

## POINT OF PRESENCE LEASE

THIS Lease made this *17<sup>th</sup> day of July, 2015* and in pursuance of the Short Form of Leases Act

**BETWEEN:**

***1247798 ONTARIO LIMITED***

(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

***TELUS COMMUNICATIONS COMPANY***

(hereinafter called the "Tenant")

OF THE SECOND PART

**IN CONSIDERATION OF** the sum of Ten Dollars (\$10.00) herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) paid by the Tenant to the Landlord, both parties hereto covenant and agree as follows:

### ARTICLE 1 - DEFINITIONS

#### **1.01 In this Lease:**

- (a) "Access Easement" means an easement or easements over those portions of the Lands and the Building thereon, but excluding the roof of any building, necessary to enable the Tenant to gain access to the Equipment in the Building, which shall include those portions as designated by the Landlord from time to time, available for common access and egress for occupants of the Building such as driveways, walkways, hallways and exits and entrances.
- (b) "Article", "Section", "Schedule" and "Paragraph" means and refers to the specified article, section, schedule or paragraph of this Lease.
- (c) "Building" means the building described on Schedule "A" attached hereto.
- (d) "Business Taxes" means all taxes, rates, duties, levies, assessments, license fees that are levied, rated, charged or assessed with respect to any and every business carried on by the Tenant in the Building.
- (e) "Commencement Date" means the date described in **Section paragraph 2.01**.
- (f) "Equipment" means the equipment described in Section 4.01(a).

- (g) "H.S.T." means the Harmonized Sales Tax as levied and assessed under lawful authority by the Federal Government of Canada and the Landlord's H.S.T. Registration No. is: ***137392601RT0021***
- (h) "Lands" means the real property located in the City of Toronto, in the Province of Ontario, known municipally as 67 Yonge Street and including the Building(s) located thereon and surrounding lands owned by the Landlord and all other fixtures and improvements located therein.
- (i) "Lease" means this lease and all instruments supplemental hereto or in amendment or confirmation hereof.
- (j) "Rent" means the annual rental payable by the Tenant to the Landlord as provided in Article 3.
- (k) "Signals" means signs, signals, writing, images, sounds or intelligence of any nature.
- (l) "Telecommunication(s)" means any transmission, emission or reception of Signals by wire, radio, visual, fiber optic or any other system.
- (m) "Term" means the initial term and period of time described in Section 2.01.
- (n) "Use" means the use of the Equipment in the Building for the purposes permitted pursuant to Section 4.01(b)(ii).
- (o) "Utilities Easement" means an easement or easements in, over, or under those portions of the Lands and the Building(s) located thereon, subject to the approval of the Landlord as to location (such approval not to be unreasonably withheld), to maintain such equipment, exterior grounding, electric power and communications lines, as may be necessary for the Use which easement shall include without restricting the foregoing the rights:
  - (i) To lay down and construct conduits for wires and cables of all kinds, without limitation, fiber optic cables in, under and upon the said easement lands,
  - (ii) To transmit over or through said conduits or any parts thereof all manner and kinds of Telecommunications, electric energy, telephone, radio or television impulses; and
  - (iii) To install electric power and communications lines within the Building conduits as may be necessary to service the Equipment and to carry out the Use.

## **ARTICLE 2 – DEMISE**

### **2.01 Term**

The Landlord hereby grants to the Tenant a non-exclusive right to enter and gain access to the Building for a Term of Five (5) years commencing on the 1<sup>st</sup> day of January, 2016 (the "Commencement Date") and expiring on the 31<sup>st</sup> day of December, 2020 (the "Term").

### ARTICLE 3 – RENT

#### 3.01 Rent

The Tenant shall pay to the Landlord an annual rent of **Seven Hundred and Fifty --- xx/100 Dollars (\$750.00)** plus H.S.T. on the Commencement Date and on each anniversary thereof during the Term.

### ARTICLE 4 - USE OF BUILDING

#### 4.01 Use of Building

- (a) The Landlord grants permission to the Tenant and the Tenant shall have the right, in accordance with the approval process described in Section 4.02 and at the Tenant's sole expense, to install, construct, test, operate, maintain, repair and service its Equipment (as defined below). Equipment includes in-building wire (as defined by the CRTC in Decision 99-10), fiber optic or copper cable, infrastructure or other (excluding conduit) (the "Equipment") as may be necessary to enable and deliver the Tenant's services to occupants in the Building.
- (b) The Landlord grants permission to the Tenant and the Tenant shall have the right at the Tenant's sole expense to:
  - (i) Subject to the Landlord's reasonable security requirements and subject to the prior rights of the Building tenants, the Tenant and its officers, employees, and authorized agents and contractors shall have a right of ingress and egress to the Building during regular business hours for the purposes of maintaining, operating, and repairing the Equipment. Notwithstanding the above, if the Tenant requires access to the Equipment in the Building, or any other part of the Building which the Landlord designates outside of normal business hours, the Tenant may, after providing at least forty-eight (48) hours' notice, be accompanied by a representative of the Landlord designated for that purpose and the cost of providing this form of accompaniment or supervision will be paid by the Tenant to the Landlord at a rate of **Fifty Dollars (\$50.00)** per hour plus fifteen percent (15%) admin fee plus H.S.T. This fee shall not apply if it is recovered by the Landlord from tenants through the operating costs of the Building charged to them under their **leases**. In the event of an emergency, the Tenant will provide as much advance notice as possible to the Landlord or its agent of its requirement to enter the Building.; and
  - (ii) use the Building including access to and use of, floor space in the main terminal room and/or other segregated, enclosed space in the Building to house its Equipment for the purpose of providing Telecommunication services to tenants and other occupants of the building(s) located upon the Lands.

#### 4.02 Approval By Landlord

The Tenant will submit to the Landlord, for its approval, detailed plans of location and installations of the matters contemplated in Section 4.01(a). The approval by the Landlord shall not be unreasonably

withheld or delayed. Any costs associated by the Landlord for approval of drawings will be borne by the Tenant. Notwithstanding anything contained herein, any material alterations (eg. upgrades, modifications, removal or replacements) to the Equipment shall require the Landlord's preapproval in writing.

## **ARTICLE 5 - TENANT'S COVENANTS**

### **5.01 Tenant's Covenants**

The Tenant covenants and agrees with the Landlord throughout the Term to fulfill the following obligations.

### **5.02 Rent**

The Tenant will pay Rent.

### **5.03 Taxes**

The Tenant will pay Business Taxes and H.S.T.

### **5.04 Maintenance, Repairs and Removal**

- (a) The Tenant shall at all times, at its sole cost and expense, keep and maintain the Equipment in good order and promptly make all needed repairs and replacements thereto. The Tenant shall maintain and repair the Equipment such that there is no danger or risk whatsoever to the other tenants or occupants of the Building or to the Landlord. Upon the expiration or earlier termination of this Lease, the Tenant shall remove the Equipment in or upon the Building and Lands at its own expense and return the Building and Lands to its original condition before the commencement of this Lease. The Landlord may upon not less than thirty (30) days prior written notice, require the Tenant before the expiration of the Term or any renewal thereof, to remove some or all leasehold improvements and to restore the Building to its original condition, the cost of which shall be borne exclusively by the Tenant. Upon the expiration of the Term or any renewal thereof, all leasehold improvements and all personal property of the Tenant including the Equipment remaining in the Building or upon the Lands shall become the property of the Landlord; and
- (b) The Tenant shall, at its own cost and responsibility (i) ensure that all Equipment is installed in accordance with all relevant fire and building code requirements at all times throughout the Term and any extension term thereof, (ii) ensure all penetrations into the Building and through any fire walls to be properly fire sealed/caulked by the Tenant; and (iii) be responsible for the provision, installation, maintenance and repair of the Equipment installed by the Tenant during the Term.

#### **5.05 Indemnity**

The Tenant shall indemnify and save harmless the Landlord, its directors, officers, employees and contractors from and against any and all losses, actions, causes of action, suits, claims, damages, costs and liabilities including legal fees arising out of or as a result of:

- (a) Any breach, violation, or non-performance of the terms, covenants and obligations on the part of the Tenant set out in this Lease,
- (b) Any physical damage to any tangible property of the Building or to the Lands or building(s) located thereon however caused or occasioned wholly or in part by the use of Equipment in the Building by the Tenant or those for whom it is in law responsible, or by the failure of, or as a result of any or all of the Equipment; and
- (c) Any injury to or death of any person, its employees or subcontractors in the use or occupation of the Utilities Easement however caused or occasioned wholly or in part by the use of Equipment in the Building by the Tenant or those for whom it is in law responsible, or by the failure of, or as a result of any or all of the Equipment.

#### **5.06 Insurance**

The Tenant shall carry at its own cost, at all times during the Term and any renewal thereof, workers' compensation coverage and comprehensive general liability insurance in the minimum amount of five million dollars (\$5,000,000.00) against any claims which may arise from its operations to include property damage and personal injury, including death to any person with respect to the Building and the Tenant's use of the Lands and the building(s) located thereon, including the activities and operations conducted by those for whom it is in law responsible or in such other reasonable amount as the Landlord or its mortgagee(s) may deem reasonably necessary. Such policies shall name the Landlord and its mortgagee(s), if any, as an additional insured, and shall contain a severability of interests clause and a cross-liability clause. Prior to commencement and through to completion of this Lease, the Tenant shall provide the Landlord with certificates of such insurance (with an insurance company or companies and in a form acceptable to the Landlord), which shall be subject to the Landlord's approval for adequacy of protection and proof of good standing with the W.S.I.B. (Workplace Safety and Insurance Board).

#### **5.07 Limitation of Liability**

The Tenant acknowledges and agrees that the obligations of the Landlord hereunder are not personally binding upon any trustees, unitholders, annuitant, officers, employees or agents of the Landlord (collectively the "Excluded Parties") whether the liability is based in tort, contract or otherwise. The Tenant will only have recourse to the Landlord and the property and assets held by or on behalf of the Landlord and no recourse may be had to the Excluded Parties or their properties and assets.

## ARTICLE 6 – EASEMENTS

### 6.01 Easements

- (a) In consideration of the Rent and other good and valuable consideration set forth by this Lease, the Landlord hereby grants to the Tenant during the Term and any extensions thereof, the Access Easement and the Utilities Easement.
- (b) The Access Easement and the Utilities Easement shall be for the benefit of and be appurtenant to the leasehold interest created by this Lease and for the use and enjoyment of the Tenant, its assignees, subtenants, licenses, and their respective employees, servants, contractors, subcontractors and agents.
- (c) The Access Easement and the Utilities Easement shall be construed as running with and binding upon the Lands and all parts thereof.

## ARTICLE 7 - TERMINATION OF LEASE

### 7.01 Interference with Signals

If operations of any nature or kind whatsoever, including third party Telecommunications operations or equipment, materially interfere in any manner with the signals transmitted or received by the Equipment or should the construction of, or the operation of the Equipment, in the reasonable opinion of the Tenant, be or become commercially impractical or impossible by reason of government decision, law, by-law or regulation, the Tenant may terminate this Lease by giving thirty (30) days written notice to the Landlord.

### 7.02 Damage and Destruction

In the event that the Equipment is destroyed or damaged in such a manner that it would not be possible for the Tenant to carry out the Use, the Tenant may repair or rebuild, or the Tenant may terminate this Lease by giving thirty (30) days written notice to the Landlord.

### 7.03 Operation of Equipment

Notwithstanding Section 8.01, if the operation of the Equipment is causing the electronic equipment of the Landlord or other tenants or occupants of the building(s) located on the Lands to function improperly, then the Landlord will notify the Tenant and the Tenant will immediately act to rectify the situation. If the Tenant is unable to rectify the situation to the satisfaction of the Landlord within two (2) days of receiving

notification of the problem, then the Landlord may terminate this Lease upon three (3) days prior written notice.

#### **7.04 Termination**

In the event the Tenant ceases to provide its services to the occupants, then the Tenant and/or the Landlord may terminate this Lease upon thirty (30) days prior written notice to the other party. Either party may terminate this Lease immediately if the other party is in breach of a material term or condition of this Lease and such party does not remedy the breach to the other party's satisfaction, acting reasonably, within thirty (30) days of receiving notice thereof. Upon termination of the Lease, the Tenant shall remove the Equipment and any damaged caused by the removal of the Equipment shall be repaired by the Tenant, at its sole cost and expense.

### **ARTICLE 8-DEFAULT**

#### **8.01 Default**

Provided, and it is expressly agreed that if and whenever the Rent hereby reserved or any part thereof shall be unpaid for five (5) days following the notice in writing of such a default by the Landlord or in the case of the breach of non-performance of any of the covenants or agreements herein contained on the part of the Tenant, where at least fifteen (15) days' notice specifying the nature of such a breach has been given by the Landlord to the Tenant and the Tenant has failed to cure such a breach, then and in either such case it shall be lawful for the Landlord at any time thereafter to repossess the Equipment and terminate its operation.

### **ARTICLE 9 - ASSIGNMENT AND SUBLETTING**

#### **9.01 Assignment**

The Tenant shall not assign this Lease or sublet or license all or part of the Equipment in the Building without the written consent of the Landlord being first had and obtained, which consent shall not be unreasonably withheld. Notwithstanding any assignment or subletting, the Tenant shall remain jointly and severally liable on this Lease and shall not be relieved from performing any of the terms, covenants and conditions of this Lease.

- (a) Notwithstanding the foregoing the Tenant may, without the Landlord's consent, but on prior written notice to the Landlord, assign its rights and obligations under this Lease or sublet or license all or part of the Equipment in the Building to:
  - (i) any corporation into which or with which the Tenant merges or consolidates; and
  - (ii) any parent, subsidiary, or affiliate of the Tenant (as those terms are defined in the Canada Business Corporations Act).

- (b) a change of control of the Tenant shall not be considered as assignment for the purposes of this Lease, unless the purpose of such change in control is to avoid the Landlord's consent pursuant to Section 9.01 hereof.

In the event of an assignment of this Lease or any subleasing of the whole or part of the Equipment in the Building other than under Section 9.01(a) or 9.01(b), the Tenant agrees to pay the Landlord, the Landlord's reasonable administration fee of not less than \$1,000.00 plus H.S.T. at the time of such assignment or sublease.

## **9.02 Licensing**

Notwithstanding Section 9.01, the Tenant may without consent, but upon prior written notice to the Landlord, license to third parties the right to use portions of the Equipment in the Building, Access Easement and Utilities Easement or the Use permitted pursuant to Section 4.01(b)(ii), provided only employees of the Tenant shall have access to the Equipment in the Building, Access Easement and Utilities Easement. Any license granted under this Section shall be subject to the terms, conditions and obligations of this Lease. The Tenant acknowledges that in the event of a license granted by the Tenant to third parties under this subsection, the Tenant shall not be released from any of its obligations under this Lease.

## **ARTICLE 10 – SPECIAL PROVISIONS**

### **10.01 Relocation**

The Landlord may, on thirty (30) days' prior written notice to the Tenant, require the Tenant to relocate all or any part of the Equipment at the Tenant's sole cost, provided this right to require the Tenant to relocate its Equipment will be exercised only on a bona fide basis, and the Landlord will in each case give due consideration to alternatives so as to ensure that the relocation occurs only where no viable alternative is available. If the relocation is to accommodate another supplier of communications or telecommunications services, the Tenant will not be required to pay any part of the relocation costs. The Tenant will only be required to relocate the Equipment to an area substantially comparable to the existing location of the Equipment. Such relocation shall be done to ensure the continuation of the Tenant Services to the occupants.

### **10.02 Demolition**

In the event the Landlord intends at any time during this Term, or any extension or renewal thereof, to remodel, alter, demolish, or substantially renovate or make alterations to all or any portion of the Building, whether or not the Equipment is directly affected thereby, then the Landlord shall have the right upon not less than one hundred and eighty (180) days prior written notice to the Tenant to terminate this Lease and shall vacate the Building on the date as specified in the Landlord's notice without any compensation, damage or indemnification or any kind from the Tenant.



## ARTICLE 11 – MISCELLANEOUS

### 11.01 Notice

Any notice, request, demand, consent or other communication required or permitted to be given hereunder may be sufficiently given by personal delivery or sent by registered mail, or transmitted by facsimile, addressed to the party for which it is intended, provided, however, the Landlord and the Tenant may change their respective addresses by notice in writing to each other. Any notice so given shall be deemed to have been received on the date on which it was delivered or transmitted by facsimile, to the Tenant at the following address:

Telus Communications Company  
25 York Street, 22<sup>nd</sup> Floor  
Toronto, ON M5J 2V5  
Attention: Richard Johnson, Manager, Building Access  
Telephone No.: 416-496-6893

And to the Landlord at the following address:

1247798 Ontario Limited  
c/o Davpart Inc.  
4576 Yonge Street, Suite #700  
Toronto, ON M2N 6N4  
Attention: Stephanie Morris, Legal Department  
Telephone No.: 416-227-2722  
Facsimile No.: 416-222-3010  
Email: morriss@davpart.com

### 11.02 Overholding

In the event that the Tenant remains in possession of the Equipment in the Building after the end of the Term hereof **without** the consent of the Landlord and without the execution and delivery of a new lease there shall be no tacit renewal of this Lease and the Term hereby granted, notwithstanding any statutory regulations to the contrary and the Tenant shall be deemed to be occupying the Building as a tenant from month to month upon the same terms and conditions as are set forth in this Lease, so far as applicable.

### 11.03 Observance of Law

The Tenant shall, at its sole cost and expense, comply with and conform to all applicable federal, provincial and local laws, and regulations, ruling and orders of governmental agencies, including, but not limited to, the Telecommunications Act, the Broadcasting Act, as amended, or the Canadian Radio-Television and Telecommunications Commission (the "CRTC"), relating to the matters contemplated by this Lease. Should any provision of this Lease be illegal or unenforceable, that provision shall be considered separate and severable from the remaining provisions of this Lease and the remaining provisions shall remain in force and be binding upon the parties.

**11.04 Interpretation**

Words importing the singular number shall include the plural and vice versa. Words importing the neuter gender shall include the masculine and feminine genders, and words importing person shall include firms and corporations and vice versa.

**11.05 Amendment or Waiver**

No provision of this Lease shall be deemed amended or waived by a course of conduct unless such amendment or waiver is in writing signed by all parties and stating specifically that it was intended to modify this Lease.

**11.06 Successors and Assigns**

This Lease shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, heirs and personal representatives. If there shall be more than one party constituting the Tenant, those parties shall be bound jointly and severally by the terms, covenants and agreements therein.

**11.07 Subordination**

This Lease and all rights of the Tenant shall be and are subordinate to every Mortgage or other form of financing that now or hereafter affects the Lands.

**11.08 Governing Law**

This Lease shall be governed by the laws of the **Province of Ontario**.

**11.09 No Registration**

The Tenant covenants and agrees with the Landlord that the Tenant shall not register this Lease or apply to register this Lease or notice thereof on the title of the Landlord's Lands without the prior written consent of the Landlord which consent may be arbitrarily withheld or delayed. However, the Landlord may elect, at its sole option, to require this Lease or notice thereof to be so registered. All the costs and expenses with respect to the registration of the Lease or notice thereof, if any, shall be done by and be for the account of the Tenant.

**11.10 Entire Agreement**

This Lease including the Schedules hereto constitutes the entire agreement of the parties and supersedes all prior agreements and understanding whether written or oral relative to the subject matter hereof. Except as otherwise specifically set forth in this Lease neither party makes any representation or warranty express or implied, statutory or otherwise to the other. This Lease may not be amended or modified except by a written instrument executed by both parties.

**IN WITNESS THEREOF** the parties hereto have hereunto executed (and in the case of a corporation affixed their corporate seals under the hands of their prior officers duly authorized in that behalf) this Lease.

Tenant:  
**TELUS COMMUNICATIONS COMPANY**

Per: Richard Johnson  
Name: Richard Johnson  
Title: Manager, Building Access

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

Authorized Signatory

Landlord:  
**1247798 ONTARIO LIMITED**

Per:   
Name: **DAVID HOFSTEDTER**  
Title: **PRESIDENT**

Authorized Signatory

SCHEDULE "A"

LEGAL DESCRIPTION OF BUILDING

**67 YONGE STREET  
2 COLBORNE STREET**

Part of Lot 1, south side of King Street, Town of York, Plan as described by Parts 1 and 2, Reference Plan 66R-15400 as described by Parcel 1-26, Section Y-1, subject to a right over Part 2, Reference Plan 66R-15400, in favour of Part 3, Reference Plan 66R-15400, together with a right-of-way, over Part 4, Reference Plan 66R-15400, as in instrument CT715633, and together with an encroachment agreement, over the Yonge Street and Colborne Street right-of-ways, as in instrument CT794572, within the City of Toronto, Municipality of Metropolitan Toronto, Province of Ontario.