

TELECOMMUNICATIONS LICENSE AGREEMENT

BETWEEN

**BROOKFIELD PROPERTIES (BHT) LTD., as to an undivided 50% interest,
and
bcIMC REALTY CORPORATION, as to an undivided 50% interest
("the Owners"),**

by their agent and manager:

BROOKFIELD PROPERTIES MANAGEMENT CORPORATION

~ and ~

TELUS COMMUNICATIONS INC.

(the "Licensee")

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INFORMATION PAGE

These two (2) pages set out information which is referred to and forms part of the TELECOMMUNICATIONS LICENSE AGREEMENT made as of **March 1, 2009** between **BROOKFIELD PROPERTIES (BHT) LTD.**, as to an undivided 50% interest, and **bcIMC REALTY CORPORATION**, as to an undivided 50% interest, as the Owners, by their agent and property manager: **BROOKFIELD PROPERTIES MANAGEMENT CORPORATION** and **TELUS COMMUNICATIONS INC.** as the Licensee. The information is as follows:

Building: The office building and retail complex commonly known as **Bankers Court** and municipally addressed as **850 – 2nd Street SW, Calgary, Alberta.**

Floor Area of Deemed Area: Estimated to be a total of **one hundred and twelve (112)** square feet. The exact measurement of the Deemed Area may be verified by an architect or surveyor employed by the Owners for that purpose and upon verification, an adjustment of the License Fee and the floor area will be made retroactively to the Commencement Date.

Commencement Date: **March 1, 2009.**

License Fee:

- (a) during the period from **March 1, 2009** to and including **February 28, 2010**, the annual sum of **three thousand nine hundred and twenty dollars (\$3,920.00)** calculated based on the annual rate of **thirty-five dollars (\$35.00)** per square foot of the Floor Area of the Deemed Area: and
- (b) during the period from **March 1, 2010** to and including **February 28, 2011**, the annual sum of **four thousand eighteen dollars (\$4,018.00)** calculated based on the annual rate of **thirty-five dollars and eighty-eight cents (\$35.88)** per square foot of the Floor Area of the Deemed Area: and
- (c) during the period from **March 1, 2011** to and including **February 28, 2012**, the annual sum of **four thousand one hundred and eighteen dollars and forty-five cents (\$4,118.45)** calculated based on the annual rate of **thirty-six dollars and seventy-seven cents (\$36.27)** per square foot of the Floor Area of the Deemed Area: and
- (d) during the period from **March 1, 2012** to and including **February 28, 2013**, the annual sum of **four thousand two hundred and twenty-one dollars and forty-one cents (\$4,221.41)** calculated based on the annual rate of **thirty-seven dollars and sixty-nine cents (\$37.69)** per square foot of the Floor Area of the Deemed Area: and

(e) during the period from **March 1, 2013** to and including **February 28, 2014**, the annual sum of **four thousand three hundred and twenty-six dollars and ninety-five cents (\$4,326.95)** calculated based on the annual rate of **thirty-eight dollars and sixty-three cents (\$38.63)** per square foot of the Floor Area of the Deemed Area:

plus, throughout the Term, Recoverable Costs.

Hydro Charges (subject to change pursuant to Section 6): the annual sum of three hundred and fifty dollars (\$350.00) plus an administration fee of fifteen percent (15%) payable by Licensee in advance.

Notices: Owners:

c/o Brookfield Properties
Management Corporation
181 Bay Street, 3rd Floor
Toronto, Ontario M5J 2T3
Attention: V.P. Operations

Licensee:

TELUS COMMUNICATIONS INC.
90 Gough Road
Markham, Ontario L3R 5V5
Attention: Manager, Building Access

with a copy to:

c/o Brookfield Properties
Management Corporation
Suite 1700,
335 - 8th Avenue SW
Calgary Alberta T2P 1C9
Attention: Law Department

Prime Rate Reference Bank: The Toronto Dominion Bank.

Renewal Term: Two (2) period of five (5) years.

Term: The period starting on the Commencement Date and ending on **February 28, 2014**.

TELECOMMUNICATIONS LICENSE AGREEMENT

THIS TELECOMMUNICATIONS LICENSE AGREEMENT made as of **March 1, 2009**,

B E T W E E N:

**BROOKFIELD PROPERTIES (BHT) LTD., as to an undivided 50% interest,
and
bcIMC REALTY CORPORATION, as to an undivided 50% interest,**

(hereinafter, the "Owners")

by their agent and property manager:

BROOKFIELD PROPERTIES MANAGEMENT CORPORATION

~ and ~

TELUS COMMUNICATIONS INC.

(hereinafter, the "Licensee").

1. DEFINITIONS

In this Agreement the capitalized terms appearing herein shall mean the following:

"Affiliate": for the Owners means a body corporate that is affiliated with another within the meaning of the *Canada Business Corporations Act*. for the Licensee means and affiliated body corporate as defined in the *Canada Business Corporations Act*, as well as any partnership or other unincorporated association in which TELUS COMMUNICATIONS INC. or any of its affiliated bodies corporate (or so defined) has a controlling interest.

"Agreement": this telecommunications license agreement, its Exhibits and Schedules and Information Page.

"Building": the building situated on the Lands; municipally described on the Information Page.

"Business Day": a day that is not Saturday, Sunday, or a holiday observed under the laws of Alberta or the laws of Canada.

"Cable": fibre optic, coaxial, copper cables and wires.

"Commencement Date": the date stated as the Commencement Date on the Information Page.

"Communications Equipment": cabinets, racks, electronic equipment and other equipment that (i) have been installed before the date of this Agreement, or (ii) are installed, or to be installed by the Licensee, in the Deemed Area all as described in Schedule "B" and such other equipment as may be installed by the Licensee during the Term and Renewal Term, as approved by the Owners in accordance with Section 7.

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"Communications Spaces": telecommunications pathways and cable pathways designated by the Owners in Schedule "D" for use by the Licensee to provide Services to tenants and occupants of the Building and such other pathways used by the Licensee during the Term and Renewal Term as approved by the Owners in accordance with Section 7.

"Connecting Equipment": the Cables, fibre guides, fibre entrance cabinets, fibre patch panels, conduits, inner ducts and connecting hardware that (i) have been installed before the date of this Agreement or (ii) are described in Schedule "C" installed, or to be installed by the Licensee, through the Entrance Link, and the Communication Spaces, and such other connecting equipment as may be installed by the Licensee in the Building during the Term and Renewal Term, as approved by the Owners in accordance with Section 7, that is connected to the Entrance Cable, Main Distribution Frame, Communications Equipment, or Cable or that is used to house or carry Cable.

"Consumer Price Index": (All Items for Regional Cities) for the city in which the Building is located, base year 1992=100, or if there is no Consumer Price Index for that city, for the city in Canada nearest the Building for which there is a Consumer Price Index published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency). If the Consumer Price Index is no longer published, an index published in substitution for the Consumer Price Index or any replacement index designated by the Owners, acting reasonably, will be used. If a substitution is required, the Owners will make the necessary conversions. If the base year is changed by Statistics Canada or the applicable governmental agency, the necessary conversions will be made.

"Cross Connection": the connection of one wire or cable under the management and control, or ownership of one party to a wire or cable under the management and control or ownership of another, by anchoring each wire or cable to a connecting block and placing a third wire between the two, or by any other means, and any other connection of the telecommunications system or any of its components that is under the management, control or ownership of one party to that of another, or any of its components.

"CRTC": the Canadian Radio-television and Telecommunications Commission or any successor body thereto.

"Deemed Area": the area shown outlined with a heavy black line in Schedule "A", as may be relocated as provided for in Section 2(e)

"Entrance Cable": the Cable installed or to be installed by the Licensee that connects the Licensee's telecommunications network from the property line of the Lands to the Communications Equipment and to the Main Distribution Frame and includes the tie Cables between the Communications Equipment and the Main Distribution Frame.

"Entrance Link": the coresleeve, or other penetration designated by the Owners through the Building's foundation walls or elsewhere as indicated in Schedule "D" containing the Entrance Cable.

"Equipment Room": the area containing the Main Distribution Frame for the Building.

"Event of Default": defined in Section 18.

"Existing Equipment": that part of the Licensee's Equipment installed before the date of this Agreement.

"**Fee**": any amount payable by the Licensee under this Agreement.

"**Hazardous Substance**": any substance that is controlled by, regulated, or restricted under the laws of the Province in which the Building is situated or under the laws of Canada, including any regulations, guidelines, policy statements and restrictions pertaining to the protection of the natural environment, quality of air, water and other aspects of the environment and including but not limited to polychlorinated biphenals, asbestos, and other substances commonly referred to as pollutants, contaminants or hazardous substances.

"**In-Building Wire**": as defined by the CRTC constitutes copper wires, Cable and other connecting facilities which originate in the Equipment Room and run to the telephone closet on each floor and thereafter to but not within the premises of the tenant's or occupants in the Building.

"**Information Page**": collectively, the sheets attached to this Agreement and marked as "Page IP".

"**Inside Wire**": wires and other facilities which are usually in, or in proximity of, premises of the tenants or occupants of the Building, and which are under those persons' or entities' responsibility and control.

"**Lands**": the lands occupied by the Building.

"**LEC**": a local exchange carrier regulated by the CRTC.

"**Licensee's Equipment**": the Communications Equipment and the Connecting Equipment.

"**License Fee**": the annual sums stated as the License Fee on the Information Page.

"**Main Distribution Frame**": the main distribution frame or other physical location for the Cross Connection of a TSP's Entrance Cable to the In-Building Wire located in the Building.

"**Multi-Dwelling Unit Building**": as defined by the CRTC in Decision 2003-45 constituting a building with at least two units and at least one unit occupied by a tenant.

"**Owner(s)**": BROOKFIELD PROPERTIES (BHT) LTD., as to an undivided 50% interest, and bcIMC REALTY CORPORATION, as to an undivided 50% interest and their successors and assigns and any other owner or owners from time to time of the freehold or leasehold title of the Lands, the Building or either of them.

"**Plans and Specifications**": the working drawings, plans, specifications, and other applicable construction or installation plans referred to in Section 7(a).

"**Prime**": the rate quoted from time to time as its "Prime Rate" for commercial loans in the City in Canada where the Owners' head office is situated, by the bank indicated on the Information Page, as the "Prime Rate Reference Bank".

"**Recoverable Costs**": the costs and expenses particularized on Exhibit "1" for building services requested of the Owners by the Licensee or causal to the Licensee's construction and installation, maintenance, operation and repair activities relating to the provision of the Services in the Building and confirmed, in advance, in writing by the Owners to the Licensee. However, Recoverable Costs shall not include costs that would be incurred by the Owners in any event,

costs that have already been incurred by the date of execution of this Agreement, the costs associated with the negotiation, management, administration, monitoring and enforcement of this Agreement or of other agreements with TSPs, or fees in relation to a Riser Manager (except to the extent identified in Exhibit "1" and provided by the Riser Manager).

"Released Licensee Persons": the Licensee, its agents, contractors, subcontractors, authorized representatives or other authorized persons and their respective officers, directors, employees, and agents.

"Released Owners Persons": the Owners, the owners of the fee simple interest in the Lands, any property manager(s) of the Building (including, without limitation, Brookfield Properties Ltd. and Brookfield Properties Management Corporation), any lender or other person that holds security on the Building and any other person having an interest in the Building or the Lands from time to time that the Owners may reasonably designate by written notice to the Licensee, and their respective officers, directors, employees, agents, representatives and contractors, and others for whom each of the foregoing persons is responsible for at law, of all and any of them.

"Renewal Term": the renewal term(s) noted on the Information Page.

"Riser Manager": a person or entity retained by the Owners to provide management and supervision services for all or part of the raceways, risers, ducts, conduits, sleeves, communications pathways (including the Communications Spaces), roof areas and other telecommunications related facilities in or serving the Building.

"Services": the wire-line telecommunications to be provided by the Licensee to tenants or occupants in the Building but not including any wireless, antennae or other non-wire transmissions.

"Term": the period of time stated as the Term on the Information Page.

"TSP": a telecommunications service provider.

2. GRANT

- (a) the Owners grant to the Licensee for the Term and any Renewal Terms, a non-exclusive license:
 - (i) to install, operate, maintain, repair, improve, replace, and remove, at the Licensee's sole expense and risk, the Entrance Cable, Communications Equipment, Connecting Equipment, and Cable;
 - (ii) to use the Entrance Link, Main Distribution Frame, and Communications Spaces;
 - (iii) to connect the Entrance Cable to the Communications Equipment and to the Main Distribution Frame; and
 - (iv) connect the Licensee's Equipment to the In-Building Wire and Inside Wire.

all in accordance with the terms and conditions set out in this License Agreement.

- (b) The Owners grant to the Licensee for the Term and any Renewal Term(s), an exclusive license to use the Deemed Area.
- (c) The Licensee shall be provided access to the Lands and Buildings in order to exercise its non-exclusive and exclusive license, twenty four hours per day, three hundred and sixty five days per year subject to:
 - (i) the Owners' reasonable security requirements;
 - (ii) the notice requirement as provided in Section 9(b); and
 - (iii) an event of *force majeure* as provided in Section 31
- (d) The Licensee shall use the Equipment Room and Deemed Area for the sole purpose of providing Services to tenants and occupants in the Building. The Licensee is expressly forbidden to serve other properties from the Building.
- (e) The Owners may at any time and for valid reasons including, without limitation, where the Deemed Area becomes damaged and is not technically or economically feasible to restore within ninety (90) days after the damage, require the Licensee, to relocate within the Building any or all of the Licensee's Equipment, and the Deemed Area. Upon receipt of not less than one hundred and twenty (120) days advance written notice from the Owners, or such lesser period of time as agreed to by the parties in case of damage to the Deemed Area as aforesaid, (a "Relocation Notice") the Licensee shall relocate the Licensee's Equipment and the Deemed Area. The Relocation Costs will be shared equally by the Owners and the Licensee unless the relocation is primarily to accommodate another supplier of Services or is a result of the Deemed Area being damaged as aforesaid. In those cases, the Licensee will not be required to pay any part of the relocation costs. The Owners shall permit the Licensee to effect any relocation using a procedure that will ensure that the relocated equipment is operational for service prior to discontinuing service from the previous service location. If a Relocation Notice is delivered, the Licensee, will, within fifteen (15) days after its receipt deliver written notice to the Owners setting out particulars of its estimate of the Relocation Costs and, the Owners will be entitled to rely upon that estimate in proceeding with the relocation. The Owners may at any time within fifteen (15) days after receipt of the Licensee's estimate of the Relocation Costs rescind its Relocation Notice by giving written notice to the Licensee to that effect.
- (f) The Owners make no warranty or representation that the Equipment Room, Deemed Area, the Communications Spaces or any part of the Building is or are suitable for the Licensee's use or purpose.
- (g) The Owners may grant, renew or extend similar licenses to other suppliers of telecommunications services. The License granted by this Agreement is revocable only in accordance with the express terms of this Agreement.
- (h) The Licensee agrees to take reasonable steps to assist the Owners in improving the space and operating efficiencies within the Building by undertaking the following, on a one time only basis, at the Licensee's cost, at the request of the Owners and within timeframes approved by the Owners, acting reasonably:

- (i) identifying Existing Equipment;
- (ii) upon reasonable request from the Owners, to achieve improved space and operating efficiencies in connection with specific cases, examining, identifying and labelling specific items of Existing Equipment;

relocating, reconfiguring and improving space and operating efficiencies related to Existing Equipment in accordance with the reasonable requests of the Owners, but subject to Section 2(e); and

upon request from the Owners and with reasonable time to respond in the circumstances, providing to the Owners on a confidential basis, its existing available information on its Existing Equipment, e.g. concerning types of wiring, wiring casings, materials used in the Existing Equipment, sizes, capacities and other information, where that other information may be required having regard to building code, building safety, fire code, fire safety or similar governmental requirements where the requirements of the Owners' insurers.

- (i) The relationship between the Owners and the Licensee is solely that of independent contractors, and nothing in this Agreement shall be construed to constitute the parties as employer/employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

3. FEES

- (a) The Licensee agrees to pay the License Fee to the Owners annually in advance without any set-off, deduction or abatement whatsoever.
- (b) The Licensee shall also pay to the Owners any Recoverable Costs incurred by them within thirty (30) days after receipt of each itemized invoice, without deduction, abatement or set off.
- (c) Interest will accrue at that rate of interest that is three percent (3%) greater than Prime on any arrears of Fees payable by the Licensee, and will be payable when payment of the interest is demanded.
- (d) Value added taxes and similar taxes such as "HST" or "GST" are payable by the Licensee on all Fees.

4. TERM - OPTION TO RENEW

- (a) The Term of this Agreement starts on the Commencement Date and expires on the date stipulated on the Information Page.
- (b) Provided that the Licensee is not then in default of any of its material obligations under this Agreement, and is providing Services as a LEC in the Building, this Agreement will automatically be renewed for the Renewal Term unless either the Owners or the Licensee give the other party at least one hundred and twenty (120) days written notice prior to the end of the Term of that party's intention not to renew. The Renewal Term will be governed by the same terms and conditions set out herein except for: (i) any further right to renew, (ii) Section 2(h) which

shall cease to be in effect upon expiration of the Term, and (iii) the License Fee, which during the first year of the Renewal Term shall be the License Fee payable during the last year of the initial Term plus that amount which represents the percentage increase in the Consumer Price Index from the Commencement Date to the start of the Renewal Term (or zero should there be a decrease in the Consumer Price Index) and, thereafter, the License Fee payable for each year of the Renewal Term shall be 102.5% of the amount of License Fee payable during the immediately preceding year.

5. USE

The Licensee shall use the Building, Communications Spaces, Deemed Area, Licensee's Equipment and the Equipment Room in the Building solely for the purpose of providing Services to the tenants or occupants situated in the Building. The Licensee must be properly certified or licensed by the appropriate governing bodies to provide its Services. This Agreement does not provide for the installation or operation of any forms and types of rooftop communications equipment or wireless communications equipment.

6. ELECTRIC UTILITIES

The Owners may estimate or re-estimate, acting reasonably, the amount of electricity consumed by the Licensee which amount plus an administration fee of fifteen percent (15%) of the amount shall be paid by the Licensee, in advance, on the Commencement Date and, thereafter, on each anniversary of the Commencement Date occurring during the Term, or any extensions thereof or renewals of this Agreement. Alternatively, either party may install a meter at its own cost and in that case the Licensee will pay for electricity consumption annually, in arrears, based on the meter reading plus an administration fee of fifteen percent (15%), which amounts shall be paid by the Licensee within thirty (30) days upon receipt of the Owners' invoice therefor. Unless and until the Owners re-estimate the amount of electricity consumed by the Licensee or either party installs a meter to measure the Licensee's consumption of electricity, the Owners' current estimate of the Licensee's consumption of electricity shall be as set out in section of the Information Page entitled "Hydro Charges".

The Owners shall notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's Equipment use but shall not be responsible for any losses, costs or expenses suffered as a result of any such outages providing reasonable notice of such planned utility outages was provided. The Owners have no obligation to provide emergency or "backup" power to the Licensee. Any provision of emergency or "backup" power shall be the sole responsibility of the Licensee.

7. CONSTRUCTION

- (a) Subject to what is stated below and unless otherwise waived by the Owners upon request by the Licensee, prior to performance of any work, or the making of any installation, and prior to changes, alterations or upgrades to any existing work or installation in the Building, the Licensee shall, at its sole cost and expense, prepare and deliver to the Owners for the Owners' prior approval, working drawings, plans and specifications for the work or installation detailing the type, size and location of the Licensee's Equipment that is proposed to be installed, altered or removed, the Communication Spaces to be used by the Licensee and the Deemed Area, all specifically describing the proposed construction and work. All working drawings, plans and specifications must be

prepared in accordance with applicable engineering standards, and will be considered as part of the Plans and Specifications when they have been approved by the Owners, in writing. No work shall commence until the Owners have approved, in writing, the working drawings, plans and specifications, and any other applicable construction or installation plans or has waived the requirement to provide such documentation. The Owners' approval of Plans and Specifications is not deemed a representation that the Licensee's Equipment will not cause interference with other systems in the Building or that the Plans and Specifications comply with applicable laws, rules or regulations. That responsibility shall remain with the Licensee. Despite what is stated above, only an initial "Bay Layout" will be required in respect of equipment intended to be installed in the racks installed inside the Deemed Area and, technical specifications in respect of that equipment will not be required to be provided other than specifications relating to heat generated by the equipment and electrical consumption.

- (b) The Licensee warrants that, except for the Existing Equipment which shall be compliance with all applicable laws, rules and regulations in the Province where the Building is located and in Canada, the installation of the Licensee's Connecting Equipment, Entrance Cable and Cable shall be in strict compliance with the approved Plans and Specifications.
- (c) The Licensee agrees that installation and construction shall be performed:
 - (i) in a neat, responsible, and good and workmanlike manner;
 - (ii) strictly consistent with such reasonable requirements as shall be imposed by the Owners and communicated in advance to the Licensee in writing;
 - (iii) in accordance with all applicable laws, rules and regulations; and
 - (iv) using only contractors approved in writing by the Owners, acting reasonably (it being acknowledged that, without limitation, a lack of or incompatible union affiliation of a contractor is a reasonable basis for failing to approve a contractor where the Owners determine, on a bone fide basis, that the use of such a contractor may cause a breach of a labour agreement, the filing of a labour grievance, or labour disruption.).
- (d) The Licensee shall label each Cable installed by the Licensee on or after the date of this Agreement in the Communications Spaces, in each telephone closet through which the Cables pass, and, in addition, at any intervals and at additional locations that the Owners might reasonably require. The labelling will be in a format approved by the Owners acting reasonably.
- (e) The Licensee shall obtain, at its sole cost and expense, prior to construction and work, any necessary permits, licenses and approvals, copies of which will be delivered to the Owners upon request prior to commencement of construction and work. The Licensee's Equipment shall comply with all applicable standards including safety, as may be periodically revised by any governing body with jurisdiction over the Licensee's operations.

- (f) The Licensee shall not, during construction or otherwise block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, halls, stairs, elevators, the sidewalks around the Building or any entrance ways.
- (g) The Licensee may amend or supplement the Plans and Specifications approved by the Owners, from time to time, with the written consent of the Owners, for the purpose of serving tenants and occupants of the Building. All terms and conditions of this Section 7 shall apply.

Prior to the installation of any additional Licensee's Equipment under this Agreement, the Licensee will also provide to the Owners whatever information the Owners reasonably require concerning types of wiring casings, materials used in the Licensee's Equipment, sizes, capacities and other information which may be required having regard to building code, building safety, fire code, fire safety or similar governmental requirements or the requirements of the Owners' insurers.

8. COVENANTS

The Licensee covenants as follows:

- (i) The Licensee shall, at its sole cost and expense, maintain and repair the Deemed Area and the Licensee's Equipment in proper operating condition and maintain them in satisfactory condition as to safety.
- (ii) The Licensee shall, at its sole cost and expense, repair any damage to the Building, Lands, Communications Spaces and any other property owned, controlled or managed by the Owners or by any lessee or licensee of the Owners or by any other tenant or occupant of the Building where such damage is caused by the Licensee or any of its agents, representatives, employees, contractors, subcontractors, invitees or other for whom it is in law responsible. If the Licensee fails to repair or refinish the damage, the Owners may repair or refinish such damage and the Licensee shall reimburse the Owners all costs and expenses reasonably incurred in such repair or refinishing, plus an administration fee equal to fifteen percent (15%) of those costs.
- (iii) The Licensee shall not interfere with the use and enjoyment of the Building by the Owners or by lessees, or licensees of the Owners or tenants or occupants of the Building. If such interference occurs, the Owners may give the Licensee written notice thereof and the Licensee shall correct same as soon as possible and in any event within forty-eight (48) hours after receipt of notice, or such further time period as may be reasonably required by the Licensee in order to correct or remove such interference. In the case of emergency, or if the Licensee fails to correct or remove such interference after proper notification, the Owners may take any action the Owners deem appropriate to correct or remove same, all at the cost of the Licensee, plus an administration fee equal to fifteen percent (15%) of those costs.
- (iv) The Licensee shall use commercially reasonable efforts to ensure that its Equipment does not disrupt, adversely affect, or interfere with other

providers of communications services in the Building, the Building's operating, elevator, safety, security, or other systems, or with any tenant's or occupant's rights of enjoyment, including their respective use or operation of communications or computer devices or with the systems, facilities, and devices situated in neighbouring properties. If such disruption or interference does occur, the Owners may give the Licensee written notice thereof and the Licensee shall correct or remove such disruption or interference as soon as possible and in any event within forty-eight (48) hours after receiving written notice thereof, or such further time period as may be reasonably required by the Licensee in order to correct or remove such disruption or interference.

- (v) The Licensee will comply with all Building rules, as periodically adopted by the Owners acting reasonably, and communicated to the Licensee in writing and will use reasonable efforts to cause its agents, employees, contractors, invitees and visitors to do so.
- (vi) The Licensee will comply with all applicable rules and regulations having force of law periodically issued by any and all governing bodies in the Province where the Building is located and in Canada pertaining to the installation, maintenance, operation and repair of the Deemed Area, the Equipment Room, the Licensee's Equipment and In-Building Wire, including the Licensee's provision of services.

The Licensee will not encumber charge, grant a security interest in respect of, or otherwise grant rights in favour of third parties in respect of any part of the In-Building Wire. Notwithstanding any other provision of this Agreement, the Owners acknowledge and agree that: (a) the Licensee is permitted to allow other local exchange carriers to connect to and use copper In-Building Wire under its responsibility and control and conversely, to connect to and use copper In-Building Wire under the control and responsibility of other local exchange carriers, at no cost, and (b) the Licensee is obligated, and shall be entitled to comply with any future orders, decisions or other directives of the CRTC as regards the operation or use of In-Building Wire or other communications facilities or infrastructure located within the Building.

Except as required by the CRTC with respect to a LEC, the Licensee will not permit any other TSP to co-locate equipment in its Deemed Area nor will it permit any third party supplier to Cross Connect to any of the Licensee's Equipment or to use any part of the Licensee's Equipment for the purpose of providing Services, telecommunication or similar services to customers in the Building.

The Licensee will not use any part of the Licensee's Equipment as a network hub facility, switch hotel, switch node, or similar facility that functions as an integral part of a network where disruption of the operation or use of the Licensee's Equipment or any part of it would have the effect of disrupting service to persons outside of the Building. Despite the foregoing or anything else contained in this Agreement to the contrary, the Licensee will not be responsible for any Riser Manager costs, however if the Owners employ a third party to install In-Building

Wire on behalf of the Licensee, the Licensee will be responsible for the actual costs plus fifteen (15%) related to such In-Building Wiring requested by the Licensee.

- (x) The Licensee will strictly comply with all occupational health and safety legislation, Workers' Compensation legislation, and other governmental requirements relating to performance of work and adherence to safety standards, as applicable.

If the Owners elect to retain a Riser Manager, the Licensee will, to the extent directed by the Owners (i) recognize the Riser Manager as the duly authorized representative of the Owners, and (ii) abide by all reasonable policies, directions and decisions of the Riser Manager pertaining to matters such as the use of Communication Spaces and other areas within the Building, and the installation and operation of equipment having regard to safety, operational and building integrity concerns except to the extent that such policies, directions or decisions may be inconsistent with the terms and conditions of this Agreement, in which case the terms of this Agreement shall supersede. Despite the foregoing or anything else contained herein to the contrary, the Licensee will not be responsible for any Riser Manager costs, however if the Owners employ a third party to install In-Building Wire on behalf of the Licensee, at the Licensee's request, the Licensee will be responsible for the actual costs plus fifteen (15%) related to such In-Building Wiring requested by the Licensee.

- (b) The Owners covenant:

- (i) To operate, repair and maintain the Building and Building systems and the Lands in a safe and proper operating condition and in accordance with accepted building industry standards;
- (ii) That any consent or approval of the Owners pursuant to the terms of this License shall not be unreasonably withheld, conditioned or delayed, except as is expressly provided for;

Subject to the Licensee reimbursing the Owners for the Owners' reasonable costs in doing so, and subject to payment to the Owners of an administration fee of fifteen percent (15%) of those costs, to cooperate with the Licensee to the extent reasonable in obtaining all necessary consents, permits and authorizations as may be required for the Licensee's construction, installation and operations provided for in this Agreement, in or in respect of the Building; and

If the operation of the Licensee's Equipment or the provision of the Services is interfered with by the operation of other equipment or by the activities of third parties in or in respect of the Building, the Owners shall, to the extent that it is commercially reasonable, upon being provided by the Licensee with written notice and reasonable particulars concerning the nature of the interference, extend reasonable efforts to assist the Licensee in obtaining removal or amelioration of the interference within a time frame that is appropriate having regard to the nature and extent of the interference.

9. ACCESS

- (a) Subject to Section 9(b), the Licensee's authorized representatives may have access to the Equipment Room at all times during normal business hours, and at other times as agreed by the parties in advance, subject to the Owners' reasonable security requirements which may include supervision, for the purposes of installing, maintaining, operating, improving and repairing the Licensee's Equipment. The Owners will give the Licensee's authorized employees or properly authorized contractors, subcontractors, and agents of the Licensee ingress and egress to the Lands, Building and Communications Spaces including non-exclusive use of an elevator during normal business hours, and at other times as agreed by the parties in advance. However, only authorized engineers, employees or properly authorized contractors, subcontractors, and agents of the Licensee, other authorized regulatory inspectors, or persons under their direct supervision and control will be permitted to enter the Building, Communications Spaces, Equipment Room, or other areas in the Building and only upon the conditions set forth in this Agreement. The Licensee shall be fully responsible for the acts or omissions of its employees, contractors, subcontractors, representatives, invitees, others for whom it is in law responsible or other authorized persons invited on its behalf to enter the Communication Spaces, Equipment Room, or other areas in the Building.
- (b) Except in the event of an emergency and as described below, the Licensee will give at least twenty-four (24) hours notice to the Owners of its intent to enter Communications Spaces. At the time that notice is given, the Licensee shall inform the Owners of the names of the persons who will be accessing the Communications Spaces, the reasons for entry, and the expected duration of the work to be performed. For routine service activations and repair visits to the Building during normal business hours for which purposes the Licensee requires access without advance notice in order to meet, as a LEC, its CRTC-mandated service provisioning and service repair intervals this notice may be given at the time of the entry, to the Owners, or other person designated in writing for that purpose by the Owners. Any person who accesses the Building Communication Spaces, or any other part of the Building and tenant premises which the Owners designate outside of normal business hours, may be required by the Owners to be accompanied by a representative of the Owners designated for that purpose and the cost of providing this form of accompaniment or supervision will be paid by the Licensee to the Owners based on the established Building's hourly rate for such escorts plus an administration fee of fifteen percent (15%). In the event of any emergency, unless the nature of the emergency renders such advance notice impractical, the Licensee shall give to the Owners as much advance notice as reasonably possible of its intent to enter the Communications Spaces and, within five (5) Business Days following the entry, upon request, shall provide to the Owners a written report detailing the nature of such emergency, the corrective actions taken, and any other relevant information.
- (c) Nothing in this Agreement shall prohibit or otherwise restrict the Owners and their representatives from having access to and to enter upon and into the Equipment Room or any Deemed Area for the purpose of inspections, conducting maintenance, repairs and alterations which the Owners wish to make in connection with the Building, or to perform any acts related to the safety, protection, preservation, or improvement of the Equipment Room, Deemed Area,

Lands, or the Building or for such other purposes as the Owners consider necessary. The Owner will, however, except in case of an emergency where no notice is required, give the Licensee at least twenty-four (24) hours advance notice before entry into the Deemed Area and where possible, will be accompanied by a representative of the Licensee if the Licensee makes a representative available for that purpose.

10. INSURANCE

- (a) The Licensee shall maintain in force, at its expense, during the Term of this Agreement and any Renewal Term, a policy of Commercial General Liability Insurance issued by an insurer acceptable to the Owners, acting reasonably, insuring the Licensee and, as additional insureds, the Released Owners Persons, only in respect of matters related to the operations of the Licensee in the Building, with a combined single limit of Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury or death or physical damage to tangible property including loss of use, physical damage to the Building and tangible property of the Released Owners Persons in the Building or bodily injury or death of the Released Owners Persons' respective employees, or **bodily** injury or death or damage to tangible property suffered by any of the customers of the Licensee and their employees in the Building. The Licensee's liability insurance may be composed of any combination of a primary policy and an excess liability or "umbrella" insurance policies, will contain owners' and contractors' protective coverage, blanket **contractual liability coverage, legal liability insurance covering liability for damage to property in its care custody and control, in such reasonable amounts as the Owners require**, standard non-owned automobile coverage, contingent employer's liability insurance, a cross liability and severability of interests clause, and be written on an occurrence basis.
- (b) The Licensee will also maintain (i) an automobile liability insurance policy, and (ii) all risks property insurance on the Licensee's Equipment with a sufficient insured limit to cover its replacement cost and with a waiver of subrogation against the Owners from the property insurers or, alternatively, the Licensee, **for so long as it is TELUS COMMUNICATIONS INC. or Affiliate and no Event of Default has occurred and subsisting under this Agreement, it may self insure for its all risks property coverage** the full replacement cost of the Licensee's Equipment **but for the purposes of all other provisions under this Agreement will be deemed to have taken out such coverage and received full proceeds thereunder.**
- (c) The Licensee agrees that its insurance shall be primary insurance insofar as the Released Persons and the Licensee are concerned, with any other insurance maintained by the Released Owners Persons being excess and non-contributing with the insurance of the Licensee required under Section 10(a) and Section 10(b) of this Agreement.
- (d) The Licensee shall provide proof of such insurance to the Owners prior to commencement of any construction **(and in any event prior to the Commencement Date)** and notify the Owners, in writing, that a policy is cancelled or materially changed to the detriment of the Owners at least thirty (30) days prior to such cancellation or material change. Annually, on the anniversary of the Commencement Date, or upon renewal of the respective policies as the

case may be, the Licensee shall provide proof of such insurance in the form of insurance certificates signed by the Licensee's insurance brokers or its insurers' authorized representatives and in form, content, and detail consistent with the standard developed by ACORD (Association of Cooperative Operations, Research and Development) to the Owners, acting reasonably.

The Owners will maintain all risk property insurance on the Building.

11. (A) RELEASE BY LICENSEE

In no event will the Released Owners Persons, be liable to the Licensee and the Licensee releases the Released Owners Persons for:

- (a) any damage to the Licensee's Equipment, Equipment Room, and Deemed Area or loss of use of such property;
- (b) the quality, adequacy, compatibility or sufficiency of any Building Communication Spaces or **Equipment Room** provided to the Licensee hereunder, it being acknowledged by the Licensee that all Building Communication Spaces are 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, under the terms of another telecommunications access license or similar agreement, whether or not the party has been escorted while within the Building;
- (d) any claims resulting from lightning 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) the inadequacy of any utility service, or the loss of or the failure to provide any utility service save. The Licensee acknowledges that interruptions in the supply of any services, systems (**including but not limited to heating, ventilation or air-conditioning**) or utilities are not uncommon in office buildings and the Licensee further acknowledges that it may, but is not obligated to, ensure that any sensitive Equipment in and on the Building may be protected by the Licensee from any failure in supply or interruptions through the use of a UPS system, surge protectors and other appropriate safety systems and that the Released Owners Persons do not have any obligations in that regard; or
- (f) any damage, loss, cost or expense (whether below deductibles or not) which arises from damage to or loss of or use of property referred to in Section 11(A)(a), or damage to other property in respect of which the Licensee maintains property insurance coverage or is required to maintain property insurance in accordance with the terms of this Agreement, whether the property insurance is provided by a third party insurer or the Licensee self insures, it being acknowledged that the Owners, in requiring the Licensee to maintain property insurance or to self-insure, as provided above, does so with the intent that losses, regardless of how caused, are intended to be covered by that property insurance or self-insurance without any subrogation, claim or other claim associated with the loss or damage being brought against the Released Owners Persons.

This release extends to any acts or omissions of the Released Owners Persons but not to any grossly negligent or wrongful wilful acts or omissions of the Owners except that for damage, loss, cost or expense referred to in Section 11(A)(f) above, the Owners will only be responsible for any grossly negligent or wrongful wilful acts or omissions of the Owners (but for greater certainty, the Owners shall not be responsible for consequential injury or damages, including loss of business income); in each case without taking into account any deductible or co-insurance provisions or other clauses of any insurance policies.

11. (B) INDEMNITY

Except for any claims, losses, costs, damages and expenses arising from the Owners' wilful misconduct or gross negligence, the Licensee shall indemnify, and hold each of the Released Owners Persons harmless from and against any claims, losses, costs, damages and expenses of whatever kind arising from: (i) the construction, installation, operation, damage to or loss of, maintenance, repair, or removal of the Licensee's Equipment, (ii) any breach of this Agreement by the Licensee, and this indemnity includes but is not limited to any claims or demands made by any customers of the Licensee or users of the Licensee's Equipment and reasonable legal fees. The provisions of this Section 11(B) shall survive termination of this Agreement.

12. RELEASE BY OWNERS

The Owners, for themselves and any insurer or other party claiming through or under them, release the Licensee in respect of any damage, loss, cost or expense (whether below deductibles or not) which arises from damage to or loss of use of Owners' property in respect of which the Owners maintain property insurance coverage or are required to maintain property insurance in accordance with the terms of this Agreement, whether the property insurance is provided by a third party insurer or the Owners self-insure, it being acknowledged that the Licensee, in requiring the Owners to maintain property insurance or to self-insure, as provided above, does so with the intent that losses, regardless of how caused, are intended to be covered by that property insurance or self-insurance without any subrogation, claim or other claim associated with the loss or damage being brought against the Licensee.

13. LIENS

The Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labour, material or services claiming by, through or under the Licensee. The Licensee shall also indemnify, hold harmless and defend the Owners and Owner(s) against any such liens, including the reasonable fees of the Owners' or the Owner(s)' respective solicitors. The provisions of this Section 13 shall survive termination of this Agreement. All such liens shall be removed within five (5) Business Days of notice to the Licensee to do so. The Owners may, at the cost of the Licensee, pay money into court to obtain removal of a lien if the Licensee fails to do so, as required, and the Licensee will pay the cost to the Owners including the amount paid into Court plus an administration fee equal to fifteen percent (15%) of the amount.

14. CONSEQUENTIAL DAMAGES - EXPANDED MEANINGS - AGENCY AND TRUST

- (a) Neither the Owners nor the Licensee will be liable to the other (regardless of any other provision of this Agreement), in respect of any indirect, special, incidental or consequential damages including loss of revenue, loss of profits, loss of business opportunity or loss of use of any facilities or property, even if advised of the possibility of such damages.

- (b) Wherever a release or limitation of liability is provided for under this Agreement in favour of the Owners, it will be deemed to extend to and include the Released Owners Persons. The Owners act as agent or trustee for the benefit of the Released Owners Persons, and each of them, to allow them to enforce the benefit of this provision as well as the benefit of each release clause in this Agreement that is intended to benefit them.
- (c) Wherever a release is provided for under this Agreement in favour of the Licensee, it will be deemed to include the Released Licensee Persons. The Licensee acts as agent or trustee for the benefit of the Released Licensee Persons, and each of them, to allow them to enforce the benefit of this provision as well as the benefit of each release clause in this Agreement that is intended to benefit them.

15. ASSUMPTION OF RESPONSIBILITY AND CONTROL

The Owners reserve their right, consistent with the applicable decisions and rulings of the CRTC, to request the Licensee to transfer responsibility and control of the Licensee's In-Building Wire. Such transfer shall be at the sole discretion of the Licensee and on terms and conditions acceptable to the Licensee. If the Owners assume responsibility and control of In-Building Wire installed by the Licensee, it will be entitled to recover the reasonable costs of the maintenance and management of the In-Building Wire to the extent permitted by the CRTC.

16. ASSIGNMENT, SUBLICENSING, ENCUMBERING, SHARING OF SPACE AND EQUIPMENT BY THE LICENSEE

- (a) The Licensee shall not assign this Agreement in whole or in part without obtaining the prior written consent of the Owners which consent may not be unreasonably withheld. Despite what is stated above, for so long as the Licensee is TELUS COMMUNICATIONS INC. and no Event of Default has occurred and is subsisting under this Agreement, TELUS COMMUNICATIONS INC. may assign this Agreement its any of rights under this Agreement, on a *bona fide* basis, to an Affiliate without the prior written consent of the Owners, but on five (5) days prior written notice to the Owners, to a purchaser of substantially all of the assets of TELUS COMMUNICATIONS INC. in Canada if: (i) the assignee executes an agreement with the Owners to be bound joint and severally with the Licensee by the terms of this Agreement and agrees to pay the reasonable costs of the Owners incurred in connection with the preparation, negotiation and finalization of that agreement; (ii) the assignee agrees in the agreement referred to above, that should it cease to be an Affiliate of TELUS COMMUNICATIONS INC., an assignment in respect of which the Owners' consent is required as provided above will be considered to occur as of the date it ceased to be an Affiliate; and (iii) the assignee provides to the Owners those reasonable particulars and documentation which the Owners require in order to satisfy itself concerning the requirements stipulated above, and provides to the Owners five (5) days advance written notice to enable it to prepare, negotiate and obtain the execution of the agreement mentioned above and to satisfy itself that the requirements stipulated above are satisfied.
- (b) Subject to Section 19(b), no assignment whether to an Affiliate or otherwise, shall release the Licensee from any liability or obligation under this Agreement, unless the Owners provide a release in writing.

- (c) Except as required or mandated by the CRTC rules and regulations applicable to LECs or as provided for in this Agreement, the Licensee will not sublicense, co-locate, share the use of, or otherwise provide the benefit of this Agreement to any third party telecommunication provider or other communication service provider and will not mortgage or encumber its rights under this Agreement in favour of any Lender without the Owners' consent.
- (d) Notwithstanding any other provision of this agreement, the Licensee is entitled to assign its rights under this Agreement to a *bona fide* lender, as collateral security for any *bona fide*, secured financing of all or part of its business undertaking. However, this permission does not imply or allow the inference that the Owners waive, or are willing to forbear from the exercise of its remedies under this Agreement, should an Event of Default occur, nor that any lender will have any greater rights than the Licensee in respect of this Agreement, including but not limited to the restrictions set out in this Section 16.

17. HAZARDOUS MATERIALS

The Licensee shall not install, bring upon, or use any Hazardous Substance into, upon or on the Building except telecommunications equipment batteries or other equipment, material or other items normally required in connection with the functioning of the Licensee's Equipment located in the Building in a manner and in quantities permitted by laws of Canada and the Province where the Building is located, and as necessary for the ordinary performance of Licensee's business in the Building, and provided that any such use is in compliance with all applicable laws. The Licensee shall indemnify and hold the Released Owners Persons and any party the Owners are responsible for at law, harmless from any claim, loss, cost, damage, or expense to the extent and as a direct result of, any breach regarding the installation or use of any Hazardous Substance brought into or on the Lands or Building by the Licensee, including any and all costs incurred in remedying such breach.

18. EVENTS OF DEFAULT - TERMINATION REMEDIES

- (a) Each of the following events shall be deemed to be an Event of Default by the Licensee under this Agreement:
 - (i) the Licensee defaulting in the payment of any License Fee, amount, or portion thereof, or other sum of money due to the Owners and such default continues for more than Fifteen (15) Business Days, following written notification of such default by the Owners to the Licensee;
 - (ii) there is interference with the telecommunications or computer equipment of the Owners, any tenant, or any other occupant of the Building or any other telecommunications or computer devices provided in the Building by reason of, or as a result of, the installation, operation, maintenance, repair, or removal of the Licensee's Equipment, which interference is not cured as provided for in Section 8(a)(iv);
 - (iii) the revocation of the Licensee's permission to provide regulated or non-regulated telecommunications services by any governing entity authorized to permit or regulate the Licensee's providing of such services;

- (iv) the Licensee's becoming insolvent, or the filing, execution, or occurrence of a petition in bankruptcy or other insolvency proceeding by or against the Licensee; or an assignment for the benefit of creditors; or a petition or proceeding by or against the Licensee for the appointment of a trustee, receiver or liquidator of the Licensee or of any of the Licensee's property or a proceeding by any governmental authority for the dissolution or liquidation of the Licensee;
- (v) the appointment of a receiver, receiver and manager, or other representative in connection with any default by the Licensee under any loan or debt obligation;

the ceasing of the Licensee to carry on business in the ordinary course; and

if the Licensee shall default in the observance or performance of any of the Licensee's other material obligations under this Agreement and such default shall continue for more than twenty (20) Business Days after written notification of such default by the Owners to the Licensee or where it is not reasonably possible to cure such default within (20) Business Days, the Licensee has not commenced reasonable steps to cure such default within the twenty (20) business days and proceed with such action in a diligent manner.

- (b) Upon or after the occurrence of an Event of Default the Owners may elect to terminate this Agreement without limiting their other remedies, by providing written notice of termination to the Licensee, which termination shall take effect as of the date specified in the notice of termination.
- (c) If the Owners shall default in the observance or performance of any of the Owners' other obligations under this Agreement and such default shall continue for more than twenty (20) Business Days after written notification of such default by the Licensee to the Owners, the Licensee may terminate this Agreement without limiting its other remedies.

19. RESTORATION OBLIGATIONS

- (a) At the expiration or earlier termination of this Agreement the Licensee shall, at the Licensee's sole cost and expense, without liens, remove the Entrance Cable, and all other items of the Licensee's Equipment except any part of it that by agreement between the Licensee and the Owners has been acquired by the Owners, and all of the Licensee's personal property from the Building. This obligation to remove the Entrance Cable and all other items of the Licensee's Equipment shall be subject to any CRTC rules and regulations having force of law on a LEC to provide services to other TSP's. If any property that is required to be removed is not so removed within twenty (20) Business Days after the termination, the property may, at the Owners' sole option, (i) be removed and stored by the Owners at the Licensee's expense (and the Licensee will pay an administration fee equal to fifteen percent (15%) of the expense), or (ii) become the property of the Owners without compensation to the Licensee. As of the date of such removal, neither party shall have any claim against the other, except for claims or obligations that may have arisen or accrued prior to such termination or

arise by reason of the Licensee's Equipment and other equipment or property removal, which claims or obligations shall survive such termination. The Licensee further covenants, at its sole cost and expense, to repair, restore or refinish all damage caused by the operation, installation or removal of the Licensee's Equipment, in the Deemed Area, the Building and the Lands. If the Licensee fails to repair, restore or refinish any such damage, the Owners may, in their sole discretion, repair or refinish such damage and the Licensee shall reimburse the Owners of all costs and expenses reasonably incurred in such repair or refinishing and will pay to the Owners an administration fee equal to fifteen percent (15%) of the cost.

- (b) If due to CRTC rules and regulations having force of law, require mandatory obligations upon the Licensee to provide services to other TSPs, the Licensee is not required by Section 19(a) to remove the Entrance Cable or other items of the Licensee's Equipment ("Exempted Items") then despite the expiration or termination of the Term of this License, all of the obligations of the Licensee under this Agreement will continue in full force and effect as regards the exempted items except that the obligation to pay the License Fee will be suspended so long as the Licensee does not provide Services. That situation will continue (subject to the sentence following this one) until the Licensee's CRTC mandated obligations end and the Licensee removes the Exempted Items and restores damage as provided in Section 19(a). Notwithstanding the foregoing, so long as, and to the extent the Owners or a third party assume responsibility and control of the Exempted Items, and the third party is either (a), bound by a telecommunications access agreement with the Owners, or (b) has become the assignee of this agreement as regards the Exempted Items, or a successor of the Owners, the Licensee will be exempted from its obligations, liabilities and responsibilities under this agreement including the obligation to remove the Exempted Items.

20. OWNERS' ALTERATIONS

Despite anything else in this Agreement, but subject to Section 2(e), the Owners may, at any time, if they act in good faith, make any changes in, additions to or relocations of any part of the Building; may grant, modify or terminate easements and any other agreements pertaining to the use or maintenance of all or any part of the Building, may close all or any part of the Building to such extent as the Owners consider necessary to prevent the accrual of any rights in them to any persons; and the Owners may also make changes or additions to the pipes, ducts, utilities and any other building services in the Building (including areas used or occupied by the Licensee) which serve any part of the Building. No claim for compensation shall be made by the Licensee by reason of any inconvenience, nuisance or discomfort arising from work done by the Owners but the work will be done as expeditiously as is reasonably possible.

21. NOTICES

Any demand, notice or other communication to be made or given in connection with this Agreement shall be in writing and shall be deemed received by the recipient on the date of delivery, provided that delivery is made before 6:00 pm on a Business Day by prepaid registered mail or personal delivery, failing which receipt shall be deemed to have occurred the within five (5) Business Days from date of delivery. Until notified of a different address, as provided herein, all notices shall be addressed to the parties as stipulated on the Information

Page. Notices given by electronic means (including facsimile and email) will not be considered to have been given in writing.

22. LICENSEE'S EQUIPMENT TO REMAIN PERSONAL PROPERTY

Except as otherwise provided in this Agreement, the Licensee's Equipment, Entrance Cable and In-Building Wire shall remain personal property of the Licensee although it may be affixed or attached to the Building, and shall, during the Term of this Agreement, or any Renewal Term, and upon the expiration of this Agreement belong to and be removable by the Licensee unless otherwise agreed to by the parties or except as may be required to fulfill any requirement to provide service to other TSP's in the Building.

23. LICENSE ONLY

This Agreement provides for the granting of licenses only and the Licensee acknowledges that the Licensee does not and shall not claim any interest or estate of any kind or extent whatsoever in the Building, Communications Spaces, or Equipment Room by virtue of this Agreement or the Licensee's use of the Building, Communications Spaces or Equipment Room. The relationship between the Owners and the Licensee shall not be deemed to be a "landlord-tenant" relationship and the Licensee shall not be entitled to avail itself of any rights afforded to tenants at law.

24. LIMITATION OF LIABILITY

The obligations of the Owners under this Agreement shall no longer be binding upon the Owners if the Owners sell, assign or otherwise transfer their interest in the Building as owner, lessee or lessor (or upon any subsequent Owners or owner after the sale, assignment or transfer by such subsequent Owners). If there is such a sale, assignment or transfer, the Owners' obligations shall be binding upon the grantee, assignee or other transferee of the interest, and any such grantee, assignee or transferee, by accepting such interest, shall be deemed to have assumed those obligations. A lease of the entire Building shall be deemed a transfer within the meaning of this Section 24. For greater clarity, nothing in this Section 24 releases the Owners from any liability(ies) that may arise prior to the date of such sale, assignment or transfer herein.

25. SPECIFIC TERMINATION RIGHTS

In addition to the other termination rights provided to it in this Agreement, either party may elect to terminate this Agreement in each of the following circumstances, subject to giving at least thirty (30) days' prior written notice to the other party:

- (a) where the Building has been destroyed, or damaged to such an extent that it is not feasible to repair it within a period of one hundred and eighty (180) days after the damage;
- (b) where the Deemed Area or the Communications Spaces become damaged and, it is not feasible to restore them within one hundred eighty (180) days after the damage; and there is no other alternative space available in the Building that is suitable for the Licensee's use;
- (c) where the Building is expropriated by a lawful authority;

- (d) where the Owners wish to redevelop, or otherwise alter the Building in such a manner as to, in the Owner' opinion, make the relocation of any part of the Deemed Area or the Licensee's Equipment not feasible;
- (e) the Licensee no longer provides Licensee's Services in the Building; and has no reasonable prospects of doing so in the foreseeable future;
- (f) the Licensee, acting in good faith, is unable to secure, on terms and conditions commercially reasonably satisfactory to it, all necessary consents, approvals, permits and authorizations of any federal, municipal or other governmental authority having jurisdiction over the provisioning of Licensee Services or any other matters required by the Licensee to provide Licensee Services; or
- (g) the Building is no longer a "Multi-Dwelling Unit Building" as defined by the CRTC.

26. ESTOPPEL CERTIFICATES

The Licensee will provide to the Owners from time to time, within ten (10) Business Days of the Owners' written request in each case, at no cost to the Owners, a statement duly executed by the Licensee confirming that this Agreement is in good standing confirming, the Fees payable and the Fees actually paid to any date specified by the Owners for the statement confirming the Commencement Date, the Term, any Renewal Term to which it claims to be entitled, and any other information that the Owners reasonably request pertaining to this Agreement or Building.

27. OWNERS' AND LICENSEE'S AUTHORITY

Each party represents to the other that it has full authority to execute this Agreement.

28. SEVERAL OBLIGATIONS - NON-RECOURSE

The liability of each person comprising the Owners where there are more than one, is several and not joint, or joint and several and is limited to the interest in the Building of the Owners from time to time of such person comprising the Owners.

29. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by authorized representatives of the parties.

30. LICENSEE'S REPRESENTATION

The Licensee represents to the Owners and acknowledges that the Owners rely upon this representation and would not have entered into this Agreement but for that representation, that, the construction, design and operation of the network to which the Licensee's Equipment is or may be connected includes or will include upon connection, redundant and back-up features so that the risk of damage, malfunction or disruption of the Licensee's Equipment disrupting service to customers or other third parties utilizing that network and equipment (except for telecommunication services between (i) the customers of the Licensee or the customers of telecommunication service providers that lease local loops from the Licensee to serve

customers within the Building and (ii) persons communicating with those customers) is minimized.

31. 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 include, but is not limited to: any acts of God, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotion or disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause or event 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*.

32. IMPLIED WAIVERS

A waiver by the Owners or the Licensee of any breach of the terms, covenants and conditions of this Agreement shall not be deemed to be a waiver of the term, covenant or condition or of any subsequent breach of it or any other term, covenant or condition. No term, covenant or condition of this Agreement is deemed to have been waived unless the waiver is in writing and signed by the party purporting to provide such waiver, and then only to the extent provided for in the written waiver.

33. SEVERABILITY

If any provision of this Agreement or any part of a provision is found to be illegal or unenforceable then it will be severed from the rest of this Agreement and the rest of this Agreement will be enforceable, accordingly, except where the severance of such provision or part thereof shall result in the purpose and intent of the Agreement being frustrated or materially or adversely different from that of the Agreement prior to such severance. In the latter instances, either party may terminate this Agreement upon providing a minimum of thirty (30) days prior written notice to the other party.


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34. GOVERNING LAW


This Agreement will be governed by the laws of the province in which the Building is situated and all Federal laws applicable therein.

IN WITNESS WHEREOF, the Owners and the Licensee have executed this Agreement in multiple original counterparts as of the day and year first above written.

BROOKFIELD PROPERTIES MANAGEMENT CORPORATION, for and on behalf of:
BROOKFIELD PROPERTIES (BHT) LTD.
and bcIMC REALTY CORPORATION

Per:  (Owners)


Ian Parker
Senior Vice President, Asset Management,
Western



D. Cameron Black
Vice President, Legal Counsel, Western

I/We have authority to bind the corporation

TELUS COMMUNICATIONS INC. (Licensee)

Per: 

Name: ROBERT BARRY
Title: AVP, BULK/INR ACCESS

Name:
Title:

I/We have authority to bind the corporation

SCHEDULE "B"

COMMUNICATIONS EQUIPMENT DETAILED DESCRIPTION

Specifications of Licensee's Equipment List

The Licensee's Communications Equipment may include:

- Telecom equipment racks
- Cable transport ladder
- Fiber transport trough
- Fiber termination panel
- Fiber splice panel
- Various rack mount electronics
- Fiber optic and copper cable as required
- Rack mount fuse panel
- Fiber optic patch cords
- Copper termination panels
- Security screen
- Fire rated plywood
- Hydro breaker panel
- Fiber optic vertical guide
- EMT conduit, as required
- Pull boxes
- CISCO 4000 Ethernet Router
- Media Convert Shelf
- Nortel OC48 ADM
- Hydro check Meter
- ADC DSX panels (DS1-DS3)
- Chain-link caging and combination lock

SCHEDULE "C"
CONNECTING EQUIPMENT PLANS AND DESCRIPTION

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SCHEDULE "D"
DESIGNATED PARTS OF BUILDING
COMMUNICATIONS SPACES

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EXHIBIT "1"

RECOVERABLE COSTS

The Recoverable Costs are the costs of:

- (a) architectural, mechanical and electrical consulting fees to provide or review architectural, electrical and heating, ventilating and air-conditioning design for construction of additional main terminal room or point of presence space (Equipment Room space), riser rooms and other areas requiring reconstruction to accommodate the installation of the Licensee's Equipment;
- (b) mechanical engineering and construction to provide any additional cooling for anticipated loads to accommodate the Licensee's requirements;
- (c) electrical engineering and construction to provide sufficient power distribution to support the power loads anticipated for the Licensee's Equipment, including any connection to any emergency generator power grid that may be made available using a transfer switch;
- (d) the installation of any secured entry devices or other mechanical or electronic security devices that may be installed to satisfy the requirements of the Licensee;
- (e) construction for additional space or reconstruction or modification of existing space to accommodate the Licensee and modifying, enlarging or enhancing any telecommunication related facilities that must be made to accommodate the requirements of the Licensee including the reviewing of plans, specifications and working drawing and the monitoring of the performance of work and the obtaining of professional advice from engineers and technical experts;
- (f) any other reasonable costs of facilitating the initial set up of the Licensee's operations within the Building; and
- (g) reviewing plans, specifications and working drawings and monitoring performance of work, as contemplated by Section 7(a). In the event the Owners are able to rely only on their base building personnel for the review of the Plans and Specifications and monitoring as set out Section 7(a), then the Licensee shall be responsible for the Owners' administrative charge of three fifty hundred fifty dollars (\$350.00) plus Goods and Services Tax.