

TELECOMMUNICATIONS LICENSE AGREEMENT

THIS AGREEMENT dated this 1st day of March, 2002.

BETWEEN:

THE STANDARD LIFE ASSURANCE COMPANY
(the "Owner")

and

TELUS Communications Inc and its affiliates

(the "Licensee")

PREAMBLE:

- (a) The Owner is the owner of a certain building as more particularly described in this Agreement.
- (b) The Owner has agreed to grant to the Licensee a license to install, operate, maintain, repair and replace certain communications equipment in the Owner's building as more particularly described in this Agreement on the terms and conditions set out in this Agreement.

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

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

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

"Agreement" means this Agreement and the attached Schedule A and all subsequent changes, modifications and amendments to this Agreement and the attached Schedule A made in accordance with the provisions of this Agreement.

"Basic Services" means twisted pair of copper wire used to provide basic telephone services to the Building.

"Building" means the building owned by the Owner and located on the Lands.

"Building Risers" means the electrical, mechanical or communications spaces or other pathways in the Building.

"Business Day" means a day other than a Saturday, Sunday and any other day on which the principal commercial banks in Alberta are not open for business during normal banking hours.

"Commencement Date" means the date on which the Term commences, which shall be **March 1, 2002** or the date on which the construction of the Equipment Room commences, whichever is earlier.

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

"Communications Equipment" means the communications equipment of the Licensee and its affiliates, including, without limitation, cabinets, racks, electronic equipment and other similar equipment.

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"Connecting Equipment" means the cables, conduits, inner ducts and connecting hardware of the Licensee that is connected to the Communications Equipment.

"Entrance Link" means the core sleeve penetration through the foundations of the Building.

"Equipment Room" means the enclosed premises on ~~the~~ ^{Basement} Parking level 3 (Room J) which premises shall be provided by the Owner to the Licensee for the sole and exclusive use of the Licensee.

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

"Lands" means the lands situated in the City of Toronto, in the Province of Ontario, on which the Building is constructed, as more particularly described in the attached Schedule B.

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

"Licensee's Equipment" means, collectively, the Communications Equipment and the Connecting Equipment.

"Notice" means any notice, request, consent or other communication provided, required or permitted under this Agreement as contemplated in Section 12.1 of this Agreement.

"Term" means the continuous period of two (2) years, with three one (1) year renewal options, commencing on the Commencement Date.

"Renewal Term" means the period after the Term for which this Agreement may be renewed and extended as described in section 3.2 of this Agreement.

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

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

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

Schedule A – Equipment Room Plan

Schedule B – Legal Description of Lands

~~Schedule C – Revenue Sharing Programme~~

ARTICLE 2 – LICENSE

- 2.1 **License** The Owner grants to the Licensee a non-exclusive license to:
- (a) install, operate, maintain, repair and replace the Communications Equipment in the Equipment Room, at the Licensee's sole expense and risk;
 - (b) install, operate, maintain, repair and replace the Connecting Equipment in the Building, at the Licensee's sole expense and risk, together with the right to pull the Connecting Equipment through the Entrance Link and through the Building Risers as necessary to reach from the Entrance Link to the Equipment Room and from the Equipment Room to the Licensee's customers in the Building, as required by the Licensee from time to time to provide communications services to the Licensee's customers in the Building; and
 - (c) use the Entrance Link and existing Building wiring, only to the extent that the Owner has the possession of, and authority to allow the use of, the entrance Link and the existing Building wiring, as required by the Licensee for the purpose of connecting the Licensee's Equipment to the Licensee's customers in the Building.
- 2.2 **Equipment Room** The Owner shall provide the Equipment Room to the Licensee, for the sole and exclusive use of the Licensee, which Equipment Room shall be used by the Licensee for the provision of communications services to the Licensee's customers in the Building.
- 2.3 **Sublicense** Notwithstanding section 13.4 of this Agreement, and subject to the prior written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, the Licensee shall have the right to sublicense a portion of the Equipment Room to a third party for the purpose of permitting such third party to provide communications services to its customers in the Building.
- 2.4 **Nature of Interest** The right granted to the Licensee under this Agreement is a license only, and shall not constitute a partnership, joint venture or lease between the parties.
- 2.5 **Non-Exclusivity** The License acknowledges and agrees that the license granted to the Licensee pursuant to section 2.1 of this Agreement is not exclusive to the Licensee, and that the Owner has the right to grant similar rights and privileges in respect of the Building to other parties.

ARTICLE 3 – TERM

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

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- 3.2 **Option to Renew** If the Licensee pays its Rent and observes or performs all its obligations under this Agreement, duly, regularly and promptly throughout the Term, and if the Licensee delivers to the Owner written notice exercising its option to renew at least six months prior to the expiry of the Term or six months prior to the expiry of the second Renewal Term, if applicable, the Licensee will have two options to renew this Agreement each for a further term of Five (5) years on the same terms as are contained in this Agreement, except for: (i) Basic Rent, and (ii) further options to renew. Annual basic rent for the first and second Renewal Terms will be based upon fair market basic rent for equivalent space at the time of renewal, except that the annual basic rent will not be less than the Basic Rent which the Licensee was obliged to pay during the last year of the Term or the last year of the first Renewal Term, if applicable. The time for determining annual basic rent for the first and second Renewal Terms will be the four month period immediately preceding the expiry of the Term or immediately preceding the expiry of the first Renewal Term, as the case may be. If the Owner and Licensee are unable to agree on such rent at least 30 days prior to the expiry of the Term or prior to the expiry of the first Renewal Term, as the case may be, either of them may refer the determination of such annual basic rent to arbitration under the arbitration legislation of the Province where the Building is located. The arbitrator's determination will be conclusive and binding on the Owner and Licensee. The arbitration costs will be awarded in the arbitrator's discretion. Until the arbitrator has determined such annual basic rent, the Licensee will continue to pay monthly installments of basic rent in the same amount it was paying prior to the expiry of the Term or prior to the expiry of the first Renewal Term, as the case may be. Forthwith after the arbitrator's determination, the Licensee will pay to the Owner the difference, if any, between the basic rent installments which it has then paid to date and the basic rent installments pursuant to such determination.
- 3.3 **Overholding** If the Licensee remains in occupation of the Equipment Room following the expiration of the Term or a Renewal Term, such continued occupation by the Licensee shall not have the effect of renewing or extending this Agreement for any period of time, and the Licensee shall be deemed to be occupying the Equipment Room as a licensee on a month-to-month basis upon the same terms and conditions as set out in this Agreement.

ARTICLE 4 – LICENSE FEE

- 4.1 **License Fee** The Licensee shall pay to the Owner an annual License Fee in an amount of **\$12,438.00 per annum in first and second years of the Term (the "License Fee")**. For the third, fourth and fifth years of the Term, the License Fee shall be based on market access fee for similar telecommunications service provider licenses in similar buildings in the vicinity of the Building, to be determined no later than sixty (60) days prior to completion of the second year of the Term, failing which the License Fee for years 3-5 shall be determined by a single arbitrator in accordance with the applicable arbitration legislation for the province in which the building is located as set forth in section 3.2. The access fee shall be paid in advance of the Commencement Date and thereafter annually on each anniversary date of the Commencement Date and thereafter annually on each anniversary date of the Commencement Date during the Term or any renewal thereof.
- 4.2 **GST** The Licensee shall pay Goods and Services Tax ("GST") and Provincial Sales Tax ("PST") as applicable on the License Fee, which GST and PST shall be paid at the time the License Fee is payable. The Owner's GST registration number is 105252126.
- 4.3 **Non-Disclosure** The Owner and the Licensee each agree to use good faith efforts to refrain from disclosing the financial terms of this Agreement, except that either party may disclose the financial terms of this Agreement if required by law or regulation.

ARTICLE 5 – USE

- 5.1 **Use of Equipment Room** The Licensee shall use the Equipment Room only for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Equipment as required by the Licensee for the purpose of providing communications services to the Licensee's customers in the Building.
- 5.2 **Title** The Owner acknowledges and agrees that title to, and ownership of, the Licensee's Equipment shall remain with the Licensee at all times notwithstanding that the Licensee's Equipment may be affixed to a part of the Building for the time being.

ARTICLE 6 – ACCESS AND ELECTRIC UTILITIES

- 6.1 **Access** The Licensee and its authorized representatives shall have access to the Equipment Room on a seven (7) days a week, twenty-four (24) hours per day basis for the purpose of installing, operating, maintaining, repairing and removing the Licensee's Equipment. The Licensee and its authorized representative further shall have such access to the driveways, walkways, entrances, exits and hallways associated with the Building as may be required in order for the Licensee and its authorized representative to access the Equipment Room. The owner acknowledges that the nature of the Licensee's communications services requires such access for servicing purposes and in emergency situations. The Licensee and its authorized representatives shall have ingress and egress to the Building Risers at such times as specified by the Owner, acting reasonably, provided that in the event of an emergency, the Licensee shall have the right to enter the Building Risers upon notification to the Owner. All entry and access to the Equipment Room and the Building, including the Building Risers, by the Licensee and its authorized representatives shall be subject to the Owner's reasonable security procedures. The right of access granted to the Licensee and its authorized representatives hereunder shall at all times be subject to the Owner's security requirements. Without limiting the generality of the foregoing, the Licensee must obtain an access card from the security desk. All Licensee representatives will provide picture identification to the Owner's security personnel prior to being granted access.
- 6.2 **Electrical Power** The Licensee shall have the right to connect the Licensee's Equipment to the electric power distributing system within the Building at the sole cost and expense of the Licensee. Where the Licensee's Equipment consumes more than approximately one (1) kilowatt per hour, the Owner may require the Licensee to pay for all electricity consumed by the Licensee on a load and usage basis. The Licensee, at its sole cost and expense, shall install a separate metre, which shall be connected to the building energy management system, to determine the Licensee's electricity consumption. The Owner shall use reasonable commercial efforts to notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's use. The Licensee agrees that the owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or backup power to the Licensee on such terms and conditions as mutually agreed between the parties.
- 6.3 **Telephone Service** The Licensee, at its sole cost and expense, shall have the right to install a telephone in the Equipment Room if required by the Licensee.
- 6.4 **Nuisance** The Licensee shall not use nor permit the Licensee's Equipment or any part of the Equipment Room to be used in such a manner as to annoy, disturb or cause nuisance to the Owner or the occupiers, tenants or other licensees of the Building, or in a manner that constitutes a contravention of law.
- 6.5 **Compliance with Laws** The Licensee, in installing, maintaining operating, repairing and replacing the Licensee's Equipment in the Equipment Room and the Building Risers shall comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC.

ARTICLE 7 – INSTALLATION, MAINTENANCE AND REPAIRS

- 7.1 **Approval of Plans** Prior to the commencement of the installation of the Licensee's Equipment in the Equipment Room and in the Building Risers, the Licensee shall prepare and submit plans, specifications, and working drawings that are approved by a Professional Engineer, to the Owner in respect of such installation, as well as any subsequent changes, for the approval of the Owner, which approval shall not be unreasonably withheld or delayed.
- 7.2 **Installation** Upon receipt of the Owner's written approval pursuant to section 7.1 above, the Licensee, at its sole expense and risk, shall be entitled to commence the installation of the Licensee's Equipment, which installation shall be performed in a responsible and workmanlike manner and in accordance with all applicable laws, regulations, by-laws, orders, rules and ordinances of all federal, provincial and municipal governmental authorities. And within 30 days after completions of work, the Licensee shall provide the Owner with a Statutory Declaration that all supplies of labour, material and services in respect of the installation have been paid in full.
- 7.3 **Cables** The Licensee shall label each cable placed by the Licensee in the Building Risers and any telecommunications closets through which the Licensee's cable passes with an identification number assigned by the Owner of the Licensee.
- 7.4 **Repairs and Maintenance** The Licensee will repair, at its sole expense, any and all damages to the building whatsoever resulting from the installation of its Entrance Link, Communications Equipment and/or Connecting Equipment. The Licensee, at its own cost and expense, shall keep the Equipment Room and the Licensee's Equipment in a safe and properly maintained condition.
- 7.5 **Liens** The Licensee shall be responsible for the satisfaction or payment or any liens registered against the Building by any supplier of labour, material or services to the Licensee. Any such liens shall be discharged by the Licensee, provided that the Licensee may contest, in good faith, any such liens.

ARTICLE 8 – INSURANCE AND INDEMNIFICATION

8. **Insurance** The Licensee, at its own expense, shall take out and maintain in force while this Agreement is in effect, comprehensive general liability insurance in a minimum amount of Ten Million Dollars (\$10,000,000.00) per occurrence for injury, death or property damage arising out of the Licensee's operations pursuant to this Agreement, which insurance shall contain cross liability and severability of interest clauses. The Licensee shall provide certificates of insurance to the Owner on or prior to the commencement of the Term of this Agreement.
- 8.2 **Indemnification** The Licensee shall indemnify and save harmless the Owner from and against any loss, suit, claim, action, damage or expense arising out of, from or by reason of, the installation, operation, maintenance, repair or removal of the Licensee's Equipment in the equipment room and at the building communications space, building risers and entrance link pursuant to this Agreement, except to the extent that any such loss, suit, claim, action, damage or expense is due to the negligence or willful misconduct of the Owner of those for whom the Owner is in law responsible.

ARTICLE 9 – TERMINATION

9.1 **Termination by Licensee** The Licensee shall have the right to terminate this Agreement on the anniversary date of the License upon ninety (90) days written notice to the Owner in the event of the occurrence of any of the following, but not excluding any unforeseen circumstances:

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

9.2 **Termination by the Owner** The Owner shall have the right to terminate this Agreement upon thirty (30) days written notice to the Licensee in the event of the occurrence of any of the following, but not excluding any unforeseen circumstances.

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence; or
- (c) the licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency.

9.3 **Surrender** Upon the expiration or earlier termination of this Agreement, the Licensee shall remove all of its Connecting Equipment and Communications Equipment from the Equipment



Room, Building Risers and the Building, and shall be responsible for repairing any damage caused by such removal.

ARTICLE 10 – DAMAGE OR DESTRUCTION OF BUILDING

Right to Terminate In the event the Building is damaged to such an extent that the Licensee is unable to effectively exercise its rights pursuant to the license granted by the Owner under this Agreement, the Owner, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days. In the event the Owner elects not to repair the damage within one hundred eighty (180) days, the Licensee shall have the right to terminate this Agreement upon providing thirty (30) days prior written notice to the Owner, in which event the Licensee shall remove the Licensee's Equipment in accordance with the provisions of section 9.3 of this Agreement.

ARTICLE 11 – FORCE MAJEURE

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

ARTICLE 12 – NOTICES

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

(a) If to the Owner:

The Standard Life Assurance Company
Suite 600
110 Sheppard Avenue, East
North York, Ontario M2N 6Y5
Attention: Mr. Bruce Graham
Regional Asset Manager, Real Estate Group

Telephone: (416)224-3486
Facsimile: (416)224-3428

(b) If to the Licensee:

TELUS Communications Inc and its affiliates
6th Floor
100 Sheppard Avenue, East
Toronto, Ontario M2N 6N5



Attention: Mr. Richard Johnson
Manager, Building Access, Ontario
Telephone: (416)228-3491
Facsimile: (905)804-6104

Receipt Where a Notice is delivered personally or by facsimile, it shall be deemed to have been received the same Business Day, or if the day on which the Notice was sent is not a Business Day, the Notice shall be deemed to have been received on the next Business Day.

Where a Notice is sent by registered mail, it shall be deemed to have been received three (3) Business Days after the date of mailing. In no event should any Notice be sent by mail during any period of interrupted or threatened interruption of postal service.

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

ARTICLE 13 – MISCELLANEOUS


CRTC Decision The Owner and the Licensee acknowledge that the access rights of telecommunications providers in multi-tenant buildings is presently subject to a regulatory proceeding initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this Agreement is in effect, this Agreement shall be amended by the parties in such a manner so as to give effect to such ruling or decision, and all appropriate adjustments in respect of any amounts paid under this Agreement shall immediately be made between the parties to ensure that this Agreement is brought into conformity with such ruling or decision, including, without limitation, the termination of this Agreement if necessary.

- 13.2 **Entire Agreement** This Agreement cancels, replaces and supersedes as of its effective date all existing agreements and understandings, written or oral, between the parties relating to the subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.
- 13.3 **Waiver** No failure by either to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will constitute a waiver of any provision of this Agreement. No waiver shall be effective unless made in writing by an authorized officer of the party.
- 13.4 **Successors and Assigns** This Agreement shall not be assigned by the Licensee, in whole or in part, without the express written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, provided that the Licensee shall be entitled to assign this Agreement to an affiliate of the Licensee, as defined in the *Canada Business Corporations Act*, upon written notice to the Owner. This Agreement shall be binding upon, and shall enure to, the benefit of the parties and their respective successors and permitted assigns.

- 13.5 **Basic Services** The Owner and TELUS agree that nothing in this License will be construed or interpreted as applying to the supply of Basic Services by TELUS in the Building.

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

The Standard Life Assurance Company

Per:  _____

Title: Bruce Graham
Regional Asset Manager

Per: _____

Title: _____

TELUS Communications Inc and its affiliates

Per:  _____

Title: AVP Building Access

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SCHEDULE B

**LEGAL DESCRIPTION OF LANDS
PLAN TOWN OF YORK PT LOT 8
RP 63R1538 PARTS 1 & 2
RP 63R2717 PART 1**

**Municipally known as 121 King Street West
Toronto, Ontario**

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SCHEDULE C
REVENUE SHARING PROGRAMME

1. Definition of "Gross Revenues"

"Gross Revenue" includes all monthly-recurring billed revenues for telecommunications services provided to the Licensee's customers within the Building, net of any discounts, promotions or bundling allowances offered to the customer.

2. Revenue Sharing Eligibility

The following criteria must be fulfilled, in the manner set out below, by the Owner in order to be eligible for the Revenue Sharing Programme for the Building:

The Owner agrees to approve the Licensee's media releases relating to the provision of services by the Licensee in the Building within thirty (30) days of receipt of a substantially completed final draft of any such media releases subject to any revisions requested by the Owner, acting reasonably.

2. The Owner may permit in-building marketing by the Licensee a minimum of once per year. The specific marketing programme for the Building including the size, duration and location of the programme shall be pre-approved by the Owner, acting reasonably, within thirty (30) days of the Licensee's written request for approval.

If all two (2) criteria set out above are fulfilled by the Owner, then the Owner shall be entitled to three (3%) of the Licensee's monthly Gross Revenue for the Building (the "Revenue Sharing Fee").

3. Payment

The Revenue Sharing Fee shall be payable to the Owner quarterly, cumulatively, and in arrears, within sixty (60) days following the end of each calendar quarter.

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