project management services which is a direct result of the increased installed base of the Company's BASE24 products.

The increase in maintenance fee revenue for the first quarter of fiscal 1997 is a result of the continued growth of the installed base of the Company's BASE24 products.

#### Expenses

Total operating expenses for the first quarter of fiscal 1997 increased 30.5% or \$9.5 million over the comparable period in fiscal 1996. The primary reason for the overall increase in operating expenses is the increase in staff required to support the increased demand for the Company's products and services. Total staff including both employees and independent contractors increased from 1,105 at December 31, 1995 to 1,391 at December 31, 1996.

The Company's operating margin for the first quarter of fiscal 1997 was 14.4% as compared to 11.9% for the comparable period in fiscal 1996. These improvements are primarily due to the impact of the growth in the Company's recurring revenues (MLF's, maintenance and facilities management fees).

The Company's gross margin (total revenues minus cost of software and cost of maintenance and services) for the first quarter of fiscal 1997 was 60.8% as compared to 62.1% for the comparable period in fiscal 1996. The decline in gross margin is primarily due to increased useage of independent contractors who typically are more expensive than employees and a general increase in technical staff labor costs. To allow for flexibility in its staffing requirements, the Company typically utilizes a mix of employees and independent contractors. The increase in technical staff labor costs is directly attributed to intense competition for such personnel.

Research and development(R&D) costs for the first quarter of fiscal 1997 increased 11.8% or \$418,000 over the comparable period in fiscal 1996. This increase is due to hiring of additional staff who are working on the development of new applications and enhancements. R&D costs as a percentage of total revenues were 8.3% and 10.0% for the first quarter of fiscal 1997 and 1996, respectively. This decrease is the result of the Company's total revenues increasing at a faster rate than the growth in R&D staffing levels. The Company capitalized software development costs of \$368,000 and \$331,000 in the first quarter of fiscal 1997 and 1996, respectively.

Selling and marketing costs as a percentage of total revenues decreased to 21.6% in the first quarter of fiscal 1997 from 23.7% in the first quarter of fiscal 1996. This decrease is due primarily to higher levels of service revenues and backlog which typically have a lower level of sales commission expense associated with it.

#### EBITDA

The Company's earnings before interest expense, income taxes, depreciation and amortization (EBITDA) increased from \$6.5 million in the first quarter of fiscal 1996 to \$9.8 million for the first quarter of fiscal 1997. The increase in EBITDA can be attributed to the continued growth in both recurring and non-recurring revenues more than offsetting the growth in operating expenses. EBITDA is not intended to represent cash flows for the periods.

#### Other Income and Expense

Other income and expense consists primarily of interest income derived from short-term investments and foreign currency transaction losses. The Company incurred foreign currency transaction losses in the first quarter of fiscal 1997 as a result of revaluing U.S. dollar cash and receivables in its U.K. subsidiary.

#### Income Taxes

The effective tax rate for the first quarter of fiscal 1997 was 44.8% as compared to 38.0% for the first quarter of fiscal 1996. The increase in the effective tax rate is principally the result of deferred tax assets which were recognized in the first quarter of fiscal 1996 which reduced the effective tax rate for that period with no corresponding recognition of deferred tax assets in the first quarter of fiscal 1997.

As of December 31, 1996, the Company has deferred tax assets of \$ 9.6 million and deferred tax liabilities of \$.6 million. Each quarter, the Company evaluates its historical operating results as well as its projections for the next 24 months to determine the realizability of the deferred tax assets. This analysis indicated that \$1.7 million of the deferred tax assets were more likely than not to be realized. Accordingly, the Company has recorded a valuation allowance of \$ 7.9 million as of December 31, 1996.



## Backlog

- - - - -

As of December 31, 1996 and 1995, the Company had non-recurring revenue backlog of \$21.9 million and \$17.2 million in software license fees and \$14.6 million and \$10.7 million in services, respectively. The Company includes in its non-recurring revenue backlog all fees specified in contracts which have been executed by the Company to the extent that the Company contemplates recognition of the related revenue within one year. There can be no assurance that the contracts included in non-recurring revenue backlog will actually generate the specified revenues or that the actual revenues will be generated within the one year period.

As of December 31, 1996 and 1995, the Company had recurring revenue backlog of \$75.0 million and \$57.3 million, respectively. The Company defines recurring revenue backlog to be all monthly license fees, maintenance fees and facilities management fees specified in contracts which have been executed by the Company and its customers to the extent that the Company contemplates recognition of the related revenue within one year. There can be no assurance, however, that contracts included in recurring revenue backlog will actually generate the specified revenues.

## Liquidity and Capital Resources

- - - - -

As of December 31, 1996, the Company had working capital of \$45.0 million, cash and cash equivalents of \$31.0 million and a \$10 million bank line of credit of which there are no borrowings outstanding. The bank line of credit expires in June 1997.

During the three months ended December 31, 1996, the Company's cash flow from operations amounted to \$3.1 million and cash used in investing activities amounted to \$4.1 million. Of the \$4.1 million of cash used in investing activities, \$1.7 million consisted of advances to Insession (\$800,000) and USPI (\$900,000) under promissory notes.

In the normal course of business, the Company evaluates potential acquisitions of complementary businesses, products or technologies. In October 1996, the Company acquired 100% of OSSI in exchange for 209,993 shares of the Company's Class A Common Stock.

Management believes that the Company's working capital, cash flow generated from operations and borrowing capacity are sufficient to meet the Company's working capital requirements for the foreseeable future.

TRANSACTION SYSTEMS ARCHITECTS, INC.  
PART II. OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

10.24 Lease respecting facility at 200 Wellington Street West,  
Toronto, Canada

27.00 Financial Data Schedule

(b) Reports on Form 8-K

None

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: February 7, 1997

TRANSACTION SYSTEMS ARCHITECTS, INC  
(Registrant)

/s/ Dwight G. Hanson

-----  
Dwight G. Hanson  
Controller  
(Principal Accounting Officer)

TRANSACTION SYSTEMS ARCHITECTS, INC.

INDEX TO EXHIBITS

Exhibit Number	Description
- - - - -	- - - - -
10.24	Lease respecting facility at 200 Wellington Street West, Toronto, Canada
27.00	Financial Data Schedule

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.....  
Please Initial

902CEP1096

METROCENTRE  
WELLINGTON STREET OFFICE BUILDING  
200 WELLINGTON STREET WEST, TORONTO

THIS LEASE made the 24th day of October,  
1996

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT

BETWEEN:

MARATHON REALTY  
COMPANY LIMITED,  
a corporation  
incorporated  
under the laws  
of Canada,

(hereinafter  
called the  
"Landlord")

OF THE FIRST PART

- and -

APPLIED  
COMMUNICATIONS  
CANADA, INC.

(hereinafter  
called the  
"Tenant")

OF THE SECOND PART

WITNESSETH that in consideration of the  
rents, covenants, conditions and agreements hereinafter  
reserved and contained, the Landlord and the Tenant covenant  
and agree as follows:

.c.SECTION 1 Summary of Specific Terms;  
Summary of Specific Terms

1. The terms set out below are certain basic  
terms of this Lease which form part of and are referred to  
in subsequent provisions of this Lease.

(a) (i) Landlord:  
Marathon Realty Company  
Limited

(ii) Address of Landlord:  
Suite 1700  
120 Adelaide Street West  
Toronto, Ontario  
M5H 1T1

Counsel Attention: Legal

Vice-President with a copy to:  
Toronto  
Region, at the same address

(b) (i) Tenant:  
Applied Communications  
Canada, Inc.

(ii) Address of Tenant:  
Prior to the commencement  
of the Term:  
155 University Avenue

Suite 1900  
Toronto, Ontario  
M5H 3B7



with a copy to:

Baker &  
McKenzie  
Barristers  
and Solicitors  
BCE Place,  
181 Bay Street  
Suite 2100,  
P.O. Box 874  
Toronto,  
Ontario  
M5J 2T3

Attention:  
M.E.  
Kowalski/S.J.  
McAuley

From and after the commencement of the Term, the Premises.

(c) Premises:  
All of the seventh (7th) floor and part of the sixth (6th) floor  
200 Wellington Street West  
Toronto, Ontario

(d) Useable Area of the Premises:  
(i) approximately 2,895 square feet (268.95 square metres) on the sixth floor; and  
  
(ii) approximately 23,553 square feet (2,188.15 square metres) on the seventh (7th) floor,

subject to certification pursuant to Section 2(v) and subject to clause 1 of Schedule "E".

(e) Rentable Area of the Premises:  
Approximately 26,795 square feet (2,489.34 square metres), subject to certification pursuant to Section 2(o) and subject to clause 1 of Schedule "E".

(f) Term:  
Ten (10) years plus the number of days (if any) from and including the Commencement Date to and including the last day of the calendar month in which the Commencement Date occurs, commencing on the Commencement Date and ending on the day immediately preceding the tenth (10th) anniversary of the Commencement Date (if the Commencement Date is the first day of a calendar month) or on the tenth (10th) anniversary of the last day of the calendar month in which the Commencement Date occurs (if the Commencement Date is other than the first day of a calendar month).

(g) Basic Rent (Section 5):

Lease Years	Basic Rent rate per square foot of the Rentable Area of the Premises	Per annum (subject to clause 1 of Schedule "E" and subject to adjustment pursuant to Section 5)	Per month (subject to clause 1 of Schedule "E" and subject to adjustment pursuant to Section 5)
First five (5) Lease Years plus the period (if any) from and including the Commencement Date to and including the last day of the calendar month in which the Commencement Date occurs	\$8.50	\$227,757.50	\$18,979.79

(h) Permitted Use (Section 10(g)):  
an office for the Tenant's  
business, including a computer centre

(i) Special Provisions:  
Schedule "E"

.c.SECTION 2 Definitions;

Definitions

2. For the purposes of this Lease:

.c2.(a) Additional Rent;

(a) "Additional Rent" means all amounts payable by the Tenant under the terms of this Lease, whether payable to the Landlord or otherwise, over and above Basic Rent, and the Landlord shall have the same rights and remedies for recovery thereof as it has in respect of Basic Rent reserved hereunder.

.c2.(b) Basic Rent;

(b) "Basic Rent" means the rent payable pursuant to Section 5.

.c2.(c) Building;

(c) "Building" means the Wellington Street Lands and the multi-storey office building so indicated on page 1 of Schedule "B" annexed hereto constructed thereon, and all other structures, improvements, facilities and appurtenances that have been or will be constructed on the Wellington Street Lands, and any additions, reductions, deletions, alterations, substitutions and improvements made thereon or thereto from time to time, but excluding the Retail Concourse.

.c2.(d) Capital Tax;

(d) "Capital Tax" is an amount determined by multiplying each of the "Applicable Rates" by the "Project Capital" and totalling the products. "Project Capital" is the amount of capital which the Landlord determines, without duplication, is invested from time to time by the Landlord, any owner of a freehold or leasehold title or titles of the Project, or a part of it, from time to time (each, an "Owner", and collectively the "Owners"; provided that a tenant of leaseable premises comprising part of a building in the Project is not an Owner) or all of them, in doing all or any of: acquiring, developing, expanding, redeveloping and improving the Project. Project Capital will not be increased by any financing or refinancing except to the extent that the proceeds are invested directly as Project Capital. An "Applicable Rate" is the capital tax rate specified from time to time under any statute of Canada and any statute of the Province of Ontario which imposes a tax in respect of the capital of corporations. Each Applicable Rate will be considered to be the rate that would apply if none of the Landlord or the Owners employed capital outside of the Province of Ontario. Where part of the capital of the Landlord or the Owners (or corporations that are considered to be related to or associated with any of them) is not taxable under any such statute, such non-taxable capital will be apportioned by the Landlord and the Owners among each of their respective assets and the assets of the related or associated corporations for the purpose of determining Project Capital.

.c2.(d.1) Commencement Date;

(d.1) "Commencement Date" means the date which is the later of:

(i)  
March 1, 1997; and

(ii)  
the sixtieth (60th) day next following the date on which the Landlord provides non-exclusive possession of the Premises to the Tenant pursuant to and in accordance with clause 2 of Schedule "E".

- .c2.(e) Landlord's Architect;  
(e) "Landlord's Architect" means a qualified architect, engineer or Ontario Land Surveyor from time to time chosen by the Landlord.
- .c2.(f) Lands;  
(f) "Lands" means those lands and premises described in the legal description annexed hereto as Schedule "C" which Lands include the Wellington Street Lands, and the lands on which the office building known municipally as 225 King Street West, Toronto has been built.
- .c2.(g) Lease;  
(g) "Lease" means this Lease and any amendments and alterations from time to time made to this Lease in accordance with the provisions herein set out.
- .c2.(h) Lease Year;  
(h) "Lease Year" means a period of twelve (12) consecutive full calendar months; the first Lease Year shall commence on the first day of the Term if such day is the first day of a calendar month, but, if not, on the first day of the calendar month next following the date of commencement of the Term; and each successive Lease Year shall commence on the anniversary date of the commencement date of the first Lease Year.
- .c2.(i) Leasehold Improvements;  
(i) "Leasehold Improvements" means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf or for the benefit of the Landlord, the Tenant or any previous tenant or occupant in the Premises, including all partitions however affixed (including moveable and demountable partitions), millwork and affixed wall units, internal stairways, doors, hardware, light fixtures, carpeting and other applied floor finishes, and heating, ventilating and air-conditioning equipment and other building services not forming part of the Landlord's base building equipment and services, but excluding trade fixtures, drapes, and furniture and equipment (including, without limitation, portable work stations and cubicles) not of the nature of fixtures.
- .c2.(j) Normal Business Hours;  
(j) "Normal Business Hours" means 8:30 a.m. to 6:00 p.m. Monday through Friday (but excluding Saturdays, Sundays, public or statutory holidays and Boxing Day), as such hours may be varied by the Landlord from time to time.
- .c2.(k) Operating Costs;  
(k) "Operating Costs;" means the aggregate of all costs, expenses or amounts incurred, whether by the Landlord or others on behalf of the Landlord, in connection with the complete maintenance, operation, management and repair of the Building and all components thereof and all improvements of the Landlord thereon or therein including, without limiting the foregoing and without duplication: the costs of all repairs and replacements required for such operation and maintenance; all costs in respect of any heating, ventilating and air-conditioning or other equipment and fuel, energy and other costs of providing heat, ventilating and air-conditioning; all expenditures including capital expenditures made by the Landlord in an effort to promote energy conservation including those set out in Section 10(x) of this Lease; the cost of operating and maintaining elevators, escalators, and moving sidewalks (if any); the cost of providing hot and cold water; depreciation (in accordance with generally accepted accounting principles from time to time) of all capital and maintenance equipment which by its nature requires periodic replacement including all heating, ventilating and air-conditioning equipment; the cost of electricity including lighting not otherwise charged to tenants; the cost of snow, ice and refuse clearance and removal; landscape maintenance and window cleaning; the cost of all insurance with respect to the Building; the cost of replacement of electric bulbs, tubes, starters and

ballasts not otherwise charged to tenants; accounting costs incurred in connection with preparation of statements and opinions for tenants and the reasonable cost of collecting payments of all amounts payable by tenants; the cost of providing security services and equipment; the cost of all rental equipment and building supplies used by the Landlord for all such operations and maintenance or any other purpose; the cost (including the fair market office rental therefor) of providing and operating the management office for the Building; amounts paid on service contracts; the amount of all salaries, wages, fees, and benefits paid to or on behalf of persons engaged in cleaning, supervision, maintenance, operation, management, and repair; Capital Tax; any business taxes which may be imposed on the Landlord by reason of its operation of the Building or parts thereof; and management fees or charges of managing agents or Landlord's reasonable charges in lieu thereof if the Landlord undertakes management of the Project.

In calculating Operating Costs, if less than one hundred percent (100%) of the Building is occupied by tenants (including the Tenant), then the amount of such Operating Costs shall be adjusted to be an amount equal to the amount of Operating Costs which would have been incurred had one hundred percent (100%) of the Building been occupied by tenants throughout the entire period for which Operating Costs are being calculated.

With respect to any Operating Costs not charged separately from similar costs on other parts of the Project, the Landlord shall have the right from time to time to reasonably allocate and re-allocate such costs among the Building and any and all other phases or portions of the Project built or to be built from time to time and among the various phases and any portion or portions of the Project remaining vacant or not built upon, and the amount so allocated to the Building shall be included in Operating Costs. Operating Costs shall also include an equitable allocation of all costs, expenses and amounts of the nature described in this Section 2(k) incurred, whether by the Landlord or others on behalf of the Landlord, in connection with the complete maintenance, operation, management and repair of common areas and facilities in or about the Project provided for the use or benefit of tenants in the Building in common with occupants of other parts of the Project, including, without limiting the generality of the foregoing, the underground parking areas comprising part of the Property.

Operating Costs shall not include:

- (i) the Landlord's income tax;
- (ii) interest on Landlord's debt or capital retirement of debt;
- (iii) except as otherwise expressly provided herein, amounts directly chargeable to capital account;
- (iv) the cost of any item which would otherwise be included in Operating Costs to the extent of recovery in respect thereof by the Landlord under a warranty or guarantee relating to the construction of the Building;
- (v) the cost of repairing or replacing any item which would otherwise be included in Operating Costs to the extent of recovery in respect thereof by the Landlord under insurance carried by the Landlord;
- (vi) any costs of enforcing the observance and performance of covenants and obligations of other tenants of the Building in the event of default under their respective leases;
- (vii) structural repair or replacement resulting from inferior or deficient workmanship materials or

equipment in the initial construction of the Building for which the Landlord is reimbursed by its insurers;

(viii) fines, late payment charges or penalties incurred by reason of non-compliance on the part of the Landlord with applicable laws, by-laws and regulations arising by reason of the negligent or wilful act or omission of the Landlord or any person for whom it is in law responsible.

.c2.(1) Premises;  
(1) "Premises" means that portion of the Building identified in Section 1(c) and approximately as shown outlined in red on the floor plan annexed hereto as Schedule "A".

.c2.(m) Project;  
(m) "Project" means the Lands and any buildings, structures or improvements thereon from time to time (including the Building and the Retail Concourse), together with any additional lands and any buildings, structures or improvements thereon from time to time used as part of or in connection with the Project but not owned by the Landlord (including passageways, tunnels, concourses or other facilities serving the Project that may extend or be located beyond the boundaries of the Lands and including, without limitation, pedestrian concourses linking the Project with the St. Andrew subway station of the Toronto Transit Commission or other neighbouring developments), and all outside areas and landscaped areas (save and except the public park so indicated on Schedule "B" annexed hereto and located or to be located on lands leased by the Landlord to The Municipality of Metropolitan Toronto pursuant to a lease made as of the 30th day of October, 1989, registered in the Land Registry Office for the Registry Division of Toronto (No. 63) as Instrument Number CA 57678), roadways and driveways, tunnels and ramps, and outside and covered parking areas, all as existing or to be constructed from time to time in, under or upon the Lands or such other lands, and any additions, reductions, deletions, alterations, substitutions and improvements made thereon or thereto from time to time.

.c2.(n) Proportionate Share;  
(n) "Proportionate Share" means that fraction having as its numerator the Rentable Area of the Premises, and having as its denominator the Rentable Area of the Building. Provided that if any tenant performs or provides at its own cost any service or aspect of those items the cost of which would normally constitute part of Operating Costs, or if for any other reason the Landlord does not render to any tenant a service or perform for any tenant an aspect the cost of which would normally constitute part of Operating Costs, then the Landlord, acting reasonably, may adjust the Proportionate Share for the purpose of determining the Tenant's Proportionate Share of Operating Costs for those services or aspects as may be necessary to provide an equitable distribution of Operating Costs among the tenants who are provided with such services or aspects.

.c2.(o) Rentable Area;  
(o) "Rentable Area" with reference to the Premises means the area of the Premises, expressed in square feet or square meters in a certificate prepared by the Landlord's Architect, measured in accordance with applicable B.O.M.A. standards, as amended from time to time, which certificate shall be conclusive and binding, subject as herein provided, and shall be delivered to the Tenant on or after the commencement of the Term, at which time any adjustment to the area that is required thereby shall be made. The approximate Rentable Area of the Premises is set forth in Section 1(e).

The Rentable Area of all premises in the Building shall be measured and determined as

follows:

(1) In the case of premises occupying the whole of one or more floors, the Rentable Area of such premises shall be the Useable Area of such premises, as determined in accordance with subparagraph 2(v).

(2) In the case of premises occupying part of a floor, the Rentable Area of such premises shall be the Useable Area of such premises, as determined in accordance with subparagraph 2(v), plus a portion of the area of public and/or service areas which without limitation shall include corridors, elevator lobbies, washrooms, air conditioning equipment rooms, fan rooms, janitors' closets and electrical closets within and exclusively or primarily serving only that floor. The portion of the area of said public and/or service areas so added shall be that portion, from time to time, which the Useable Area of such premises bears to the Useable Areas of all premises leased or set aside from time to time for leasing by the Landlord on that floor (including such premises). No deductions shall be made for columns and projections necessary to the Building.

.c2.(p) Rentable Area of the Building;

(p) "Rentable Area of the Building;" means the total of the Rentable Areas of all premises leased or set aside from time to time by the Landlord for leasing in the Building (including the Premises), and shall include the areas of all corridors, lobbies and other areas from time to time set aside by the Landlord for common use on all floors of the Building (excluding the parking and below grade or penthouse level storage areas of the Building and those common areas at the ground level of the said building from time to time set aside by the Landlord for common use by all tenants of the said building including building entrance lobbies, ramps and corridor areas), such areas being as certified from time to time by the Landlord's Architect.

.c2.(q) Restoration Work;

(q) "Restoration Work" means the following items of work in the Premises:

(i) removal of all partitions within the Premises relating to the computer room and operations room constructed or to be constructed by or on behalf of the Tenant therein, except for demising walls of the Premises, and removal of all structural alterations (including, without limitation, internal staircases) made in or to the Premises by or on behalf of the Tenant; and

(ii) all restoration and repair work required in connection with and to the extent applicable to the work described in paragraph (i) of this Section 1(q) and areas in the Premises affected thereby, including:

(A) patching, to a state of readiness for paint, of all existing drywall surfaces and wall scars where partitions are removed and the application of one (1) coat of white drywall primer to all drywall surfaces;

(B) removal of all applied floor finishes (thereby returning floor to smooth trowelled concrete condition);

(C) removal of all telephone and computer cables and electrical wiring back to the source (that is, electrical/telephone closets

and/or rooms); removal of telephone jacks from columns and demising walls and patching as required; and the restoration of all existing building light fixtures to clean working order with lenses in place;

(D) removal of all plumbing installations (including, without limitation, sinks, private washrooms and showers) back to source and properly capping as required;

(E) restoring ceiling to building standard suspended acoustical ceiling, which includes patching or replacing damaged T-bar grid, replacement of damaged ceiling tiles and the removal of existing drywall ceilings or special ceilings; and

(F) ensuring that the drywall baffle above the existing demising walls is complete and that adequate return air openings are maintained.

.c2.(r)  
(r) Retail Concourse;  
"Retail Concourse" means the retail commercial buildings, structures, improvements and facilities constructed or to be constructed on the Lands as so indicated on page 2 of Schedule "B" annexed hereto and any additions, reductions, deletions, alterations, substitutions and improvements made thereon or thereto from time to time.

.c2.(s)  
(s) Rules and Regulations;  
"Rules and Regulations;" means those Rules and Regulations set out in Schedule "D" to this Lease, and any additional Rules and Regulations made from time to time in accordance with section 10(f) of this Lease.

.c2.(t)  
(t) Taxes;  
"Taxes;" means all taxes, rates, duties, levies and assessments whatsoever whether municipal, parliamentary or otherwise, levied, charged or assessed upon the Building, or upon any part or parts thereof and all improvements now or hereafter erected or placed on the Wellington Street Lands, or charged against the Landlord on account thereof, including local improvement charges and any present or future commercial concentration tax or other rate, duty, levy or assessment charged or assessed based upon the floor area or size of the Building or the Project or any part or parts thereof, but excluding any taxes such as corporate, income, profit and excess profit taxes assessed upon the income of the Landlord. In addition to the foregoing, Taxes shall include any and all taxes, charges, levies, or assessments which may in the future be levied, charged or assessed in lieu thereof or in addition thereto. Taxes shall also include all costs and expenses incurred by the Landlord in obtaining or attempting to obtain a reduction or prevent an increase in the amount of such Taxes. In calculating Taxes, if less than one hundred percent (100%) of the Building is occupied by tenants (including the Tenant), then the amount of such Taxes shall be adjusted to be an amount equal to the amount of Taxes which would have been incurred had one hundred percent (100%) of the Building been occupied by tenants throughout the entire period for which Taxes are being calculated, it being intended hereby that the Landlord shall obtain full reimbursement of Taxes attributable to or in respect of occupied premises, and not that the Landlord shall recover more than actual Taxes. In calculating Taxes, if any portion of the Building is assessed or taxed other than at the prevailing commercial assessment rates and mill rates due to the occupancy of any tenants or the nature of any tenant's operation, then the amount of such Taxes shall be adjusted to be an amount equal to the amount of Taxes which

would have been incurred had such portion of the Building been assessed and taxed at the prevailing commercial assessment rates and mill rates throughout the entire period for which Taxes are being calculated. With respect to any such Taxes and any similar taxes on other parts of the Project, the Landlord, acting reasonably, shall have the right from time to time to allocate and re-allocate such Taxes on a fair and equitable basis among the Building and any and all other phases or portions of the Project built or to be built from time to time, and among the various phases and any portion or portions of the Project remaining vacant or not built upon, and the amount so allocated to the Building shall constitute Taxes. Taxes shall also include an allocation on a fair and equitable basis by the Landlord, acting reasonably, of all taxes, rates, duties, levies and assessments of the nature included in the foregoing definition of Taxes which are levied, charged or assessed upon common areas and facilities in or about the Project provided for the use or benefit of tenants in the Building in common with occupants of other parts of the Project including, without limiting the generality of the foregoing, the underground parking areas comprising part of the Project.

Term;

.c2.(u) (u) "Term;" means that Term set out in Section 4 of this Lease or as such Term may be altered, extended or reduced in accordance with the provisions of this Lease.

Useable Area;

.c2.(v) (v) "Useable Area" with reference to the Premises means the area of the Premises, expressed in square feet or square meters in a certificate prepared by the Landlord's Architect, measured in accordance with applicable B.O.M.A. standards, as amended from time to time, which certificate shall be conclusive and binding, subject as herein provided, and shall be delivered to the Tenant on or after the commencement of the Term, at which time any adjustment to the area that is required thereby shall be made. The approximate Useable Area of the Premises is set forth in Section 1(d).

The Useable Area of all premises in the Building shall be measured and determined as follows:

(1) In the case of premises occupying the whole of one or more floors, the Useable Area of such premises shall be determined by measuring to and from the inside faces of the office glass lines of the outer building walls, but shall not include stairs, elevator shafts (except as hereinafter provided), stacks, pipe shafts and vertical ducts with their enclosing walls. Washrooms, air-conditioning rooms, fan rooms, janitors' closets, electrical closets, elevator shafts and stairs within and exclusively or primarily serving only that floor or floors shall be included in the Useable Area of such premises. No deductions shall be made for columns and projections necessary to the Building.

(2) In the case of premises occupying part of a floor, the Useable Area of such premises shall be determined by measuring from and to whichever of the following form the boundaries of such premises: the inside face of the office glass line of the outer building walls; the centre of partitions which separate such premises from adjoining premises or public and/or service areas; and the office side of corridor walls or other permanent partitions. No deductions shall be made for columns and projections necessary to the Building.

.c2.(w) Wellington Street Lands;



- (w) "Wellington Street Lands" means the lands described in Part A of Schedule "C" annexed hereto.
- .c2.(x) Year;
- (w) "Year;" means each calendar year, the whole or part of which is included within the Term.

.c.SECTION 3 Premises

3. The Landlord hereby leases to the Tenant the Premises.

.c.SECTION 4 Term

4. To have and to hold the Premises for and during the Term specified in Section 1(f) commencing and ending on the dates set forth therein.

.c.SECTION 5 Basic Rent

5. Yielding and paying therefor during each Lease Year of the Term unto the Landlord for the Premises without any set-offs, deductions or defalcations whatsoever, Basic Rent in the amount per square foot of the Rentable Area of the Premises set forth in Section 1(g) for such Lease Year, to be paid in advance in equal consecutive monthly instalments in the amount set forth in Section 1(g) for such Lease Year on the first day of each and every month during such Lease Year, subject to adjustment as hereinafter provided.

If the Term commences on any day other than the first or ends on any day other than the last day of a month, Basic Rent and Additional Rent for the fractions of a month at the commencement and at the end of the Term shall be adjusted pro rata on a per diem basis. If the Commencement Date is other than the first day of a calendar month, the Tenant shall pay to the Landlord Basic Rent for the period from and including the Commencement Date to and including the last day of such month at the rate per square foot of the Rentable Area of the Premises set forth in Section 1(g).

The annual Basic Rent for each Lease Year set forth in Section 1(g) shall be adjusted, if necessary, based upon the Landlord's Architect's certificate of the Rentable Area of the Premises referred to in Section 2(o) by multiplying the Rentable Area of the Premises so certified expressed in square feet by the rental rate for such Lease Year set forth in Section 1(g), and the monthly instalments of Basic Rent shall be adjusted accordingly.

Basic Rent and Additional Rent shall be paid to the Landlord at the address of the Landlord set forth in Section 1(a)(ii), or at such other place or places as the Landlord shall designate from time to time in writing.

.c.SECTION 6 Taxes

6. (a) The Tenant covenants to pay the Tenant's Proportionate Share of Taxes for the Year, during each Year of the Term, to the Landlord as Additional Rent within fifteen (15) days following receipt by the Tenant of written notice of the amount of such Tenant's Proportionate Share of Taxes for such Year, notwithstanding that the Year in question or the Term may have ended. If after initial determination by the Landlord of the Tenant's Proportionate Share of Taxes for a Year there is a further increase in Taxes with respect to such Year by reason of the issue of supplemental assessment notices or taxes or both, or a variation in the basis upon which the Taxes are calculated, or for any other reason, the Landlord shall, as often as necessary, recalculate the Tenant's Proportionate Share of Taxes for that Year, and if that amount is greater than originally calculated, the Tenant covenants to pay any excess amount to the Landlord (together with the original calculated amount of the Tenant's Proportionate Share of Taxes for that Year if not already paid) as Additional Rent in the manner aforesaid. The Landlord shall reimburse the Tenant for the Tenant's Proportionate Share of any reduction or decrease during the Term in Taxes to the extent to which the Tenant shall have previously paid its Proportionate Share of such Taxes under this Section 6.

(b) The Landlord shall be entitled, at any time or times in any Year, upon at least fifteen (15) days' notice to the Tenant, to require the Tenant to pay to the Landlord monthly, on the date of payment of monthly

rental instalments, as Additional Rent, an amount equal to one-twelfth (1/12) of the amount estimated by the Landlord to be the Taxes payable by the Tenant for such Year. The Landlord shall be entitled subsequently during such Year, upon at least fifteen (15) days' notice to the Tenant, to revise its estimate of the amount of the Taxes payable by the Tenant and the said monthly instalments shall be revised accordingly. All amounts received under this provision in any Year, on account of the estimated amount of the Taxes payable by the Tenant, shall be applied in reduction of the actual amount of the Taxes payable by the Tenant for such Year. If the amount received is less than the actual Taxes payable by the Tenant for such Year, the Tenant shall pay such deficiency to the Landlord as Additional Rent, within fifteen (15) days following receipt by the Tenant of notice of the amount of such deficiency. If the amount received is greater than the actual Taxes payable by the Tenant for such Year, the Landlord shall either refund the excess to the Tenant as soon as possible after the end of the Year in respect of which such payments were made, or at the Landlord's option shall apply such excess against any amounts owing or becoming due to the Landlord by the Tenant. Notwithstanding the foregoing, the Landlord shall always have the right to revise the amount of tax instalment payments to an amount that allows the Landlord to collect all Taxes by the final due date of Taxes for the year.

- (c) If the Term commences or ends on any day other than the first or last day, respectively, of a Year, the Tenant shall be liable only for the portion of the Taxes payable by the Tenant for such Year as falls within the Term, determined on a per diem basis.
- (d) If the Taxes payable by the Tenant shall be increased by reason of any installations made in or upon or any alterations made in or to the Premises by the Tenant, or by the Landlord on behalf of the Tenant, the Tenant shall pay the amount of such increase forthwith to the Landlord upon receipt of notice thereof. The Tenant shall also pay every tax and licence fee in respect of any business conducted upon the Premises. All payments referred to herein shall be paid and discharged by the Tenant as soon as they become due and payable, and the Tenant shall, upon the written request of the Landlord, promptly deliver to the Landlord, receipts evidencing such payments, where applicable.
- (e) At its sole expense, the Tenant shall have the right to appeal any separate assessment for Taxes issued in respect of the Premises, after having first obtained the Landlord's written approval. By initiating such action, the Tenant shall not detrimentally affect the position of the Landlord, nor permit any lien or other encumbrances to be filed or assessed against the Building and if required, the Tenant shall provide the Landlord with an indemnity for any costs, expenses, liabilities or damages, including, without limitation, any increases in Taxes, which are, or may be, incurred or suffered by the Landlord directly or indirectly as a result of such appeal. The Tenant shall also serve the Landlord with a copy of the notice of appeal, pertaining to any such appeal which is so commenced by the Tenant.

.c. SECTION 7 Operating Costs

- 7. (a) The Tenant covenants to pay the Tenant's Proportionate Share of Operating Costs for the Year, during each Year of the Term, to the Landlord as Additional Rent within thirty (30) days following receipt by the Tenant of written notice of the amount of such Tenant's Proportionate share of Operating Costs for such Year, notwithstanding that the Year in question

or the Term may have ended. Any amounts payable pursuant to this subsection (a) shall be determined and certified by the Landlord following the end of the Year for which such amounts are payable. If only part of a Year is included within the Term, any such amount payable shall be pro-rated accordingly and, during the last year of the Term, shall be paid on the last day of the Term. Any balance remaining unpaid or any excess paid shall, notwithstanding such termination, be adjusted between the Landlord and Tenant within a reasonable period thereafter.

(b) The Landlord shall be entitled at any time in any Year, upon at least thirty (30) days' notice to the Tenant, to require the Tenant to pay to the Landlord monthly, on the date for payment of monthly rental instalments, as Additional Rent, an amount equal to one-twelfth (1/12th) of the amount estimated by the Landlord to be the amount of the Tenant's Proportionate Share of Operating Costs for such Year. The Landlord shall be entitled subsequently during such Year upon at least thirty (30) days' notice to the Tenant, to reasonably revise its estimate of the amount of the Tenant's Proportionate Share of Operating Costs and the said monthly instalments shall be revised accordingly. All amounts received under this provision in any Year on account of the estimated amount of the Tenant's Proportionate Share of Operating Costs shall be applied in reduction of the actual amount of the Tenant's Proportionate Share of Operating Costs for such Year. If the amount received is less than the actual Tenant's Proportionate Share of Operating Costs for such Year, the Tenant shall pay any deficiency to the Landlord as Additional Rent within thirty (30) days following receipt by the Tenant of notice of the amount of such deficiency. If the amount received is greater than the actual Tenant's Proportionate Share of Operating Costs, the Landlord shall either refund the excess to the Tenant as soon as possible after the end of the Year in respect of which such payments were made or at the Landlord's option shall apply such excess against any amounts owing or becoming due to the Landlord by the Tenant.

#### .c.SECTION 8 Recovery of Adjustments

8. The Landlord (in addition to any other rights or remedies of the Landlord) shall have the same rights and remedies in the event of the default by the Tenant in payment of any amount payable by the Tenant hereunder (including, without limitation, any amounts payable pursuant to Sections 6 and 7) as the Landlord would have in the case of default in payment of rent.

#### .c.SECTION 9 Net Lease

9. The Tenant acknowledges that it is intended and agreed that this Lease is a completely carefree net lease for the Landlord and that the Landlord is not responsible during the Term or any renewal thereof for any costs, charges, expenses or outlays of any nature relating to the Project or the Premises, or the contents thereof, or otherwise, except as specifically set forth in this Lease, and that the Tenant will pay all charges, taxes, impositions, costs and expenses of every kind relative to the Premises, and the Tenant covenants with the Landlord accordingly.

Notwithstanding any other provisions of this Lease to the contrary, the Tenant shall pay to the Landlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, or any other similar taxes imposed on the Tenant or the Landlord, by any level of government, with respect to Basic Rent, Additional Rent or any other amounts payable by the Tenant to the Landlord under this Lease, whether characterized as a goods and services tax, sales tax, value added tax or otherwise (except income taxes payable by the Landlord under the Income Tax Act (Canada)) (herein called "Sales Taxes"), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable or collectable by the Landlord. The amount of such Sales Taxes so payable by the Tenant shall be calculated in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such Sales Taxes apply are payable to the

Landlord under the terms of this Lease or earlier if required by the applicable legislation. Notwithstanding any other provision in this Lease to the contrary, the Sales Taxes payable by the Tenant under this paragraph shall be deemed not to be Basic Rent or Additional Rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of rent under this Lease.

.c. SECTION 10 Tenant's Covenants

10. The Tenant covenants with the Landlord:

.c2.(a) Pay Rent

(a) to pay Basic Rent, the Tenant's Proportionate Share of Taxes and the Tenant's Proportionate Share of Operating Costs and all other amounts payable by the Tenant to the Landlord under this Lease as Additional Rent. In the event of any dispute between the Landlord and the Tenant as to any Additional Rent payable, the opinion of the Landlord's independent auditor as to the Additional Rent payable shall be final and binding on the Landlord and the Tenant. If the Landlord's auditor's opinion is that the Additional Rent in dispute has been overstated by more than three percent (3%), then the Landlord shall pay the cost of the auditor's opinion. If the Landlord's auditor's opinion is that the Additional Rent in dispute has not been overstated, or has been overstated by three percent (3%) or less, then the Tenant shall pay the cost of the auditor's opinion;

.c2.(b) Utility Charges

(b) to pay all charges for telephone, electric current and all other utilities supplied to or used in connection with the Premises, and the total cost of any replacement of electric bulbs, tubes, starters and ballasts in the Premises. If there are no separate meters for measuring the consumption of such utilities, the Tenant shall pay to the Landlord, in advance by monthly instalments as Additional Rent, such amount as may be reasonably estimated by the Landlord from time to time as the cost of such utilities for the Premises. In the event of any dispute between the Landlord and the Tenant as to the amount of such utility costs, the opinion of the Landlord's Architect shall be final and binding on the Landlord and the Tenant. The Tenant shall advise the Landlord forthwith of any installations, appliances or business machines used by the Tenant and consuming or likely to consume large amounts of electricity or other utilities and further on request shall promptly provide the Landlord with a list of all installations, appliances and business machines used in the Premises, and the Landlord shall have the right to install a separate meter at the Tenant's expense to measure the consumption of such utilities;

.c2.(c) Maintain & Repair

(c) to repair, maintain and keep the Premises in good and substantial repair as a prudent tenant would do, reasonable wear and tear and damage by fire and any other peril against which the Landlord is or is required hereunder to be insured, only excepted, and that the Landlord may enter and view state of repair; and that the Tenant will repair in accordance with notice in writing, reasonable wear and tear and damage by fire and any other peril against which the Landlord is or is required hereunder to be insured, only excepted; and that the Tenant will leave the Premises in good repair, reasonable wear and tear and damage by fire and any other peril against which the Landlord is or is required hereunder to be insured, only excepted; provided that if the Tenant neglects to so maintain or to make such repairs promptly after notice, the Landlord may, at its option, do such maintenance or make such repairs at the expense of the Tenant, and in any and every such case the Tenant covenants with

the Landlord to pay to the Landlord forthwith as Additional Rent all sums which the Landlord may have expended in doing such maintenance and making such repairs; provided further that the doing of such maintenance or the making of any repairs by the Landlord shall not relieve the Tenant from the obligation to maintain and repair;

.c2.(d) Repair Where Tenant at Fault

(d) if the Building or the Project, including the Premises, the elevators, boilers, engines, pipes and other apparatus (or any of them) used for the purposes of heating, ventilating or air-conditioning the Building or the Project or operating the elevators, or if the water pipes, drainage pipes, electric lighting or other equipment of the Building or the Project, or the landscaping, trees, shrubs and flowers, or the roof or outside walls of the Building or the Project get out of repair or become damaged or destroyed through the wilful act, negligence, carelessness or misuse of the Tenant or any person for whom the Tenant is in law responsible or through it or them in any way stopping up or injuring the heating, ventilating or air-conditioning apparatus, elevators, water pipes, drainage pipes, or other equipment or part of the Building or the Project, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant who shall pay the same to the Landlord forthwith upon demand;

.c2.(e) Assigning or Subletting

(e) not to assign this Lease or sublet or franchise, license, grant concessions in, or otherwise part with or share possession of the Premises, or any part thereof, without the prior written consent of the Landlord; at the time the Tenant requests such consent the Tenant shall deliver to the Landlord such information in writing (the "required information") as the Landlord may reasonably require, including a copy of the proposed offer or agreement, if any, to assign or sublet or otherwise and the name, address, nature of business and evidence as to the financial strength of the proposed assignee or subtenant; upon receipt of such request and all required information, the Landlord shall have the right, exercisable within thirty (30) days after such receipt, to terminate this Lease if the request relates to all of the Premises or, if the request relates to a portion of the Premises only, the Landlord shall have the right to terminate this Lease with respect to such portion and the rent payable by the Tenant under this Lease shall abate in the proportion that the area of the portion of the Premises for which this Lease is terminated bears to the area of the Premises. If the Landlord exercises such right, the Tenant shall notify the Landlord in writing within five (5) days thereafter of the Tenant's intention either to refrain from effecting the transaction in respect of which the Tenant requested the Landlord's consent or to accept such termination. If the Tenant advises the Landlord that it intends to refrain from effecting the transaction, then the Landlord's exercise of its right of termination will become null and void. If the Tenant accepts the termination or fails to deliver such notice within such five (5) day period, the Tenant shall surrender possession of the Premises or such portion thereof, as the case may be, not less than sixty (60) days and not more than ninety (90) days following the Landlord's notice of exercise of its right hereunder in accordance with all the provisions of this Lease relating to the surrender of the Premises at the expiration of the Term and all rent and other charges shall be deemed to be adjusted accordingly and the Lease shall be deemed to be amended accordingly, as of the date of actual surrender. If the

Landlord does not exercise such right, then the Landlord's prior written consent shall not, subject as hereinafter provided, be unreasonably withheld.

Notwithstanding any statutory provision or rule of law to the contrary, it shall not be considered unreasonable for the Landlord to withhold its consent if, without limiting any other factors or circumstances which the Landlord may reasonably take into account:

- (i) the Tenant is then in default under this Lease;
- (ii) the proposed assignment, sublease, franchise, license, concession or other parting with or sharing of possession of the Premises (each, a "Transfer") would be or could result in the violation or breach of any covenants or restrictions made or granted by the Landlord to other tenants or occupants, or prospective tenants or occupants, of the Building;
- (iii) in the Landlord's reasonable opinion, the financial background, business history and capability of the proposed assignee, subtenant, franchisee, licensee, concessionaire or other occupant (each, a "Transferee") is not satisfactory;
- (iv) the proposed Transfer is to an existing tenant of the Building or a prospective tenant which has otherwise been introduced to the Landlord or the Building to the extent the Landlord has premises available of similar size; or
- (v) the use of the Premises by the proposed Transferee, in the Landlord's opinion arrived at in good faith, could result in excessive use of the elevators or other systems or services in the Building, be inconsistent with the image and standards of the Building or expose the occupants of the Building to risk of harm, damage or interference with their use and enjoyment thereof.

The Landlord's consent to any Transfer, or any assignment or sublease to an affiliate of the Tenant permitted without the Landlord's consent as provided in the paragraph next following, shall be subject to the condition that the Tenant shall pay forthwith, as received, to the Landlord any consideration, including increased rent, received by or for the account of the Tenant either directly or indirectly from any Transferee whether in the form of cash, goods or services. The amount of any leasing commissions or fees and the cost of any inducements, whether by way of cash, leasehold improvements, rent-free periods, lease takeovers or other like concessions or inducements, paid or given by the Tenant to secure such Transfer may be amortized by the Tenant over the term of the Transfer on a straight-line basis without interest and deducted from the amount of minimum rent and additional rent payable by the Transferee for the purposes of determining the Tenant's obligation to pay any amount to the Landlord under this paragraph.

Notwithstanding the foregoing provisions of this Section 10(e):

- (i) the Tenant shall have the right at any time or times to assign this Lease or sublet all or any part or parts of the Premises to any affiliate of Applied Communications Canada, Inc. (the term "affiliate" being defined in this Lease as such term is defined in the Business Corporations Act (Ontario), as amended to the date of this Lease), without consent of the Landlord but upon prior written notice to the Landlord, and the Landlord shall not have the right of termination set forth in the first paragraph of this Section 10(e) in respect of any such assignment or subletting,

provided that:

(A) upon request by the Landlord, the assignee or subtenant shall enter into a covenant with the Landlord in form satisfactory to the Landlord to observe and perform all of the Tenant's covenants, liabilities and obligations under this Lease;

(B) the provisions of the immediately preceding paragraph shall apply to any such assignment or sublease; and

(C) upon any such assignee or subtenant ceasing to be an affiliate of Applied Communications Canada, Inc., this Lease shall be re-assigned to Applied Communications Canada, Inc. or the sublease shall be terminated, as the case may be;

- (ii) the amalgamation of the Tenant with one or more corporations, provided that the amalgamated corporation is subject to and bound by all of the Tenant's covenants, liabilities and obligations under this Lease, shall not require the Landlord's consent under this Section 10(e) and the Landlord shall not have the right of termination set forth in the first paragraph of this Section 10(e) in respect of any such amalgamation; and
- (iii) the Landlord shall not have the right of termination set forth in the first paragraph of this Section 10(e) in respect of, but all other terms and provisions of this Section 10(e) shall apply to, an assignment of this Lease made by the Tenant to the purchaser of all of the Tenant's property, assets and undertaking.

In no event shall any Transfer to which the Landlord has consented, or in respect of which the Landlord's consent is not provided hereunder, release the Tenant from its obligations fully to perform all the terms, conditions and covenants of this Lease. The Tenant shall pay on demand the Landlord's reasonable costs incurred in connection with the Tenant's request for such consent and any agreement referred to in paragraph (i)(A) of this Section 10(e). The Landlord's consent may be conditional upon the Transferee entering into a covenant with the Landlord in form satisfactory to the Landlord, acting reasonably, to observe and perform all tenant's covenants in the Lease. If the Tenant is a private corporation and any part or all of the corporate shares shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition or dispositions so as to result in a change in the control of the corporation, such change of control shall be considered an assignment of this Lease and shall be subject to the aforesaid provisions; the Tenant shall make available to the Landlord upon its request for inspection and copying, all books and records of the Tenant, any Transferee and their respective shareholders which, alone or with other data, may show the applicability or inapplicability of this clause.

The Tenant shall not advertise or allow the Premises or a portion thereof to be advertised as being available for assignment, sublease or otherwise without the prior written approval of the Landlord to the form and content of such advertisement, which approval shall not be unreasonably withheld or delayed, provided that no such advertising shall contain any reference to the rental or the rental rate of the Premises;

.c2.(f) Rules and Regulations

(f) that the Tenant and its employees and all persons visiting or doing business with them on the Premises shall be bound by and shall observe and perform the Rules and Regulations and any further and other reasonable Rules and Regulations made hereafter by the Landlord of which notice in writing shall be given to the Tenant and all such Rules and Regulations shall be deemed to be incorporated into and form part of this Lease;

.c2.(g) Use of Premises

(g) not to use the Premises nor allow the Premises to be used for any purpose other than an office for the Tenant's business, including a computer centre; and not to carry on nor allow to be carried on in or from the Premises any activity which would in the Landlord's determination lower the respectable character of the Building as a first-class commercial building; and that if the costs of insurance on the Building or the Project shall be increased by reason of the use made of the Premises or by reason of anything done or omitted or permitted by the Tenant or by anyone permitted by the Tenant to be upon the Premises, the Tenant shall pay to the Landlord on demand as Additional Rent the amount of such increase; and if any insurance policy upon the Building or the Project shall be cancelled by the insurer or be under notice of possible cancellation by the insurer by reason of the use or occupation of the Premises or any part thereof by the Tenant or any assignee or subtenant of the Tenant or by anyone permitted by the Tenant to be upon the Premises, the Landlord may at its option terminate this Lease forthwith by leaving upon the Premises notice in writing of its intention to do so and thereupon rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid in full to the later of the date of such termination or the date on which actual possession is given up or taken, and the Tenant shall immediately deliver up possession of the Premises to the Landlord who may re-enter and take possession of same;

.c2.(h) Observance of Law

(h) in its use and occupation of the Premises, not to violate any law or ordinance or any order, rule, regulation or requirement of any federal, provincial or municipal government and any appropriate department, commission, board or officer thereof, and to comply promptly and at the Tenant's sole cost with all of the foregoing;

.c2.(i) Waste and Nuisance

(i) not to do or suffer any waste, damage, disfiguration or injury to the Premises or the fixtures and equipment thereof or permit or suffer any overloading of the floors thereof; and not to use or permit to be used any part of the Premises for any dangerous, noxious or offensive trade or business and not to cause or maintain any nuisance in, at or on the Premises or cause any annoyance, nuisance or disturbance to the occupiers or owners of any adjoining lands and/or premises;

.c2.(j) Entry by Landlord

(j) to permit the Landlord and its servants or agents to enter upon the Premises at any time and from time to time for the purpose of inspecting and making repairs, alterations or improvements to the Premises or to the Building or the Project and the Tenant shall not be entitled to any compensation for any inconvenience, nuisance or discomfort occasioned thereby;

.c2.(k) Indemnity

(k) to promptly indemnify and save harmless the



Landlord from any and all liabilities, damages, costs, claims, suits or actions arising out of: any breach, violation or non-observance by the Tenant of any of its covenants and obligations under this Lease; any damage to property while said property shall be in or about the Premises including the systems, furnishings and amenities thereof, as a result of the wilful or negligent act or omission of the Tenant, its invitees, licensees, agents, servants or employees; and any injury to any licensee, invitee, agent, servant or employee of the Tenant, including death resulting at any time therefrom, occurring on or about the Premises or the Building or the Project, save and except, in respect only of any injury (including death) not covered by insurance maintained or required pursuant to Section 10(u) to be maintained by the Tenant, to the extent that any such injury (including death) is caused, or to the extent contributed to, by the negligent or wilful acts or omissions of the Landlord or those for whom it is in law responsible, and then only to the extent that the Landlord is or is required hereunder to be insured in respect of such injury or death; and this indemnity shall survive the expiry or earlier termination of this Lease, in respect of any of the foregoing circumstances arising during the Term;

.c2.(l) Exhibiting Premises

- (l) to permit the Landlord or its agents, upon not less than twenty-four (24) hours' prior notice (which notice, notwithstanding Section 35, need not be in writing and may be given orally to management at the Premises) to exhibit the Premises to prospective purchasers or mortgagees of the Building and, during the last twelve (12) months of the Term or any renewal thereof, to prospective tenants, provided that the Tenant's business is not materially adversely affected thereby;

.c2.(m) Alterations

- (m) that the Tenant will not, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, make or erect in or to the Premises any installations, alterations, additions, partitions, repairs or improvements, or do anything which might affect the proper operation of the electrical, lighting, heating, ventilating, air-conditioning, sprinkler, fire protection or other systems; the Tenant's request for such consent shall be in writing and accompanied by an adequate description of the contemplated work and, where appropriate, working drawings and specifications therefor; on completion the Tenant shall provide the Landlord with a full set of "as-built" drawings; the Landlord's costs of having its architects, engineers or others examine such drawings and specifications shall be payable by the Tenant upon demand as Additional Rent; the Landlord may require that any or all work to be done hereunder be done by the Landlord's contractors or workmen or by contractors or workmen engaged by the Tenant but first approved by the Landlord; the Landlord has provided the Tenant with the Landlord's design criteria for the Building, including the Landlord's approved contractors, and the Tenant shall be permitted to use any of such approved contractors; and all work shall be subject to inspection by and the reasonable supervision of the Landlord and shall be performed in accordance with all laws and any reasonable conditions (including a reasonable supervision fee of the Landlord to be paid by the Tenant) or regulations imposed by the Landlord and completed in a good and workmanlike manner and with reasonable diligence in accordance with the approvals given by the Landlord; any connections of apparatus to the electrical system, plumbing lines, or heating, ventilating or air-conditioning systems shall be deemed to be an alteration within

the meaning of this paragraph; the Tenant shall, at its own cost and before commencement of any work, obtain all necessary building or other permits and keep same in force and the Tenant shall promptly pay all charges incurred by it for any work, materials or services and shall forthwith discharge any liens resulting therefrom; if the Tenant fails to so discharge any liens, the Landlord may (but shall be under no obligation to) pay into court the amount required, or otherwise obtain a discharge of the lien in the name of the Tenant and any amount so paid together with all costs incurred in respect of such discharge shall be payable by the Tenant to the Landlord forthwith upon demand plus interest on all such amounts at the rate hereafter set out in this Lease; the Tenant shall not create any mortgage, conditional sale agreement, or other encumbrance in respect of its Leasehold Improvements or trade fixtures nor shall the Tenant lease the same from any third party, nor permit any such encumbrance to attach to the Premises or to the Building or the Project;

.c2.(n) Interior Walls

(n) that the Tenant will not deface or mark any part of the Premises, the Building or the Project and will not permit any hole to be drilled or made or nails, screws, hooks or spikes to be driven into perimeter or demising walls, doors or floors or stone or brick work of the Building or any appurtenances thereof without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. The Tenant may, without the consent of the Landlord, hang any wall coverings, artwork or decorations on the interior walls of the Premises;

.c2.(o) Signs

(o) that the Tenant will not paint, place, affix, inscribe or display on any of the windows of the Premises or the Building or on any part of the outside or inside thereof, any sign, picture, direction, lettering, advertisement or notice without the prior written consent of the Landlord; and the Landlord shall have the right to prescribe the size, material, colour, method of attachment, pattern and location of identification signs for the Tenant; on the Tenant ceasing to be a tenant of the Premises, the Landlord will cause any sign to be removed or obliterated at the Tenant's expense; the Tenant shall be entitled to have one name shown upon the directory board or boards of the Building and any additional name or subsequent changes shall be paid for by the Tenant, but the Landlord shall in its sole discretion design the style of such identification and allocate the space on the directory board or boards therefor;

.c2.(p) Name of Building

(p) not to refer to the Building or the Project by any name or names other than such name or names as may be designated from time to time by the Landlord, nor to use such name or names for any purpose other than that of the business address of the Tenant; the Tenant shall not use the name "Metro Hall" or any derivative thereof or any name which uses or references Metro or Metro Hall or is similar thereto, whether in connection with the Building or the Project or for any other purpose, including without limitation, signage, advertising and business forms;

.c2.(q) Glass

(q) the Landlord shall replace and the Tenant shall pay to the Landlord on demand as Additional Rent the cost of replacement with as good quality any glass on or within or in the walls or doors (exterior or interior) abutting or forming part of the Premises, which is broken during the Term or any renewals thereof, unless (save and except with respect to the glass curtainwall)

such breakage is solely the result of the negligence of the Landlord and is not the result of matters required to be insured against by the Tenant hereunder, and in the case of breakage in the glass curtainwall, only where such breakage is caused by reason of the wilful or negligent act or omission of the Tenant or any person for whom it is in law responsible;

.c2.(r) Certificates

(r) the Tenant will at any time and from time to time, at no cost to the Landlord, and upon not less than ten (10) days' prior notice, execute and deliver to the Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, stating the modifications and that the Lease is in full force and effect as modified), the amount of the annual rental then being paid hereunder, the dates to which the same, by instalment or otherwise, and other charges hereunder have been paid, whether or not there is any existing default on the part of the Landlord of which the Tenant has notice, and any other information reasonably required;

.c2.(s) Evidence of Payments

(s) to produce to the Landlord upon request, satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease;

.c2.(t) Notice of Accidents

(t) to notify the Landlord promptly and in writing of any accident or damage to or defect in the Premises, the Building, the Project, or any part thereof including the heating, ventilating, and air-conditioning apparatus, water and gas pipes, telephone lines, electrical apparatus or other building services;

.c2.(u) Tenant Insurance

(u) at its expense to maintain in force during the Term and any renewals thereof:

(i) comprehensive general liability insurance against claims for personal injury, death or property damage arising out of all operations of the Tenant (including tenants' all risk legal liability, personal liability, property damage and contractual liability to cover all indemnities and repair obligations) with respect to the business carried on in and from the Premises, in amounts required by the Landlord and any mortgagee of the Project or any part thereof from time to time but in no event less than Two Million Dollars (\$2,000,000.00) per occurrence;

(ii) all risks direct damage insurance covering all chattels and fixtures and all Leasehold Improvements, installations, additions and partitions made by the Tenant or by the Landlord at the Tenant's expense, in an amount equal to the full replacement value thereof;

(iii) when applicable, broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis in an amount not less than the full replacement cost of all boilers, pressure vessels, air conditioning equipment, electrical or mechanical apparatus owned or operated by the Tenant in, relating to or servicing the Premises;

(iv) business interruption insurance in such amounts as will reimburse the Tenant for direct or indirect loss of earnings attributable to all

perils insured against in  
subsections 10(u)(ii) and  
10(u)(iii); and

- (v) such other forms of insurance as may be reasonably required by the Landlord and any mortgagee from time to time;

All such insurance shall be with insurers and upon such terms and conditions as the Landlord reasonably approves, and certificates of insurance and renewal shall be delivered to the Landlord; all such policies shall include the Landlord and any mortgagees as named insureds as their interests may appear, shall contain, where applicable, a waiver of subrogation in favour of the Landlord and those for whom in law it is responsible, and the insurance described in subsection 10(u)(i) shall contain a cross-liability clause protecting the Landlord in respect of claims by the Tenant as if the Landlord were separately insured; all policies shall also contain a provision prohibiting the insurer from altering in a manner adverse to the Landlord and any mortgagee or cancelling the coverage without first giving the Landlord thirty (30) days' prior written notice thereof; if the Tenant fails to take out and maintain in force such insurance, the Landlord may do so and pay the premiums and the Tenant shall pay the Landlord the amount of such premiums forthwith upon demand. If both the Landlord and the Tenant have claims to be indemnified under any such insurance, the indemnity shall be applied first to the settlement of the Landlord's claim and the balance, if any, to the settlement of the Tenant's claim;

.c2.(v) Surrender on Termination

- (v) at the expiration or sooner termination of the Term, to deliver up possession of the Premises to the Landlord, together with all fixtures or improvements which the Tenant is required or permitted to leave therein or thereon, free of all rubbish and in a clean and tidy condition, and to deliver to the Landlord all keys and security devices;

.c2.(w) Fire and Safety

- (w) the Tenant acknowledges that it may be or become desirable or necessary for the Landlord to organize and co-ordinate arrangements within the Building for the safety of all tenants and occupants in the event of fire or similar event, and the Tenant, its employees, servants, agents and invitees shall co-operate and participate in any fire drills, evacuation drills and similar exercises as may be arranged or organized by the Landlord from time to time, and to hold the Landlord harmless from any personal or material loss, damage or injury arising therefrom; and,

.c2.(x) Energy Conservation

- (x) to co-operate with the Landlord in conserving energy of all types in the Building and the Project, including complying at the Tenant's own cost with all reasonable requests and demands of the Landlord made with the view to energy conservation; any reasonable capital expenditures made by the Landlord in an effort to promote energy conservation shall be added to Operating Costs in the Year such expenditures are incurred.

.c.SECTION 11 Quiet Enjoyment

11. The Landlord covenants with the Tenant for quiet enjoyment.

.c.SECTION 12 Landlord's Covenants

12. The Landlord further covenants with the Tenant as follows:

.c2.(a) Heating and Air-Conditioning

- (a) to provide heating of the Premises and to operate the air-conditioning and ventilating equipment (collectively, "HVAC Service") to an extent sufficient to maintain a reasonable temperature therein at all times during the hours from 7:00 a.m. to 7:00 p.m. Monday through Friday (but excluding Saturdays, Sundays, public or statutory holidays and Boxing Day) ("HVAC Hours") and, subject to payment by the

Tenant to the Landlord as Additional Rent of all costs and expenses attributable to or in respect thereof, outside HVAC Hours (subject as hereinafter provided), except in each case during the making of repairs; charges for HVAC Service outside HVAC Hours, as of the date of this Lease (and subject to increase in accordance with actual increases in cost), are at a rate of between \$10.00 and \$45.00 per hour per floor depending on the number of tenant floors utilizing such service, plus \$5.00 per hour per floor for fan; notwithstanding the foregoing, HVAC Service shall not be used or provided outside HVAC Hours in or to the computer and operations centre in the Premises; should the Landlord default in so doing, the Landlord shall not be liable for direct, indirect or consequential damages of any kind or damages for personal discomfort or illness by reason of the operation or non-operation of such equipment or otherwise;

.c2.(b) Taxes

- (b) to pay or cause to be paid any Taxes, the payment of which is not the responsibility of the Tenant under this Lease;

.c2.(c) Elevator

- (c) to furnish, except when repairs are being made, passenger elevator service during Normal Business Hours and limited elevator service at other times; operator less and automatic elevator service if made available shall be deemed elevator service; and to permit the Tenant and its employees, invitees and persons lawfully requiring communication with them to have free use of such elevator service in common with others;

.c2.(d) Access

- (d) to permit the Tenant and its employees and all persons lawfully requiring communication with them, in common with others entitled thereto, to have the use during Normal Business Hours and, subject to compliance with the Landlord's security system and procedures for the Building, outside Normal Business Hours, of the entrances, stairways, corridors, and halls in the Building leading to the Premises;

.c2.(e) Washrooms

- (e) to permit the Tenant and its employees, invitees and persons lawfully requiring communication with them in common with others entitled thereto to use the washrooms in the Building which may be designated for the Premises;

.c2.(f) Janitor Services

- (f) to provide janitorial and cleaning services to the Premises in accordance with normal office cleaning standards and intervals for a building of similar age and location; provided, however, that all draperies and carpeting in the Premises shall be cleaned and maintained by the Tenant at its expense. The Tenant acknowledges that the Landlord will be relieved of its obligations hereunder if:

- (i) access to any part of the Premises is denied to any person or persons employed or retained by the Landlord to perform such functions; or
- (ii) the Tenant does not leave the Premises in a reasonably tidy condition at the end of each day in order to assist the Landlord, its employees and agents in the performance of their work and duties.

The Landlord shall not be responsible for any act or omission on the part of any person or persons employed or retained to perform such work or for any loss thereby sustained by the Tenant, its employees, agents, or invitees;

and

.c2.(g) Insurance

(g) to take out and keep in full force and effect throughout the Term, in amounts such as would be carried by a prudent owner, the following:

(i) "all risks" insurance and where applicable, boiler and machinery insurance, on real and personal property of the Landlord or property for which it is legally responsible comprising and incidental to the Project but specifically excluding any property with respect to which the Tenant and other tenants are obligated to insure pursuant to their respective leases;

(ii) public liability and property damage insurance with respect to the Landlord's operations in the Project; and

(iii) such other forms of insurance as the Landlord or its mortgagee may reasonably consider advisable from time to time.

If the Tenant so requests, the Landlord agrees that all property damage insurance policies written on behalf of the Landlord and applicable to the Building shall contain a waiver of any subrogation rights which the Landlord's insurers may have against the Tenant and those for whom the Tenant is in law responsible provided that the Landlord's insurers grant such waiver. The Tenant covenants and agrees to pay to the Landlord any increase in the Landlord's insurance premiums resulting from the Landlord obtaining such waiver of subrogation rights in favour of the Tenant and such increase in cost shall be payable by the Tenant as Additional Rent on demand.

.c.SECTION 13 Leasehold Improvements and Fixtures

13. (a) The Tenant may remove its fixtures and chattels if and only if all rent and other charges due or to become due are fully paid. If the Tenant does not remove its fixtures and chattels prior to the expiry or earlier termination of the Term, such fixtures and chattels shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Premises and sold or disposed of by the Landlord in such manner as it deems advisable.

(b) All Leasehold Improvements shall be the Landlord's property upon the termination of this Lease without compensation therefor to the Tenant and shall not be removed from the Premises at any time either during or after the Term except as hereinafter provided.

Notwithstanding anything herein contained:

(i) the Landlord shall be under no obligation to replace, repair or maintain Leasehold Improvements; and

(ii) on or before the date of expiry of the Term or, in the case of an earlier termination of the Term, by no later than 45 days after the date the Landlord recovers possession of the Premises, the Tenant shall, at its sole cost, complete all Restoration Work, unless the Landlord shall otherwise require by written notice given by the Landlord to the Tenant no later than 30 days prior to the date of expiry of the Term or, in the case of an earlier termination of the Term, no later than 15 days after the date the Landlord recovers possession of the Premises, and if such notice

is given by the Landlord to the Tenant, the Tenant shall comply with the Landlord's requirements set forth therein for completion of Restoration Work within the applicable time period set forth herein.

- (c) The Tenant shall provide to the Landlord upon request copies of all drawings, plans and specifications and other relevant information in the Tenant's possession or control concerning the Leasehold Improvements in the Premises. The Tenant shall at its own expense repair any damage caused to the Building by the installation, use or removal of the Leasehold Improvements or trade fixtures and all Restoration Work, and all such work shall be done by contractors or workmen approved by the Landlord, acting reasonably, shall be subject to inspection by and supervision of the Landlord and shall be performed in accordance with all laws and any rules or regulations imposed by the Landlord, acting reasonably, and in a good and workmanlike manner.
- (d) The Tenant shall pay compensation to the Landlord for each day after the date of expiry or earlier termination of the Term until the completion of the work to be completed by the Tenant pursuant to this Section 13 at a rate equal to 150% of the per diem aggregate of Basic Rent and Additional Rent payable during the last month preceding the expiry or earlier termination of the Term, which sum is agreed by the parties to be a reasonable estimate of the damages suffered by the Landlord for loss of use of the Premises.
- (e) If the Tenant fails to complete any work referred to in this Section 13 within the period specified, the Landlord shall have the right (but shall not be obligated) to perform or cause to be performed such work in accordance with Section 24.
- (f) For greater certainty, the Tenant's covenants and obligations under this Section 13 shall survive and remain in full force and effect and binding on the Tenant notwithstanding the expiry or earlier termination of the Term.

.c. SECTION 14      Damage or Destruction

- 14. (a) If the Premises or any portion thereof are damaged or destroyed by fire or by another casualty against which the Landlord is or is required hereunder to be insured, rent shall abate in proportion to the area of that portion of the Premises which, in the reasonable opinion of the Landlord, is thereby rendered unfit for the purposes of the Tenant until the earlier of the:
  - (i) date on which no insurance proceeds are available to the Landlord under its loss of rental income insurance coverage in respect of the Premises; and
  - (ii) the Premises are repaired and rebuilt (as hereinafer defined),

and, subject as hereinafter provided in this Section 14, the Landlord agrees that it will with reasonable diligence repair and rebuild the Premises. The Landlord's obligation to rebuild and restore the Premises shall not include the obligation to rebuild, restore, replace or repair any chattel, fixture, Leasehold Improvement, installation, addition or partition in respect of which the Tenant is to maintain insurance under Section 10(u), or any other thing that is the property of the Tenant (in this clause collectively called "Tenant's Improvements"); the Premises shall be deemed repaired and rebuilt and fit for the Tenant's purposes when the Landlord's Architect certifies that they have been substantially restored and rebuilt to the point where the Tenant could occupy them for the purpose of rebuilding, restoring, replacing or

repairing the Tenant's Improvements; the issuance of the certificate shall not relieve the Landlord of its obligation to complete the rebuilding and restoration as aforesaid (and subject as hereinafter provided in this Section 14), but the Tenant shall forthwith after issuance of the certificate proceed to rebuild, restore, replace and repair the Tenant's Improvements, and the provisions of Section 10(m) shall apply to such work, mutatis mutandis.

(b) Notwithstanding Section 14(a):

- (i) if the Premises or any portion thereof are damaged or destroyed by any cause whatsoever and cannot in the reasonable opinion of the Landlord's Architect be rebuilt or made fit for the purposes of the Tenant as aforesaid within ninety (90) days of the damage or destruction; or
- (ii) if the cost (as estimated by the Landlord) of such rebuilding or making fit the Premises exceeds the proceeds of insurance actually made or to be made available to the Landlord for such purpose,

the Landlord instead of rebuilding or making the Premises fit for the Tenant may, at its option, terminate this Lease by giving to the Tenant within thirty (30) days after such damage or destruction notice of termination and thereupon rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date of such damage and the Tenant shall immediately deliver up possession of the Premises to the Landlord.

(c) Irrespective of whether the Premises or any portion thereof are damaged or destroyed as aforesaid, in the event that twenty-five per cent (25%) or more, as determined by the Landlord, of the Project, the Building, or any other single building included within the Project is damaged or destroyed by any cause whatsoever, and if:

- (i) in the reasonable opinion of the Landlord's Architect, such area cannot be rebuilt or made fit for the purposes of the tenants thereof within one hundred and eighty (180) days of such damage or destruction; or
- (ii) the cost (as estimated by the Landlord) of rebuilding or making fit such area exceeds the proceeds of insurance actually made or to be made available to the Landlord for such purpose,

the Landlord may at its option terminate this Lease by giving to the Tenant within thirty (30) days after such damage notice of termination requiring vacant possession of the Premises sixty (60) days after delivery of the notice of termination and thereupon rent and any other payments for which the Tenant is liable under this Lease shall be apportioned and paid to the date on which vacant possession is given and the Tenant shall deliver up possession of the Premises to the Landlord in accordance with such notice of termination.

(d) Notwithstanding Section 14(a), if this Lease is not terminated in accordance with Section 14(b) or 14(c), in repairing or rebuilding in the event of damage or destruction, the Landlord shall not be obligated to expend more than the amount of insurance proceeds actually made available to the Landlord for the purpose of such repair or rebuilding, and in effecting such repairs and rebuilding, the Landlord shall be entitled to vary or alter the design and materials from those originally used.

#### .c. SECTION 15 Injuries, Loss and Damage

15. Except, in respect only of loss, damage or injury (including death) not covered by insurance maintained or required pursuant to Section 10(u) to be maintained by the Tenant, to extent that any such loss, damage or injury (including death) is caused, or to the extent contributed to, by the negligent or wilful acts or omissions of the



Landlord or those for whom it is in law responsible, and then only to the extent that the Landlord is or is required hereunder to be insured in respect of such loss, damage or injury (including death), the Landlord shall not be responsible in any way for any injury to any person (including death) or for any loss of or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective invitees, licensees, agents, servants or other persons from time to time attending at the Premises while such person or property is in or about the Lands, the Premises, the Building, the Project, or any areaways, parking areas, lawns, sidewalks, steps, truckways, platforms, corridors, stairways, elevators, or escalators in connection therewith, including without limiting the foregoing, any loss of or damage to any property caused by theft or breakage, or by steam, water, rain or snow or for any loss or damage caused by or attributable to the condition or arrangements of any electric or other wiring or for any damage caused by smoke or anything done or omitted to be done by any other tenant of premises in the Building or the Project or for any other loss whatsoever with respect to the Premises, goods placed therein or any business carried on therein.

.c.SECTION 16 Impossibility, Unavoidable Delays

16. Whenever and to the extent the Landlord is unable to fulfil or shall be delayed or restricted in the fulfilment of any obligation hereunder by reason of being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfil such obligation or by reason of any statute, law, regulation, by-law or order or by reason of any other cause beyond its reasonable control, whether of the same nature as the foregoing or not, the Landlord shall be relieved from the fulfilment of such obligation and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned. There shall be no deduction from the rent or other monies payable hereunder by reason of any such failure or cause.

.c.SECTION 17 Re-Entry

17. PROVISO for re-entry by the said Landlord on non-payment of rent or non-performance of covenants.

.c.SECTION 18 Bankruptcy, etc.

18. Provided further that in case without the written consent of the Landlord, the Premises shall be used by any other person than the Tenant or for any other purpose than that for which the same were let or in case the Premises shall be vacated or remain unoccupied for fifteen (15) days, or in case the Term or any of the goods and chattels of the Tenant located in the Premises shall be at any time seized in execution or attachment by any creditor of the Tenant or the Tenant shall make any assignment for the benefit of creditors or any bulk sale or become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors, or, if the Tenant is a corporation and any order shall be made for the winding-up of the Tenant, or other termination of the corporate existence of the Tenant, then in any such case this Lease shall, at the option of the Landlord, cease and determine and the Term shall immediately become forfeited and void and the then current month's rent and the next(ensuing three (3) months' rent (including in both cases all other amounts payable as Additional Rent) shall immediately become due and be paid and the Landlord without prejudice to any claim for damages for any antecedent breach of covenant, may re-enter and take possession of the Premises as though the Tenant or other occupant or occupants of the Premises was or were holding over after the expiration of the Term without any right whatever.

.c.SECTION 19 Distress

19. The Tenant waives and renounces the benefit of any present or future statute taking away or limiting the Landlord's right of distress, and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for rent in arrears.

.c.SECTION 20 Entry As Agent

20. The Tenant further covenants and agrees that on the Landlord becoming entitled to re-enter upon the Premises under any of the provisions of this Lease, the Landlord, in addition to all other rights, shall have the right to enter the Premises as the agent of the Tenant, either by force or otherwise, and to re-let the Premises as the agent of the Tenant and to receive the rent therefor and as the agent of the Tenant to take possession of any furniture or other property on the Premises and to sell the same at public or private sale without notice and to apply the proceeds of such sale and any rent derived from

re-letting the Premises upon account of the rent under this Lease and the Tenant shall be liable to the Landlord for the deficiency, if any, for the remainder of the Term as if such re-entry had not been made less the actual amount received by the Landlord after such re-entry in respect of any re-letting applicable to the remainder of the Term. The Tenant shall also reimburse the Landlord for all reasonable legal and other costs incurred as a result of such re-entry and re-letting.

.c.SECTION 21 Right of Termination

21. The Tenant further covenants and agrees that on the Landlord becoming entitled to re-enter upon the Premises under any of the provisions of this Lease, the Landlord, in addition to all other rights, shall have the right to determine forthwith this Lease and Term by leaving upon the Premises notice in writing of its intention so to do and thereupon rent and any other payments for which the Tenant is liable under the Lease shall be computed, apportioned and paid in full to the date of such determination of this Lease and the Tenant shall immediately deliver up possession of the Premises to the Landlord, and the Landlord may re-enter and take possession of the same.

.c.SECTION 22 Non-Waiver

22. No condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the Landlord herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord save only by express waiver in writing. All rights and remedies of the Landlord in this Lease contained shall be cumulative and not alternative.

.c.SECTION 23 Overholding

23. If the Tenant shall continue to occupy all or part of the Premises after the expiration of this Lease with the consent of the Landlord, and without any further written agreement, the Tenant shall be a monthly tenant at a basic monthly rental equal to one hundred and fifty percent (150%) of the annual rental payable during the last year of this Lease and otherwise on the terms and conditions herein set out except as to length of tenancy.

.c.SECTION 24 Landlord Performing Tenant's Covenants

24. If the Tenant fails to perform or cause to be performed any of the covenants or obligations of the Tenant herein, the Landlord shall have the right (but shall not be obligated) to perform or cause to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including, without limiting the foregoing, the right to make repairs, installations and erections and expend monies) and all payments, expenses, charges, fees and disbursements incurred or paid by or on behalf of the Landlord in respect thereof shall be paid by the Tenant to the Landlord forthwith upon demand.

.c.SECTION 25 Payments to Landlord

25. (a) All payments to be made by the Tenant under this Lease shall be made at such place or places as the Landlord may designate in writing, and to the Landlord or to such agent of the Landlord as the Landlord shall from time to time direct.

(b) The Tenant shall pay the Landlord interest on all overdue rentals including Basic Rent and Additional Rent or other amounts, all such interest to be calculated and compounded monthly from the date upon which the amount is first due or demanded until actual payment thereof and at a rate per annum equal to Bank of Montreal's prime commercial lending rate of interest in effect in Canada from time to time plus five percent (5%).

(c) Notwithstanding anything to the contrary contained in this Lease, in order to cover the extra expense involved in handling delinquent payments, the Tenant, at the Landlord's sole option, and in addition to interest as aforesaid, shall pay a "late charge" of \$25.00 when any instalment of Basic Rent or Additional Rent is received at the place for payment designated by the Landlord more than five (5) days after the due date thereof. It is hereby understood that such late charge is charged as

Additional Rent, and not as a penalty or interest, for the purpose of defraying the Landlord's expenses incidental to the processing of such overdue payments.

- (d) Upon request by the Landlord, the Tenant shall forthwith forward to the Landlord (or as it may direct) twelve (12) post-dated cheques in the amounts equal to the sum of the monthly Basic Rent and the estimated monthly instalment of the Tenant's Proportionate Share of Taxes, the Tenant's Proportionate Share of Operating Costs and utility charges determined pursuant to Sections 6, 7 and 10(b) hereof for each of the twelve (12) months next following. In the alternative, the Tenant may elect to provide to the Landlord a pre-authorized debit form to permit automatic debiting of the Tenant's account with its banker for monthly Basic Rent and Additional Rent charges as aforesaid. The Tenant agrees to provide replacement authorizations from time to time as the monthly amounts of either monthly Basic Rent or Additional Rent change during the Term forthwith upon notice of such change being given to the Tenant by the Landlord. The Tenant agrees to make all other Additional Rent payments to the Landlord by cheque at the times contemplated by the terms of this Lease. If and for so long as the Tenant is Applied Communications Canada, Inc. or an affiliate thereof to which this Lease has been assigned in compliance with Section 10(e) or a corporation resulting from an amalgamation as referred to in subsection 10(e)(ii), the provisions of this Section 25(d) shall not apply.

.c.SECTION 26 Legal Costs

26. The Tenant shall pay to the Landlord, forthwith upon demand, all reasonable legal fees, on a solicitor and his own client basis, incurred by the Landlord for the enforcement of any rights of the Landlord under this Lease, or in the enforcement of any of the provisions of this Lease, or in the obtaining of possession of the Premises, or for the collection of any monies from the Tenant, or for any advice with respect to any other matters related to this Lease. The Landlord shall pay to the Tenant all reasonable legal fees, on a solicitor and his own client basis, incurred by the Tenant as a result of the default of the Landlord under the terms of this Lease.

.c.SECTION 27 Registration

27. The Tenant covenants and agrees with the Landlord that the Tenant will not register this Lease in this form in the Registry Office or the Land Titles Office.

.c.SECTION 28 Mortgages

28. At the option of the Landlord, this Lease shall be subject and subordinate to any and all mortgages, charges and deed of trust, which may now or at any time hereafter affect the Premises in whole or in part, or the Lands, the Building or the Project in whole or in part, whether or not any such mortgage, charge or deed of trust affects only the Premises or the Lands, the Building or the Project or affects other premises as well. On request at any time and from time to time of the Landlord or of the mortgagee, chargee or trustee under any such mortgage, charge or deed of trust, the Tenant shall promptly, at no cost to the Landlord or mortgagee, chargee or trustee:

- (a) attorn to such mortgagee, chargee or trustee and become its tenant of the Premises or the Tenant of the Premises of any purchaser from such mortgagee, chargee or trustee in the event of an exercise of any permitted power of sale contained in any such mortgage, charge or deed of trust for the then unexpired residue of the Term on the terms herein contained, and/or

- (b) postpone and subordinate this Lease to such mortgage, charge or deed of trust to the intent that this Lease and all right, title and interest of the Tenant in the Premises shall be subject to the rights of such mortgagee, chargee or trustee as fully as if such mortgage charge or deed of trust had been executed and registered and the money thereby secured had been advanced before the execution of this Lease (and notwithstanding any authority

or consent of such mortgagee, chargee or trustee, express or implied, to the making of this Lease).

Any such attornment or postponement and subordination shall extend to all renewals, modifications, consolidations, replacements and extensions of any such mortgage, charge or deed of trust and every instrument supplemental or ancillary thereto or in implementation thereof. The Tenant shall forthwith execute any instruments of attornment or postponement and subordination which may be so requested to give effect to this Section.

Upon written request by, and at the sole cost and expense of, the Tenant, the Landlord agrees to use reasonable efforts to obtain from any present or future mortgagee, chargee or trustee holding a mortgage, charge or deed of trust on the Premises, the Lands, the Building or the Project to which this Lease is postponed or subordinate, a non-disturbance agreement in favour of the Tenant in a form acceptable to such mortgagee, chargee or trustee.

.c.SECTION 29 Assignment by Landlord

29. If the Landlord sells or leases the Lands, the Project or the Building or any part thereof, or assigns this Lease, and to the extent that the purchaser, lessee or assignee is responsible for compliance with the covenants and obligations of the Landlord hereunder, the Landlord without further written agreement will be discharged and relieved of liability under the said covenants and obligations.

.c.SECTION 30 Relocation

30. The Landlord shall have the right, at any time and from time to time before and during the Term and any renewal of this Lease, to change the location of the Premises from the location described in this Lease to another location anywhere else in the Building, provided that:

(a) the relocated Premises are in all material respects comparable to the original Premises;

(b) notwithstanding such relocation, the Premises shall remain contiguous and on adjacent floors;

(c) the Landlord shall give the Tenant reasonable notice of such relocation; and

(d) the Landlord shall at its expense improve the relocated Premises to a similar quality and character as that of the original Premises and shall reimburse the Tenant for all reasonable direct or indirect costs incurred by the Tenant by reason of the relocation.

All terms and conditions of this Lease shall apply to the relocated Premises for the remainder of the Term.

.c.SECTION 31 Effect of Lease

31. This indenture and everything herein contained shall extend to and bind and may be taken advantage of by the respective heirs, executors, administrators, successors and assigns, as the case may be, of each and every of the parties hereto, subject to the granting of consent by the Landlord as provided herein to any assignment or sub-lease, and where there is more than one Tenant or there is a female party or a corporation, the provisions hereof shall be read with all grammatical changes thereby rendered necessary and all covenants shall be deemed joint and several.

.c.SECTION 32 Interpretation of Lease

32. All of the provisions contained in this Lease are to be construed as covenants and agreements and if any provision is illegal or unenforceable, it shall be considered separate and severable from the remaining provisions, which shall remain in force and be binding upon the Landlord and the Tenant.

This Lease contains all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Premises. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or the Tenant unless reduced to writing and signed by both of them.

.c.SECTION 33 Time of Essence

33. Time shall be of the essence of this Lease.

.c.SECTION 34 Law

34. This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario.

.c.SECTION 35 Notice

35. Any notice required or contemplated by any provision of this Lease shall be given in writing enclosed in a sealed envelope addressed, in the case of notice to the Landlord, to the address of the Landlord set forth in Section 1(a)(ii), and in the case of notice to the Tenant, to the address of the Tenant set forth in Section 1(b)(ii), and mailed in the Province of Ontario, registered and postage prepaid provided that there is no actual or contemplated disruption of mail services at the time of such mailing. The time of giving of such notice shall be conclusively deemed to be the second business day after the day of such mailing provided that there is no disruption of mail services at the time of such mailing. Such notice shall also be sufficiently given if and when the same shall be delivered, in the case of notice to the Landlord, to an executive officer of the Landlord, and in the case of notice to the Tenant, to him personally or to an officer or employee of the Tenant, if the Tenant is a corporation or by leaving such notice addressed to the Tenant on the Premises. Such notice, if delivered, shall be conclusively deemed to have been given and received at the time of such delivery. If in this Lease two or more persons are named as Tenant, such notice shall also be sufficiently given if and when the same shall be delivered personally to any one of such persons. Provided that the Landlord may, by notice to the Tenant, from time to time designate another address in Canada to which notices mailed to the Landlord more than ten (10) days thereafter shall be addressed.

.c.SECTION 36 Expansion, Alteration

36. The Landlord shall have the right, upon reasonable prior notice to the Tenant (which notice, notwithstanding Section 35, need not be in writing and may be given orally to management at the Premises, and except in the case of emergency, when no notice shall be required), to enter into the Premises and to bring its workmen and materials thereon to make additions, alterations, improvements, installations and repairs to the Lands, the Building, the Project and the common areas and services thereof as such may exist from time to time. The Landlord may cause such reasonable obstructions and interference with the use and enjoyment of the Lands, the Building and the Project, and the Premises as may be necessary for the purposes aforesaid and may interrupt or suspend the supply of electricity, water or other utilities or services when necessary and until the additions, alterations, improvements, installations or repairs have been completed, and there shall be no abatement in rent nor shall the Landlord be liable by reason thereof, provided all such work is done as expeditiously as reasonably possible. The Landlord shall have the right to use, install, maintain and repair pipes, wires, ducts, shafts or other installations in, under or through the Premises for or in connection with the supply of any services to the Premises or any other premises in the Building or the Project. Without limiting the foregoing the Landlord shall be permitted to allow Unitel Communications Company, its successors and assigns ("Unitel") to leave in the Premises upon vacating the same, and to use during the Term, Unitel's interfloor cabling system, and each of the Landlord and Unitel shall have the rights set forth in this Section 36, upon and subject to the terms and conditions herein contained, with respect to the use, operation, maintenance, repair and replacement of such interfloor cabling system.

Without limiting the foregoing, the Landlord hereby reserves the right at any time and from time to time to make changes or revisions in its plans for the Lands, the Building, or the Project, including additions to, subtractions from, or rearrangements of the building areas, walkways, parking areas or driveways, tunnels, roadways and covered parking garages, and particularly the right to construct other buildings and improvements on the Lands and within the Project. The Landlord shall have the right to enter into the Premises for such purposes, even during Normal Business Hours, without abatement of rent or any compensation to the Tenant. The Landlord shall have the right to specify the date on which any such changes to the Lands, the Building, or the Project become part of the Lands, the Building or the Project, as the case may be for all purposes.

The Landlord covenants and agrees to use all reasonable efforts to minimize disruption of the Tenant's use and occupancy of the Premises in exercising its rights pursuant to this Section 36.



.c.SECTION 37 Captions

37. The captions appearing in the margin of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope of meaning of this Lease or any of the provisions hereof.

IN WITNESS WHEREOF the parties hereto have executed this Lease.

SIGNED, SEALED AND DELIVERED )  
 MARATHON REALTY COMPANY LIMITED )  
 in the presence of: )  
 )  
 )  
 )  
 ) By: L/S  
 Witness ) Name:  
 ) Title:

SIGNED, SEALED AND DELIVERED ) APPLIED  
 COMMUNICATIONS CANADA, INC. )  
 in the presence of: )  
 )  
 )  
 )  
 ) By:  
 Witness ) Name:  
 ) Title:  
 )  
 ) And:C/S  
 Witness ) Name:  
 ) Title:

I  
am/We are authorized to bind the Corporation

SCHEDULE "A"

FLOOR PLAN OF PREMISES

.c.Schedule "A"	Floor Plan of Premises:
.c.Schedule "B"	Site Plan of Project:
.c.Schedule "C"	Legal Description of Lands:
.c.Schedule "D"	Rules and Regulations:
.c.Schedule "E"	Special Provisions:



SCHEDULE "B"

SITE PLAN

SCHEDULE "C"

LEGAL DESCRIPTION OF LANDS

PART A: WELLINGTON STREET LANDS

Firstly: Part of Lots 9 and 10, North side of Simcoe Place, Town of York, and part of Blocks A and B, Plan 378, designated as Parts 7, 10, 15 and 16 on Reference Plan 63R-4544, City of Toronto, Municipality of Metropolitan Toronto.

Secondly: Part of Lots 8, 9, 10, 20, 22, 23 and 24, south side of Russell Square and part of Lots 6, 7, 8, 9, 10, 21, 22 and 23, north side of Simcoe Place, Town of York Plan; part of Lots 8 and 9, Plan 151; part of Blocks A, B and C, Plan 378; part of Blocks D and E and one foot reserve, Plan 525E, City of Toronto, Municipality of Metropolitan Toronto, all designated as Parts 2, 4, 6, 9, 11, 12, 14 and 17 on Reference Plan 63R-4544; save and except those premises in the City of Toronto, in the Municipality of Metropolitan Toronto consisting of Parts 2, 4, 6, 9, 11, 12, 14 and 17 on Reference Plan 63R-4544 to a depth of five feet above the upper limit of the Garage Protection System (which upper limit shall be no higher than the Canadian Geodetic Datum elevation of 84 metres, and more particularly described in a lease registered on October 31, 1989 as Instrument No. CA57678).

Thirdly: Part of Lot 10, north side of Simcoe Place, Town of York Plan, designated as Part 2 on Reference Plan 63R-4597, City of Toronto, Municipality of Metropolitan Toronto; and part of Lots 14 and 15, Registered Plan 151, Part of Blocks C, D, E, F, G and Part of One Foot Reserve, Registered Plan 378, Part of Block E, Registered Plan 525E, Part of Lot 10 north side of Simcoe Place, Town of York Plan, Part of Lots 20 and 21 south side of Russell Square, Town of York Plan, all designated as Part 1 on Reference Plan 63R-4597.

PART B: KING STREET LANDS

Part of Lots 20, 21 and 22, South side of Russell Square, Town of York, and Part of Lot 9, Plan 151, all designated as Part 3 on Reference Plan 63R-4544, City of Toronto, Municipality of Metropolitan Toronto.

SCHEDULE "D"

RULES AND REGULATIONS FORMING

PART OF THE WITHIN LEASE

1. The sidewalk, entry passages, elevators, patios, fire escapes and common stairways of the Building and the Project shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress to and from their respective premises. Tenants will not place or allow to be placed in the building corridors or public stairways any waste paper, dust, garbage, refuse or anything whatever that would tend to make them unclean or untidy.

2. The skylights and windows that reflect or admit light into passageways and common areas of the Building shall not be covered or obstructed by any of the tenants, and no awnings shall be put up, without the prior written consent of the Landlord.

3. The water-closets and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting by misuse shall be borne by the tenant by whom or by whose agents, servants or employees the same is caused. Tenants shall not let the water run unless in actual use, nor shall they deface any part of the Building or the Project.

4. No tenant shall do or permit anything to be done in the Premises or bring or keep anything therein which will in any way increase the risk of fire, or obstruct or interfere with the rights of other tenants, or violate or act at variance with the laws relating to fires or with the regulations of the Fire Department or the Board of Health.

5. Tenants, their clerks or servants, shall not make or commit any improper noises on the Building or the Project, lounge about doors or corridors or interfere in any way with other tenants or those having business with them.

6. Nothing shall be thrown by the tenants, their clerks or servants, out of windows or doors, or down the passages, elevator shafts or skylights of the Building or the Project.

7. No birds or animals shall be kept in or about the Premises nor shall the tenants operate or permit to be operated any musical or sound producing instrument or device inside or outside the Premises which may be heard outside the Premises.

8. No one shall use the Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for business purposes.

9. The Landlord shall have the right:

- (a) to require all persons entering or leaving the Building or the Project during such hours as the Landlord may reasonably determine, to identify themselves to a watchman by registration or otherwise to establish their right to enter or leave;
- (b) to exclude or expel any pedlar or beggar at any time from the Premises, the Building or the Project; and
- (c) to institute, at the Landlord's option, a system whereby access to the Building or the Project, during such hours as the Landlord may reasonably determine, is only available by means of an identity card which may contain a photograph of the bearer, and if the Landlord institutes such system the Landlord shall make such cards available and the Tenant shall pay the Landlord the reasonable cost of such cards and photographs.

10. All tenants must observe strict care not to allow their suite doors or windows to remain open so as to admit rain or snow, or so as to interfere with the heating or air-conditioning of the Building or the Project. Any injury or damage caused to the Building or the Project or its appointments, furnishings, heating and other

appliances, or to any other tenant or to the premises occupied by any other tenant, by reason of windows being left open so as to admit rain or snow, by interference with or neglect of the heating appliances or by reason of any other misconduct or neglect upon the part of a tenant or any other person or servant subject to it, shall be made good by the tenant in whose premises the neglect, interference or misconduct occurred.

11. The Tenant shall assist and co-operate with the Landlord in preventing injury to the premises demised to them respectively.

12. No inflammable oils or other inflammable, radioactive, dangerous or explosive materials shall be kept or permitted to be kept in the Premises. Nothing shall be placed on the outside of window sills or projections.

13. Furniture, effects and supplies shall not be taken into or removed from the Building or the Premises, except at such time and in such manner as may be previously approved by the Landlord, which approval shall include permission to use entrances, doorways and freight elevators at certain times nor such purposes, and upon such terms (including payment of any usual charges for the use of freight elevators) as the Landlord shall impose.

14. No bicycles or other vehicles shall be brought within the Building or the Project except in the parking garage, and then only in compliance with the rules and regulations as established and in force from time to time for the use of said parking garage.

15. Business machines, filing cabinets, heavy merchandise, or other articles liable to overload, injure or destroy any part of the Building or the Project shall not be taken into it without the prior written consent of the Landlord and the Landlord shall in all cases retain the right to prescribe the weight and proper position of all such articles and the times and routes for moving them into or out of the Building and the Project; the cost of repairing any damage done to the Building or the Project by such moving or by keeping any such articles on the Premises shall be paid by the Tenant.

16. The Tenant shall not change any locks nor place any additional lock upon any door of the Premises without the prior written consent of the Landlord. The Tenant shall be responsible for all locks and all keys to such locks and shall return all keys to the Landlord upon termination of the Lease.

17. The Tenant shall give the Landlord prompt notice of any accident to or any defect in the plumbing, heating, air-conditioning, mechanical or electrical apparatus or any other part of the Building or the Project.

18. The Tenant shall not install or permit the installation or use of any machine dispensing goods for sale in the Premises or the Building or permit the delivery of any food or beverage to the Premises without the prior written approval of the Landlord, except in either case as reasonably required for an employee cafeteria in the Premises, and shall not contravene any regulations fixed or to be fixed by the Landlord. Only persons authorized by the Landlord, acting reasonably, shall be permitted to deliver or to use the elevators in the Building for the purpose of delivering food or beverage to the Premises.

19. The parking of vehicles in the parking areas designated by the Landlord shall be subject to the usual charges and reasonable regulations of the Landlord. The Landlord shall not be responsible for loss of or damage to said vehicles or anything contained therein.

20. The Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors or other parts of the Premises, the Building or the Project except with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, and as it may direct. The Tenant shall be permitted to hang wall coverings, artwork and decorations on the interior walls of the Premises without the Landlord's consent.

21. The lining of all window drapes facing the interior surface of all windows shall be subject to the prior written approval of the Landlord as to colour and material and the Tenant shall not hang and will remove all draperies which in the Landlord's opinion do not conform to any uniform scheme of window coverings established for the Building. The Landlord may regulate, and the Tenant agrees to comply with the Landlord's instructions and regulations from time to time with respect to whether or not and at what times the windows, drapes and blinds shall be open or closed.

22. The Tenant shall at the end of each business day leave the Premises in a reasonably tidy

condition for the purpose of allowing the performance of the Landlord's cleaning services.

23. The Landlord shall have the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care, cleanliness and appearance of the Premises, the Building and the Project, and for the preservation of good order therein, and the same shall be kept and observed by the tenants, their clerks and servants.

24. No public or private auction or other similar type of sale of any goods, wares or merchandise shall be conducted in or from the Premises.

25. No telephonic, telegraphic, electronic, wire service or other connections or electric wiring shall be made in places other than those designated by the Landlord or without the authority of the Landlord, which will direct the electricians or other workmen as to where and how any wires or equipment are to be introduced and without any such directions, no boring or cutting or otherwise will be permitted.

26. Any alterations, additions or changes made in the partitions or divisions of the rooms during the currency of this Lease shall, if made at the request of the Tenant, be done at the expense of the Tenant, and shall be subject to the approval and direction of the Landlord.

27. The Tenant agrees to abide by the foregoing RULES AND REGULATIONS, which are hereby made a part of this Lease, including any Rules and Regulations bona fide made under section 23 of these Rules and Regulations, provided that no rule or regulation shall be promulgated or enforced in a manner that discriminates against the Tenant's lawful and proper use and occupation of the Premises in accordance with this Lease.

SCHEDULE "E"

SPECIAL PROVISIONS

1. Sixth Floor Premises

The Landlord and the Tenant acknowledge that there are portions of the existing corridor serving the Tenant's Premises on the 6th floor which are unuseable in the Tenant's business. For purposes of calculation of Basic Rent, Operating Costs, Taxes and utility charges, the Rentable Area of the Premises will be deemed to be 400 square feet less than the final certified Rentable Area. Should the Tenant expand its Premises on the 6th floor, the reduction of 400 square feet shall be adjusted downward by the proportion of the unuseable corridor space which would become part of the expansion space.

2. Tenant's Work and Tenant Inducement

The Premises shall be accepted by the Tenant on an "as is" basis except as otherwise expressly provided in this paragraph and the Landlord shall not be required to do any work in respect thereof prior to delivering possession of the Premises to the Tenant, save and except the following work with respect to the sixth (6th) floor Premises only to be completed by the Landlord at no cost to the Tenant:

- I. Construct full height (slab to slab) demising wall, insulated with 6 mil. vapour barrier and one layer fire rated 5/8" drywall on each side, finished ready for painting by the Tenant;
- II. Install building standard entrance and exit doors;
- III. Construct all common corridors as required, finished with ceiling, lighting and carpeting; and
- IV. Finish all walls in common hallway and elevator lobby in compatible vinyl or paint.

Any additional installations, removals, alterations, additions, partitions, repairs or improvements which are necessary to enable the Tenant to carry on its business on the Premises (the "Tenant's Work") shall be made, erected or installed (including design, co-ordination and construction thereof) at the sole cost of the Tenant, subject as hereinafter provided, and subject to and in accordance with the provisions of Section 10(m) of this Lease. The Tenant shall be permitted non-exclusive access to the seventh (7th) floor Premises on January 1, 1997 and to the sixth (6th) floor Premises on November 10, 1996 (subject as hereinafter provided in the paragraph next following) for the purpose of permitting the Tenant to carry out the Tenant's Work, provided that this Lease has been executed and delivered by the Landlord and the Tenant. As of, from and including the date on which the Tenant is granted such access, all of the terms and conditions of this Lease shall apply to and bind the Tenant, but Basic Rent, the Tenant's Proportionate Share of Taxes, the Tenant's Proportionate Share of Operating Costs, and utility charges pursuant to Section 10(b) shall not be payable by the Tenant for and during the period prior to the Commencement Date.

The provision to the Tenant of non-exclusive access to the sixth (6th) floor Premises on November 10, 1996 is subject to the Landlord securing the agreement of the existing tenant thereof to vacate such sixth (6th) floor Premises prior to such date, failing which the Tenant shall be permitted non-exclusive access to the sixth (6th) floor Premises on the same basis as for the seventh (7th) floor Premises.

As an inducement to the Tenant to enter into this Lease, the Landlord shall pay to the Tenant, or to the extent, if any, by which the amount of such inducement exceeds the actual cost of the Tenant's Work credit against Basic Rent and Additional Rent as it becomes due hereunder, an amount equal to the product obtained by multiplying the sum of \$16.00 by the certified Rentable Area of the Premises expressed in square feet, plus applicable goods and services tax on such amount exigible pursuant to Part IX of the Excise Tax Act (Canada).

Ninety percent (90%) of the amount of such inducement shall be due and payable by the Landlord upon,

but not until, the occurrence or completion of all of the following:

- (a) the Tenant's execution and delivery of this Lease and any acknowledgments required;
- (b) commencement of the Term;
- (c) completion of all Tenant's Work in compliance with Section 10(m) of this Lease;
- (d) commencement by the Tenant of the conduct of its business in all of the Premises; and
- (e) the delivery to the Landlord of proof of payment of Workers' Compensation assessments for all Tenant's contractors and sub-contractors.

The Landlord shall be entitled to hold back ten percent (10%) of the inducement amount until the occurrence or completion of all of the following:

- (f) delivery to the Landlord of the following:
  - (i) a statutory declaration of an officer of the contractor that has performed the Tenant's Work that the contract under which such work was performed has been completed or abandoned, as those terms are defined under the Construction Lien Act, 1983 (the "Act");  
  
and one of
  - (ii) declarations of last supply in the form prescribed in the Act given by officers of all of the sub-contractors employed by the contractor in its performance of the Tenant's Work;  
  
or
  - (iii) a certificate of completion in the form prescribed in the Act in respect of the subcontract of each sub-contractor employed by the contractor that has performed the Tenant's Work, together with evidence of delivery of a copy of such certificate to the sub-contractor in respect of whose sub-contract it was given;
- (g) the expiry of the periods pursuant to the Act within which workmen, materialmen, contractors or suppliers in connection with completion of the Tenant's Work may file a claim for lien for unpaid work or service performed or material supplied, provided no claim for lien for unpaid work or service performed or material supplied has been filed, and if such liens have been filed, then only upon such liens being released and vacated; and
- (h) receipted and paid invoices, verifying the actual cost of the Tenant's Work.

Further, neither the initial ninety percent (90%) nor the final ten percent (10%) of the inducement shall be due and payable if, at the time it is otherwise payable, the Tenant is in default under this Lease, or the Landlord has re-entered or become entitled to do so, or the Landlord has distrained, or the Tenant has become bankrupt, or any right, title or interest in such payment has been assigned, voluntarily or otherwise, to anyone other than the Tenant. The Landlord may deduct from the amount of any portion of the inducement any arrears of Basic Rent and Additional Rent outstanding as of the date on which such portion of the inducement is payable or to be credited by the Landlord.

At the time the inducement is paid or credited to the Tenant in full or at any time thereafter, upon request by the Landlord, the Tenant shall execute and deliver to the Landlord a written acknowledgment in a form satisfactory to the Landlord and the Tenant, each acting reasonably, that the inducement has been so paid and credited and that all of the Landlord's obligations under this clause 2 have been fully performed and thereafter this Lease shall be deemed to have been amended by deleting this clause 2 therefrom.

If the Landlord fails to pay either the initial ninety percent (90%) or the remaining ten percent (10%) of the inducement to the Tenant within five (5) days after receipt by the Landlord from the Tenant of notice of default in payment of such portion of the inducement on the date on which it is due and payable in accordance with the foregoing provisions, the Tenant shall have the right to set off against Basic Rent and Additional Rent next becoming due hereunder the amount of the inducement payable but not paid by the Landlord.

3. Deposit

The Landlord acknowledges receipt by the Landlord's agent, Colliers Macaulay Nicolls (Ontario) Inc., in trust, a deposit in the amount of \$50,000.00 which shall be held in an interest-bearing account for the Tenant and paid to the Landlord and applied, together with interest, on account of Basic Rent and Additional Rent first becoming due hereunder.

4. Parking

The Tenant shall be entitled during the Term to have the use of up to nine (9) unreserved and six (6) twenty-four (24) hour reserved parking spaces in the parking garage of the Project. The Tenant shall provide written notice to the Landlord prior to the Commencement Date as to the number of parking spaces to which it commits for the Term. The Tenant shall initially pay to the Landlord or its parking contractor or agent, as directed, for the use of such parking spaces and as Additional Rent, the sum of \$160.00 per month for each unreserved space and \$250.00 per month for each reserved space (taxes included in each case), which sums shall be adjusted from time to time to the then current monthly rates charged by the Landlord or its parking contractor or agent for unreserved and reserved parking spaces in such parking garage. The use of such parking spaces shall be subject to the rules and regulations prescribed by the Landlord, its contractor or agent from time to time for parking in the parking garage. The Tenant shall execute and deliver the Landlord's standard parking agreement, subject to those amendments reasonably requested by the Tenant, for such unreserved and reserved parking spaces.

5. Early Termination by Tenant

Provided that, and for so long only as, the Tenant pays the rents and performs each and every of the covenants, conditions and agreements herein reserved and contained and on the part of the Tenant to be paid and performed and is not and has not been in default in respect of any of the same, the Tenant shall have the right to terminate this Lease effective as of the sixth (6th) anniversary of (i) the Commencement Date (if the Commencement Date is the first day of a calendar month), or (ii) the last day of the month in which the Commencement Date occurs (if the Commencement Date is not the first day of a calendar month), (the "Termination Date"), such right to be exercised by the Tenant giving to the Landlord written notice of such termination not less than twelve (12) months prior to the Terminate Date. The Tenant shall deliver to the Landlord not less than ten (10) days prior to the earlier of the Termination Date and the date on which the Tenant intends to vacate the Premises, as a termination fee, a bank draft or certified cheque payable to the Landlord in the amount equal to the product obtained by multiplying the sum of \$18.50 by the number of square feet comprised in the Rentable Area of the Premises.

If the Tenant exercises such right of termination, this Lease shall be terminated as of, from and including the Termination Date, Basic Rent and Additional Rent shall be adjusted and paid by the Tenant to the Termination Date, and the Tenant shall, on or before the Termination Date, surrender and vacate the Premises in accordance with all of the provisions of this Lease applicable at the expiration of the Term.



6. Renewal

If the Tenant pays the rents and performs each and every of the covenants, conditions and agreements herein reserved and contained and on the part of the Tenant to be paid and performed and is not in material default in respect of any of the same, and provided that the Tenant is Applied Communications Canada, Inc., an affiliate thereof to which this Lease has been assigned in compliance with subsection 10(e)(i) or a corporation resulting from an amalgamation as referred to in subsection 10(e)(ii), and is itself in possession of and occupying and conducting its business in the whole of the Premises, this Lease has not been assigned and neither the whole nor any part of the Premises has been subleased by the Tenant, and there has not occurred a change in effective control of the Tenant, the Landlord will, upon the request in writing by the Tenant given at least twelve (12) months prior to the expiration of the Term (the "Notice Period"), grant to the Tenant a renewal lease of the Premises for one (1) further term of five (5) years upon and subject to the covenants, conditions and agreements as are set forth in the Landlord's standard form of lease for the Building then in use, and the renewal lease shall not contain any provision for further renewal and the Basic Rent shall be the Market Rent (as hereinafter defined) at the time when such rental is determined (the "New Basic Rent"). If requested by the Tenant during the Notice Period, the Landlord will provide the Tenant with a copy of its standard form of lease for the Building then in use. The New Basic Rent shall be mutually agreed to by the Landlord and the Tenant at least one hundred and eighty (180) days prior to the expiration of the Term, and failing agreement, shall be determined by arbitration in the manner hereinafter provided. In the event that the Landlord and the Tenant fail to agree on the New Basic Rent, then each of the Landlord and the Tenant, at least one hundred and seventy (170) days prior to the expiry of the Term, shall notify the other of an arbitrator selected by such party and at least one hundred and sixty (160) days prior to the expiry of the Term, the two arbitrators so nominated shall name a third arbitrator; in the event that either the Landlord or the Tenant fails to name an arbitrator within the period of time hereinbefore specified, the arbitrator named by the other party shall determine the New Basic Rent; in the event the two arbitrators named fail to agree on a third arbitrator within the time hereinbefore specified, the third arbitrator shall be such person as shall be appointed by a Judge of the Ontario Court (General Division) upon application by either of the Landlord or the Tenant. In no event shall the New Basic Rent be less than the Basic Rent payable (or which would otherwise have been payable, but for any abatement of Basic Rent pursuant to this Lease) during the last twelve (12) months of the Term.

For the purposes of this clause 6, "Market Rent" means the rate of minimum (basic) rent per square foot per annum for premises in the Building that a willing tenant renewing a lease would pay and a willing landlord would accept in bona fide arm's length negotiations.

7. Option to Lease Additional Space

Provided that, and for so long only

as :

- (a) the Tenant pays the rents herein reserved and to be paid by the Tenant and is not and has not been in material default in the performance of the covenants, conditions and agreements herein contained and on the part of the Tenant to be performed; and
- (b) the Tenant is Applied Communications Canada, Inc., an affiliate thereof to which this Lease has been assigned in compliance with subsection 10(e)(i) or a corporation resulting from an amalgamation as referred to in subsection 10(e)(ii), and is itself in possession of and occupying and conducting its business in the whole of the Premises and this Lease has not been assigned and neither the whole nor any part of the Premises has been subleased by the Tenant,

the Landlord agrees that if, at any time during the Term or any renewal thereof, space on the sixth (6th) floor (or, if the Tenant has been relocated in accordance with Section 30 of the Lease, space on the floor to which the Tenant's computer room is relocated) (the "Option Premises") becomes available for leasing, the Landlord shall give to the Tenant written notice of such availability, which notice shall set

forth the current fair market rental rate for the Option Premises and other market terms and conditions applicable thereto as are determined by the Landlord (the "Offered Terms"). The Tenant shall have the right, to be exercised by written notice given to the Landlord within ten (10) business days of the Tenant's receipt of the Landlord's notice, to elect to lease from the Landlord all of the Option Premises, upon and subject to the Offered Terms and otherwise upon and subject to the terms and conditions of this Lease (save and except this Schedule "E"). If the Tenant elects to so lease the Option Premises, the Landlord's notice to the Tenant shall be deemed to have constituted an offer to the Tenant and the Tenant's notice to the Landlord shall constitute acceptance thereof, resulting in a binding agreement to lease between the parties. If the Tenant elects not or fails to exercise its right to lease all of the Option Premises within the aforesaid period of ten (10) business days, then the Landlord shall have the right for a period of ninety (90) days after the expiry of such ten (10) business day period to offer the Option Premises to any other third party on the Offered Terms and if the Landlord does not enter into an agreement to lease with a third party for the Option Premises on the Offered Terms within such ninety (90) day period, the right of first offer set forth in this clause 7 shall once again arise and apply. If the Landlord desires to offer the Option Premises on terms and conditions more favourable to a tenant than the Offered Terms (the "New Terms"), the Landlord shall offer the Option Premises to the Tenant on the New Terms, and the provisions of this clause 7 shall apply thereto, prior to making the Option Premises available or offering the Option Premises for lease to, or accepting any offer to lease the Option Premises from, any other third party.

The Option Premises shall be deemed to be "available for leasing" if, and on the date, the Option Premises are available to the Landlord for leasing to third parties, free of any rights of or commitments to any third party.

8. Computer Room and Operations Centre;  
U.P.S. System

Subject to Section 12(d) of the Lease, the Tenant shall have the right to operate its computer room and operations centre on a 24 hours per day basis. The Tenant shall further have the right, subject to compliance with Section 10(m) of the Lease, to install at the Tenant's sole cost and expense separate heating and cooling equipment to facilitate such operations, to be accommodated by connecting new air-conditioning units having a capacity of 20 tons of cooling for the computer room and 6 tons of cooling for the operations centre to the existing base building supplementary condenser risers available 24 hours per day.

The Tenant shall also have the right, subject to compliance with Section 10(m) of the Lease, to install a U.P.S. system in the Premises and related diesel generator in a suitable (roof top) location in the most cost effective application, as approved by the Landlord, acting reasonably. All terms and conditions of this Lease (save and except this Schedule "E") shall apply to any space on the roof provided by the Landlord for the Tenant's diesel generator and all connections thereto, except that Basic Rent, Taxes and Operating Costs shall not be payable by the Tenant for such space. The Tenant shall be solely responsible for all costs incurred either by the Tenant or the Landlord by reason of or in connection with the installation, operation, maintenance, repair and replacement of such U.P.S. system and diesel generator, including any modifications to the roof required to install the diesel generator and approved by the Landlord.

The Tenant shall comply strictly with all present and future requirements, administrative and judicial orders, laws, statutes, ordinances, rules and regulations of all federal, provincial and municipal ministries, departments, commissions, boards and agencies having or claiming jurisdiction with respect to or in connection with the installation, operation, maintenance, repair and replacement of such U.P.S. system and diesel generator.

The Tenant shall have the right but not the obligation to remove the diesel generator installed by the Tenant at the expiry or earlier termination of this Lease.

The cost and all associated costs for the connection to the base building supplementary condenser water system together with all costs of the Tenant's share (as determined by the Landlord, acting reasonably) of the on-going operation, maintenance and repair of such supplementary system will be paid for by the Tenant.

The Tenant shall be responsible for all costs associated with the installation of and the on going

operation, maintenance and repair of the Tenant's  
air-conditioning units.

METROCENTRE

WELLINGTON STREET OFFICE BUILDING  
200 WELLINGTON STREET WEST, TORONTO

L E A S E

DATED: October 24, 1996

BETWEEN:

MARATHON REALTY COMPANY LIMITED

(Landlord)

- and -

APPLIED COMMUNICATIONS CANADA, INC.

(Tenant)



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