

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** made this 1day of January, 2002

Dundee Realty Management Corporation  
(hereinafter called the "Licensor")

- and -

TELUS Communications Inc. on behalf of itself  
and all affiliates of TELUS Communications Inc.  
(hereinafter called the "Licensee" )

WHEREAS the Licensor is the Manager, as Agent for the Owners of certain lands and buildings (the "Buildings") more particularly described in Schedule A attached hereto;

AND WHEREAS the Licensee has requested the Licensor's permission to construct, install, operate, maintain, repair, service, upgrade and modify (collectively "Install and Maintain") at various locations in the Building, subject to availability, certain Equipment including Cables and related materials as defined and described herein for the provision of telecommunication services to tenants and occupants in the Building;

AND WHEREAS the Licensor has agreed to permit the Licensee to Install and Maintain the Equipment at such locations shown on the Approved Plans subject to the terms and conditions hereinafter stated:

IN CONSIDERATION of the covenants, terms, conditions and agreements contained herein, and the fee of Ten Dollars (\$10.00), the Licensor hereby acknowledges the receipt and sufficiency of which, the Licensor and the Licensee agree as follows:

### DEFINITIONS

In this License Agreement:

- (a) "Approved Plans" means the Plans and Specifications to be approved by the Licensor acting reasonably prior to installation in accordance with Section 4 below;
- (b) "Cables" means cables meeting the requirements of the Specifications for Premises Wiring, Cable Management and Roof-Top Access located within the Building, connecting the main terminal room of the Building, the Licensee's Point of Presence ("POP"), if any and the demised premises of the Licensee's customers;
- (c) "Equipment" means all equipment, including Cables and related materials installed by the Licensee in accordance with the Approved Plans located within the Building; and
- (d) "License Agreement" means this License Agreement and all supplemental instruments, amendments or confirmations agreed to in writing by both parties herein and includes the Approved Plans.

## 2. GRANT OF LICENSE

The Licensor hereby grants a non-exclusive license to the Licensee for the duration of the Initial Term as defined below and any extensions thereof;

- (a) To Install and Maintain the Equipment at the locations to be shown on the Approved Plans to provide telecommunications and related incidental communications services to tenants or occupants located solely in the Building (the "Tenants") and for no other purpose, including the non-exclusive use of an equipment room or other space in the Building designated by the Licensor;
- (b) To connect the Equipment to electrical power sources within the Building and to connect to adequate grounding, including the use of the Building's ground at the Licensee's sole cost at locations approved by the Licensor in its sole discretion, acting reasonably;
- (c) Subject to the Licensor's reasonable security requirements for the Building and the quiet enjoyment of tenants and occupants of the Building, the Licensor agrees that upon prior notice it will permit the Licensee, its employees and duly authorized contractors, reasonable access to the Building during normal business hours in which the Building is open to the general public (and in the case of an emergency, such access may be 24 hours a day, 7 days a week) so as to permit the Licensee to perform installation and subsequent service, testing, repairs, connects and/or disconnects on the Equipment for the benefit of the Licensee's customers, as may be reasonably required from time to time; provided that for greater certainty, the access and installation rights granted hereunder are to be relied upon solely for the provision of the Licensee's services and for no other purpose. The Licensor shall use reasonable efforts to prevent any interruption or interference with all or any part of the telecommunication services provided by the Equipment provided the Licensor shall not be liable for interruption or cessation of such services due to the failure of utilities servicing the Building;
- (d) To have reasonable access to and use of the riser closets, chases, available conduits, pedways, and above ceiling common areas, as may be approved for use by the Licensor from time to time under the provisions of Sections 4 and 5 of this License Agreement;

provided that this Licensee does not affect the operation, aesthetics or structure of the Building, impair existing telecommunication or other utility services supplied to other tenants and occupants of the Building in the sole opinion of the Licensor, acting reasonably.

The rights granted to the Licensee herein constitute a license only and shall not under any circumstances whatsoever constitute a right by the Licensee to have exclusive possession of the Building. This License Agreement shall not constitute nor be interpreted to be either a partnership agreement, employment agreement, lease or joint venture agreement made between the parties.

The Licensee shall at all times act in its own capacity and right as an independent contractor. The Licensee shall have no right to make purchases, or to obligate the Licensor to expend any funds or to perform any obligations other than as provided in this License Agreement or as may be authorized in writing by the Licensor. The Licensee agrees that it and any of its employees or agents shall at all times present and represent itself or themselves as representatives of the Licensee.

## 3. TERM AND FEES

The term of this License Agreement (the "Initial Term") shall be for a period of five (5) years commencing on the execution of this License Agreement (the "Commencement Date"), subject to early termination in accordance with the License Agreement.

For access to the Buildings as well as the Licensor's time, trouble and expense, the Licensee shall pay to the Licensor a License Fee, as follows:

- (a) For the Initial Term, the greater of:
  - (i) two (2) cents per square foot of the gross area of the building to Licensee; and
  - (ii) an amount of \$3,000 per annum per Building (the "Annual Fee").

- (b) For the first year of the Initial Term, the Annual Fee shall be paid upon execution of the License Agreement. For the remainder of the Initial Term or any extension thereof, the Annual Fee shall be paid in advance prior to the end of the preceding year.

In addition to the License Fee, the Licensee shall pay annually in advance rental for space used to locate its POP Room within the Building, which shall be set at market rates for similar buildings in the same city as agreed by the parties or failing agreement, by a single arbitrator appointed under provincial arbitration legislation.

#### 4. APPROVED PLANS

The Licensee shall prior to Installing and Maintaining the Equipment and use of the main terminal room prepare and deliver to the Licensor plans, specifications, diagrams, layouts and any other drawings and documents reasonably required to describe the Equipment including all wiring designations ("Plans and Specifications") showing, without limitation, the size and location of the Equipment, the location of risers, and wiring connecting same to the power supply source and the telephone lines. Such Plans and Specifications shall be approved by the Licensor in its sole discretion (such approval not to be unreasonably, conditioned withheld or delayed) as evidenced by its written endorsement thereon and shall then become the Approved Plans. The endorsement by the Licensor on the Approved Plans shall constitute a confirmation of the licensing of the locations shown on the Approved Plans. The Licensor shall have the right to inspect the Equipment from time to time to determine that it is Installed and Maintained in accordance with the Approved Plans. If the Equipment is not Installed and Maintained in accordance with the Approved Plans, the Licensor may require the Licensee to bring the Equipment into conformity with the Approved Plans within a reasonable period of time, at the Licensee's cost.

#### 5. INSTALLATION/REMOVAL

- (a) The Licensee shall Install and Maintain the Equipment in a good and workmanlike manner using professional personnel in accordance with the Approved Plans and the provisions of this License Agreement. Subject to the provisions of this section and of section 5(e), the Equipment and related materials installed in the Building shall at all times remain the property of the Licensee. All such Equipment and related materials upon abandonment by the Licensee shall become the absolute property of the Licensor without compensation to the Licensee.
- (b) The Licensee may submit further Plans and Specifications showing additions, alterations, modifications, upgrades, consolidations or relocation of the Equipment (the "Alterations"). The Alterations if so approved (such approval not to be unreasonably withheld or delayed) by the Licensor shall become the Approved Plans. The Licensee shall pay the Licensor on written demand a reasonable fee for reviewing the Approved Plans and any Alterations.
- (c) The Licensee shall at its own expense Install and Maintain the Equipment in compliance with the laws, rules and regulations and fire codes of all relevant governmental authorities having jurisdiction as may be amended from time to time and no work shall be undertaken unless all requisite approvals and licenses shall have first been obtained from such governmental authorities.
- (d) Upon early termination or expiration of this License Agreement, the Licensee shall leave the portions of the Building where the Equipment is located in a neat, clean and safe condition, reasonable wear and tear excepted.
- (e) Upon the expiration of the Initial Term or any extension thereof or on such other termination of this License Agreement, at the Licensor's option, the Licensor may provide notice to the Licensee that it desires to have all or part of Cables which were installed during the Initial Term or any extension thereof to remain in the Building for the Licensor's sole ownership. Upon receiving written notice as set out above and upon the parties agreeing upon mutually acceptable terms and conditions regarding the transfer of all or part of the Cables, the said Cables shall be transferred to the Licensor. However, if the Licensor so elects, it shall provide written notice to the Licensee and the Licensee shall have an opportunity to remove the Cables within thirty (30) days therefrom. The Licensor may further elect, upon the expiration of the Initial Term or any extension thereof or on such other termination of this License Agreement, to require the Licensee to remove all or part of the Cables or other Equipment as the Licensor may direct at the Licensee's sole costs within ninety (90) days therefrom. For greater

clarity, the Equipment, other than the Cables, shall remain the property of the Licensee and shall be removed from the Building by the Licensee at its sole cost within ninety (90) days after the expiration of the Initial Term or any extension thereof. The Licensee shall repair forthwith any damages to the Building caused by such installation and removal. If the Licensee fails either to remove all or part of the Cables or other Equipment or to repair any damages to the Building as requested by the Licensor pursuant to this section 5(e) within the above time period, the Licensor may hire a contractor to perform the work and the Licensee shall be responsible for the reasonable cost of such work, or the Licensor may elect to deem such Cables or other Equipment as abandoned by the Licensee and upon such deemed abandonment such Cables or other Equipment shall become the property of the Licensor. At the Licensor's request, the Licensee shall deliver forthwith to the Licensor all necessary documentation within the Licensee's possession related to the Equipment.

- (f) The Licensee acknowledges that the Licensor at any time during the Initial Term or any extension thereof, shall have the right to alter, renovate, expand or demolish the Building. In the event the Licensor requires the Licensee, acting in good faith, to remove or relocate the Equipment, the Licensor shall provide the Licensee with reasonable advance notice (i.e. a minimum of 60 days) and upon receipt of such notice the Licensee shall remove or relocate the Equipment forthwith at the expense of the Licensor. In the event the Licensor shall require the Licensee to relocate the Equipment, in order to allow for continuity of service to the Licensee's customers in the Building, the Licensor shall permit the Licensee to install and commence operation of alternate Equipment in a relocated area prior to the dislocation of its Equipment from the original area.
- (g) The Licensee shall not use conduit to encase Cable unless approved by the Licensor, such approval not to be unreasonably withheld or delayed.
- (h) All Work shall be performed by the Licensee (or a contractor approved by the Licensor in writing) (i) in accordance with the Approved Plans and the Licensor's reasonable rules and regulations applicable to the Building, (ii) in a workman-like manner, lien free and in accordance with all applicable Laws, (iii) if applicable, without affecting or implicating any of the Building's hazardous materials programs or asbestos procedures, and (iv) in a safe manner consistent with sound construction standards and practices. Notwithstanding any other requirements, the Licensor is very concerned about safety in the Building, particularly the riser rooms and other service areas, not frequented by the public. The Licensee will provide temporary firestopping during initial construction and any subsequent alterations that might compromise the fire rating between the work area and any adjacent areas or between any floors in the Building. Under no circumstances will the Licensor tolerate poor practices by the Licensee or its contractors as it relates to Fire and Life Safety issues.

## 6. INTERFERENCE

If, based upon verifiable data obtained by the Licensor, any electrical output, electromagnetic output, radio frequency or other interference either individually or collectively (the "Interference") adversely affects in any manner whatsoever the equipment, machinery, or systems of the Licensor, tenants, occupants or other licensees within the Building or the roof-top of the Building operating in accordance with Industry Canada standards, the Licensee agrees that the Licensor may, at the Licensor's option, shut down the Licensee's Equipment on the roof-top upon twenty-four (24) hours prior written notice to the Licensee by the Licensor until the Interference is remedied; provided, however, if an emergency situation exists, which the Licensor reasonably determines to be attributable to the Licensee's Equipment, the Licensor shall promptly give verbal notice of such emergency situation to the Licensee, who shall act immediately to remedy the emergency situation and the Licensor shall have the right to immediately shut down the Equipment until such emergency situation shall be resolved. Save and except for any expenses, costs, damages, loss, claims or other liabilities due to the negligent act or omission of the Licensor or those for whom the Licensor is responsible in law, the Licensee shall indemnify, defend and hold harmless the Licensor and its property manager from and against any and all expenses, costs (including legal fees and disbursements), damages, loss, claims or other liabilities arising out of such shutdown. The Licensee agrees to immediately cease operations (except for intermittent testing on a schedule approved by the Licensor) until the Interference has been corrected to the satisfaction of the Licensor. If such Interference has not been corrected within thirty (30) days from the date the Licensor notifies the Licensee of the Interference, the Licensor shall have the right

to either terminate this License Agreement forthwith, or to require that the Licensee immediately remove from the roof-top the specific item(s) of Equipment causing the Interference in which latter case all other terms and conditions of this License Agreement shall remain in full force and effect. The Licensor shall require any parties over which it has control verifiably causing interference with the Licensee's Equipment to promptly cure the same and shall further not permit any line of sight antenna to be blocked by any installation on the Building.

## 7. ESTABLISHMENT OF CENTRAL CABLING DISTRIBUTION SYSTEM

- (a) The Licensee recognizes that the Licensor may desire to provide access to existing and future telecommunications service providers for tenants or occupants of each Building, and the Licensor may deem it desirable to achieve this objective by providing a central telecommunications cabling distribution system ("CDS") in the Building for use by such telecommunications services providers, including the Licensee. Accordingly, and notwithstanding anything contained in this License Agreement to the contrary, the Licensor reserves the right to install or have a third party install a CDS, including a main distributing frame ("MDF") for use by such telecommunications service providers. The MDF shall also serve as the origination point of the CDS. The tenant terminating block on each floor of the Building will serve as the terminating point of the CDS on that floor. The Licensee shall have the option to participate in the CDS which may be installed by the Licensor upon the parties agreeing to mutually acceptable terms and conditions. In the event the Licensee exercises its option to participate in the CDS, the Licensor reserves the right to charge and the Licensee agrees to pay in addition to the Annual Fees, a reasonable administration fee or third party riser management fee to the extent that the Licensee is required to use such CDS and provided that all telecommunications service providers are charged such a fee on an equivalent basis, taking the providers' relevant circumstances into account. Such fees shall be paid upon receipt of written demand from the Licensor or pursuant to such other schedule as determined from time to time in writing by the Licensor, acting reasonably.
- (b) During the Initial Term including any extension thereof, if the Licensor elects to provide or have a third party provide a CDS and provided that all existing and future telecommunications service providers are subject to the same obligation, the Licensee shall, at the Licensee's expense (i) relocate its existing services and demarcation point to the MDF if such a frame is installed, provided the CDS is capable of supporting the Licensee's technology and delivery mechanism to its customers and such CDS shall not impair the quality of service provided by the Licensee to its customers in the Building; (ii) remove its existing cables provided existing cables are not well utilized or are occupying too much space in the Building (other than from the exterior of the Building to the MDF along such path or paths as may be designated by the Licensor, which shall thereafter be deemed the "Raceway" for purposes of this License Agreement and which may be used by other telecommunication service providers as well as the Licensee); and (iii) utilize the CDS for providing all new service to tenants and occupants in the Building once the Licensor notifies the Licensee that the CDS is ready for service. The Licensor agrees to allow the Licensee a reasonable amount of time (not to exceed ninety (90) days) for proper planning, engineering and cutover in this regard. Cutover to the MDF will be accomplished at a time other than normal business operating hours for the Building. Upon the completion of such cutover, the Licensee shall have no further rights to use of the Equipment or any other parts of the Building except to the extent contemplated in this Section 7.
- (c) If the Licensor elects to provide a CDS, the Licensor's sole responsibility in the event of interruption or other effects caused by malfunction, damage or destruction of the CDS shall be to repair or replace the CDS as necessary to eliminate the cause of malfunction or interruption, the cost of which shall be borne by the Licensee if the problem was verifiably caused directly or indirectly by the Licensee. (In limitation of the foregoing, the Licensor's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by tenants or occupants after the malfunction, damage or destruction or that, if damaged or destroyed will be again used by tenants or occupants upon completion of restoration or repair thereof.) In no event shall the Licensee have any right to make any claims against the Licensor whatsoever for any damages, whether direct, indirect or consequential in any such circumstances and the Licensee's remedy shall be limited to a claim for specific performance of the Licensor's obligation to repair or replace as specified above.
- (d) If during the Initial Term or any extension thereof, the Licensor obtains ownership or control of all or

any portion of the Cables, the Licensor or its designate otherwise takes responsibility for management and operations of all or any portion of the Cables, then the Licensor reserves the right to charge and the Licensee agrees to pay, in addition to the Annual Fees, a reasonable administration fee or third party riser management fee to manage and supervise such Cables provided that all affected telecommunications service providers are charged such a fee on an equivalent basis, taking the providers' relevant circumstances into account.

- (e) If the Licensor elects to provide a CDS or a MDF, the Licensor will co-operate with the Licensee to ensure that the Licensee is not required to share the same sheath as an alternative telecommunication provider so long as the Licensee is currently providing redundant feeds with the same provider to a specific customer in the Building.
- (f) In addition, at its sole discretion, the Licensor may direct the Licensee to use the Cables owned and/or under the Licensor's control or the control of a third party. The Licensee will pay a reasonable fee for the rental of such Cables, and take full responsibility for the Cables for the duration the Licensee is using them as if the Licensee had originally installed them provided that all other telecommunications service providers making use of Cables pay a rental fee on an equivalent basis, taking the providers' relevant circumstances into account.
- (g) Notwithstanding anything contained in this Section 7, in the event that the Licensee does not exercise its option to participate in the CDS, all other terms and conditions of this Agreement remain in effect, and the Licensee shall have the right to use the Equipment installed by it during the Initial Term or any extension thereof.

## **8. RISER MANAGEMENT**

The Licensee acknowledges and agrees that the Licensor shall have the right to co-ordinate, restrict, enforce and approve third parties acting reasonably who wish access to the Building's risers. The Licensee acknowledges that the Licensor may retain a riser management firm or other third party manager to co-ordinate, supervise and approve the work of all telecommunication contractors who shall employ industry standard practices followed by telecommunication services providers in Canada. The Licensor may direct the Licensee to take instructions from such riser management firm or third party manager who shall act on behalf of the Licensor in this regard. An equitable proportionate share of such costs associated with third party riser management will be paid by the Licensee and all other telecommunication service providers in the Building.

## **9. CONSOLIDATION**

As technology changes, at the Licensor's request, and if technically feasible to do so, the Licensee shall modify, replace, alter or consolidate the Equipment, at its sole costs, in order to reduce the amount of space occupied by the Equipment and related materials in the Building including without limitation riser shafts and space within the main terminal room. The Licensor undertakes to use the most cost-effective and efficient solution for the Building with respect to such modification, replacement, alteration and consolidation and agrees to allocate such costs among the various telecommunication providers in the Building in an equitable and fair manner.

## **10. SUBORDINATION TO MORTGAGE**

The Licensee accepts this License Agreement subject and subordinate to any bona fide mortgage, deed of trust or other lien presently existing or hereafter arising upon the Building and/or the Property and to any renewals, modifications, consolidations, refinancing, and extensions thereof. The Licensor is hereby irrevocably vested with full power and authority to subordinate this License Agreement to any bona fide mortgage, deed of trust or other lien now existing or hereafter placed upon the Building and the Licensee agrees upon demand to execute such further instruments subordinating this License Agreement or attorning to the holder of any such liens as the Licensor may request, provided the Licensee's use and quiet enjoyment of the space occupied by the Equipment shall not be materially disturbed, so long as the Licensee has signed the subordination agreements discussed herein and is not in default hereunder beyond any applicable cure period. The terms of this License Agreement may be subject to approval by the Licensor's lender(s), and such approval is a condition precedent to the Licensor's obligations hereunder. In the event that the Licensee should fail to execute any subordination or other agreement required by

this paragraph within fourteen (14) days after receipt of the document from the Licensor as requested, the Licensee hereby irrevocably agrees that any bona fide mortgagee or holder of deed of trust, their successors or assigns, shall have the right to terminate this License Agreement upon written notice to the Licensee, upon the foreclosure of such mortgagee or holder's interest in the Building. Both parties agree that they will from time to time upon request by the other party execute and deliver to such persons as the other party shall request a statement certifying that this License Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates which License Fees and other charges payable under this License Agreement have been paid, stating that no event of default exists hereunder (or if the other party alleges a default stating the nature of such alleged default) and further stating such other matters as shall be reasonably required.

## **11. REGISTRATION/RECORDATION**

The Licensee agrees not to register or record this License Agreement or any memorandum thereof. Any registration or recording of this License Agreement shall be deemed a breach hereof entitling the Licensor, at its option, in addition to any other right or remedy, to terminate this License Agreement without notice to the Licensee.

## **12. EXCULPATORY PROVISIONS**

In no event will the Licensor be liable to the Licensee (or any other party claiming through the Licensee) for:

- (a) lost profits, loss of revenue, failure to realize expected savings, loss of data, loss of use or any other commercial or economic loss of any kind, or punitive, exemplary, indirect, incidental, consequential or special damages or third party claims arising out of the use by the Licensee of any part of the Building even if the Licensor was aware of or had been advised by the Licensee of the possibility of such potential losses or damages; and the Licensee releases, holds harmless and indemnifies the Licensor in respect of the same;
- (b) the quality, adequacy, compatibility or sufficiency of the Building or any facilities provided to the Licensee hereunder, it being acknowledged by the Licensee that all duct and any supplied cabling is provided "as is" and "where is", the use of which is at the sole risk of the Licensee;
- (c) the activities of any third party, whether or not that party is in the Building under the terms of another telecommunications access license or similar agreement, whether or not the activities of the party have been supervised by the Licensor, or whether or not the party has been escorted while within the Building;
- (d) any claims resulting from lightening or other electrical current passing through the Building or facilities that cause any damage to the Licensee's Equipment or result in the interruption of any service by the Licensee;
- (e) any claims resulting from any fire, explosion or other occurrence involving the Building;
- (f) the inadequacy of any utility service, or the loss of or the failure to provide any utility service; and
- (g) the Licensor's failure to perform any of its obligations hereunder where such failure is due, directly or indirectly, to fire, flood, explosion, earthquake, other disaster, power failure, accident, civil disturbance, riot, sabotage, laws imposed after the fact, war, rationing, embargo, strike or labor problem, acts of God or acts of government.

Other than as expressly provided for in this Agreement, there are no other warranties, representations, conditions or guarantees of any kind provided by the Licensor to the Licensee, either express or implied, whether by statute, agreement, tort, product liability, other theory of law, or otherwise, regarding this Agreement or the privileges afforded to the Licensee pursuant to this Agreement.

## **13. INDEMNITY**

The Licensee will indemnify and save harmless the Licensor from and against any and all actions, causes of action,

suits, claims, damages, awards, proceedings, costs (including the Licensor's legal costs on a solicitor and his own client basis) and liabilities or claims by any third party arising in respect of:

- (a) the placement, installation, use ( or the inability to use ), operation, maintenance or removal of the Equipment by the Licensee in, on, or from the Building;
- (b) the performance of this License Agreement by the Licensee, including the installation of the Licensee's Equipment, or its use or misuse by the Licensee;
- (c) any breach, violation, act or omission or non-performance of any condition, covenant, obligation, representation or warranty by or on the part of the Licensee;
- (d) damage to the Building or any personal property (including the loss thereof) of the Licensor, or any third party , or physical injury (including death resulting therefrom) caused directly or indirectly by the Licensee, or its agents, servants or employees;
- (e) any act or omission of the Licensee in connection with the presence, installation, use, operation or maintenance of the Equipment;
- (f) the proximity of the Equipment to any facilities or equipment of the Licensor, any tenant of the Licensor, whether or not a customer, or other carriers within the Building as a result of the presence, installation, use, operation or maintenance of the Equipment;
- (g) any act or omission of or by the Licensee in or while providing any services to any customer, or in respect to any service interruption, failure or impairment;
- (h) any actual or attempted seizure or repossession of the Equipment or any other equipment or property of the Licensee in any of the Licensor's properties by any creditor of the Licensee or by any other party; or
- (i) any claim of ownership, right or title by any third party in respect of the Equipment or any claim arising from any alleged lack of authority by the Licensee to enter into this License Agreement.

The Licensor shall not be liable for the quality of transmission, or for any damages arising from omissions, interruptions, delays, errors or defects in transmission suffered by the Licensee, or any of its customers, caused by failures or defects within the Building. To the extent that any of the Licensee's customers suffer damages arising from any of the circumstances mentioned above for which the Licensor may be at law responsible, the Licensee hereby indemnifies and holds harmless the Licensor from and against any such claims, regardless of whether the Licensor is alleged or found to be negligent, except when the Licensor is found to be solely negligent.

#### **14. RELEASE AND WAIVER**

The Licensee does hereby release the Licensor, as well as its respective directors, officers, servants, agents, employees, contractors (except for third party riser managers with whom the Licensee enters into an agreement) and those for whom all or any of them is, or are, in law responsible (hereinafter, individually, the "Releasee" and, collectively, the "Releasees"), from all actions, suits, damages, costs and liabilities for:

- (a) any damage to the Building, or the Licensee's Equipment;
- (b) any injury to, or death of any person; and
- (c) damage to any person's property or loss of use of such property,

arising out of any act or omission by any Releasee in respect of the Building or the Licensee's Equipment. This release extends to negligent acts or omissions, but not to grossly negligent or willful acts of any Releasee.

The Licensee further waives any claim that it may now have or may in the future have in tort, contract law, under any other theory of law, under statute, common law or in equity and confirms that its rights, obligations, rights of indemnity and measure and type of damages are limited to those that are expressly provided for in this License Agreement.



## 15. RIGHT OF TERMINATION

If the Licensee fails to (i) submit Plans and Specifications within thirty (30) days after the Commencement Date; or (ii) Install and Maintain the Equipment within ninety (90) days after the Licensor's approval of the Plans and Specifications, then the Licensor shall have the right to terminate this License Agreement on thirty (30) days prior written notice to the Licensee.

If: (a) the Licensee is adjudicated a bankrupt, or adjudged to be insolvent, or (b) a receiver, receiver-manager or trustee of the Licensee's property and affairs is appointed; or (c) the Licensee makes an assignment for the benefit of creditors or files a petition in bankruptcy or insolvency or for the appointment of a receiver or a receiver-manager, or any execution or attachment is issued against the Licensee or any of the Licensee's property under which any person other than the Licensee attempts to take or occupy any of the Licensee's rights under this License Agreement, and the execution or attachment is not set aside, vacated, discharged or bonded within fifteen (15) days after its issue, this License Agreement may at the option of the Licensor be terminated by delivering to the Licensee notice to that effect, and upon such delivery this License Agreement shall cease, but without prejudice to any rights of the Licensor which had accrued before the termination.

## 16. DEFAULTS

If and whenever (a) any amount due under this License Agreement shall be unpaid for fifteen (15) business days following notice in writing of such monetary default by the Licensor or (b) in the case of the default or non-performance of any of the covenants or agreements herein contained (other than monetary default) on the part of the Licensee ("Non-Monetary Default"), where at least thirty (30) business days notice specifying the nature of the Non-Monetary Default has been given by the Licensor to the Licensee and the Licensee has failed to cure such Non-Monetary Default within such cure period (or such longer period as is reasonable in the circumstances providing the Licensee has commenced to cure such Non-Monetary Default within such cure period and is diligently and continuously proceeding to cure same), or (c) the Licensee ceases operations in the Building, then the Licensor may terminate this License Agreement and the provisions of Section 6(e) shall apply.

## 17. INSURANCE

Throughout the Initial Term of this License Agreement or any extension thereof, the Licensee, at its sole cost and expense, shall take out and keep in full force and effect the following insurance:

- (a) comprehensive general liability insurance, including but not limited to personal injury liability, contractual liability of the Licensee as stated in this License Agreement and owners' and contractors' protective insurance coverage with respect to the Licensee's use of the Building or any portions thereof; such coverage shall include the activities and operations conducted by the Licensee and any other person or persons performing work on behalf of the Licensee or on whose behalf the Licensee is in law responsible. Such policy shall be written with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence involving bodily injury, death or property damage, for Five Million Dollars (\$5,000,000.00) in the aggregate and or for such higher limits as the Licensor may reasonably require from time to time;
- (b) in addition to the coverage specified in section (a) above, Excess Coverage with inclusive limits of not less than Five Million Dollars (\$5,000,000.00); and
- (c) any other form of insurance as the Licensor may reasonably require from time to time, throughout the Initial Term of this License Agreement or any extension thereof, in amounts and for insurance risks against which a prudent licensee under similar circumstances would insure.

The Licensee shall provide certificates of insurance to the Licensor on or prior to the commencement of the Initial Term of this License Agreement. All insurance policies shall contain an undertaking by the Licensee's insurer to notify the Licensor, upon not less than seven (7) days prior written notice, of any material change adverse to the Licensor, or proposed cancellation or termination of such policy. The insurance described above shall add as an

additional insured, as their interest appears, the Licensor and its property manager. All liability insurance shall contain provisions for cross-liability and severability of interests between the Licensor and the Licensee.

## 18. SUCCESSORS AND ASSIGNS

Provided the Licensee is not in default under this License Agreement, the Licensee upon prior reasonable written notice to the Licensor, shall be entitled to assign this License Agreement to any subsidiary or affiliate as defined in the *Ontario Business Corporations Act*, to a purchaser of all or a substantial part of its network or to a lender as security for a bona fide financing (the "Permitted Assignees") or in connection with a securitization or similar transaction provided the Licensee is not released from the License Agreement and provided the Permitted Assignee enters into an assumption agreement with the Licensor to be bound by all the provisions of the License Agreement.

Subject to the foregoing, the Licensee shall not assign, sub-license or transfer in any manner whatsoever this License Agreement (a "Transfer") without the prior written consent of the Licensor, which consent shall not be unreasonably withheld or unduly delayed. A sale of all or substantially all the Licensee's business or a change of control of the Licensee shall not constitute a Transfer requiring the Licensor's consent. This License Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

The Licensor shall have the right to Transfer, in whole or in part, all its rights and obligations under this License Agreement. In the event of such Transfer, a transferee shall assume the obligations of the Licensor under this License Agreement and the Licensor shall thereupon, and without further agreement, be released of all liability under this License Agreement.

## 19. NOTICE

Any notice required or permitted to be given hereunder or any tender of delivery of documents may be sufficiently given by personal delivery or by facsimile transmission, to the Licensee at the following address:

The Licensee:

TELUS Communications Inc.  
12040 – 107 Street  
Edmonton, Alberta T5G 2S7

Attention: Real Estate Specialists  
Fax: 780-441-7205

and to the Licensor the following address:

State Street Financial Centre  
30 Adelaide Street East, Suite 1600  
Toronto, Ontario M5H 3H1

Attention: Manager, Procurement & Strategic Initiatives  
Fax: (416) 365-6565

With a copy to be given at the same time and in the same manner to:  
Dundee's Legal Counsel at (416) 365-6565.

Any notice may also be given by prepaid registered mail and such notice shall be effective on the third day following the date of mailing, except in the event that there is a disruption in postal services at the date of mailing, in which case notice shall be effected by personal delivery or a facsimile transmission as stated above.

## 20. EARLY INSTALLATION OF EQUIPMENT

Provided this License Agreement is executed by both parties and the insurance requirements as set out in Section 13 are complied with and the Approved Plans have been approved by the Licensor in accordance with this License Agreement, the Licensor agrees that the Licensee shall have reasonable access to the Building in accordance with the provisions of this License Agreement prior to the Commencement Date for the purpose of installing the Equipment at the Licensee's expense. From the time that the Licensee enters the Building to commence such installation, the Licensee shall be bound by all of the provisions of this License Agreement except that the Licensee shall not be required to pay the Licence Fee until the Commencement Date.

## **21. GOVERNING LAW**

This License Agreement shall be governed by the laws of the province where the Building is located or if applicable, the laws of Canada.

## **22. FORCE MAJEURE**

Neither party to this License Agreement shall be in default or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms and conditions of this License Agreement due to any causes beyond its reasonable control which causes included but are not limited to acts of God, the public enemy, riots and insurrections, war, accident, fire, embargoes, judicial action by or acts of civil or military authorities but specifically excluding financial inability.

## **23. NO EXCLUSIVITY**

The Licensee acknowledges and agrees that nothing in this License Agreement shall be construed or interpreted as granting to the Licensee any exclusive rights or privileges in the Building to the exclusion of any other third parties.

## **24. GOVERNMENT REGULATIONS**

The parties to this License Agreement shall comply with and conform to all laws, by-laws, legislative and regulatory requirements of any governmental authority having jurisdiction relating to the matters contemplated by this License Agreement. Such governmental authorities shall include but not be limited to municipal authorities, provincial authorities, Industry Canada and the Canadian Radio-television and Telecommunications Commission. Should any provision of this Agreement be illegal, invalid or unenforceable, that provision shall be considered separate and severable from the remaining provisions of this Agreement and the remaining provisions shall remain in force and be binding upon the parties. For greater certainty, the provisions of this License Agreement regarding the Licensee's liability for, and payment of fees to the Licensor for the License Agreement shall remain in force and be binding on the parties regardless of the severance of other provisions of this License Agreement pursuant to this section.

## **25. COMMISSIONS**

The Licensee hereby indemnifies and holds Licensor harmless against any loss, claim, expense or liability with respect to any commissions or brokerage fees claimed on account of the execution and/or renewal of this License Agreement.

## **26. TAXES**

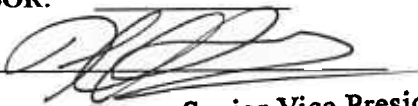
The Licensee shall be responsible for collecting and remitting all applicable Federal, provincial and local taxes attributable to the ownership and operation of any Equipment installed pursuant to this License Agreement, provided, however, that the Licensee shall not be responsible for any taxes imposed on the income of the Licensor derived from the Building or otherwise, except that the Licensee will be responsible for the payment of all applicable federal, provincial and local taxes imposed on the Licensor as a direct result of the exercise, directly or indirectly, of the Licensee's rights under this License Agreement, including the Licensee's operations and sales within the Building.

## **27. MISCELLANEOUS**

- (a) This License Agreement , including the Specifications for Premises Wiring, Cable Management and Roof-top Access attached hereto, constitutes the entire agreement of the parties and supersedes all prior agreements and understandings whether written or oral relative to the subject matter hereof. Except as otherwise specifically set forth in this License Agreement, neither party makes any representation or warranty express or implied, statutory or otherwise to the other. This License Agreement may not be amended or modified except by a written instrument executed by both parties.
- (b) Except as expressly otherwise herein provided, time is of the essence of this License Agreement.
- (c) Each of the parties agrees from time to time hereafter and upon any reasonable request of any other party, to make or cause to be made all such further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this License Agreement.
- (d) The failure of either party to insist at any time upon the strict performance of any covenant or agreement herein or to exercise any option, right, power or remedy contained in this License Agreement shall not be construed as a waiver or a relinquishment thereof for the future. No payment by the Licensee or receipt by the Licensor of a lesser amount than the monthly installment of License Fees due under this License Agreement shall be deemed to be other than on account of the earliest License Fees due hereunder, nor shall any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Licensee Fees be deemed an accord and satisfaction, and the Licensor may accept such cheque or payment without prejudice to the Licensor's right to recover the balance of such License Fees or pursue any other remedy provided for in this License Agreement.
- (e) The indemnity rights and obligations under this License Agreement shall survive the expiration or termination of this License Agreement.
- (f) The individuals executing this License Agreement on behalf of the Licensor or the Licensee, as the case may be, each represent that they are authorized to execute this License Agreement on behalf of the Licensor or the Licensee, as the case may be.

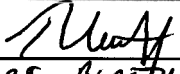
IN WITNESS WHEREOF the Licensor and the Licensee have hereunto executed this License Agreement.

LICENSOR:

Per:   
 Name: \_\_\_\_\_  
 Title: **Allan Perez, Senior Vice President**  
 c/s

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
*We have the authority to bind the Corporation*

LICENSEE: TELUS COMMUNICATIONS INC

Per:   
 Name: ROBERT BEATTY  
 Title: RVP BUILDING ACCESS  
 c/s

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
*We have the authority to bind the corporation*

G26/KOCHM4373636

**Schedule "A"**

<b>Building</b>	<b>Municipal Address</b>	<b>GLA</b>	<b>Annual Fee</b>
Woodbine Steeles Corporate Centre	7030 Woodbine Avenue Markham, Ont. L3R 6G2	119,067 sf.	\$3,000.00
Woodbine Steeles Corporate Centre	7050 Woodbine Avenue Markham, Ont. L3R 4G8	51,471 sf.	\$3,000.00
Woodbine Steeles Corporate Centre	7100 Woodbine Avenue Markham, Ont. L3R 5J2	17,697 sf.	\$3,000.00
2 St. Clair Avenue	2 St. Clair Avenue East Toronto, Ont. M4T 2T5	158,649 sf.	\$3,172.98
Capitol Square *	222 Queen Street Ottawa, Ont. K1P 5V9	193,456 sf.	\$3,869.12

The Effective Date of the Agreement for 222 Queen Street is the earlier of the date that the Licensee deploys its fibre in the area or January 1, 2003. In the event that the Effective Date occurs before January 1, 2003, the Fee for the first year of the Initial Term shall be pro-rated.

Amended: December 3, 2001

