

CANADA PLACE

TELECOMMUNICATIONS LICENSE AGREEMENT

Between

**HOOPP Realty Inc.
(the "Owner")**

and

**Telus Communications Inc.
(the "Licensee")**

**Building: Canada Place
407-2nd Street SW, Calgary, AB**



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TELECOMMUNICATIONS LICENSE AGREEMENT

THIS AGREEMENT dated this day of , 2002

BETWEEN:

HOOPP Realty Inc.

(the "Owner")

- and -

Telus Communications Inc.

(the "Licensee")

PREAMBLE:

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

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

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

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

“Entrance Link” means the core sleeve penetration through the foundation of the Building

“Equipment Room” means the enclosed premises located in the Building storage area (basement) and shown hatched on the floor plan attached to this Agreement as Schedule A, comprising approximately 192 square feet, which premises shall be provided by the Owner to the Licensee for the non-exclusive use of the Licensee.

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

“Lands” means the lands situated in the City of Calgary, in the Province of Alberta, on which the Building is constructed, as more particularly described in the attached Schedule B.

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

“Licensee’s Equipment” means, collectively, the Communications Equipment and the Connecting Equipment.

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

“Term” means the continuous period of five (5) year(s), commencing on the Commencement Date.

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

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

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

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

- Schedule A – Equipment Room Plan
- Schedule B – Legal Description of Lands

ARTICLE 2 - LICENSE

2.1 **License** The Owner grants to the Licensee a non-exclusive license to

- (a) install, operate, maintain, repair, replace, and remove the Communications Equipment in the Equipment Room, at the Licensee's sole expense and risk;
- (b) install, operate, maintain, repair, replace, and remove the Connecting Equipment in the Building, at the Licensee's sole expense and risk, together with the right to pull the Connecting Equipment through the Entrance Link and through the Building Risers as necessary to reach from the Entrance Link to the Equipment Room and from the Equipment Room to the Licensee's customers in the Building, as required by the Licensee from time to time to provide communications services to the Licensee's customers in the Building; and
- (c) use the Entrance Link and existing Building wiring, only to the extent that the Owner has the possession of, and authority to allow the use of, the Entrance Link and the existing Building wiring, as required by the Licensee for the purpose of connecting the Licensee's Equipment to the Licensee's customers in the Building.

2.2 **Equipment Room** The Owner shall provide the Equipment Room to the Licensee, for the non-exclusive use of the Licensee, which Equipment Room shall be used by the Licensee for the provision of communications services to the Licensee's customers in the Building. ✓

2.3 **Nature of Interest** The right granted to the Licensee under this Agreement is a license only, and shall not constitute a partnership, joint venture or lease between the parties.

2.4 **Non-Exclusivity** The Licensee acknowledges and agrees that the license granted to the Licensee pursuant to section 2.1 of this Agreement is not exclusive to the Licensee, and that the Owner has the right to grant similar rights and privileges in respect of the Building to other parties.

ARTICLE 3 - TERM

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

3.2 ✓ **Option to Renew** Provided that the Licensee is not in default under this Agreement, the Licensee shall have two (2) option(s) to renew and extend this Agreement for consecutive periods of five (5) year(s) each (each of which is a "Renewal Term"), upon the Licensee providing at least six (6) months written notice to the Owner. Each Renewal Term shall be on the same terms and conditions as contained in this Agreement, except that the License Fee shall be mutually agreed by the parties in writing based on the then current market rates for similar telecommunications license agreements for similar buildings. Where the parties are unable to agree on the License Fee payable during a Renewal Term prior to the expiration of the Term or a Renewal Term, as the case may be, the matter in dispute shall be determined by alternate dispute resolution or by a single arbitrator appointed under provincial arbitration legislation.

3.3 **Overholding** If the Licensee remains in occupation of the Equipment Room following the expiration of the Term or a Renewal Term, such continued occupation by the Licensee shall not have the effect of renewing or extending this Agreement for any period of time, and the Licensee shall be deemed to be occupying the Equipment Room as a licensee on a month-to-month basis upon the same terms and conditions as set out in this Agreement.

ARTICLE 4 - LICENSE FEE

4.1 **License Fee** ✓ The Licensee shall pay to the Owner an annual License Fee in an amount of Four Thousand, Five Hundred Dollars (\$4,500.00), excluding GST, which License Fee shall be paid in advance on the Commencement Date without set off or deduction and, thereafter, on each anniversary of the Commencement Date during the Term. Licensee shall pay its own business taxes and pay any increase in realty taxes assessed against Owner by reason of the installation of the Licensee's Equipment or its use of the Equipment Room or Building.

4.2 **GST** The Licensee shall pay GST as applicable on the License Fee, which GST shall be paid at the time the License Fee is payable. The Owner's GST registration number is 132210741 RT0034.

4.3 **Non-Disclosure** The Owner and the Licensee each agree to use good faith efforts to refrain from disclosing the financial terms of this Agreement, except that either party may disclose the financial terms of this Agreement if required by law or regulation.

ARTICLE 5 - USE

5.1 **Use of Equipment Room** The Licensee shall use the Equipment Room only for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Equipment as required by the Licensee for the purpose of providing communications services to the Licensee's customers in the Building. ✓

5.2 **Title** The Owner acknowledges and agrees that title to, and ownership of, the Licensee's Equipment shall remain with the Licensee at all times notwithstanding that the Licensee's Equipment may be affixed to a part of the Building for the time being.

ARTICLE 6 - ACCESS AND ELECTRIC UTILITIES

6.1 **Access** Provided Licensee has paid the License Fee and performed its obligations under this Agreement, the Licensee and its authorized representatives shall have access to the Equipment Room on a seven (7) days a week, twenty-four (24) hours per day basis for the purpose of installing, operating, maintaining, repairing and removing the Licensee's Equipment. The Owner acknowledges that the nature of the Licensee's communications services requires such access for servicing purposes and in emergency situations. The Licensee and its authorized representatives shall have ingress and egress to the Building Risers at such times as specified by the Owner, acting reasonably, provided that in the event of an emergency, the Licensee shall have the right to enter the Building Risers upon notification to the Owner. All entry and access to the Equipment Room and the Building, including the Building Risers, by the Licensee and its authorized representatives shall be subject to the Owner's reasonable security procedures.

6.2 **Electrical Power** Licensee will arrange to have installed a meter to measure its electrical consumption and shall pay all electrical costs directly to the electricity provider. If for any reason the Licensee does not install a meter, the electricity required for the operation of the Equipment shall be the sole responsibility of Licensee and electrical consumption shall be determined by a check meter installed and paid for by the Licensee prior to the Commencement Date of the Term. In the event a check meter is installed, the Licensee shall pay an electrical consumption instalment ("Electrical Instalment") of \$600.00 (Six Hundred Dollars), payable annually in advance to the Owner on or before the first day of each year. Within a reasonable time after the end of each year of the Term, the Owner shall reconcile the Electrical Instalment paid by the Licensee with the actual amount payable by the Licensee for the preceding year based on check meter readings at then applicable rates charted by the local utility during such year. If the actual amount payable by the Licensee exceeds the Electrical Instalment, the Licensee shall pay the deficiency, without interest, to the Owner within 30 days after the date of delivery of a statement by the Owner. If the actual amount payable by the Licensee is less than the Electrical Instalment, the Owner will pay the excess to the Licensee, without interest. The obligation of the Owner and Licensee to readjust any payment of the Electrical Instalment shall survive the expiration or earlier termination of this Agreement.

The Owner shall use reasonable commercial efforts to notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's use. The Licensee agrees that the Owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or backup power to the Licensee on such terms and conditions as mutually agreed between the parties.

6.3 Telephone Service The Licensee, at its sole cost and expense, shall have the right to install a telephone in the Equipment Room if required by the Licensee.

6.4 Nuisance The Licensee shall not use nor permit the Licensee's Equipment or any part of the Equipment Room to be used in such a manner as to annoy, disturb or cause nuisance to the Owner or the occupiers, tenants or other licensees of the Building, or in a manner that constitutes a contravention of law.

6.5 Compliance with Laws The Licensee, in installing, maintaining operating, repairing and replacing the Licensee's Equipment in the Equipment Room and the Building Risers shall comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC.

ARTICLE 7 - INSTALLATION, MAINTENANCE AND REPAIRS

7.1 Approval of Plans Prior to the commencement of the installation of the Licensee's Equipment in the Equipment Room and in the Building Risers, the Licensee shall prepare and submit plans, specifications, and working drawings to the Owner in respect of such installation for the approval of the Owner, which approval shall not be unreasonably withheld or delayed. ✓

7.2 Installation Upon receipt of the Owner's written approval pursuant to section 7.1 above, the Licensee, at its sole expense and risk, shall be entitled to commence the installation of the Licensee's Equipment, which installation shall be performed in a responsible and workmanlike manner and in accordance with all applicable laws, regulations, by-laws, orders, rules and ordinances of all federal, provincial and municipal governmental authorities.

7.3 Cables The Licensee shall label each cable placed by the Licensee in the Building Risers and any telecommunications closets through which the Licensee's cable passes with an identification number assigned by the Owner to the Licensee. ✓

7.4 Repairs and Maintenance The Licensee, at its own cost and expense, shall keep the Equipment Room and the Licensee's Equipment in a safe and properly maintained condition. Licensee shall repair any damage to the Building caused by its installation, operation, maintenance, repair, replacement and removal of Licensee's Equipment upon completion of the Licensee's work.

7.5 Liens The Licensee shall be responsible for the satisfaction or payment of any liens registered against the Building by any supplier of labour, material or services to the Licensee. Any such liens shall be discharged by the Licensee within ten (10) days of receiving notice thereof by the Owner provided that the Licensee may contest, in good faith, any such liens.

7.6 Interference Licensee will ensure that neither the work performed by it nor the Licensee's Equipment will interfere with the signals or conflict with the use of equipment of service providers granted prior access by Owner. If such interference or conflict arises, the Licensee and Owner shall co-operate to determine the cause of such interference. If it is determined that such interference or conflict arises from the Licensee's work or the Licensee's Equipment, the Licensee shall take steps to eliminate such interference and, failing such elimination within a reasonable period of time, the Licensee shall suspend or modify its operations at the Premises sufficiently to eliminate same.

ARTICLE 8 - INSURANCE AND INDEMNIFICATION

8.1 Insurance The Licensee, at its own expense, shall take out and maintain in force while this Agreement is in effect, comprehensive general liability insurance in a minimum amount of Five Million Dollars (\$5,000,000) per occurrence for injury, death or property damage arising out of the Licensee's operations pursuant to this Agreement, which insurance shall contain cross liability and sever ability of interest clauses.

8.2 Indemnification The Licensee shall indemnify and save harmless the Owner from and against any loss, suit, claim, action, damage or expense arising out of, from or by reason of, the installation, operation, maintenance, repair or removal of the Licensee's Equipment in the Equipment Room and the Building communications space pursuant to this Agreement, except to the extent that any such loss, suit, claim, action, damage or expense is due to the negligence or willful misconduct of the Owner or those for whom the Owner is in law responsible.

ARTICLE 9 - TERMINATION

9.1 Termination by Licensee The Licensee shall have the right to terminate this Agreement upon written notice to the Owner in the event of the occurrence of any of the following:

- (a) the Licensee is unable to secure, on terms and conditions reasonably satisfactory to the Licensee, all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal governmental authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of the Licensee's Equipment;
- (b) the Licensee's Equipment is damaged or destroyed and the Licensee determines that it will not effect repairs to, or replace, the Licensee's Equipment;
- (c) the Licensee no longer requires the Equipment Room or the Building Risers for the purpose of providing its communications services to customers in the Building;
- (d) the Owner defaults in the observance or performance of any of the Owner's obligations under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Licensee to the Owner, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Owner promptly commences such cure with reasonable diligence; or
- (e) the Owner makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Owner is conclusive evidence of insolvency.

9.2 Termination by the Owner The Owner shall have the right to terminate this Agreement upon written notice to the Licensee in the event of the occurrence of any of the following:

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event

the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence; or

- (c) the Licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency.
- (d) the Building is sold to a purchaser who does not desire to continue with the Licensee's service and the Licensee has no active service contracts within the Building with a term extending beyond the notice period.

9.3 **Surrender** Upon the expiration or earlier termination of this Agreement, the Licensee shall remove the Licensee's Equipment from the Equipment Room and the Building, and shall be responsible for repairing any damage caused by such removal, except damage caused by ordinary wear and tear.

ARTICLE 10 - DAMAGE OR DESTRUCTION OF BUILDING

10.1 **Right to Terminate** In the event the Building is damaged to such an extent that the Licensee is unable to effectively exercise its rights pursuant to the license granted by the Owner under this Agreement, the Owner, at its sole option and expense, may attempt to repair such damage within one hundred eighty (180) days. In the event the Owner elects not to repair the damage within one hundred eighty (180) days, the Licensee shall have the right to terminate this Agreement upon providing thirty (30) days prior written notice to the Owner, in which event the Licensee shall remove the Licensee's Equipment in accordance with the provisions of section 9.3 of this Agreement. The Licensee shall have no obligation to pay the License Fee or any other amounts under this Agreement during the thirty (30) day notice period, and the portion of the License Fee paid by the Licensee in advance shall be refunded by the Owner to the Licensee on a pro rated basis to the date of damage to the Building.

ARTICLE 11 - FORCE MAJEURE

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

ARTICLE 12 - NOTICES

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

(a) If to the Owner:

c/o Tonko Development Corp.
600, 999-8th Street SW
Calgary, AB T2R 1J5
Attention: Property Manager
Facsimile: (403) 228-4899

(b) If to the Licensee:

Telus Communications Inc.
Telus Plaza, 21st Floor South Tower
10020 - 100 St.,
Edmonton, AB T5J 0N5
Attention: Manager, Building Access, Western Canada
Facsimile: (780) 493-3066

12.2 **Receipt** Where a Notice is delivered personally or by facsimile, it shall be deemed to have been received the same Business Day, or if the day on which the Notice was sent is not a Business Day, the Notice shall be deemed to have been received on the next Business Day. Where a Notice is sent by registered mail, it shall be deemed to have been received three (3) Business Days after the date of mailing. In no event should any Notice be sent by mail during any period of interrupted or threatened interruption of postal service.

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

ARTICLE 13 - MISCELLANEOUS

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

13.2 **Entire Agreement** This Agreement cancels, replaces and supersedes as of its effective date all existing agreements and understandings, written or oral, between the parties relating to the subject matter of this Agreement. The whole contract between the parties is contained in this Agreement and no preliminary proposals, written or oral, form any part of this Agreement. This Agreement may not be amended or modified except by mutual agreement of the parties in writing.

13.3 **Waiver** No failure by either to exercise any right under this Agreement or to insist upon full compliance by the other party with its obligations under this Agreement will constitute a waiver of any provision of this Agreement. No waiver shall be effective unless made in writing by an authorized officer of the party.

13.4 Successors and Assigns This Agreement shall not be assigned by the Licensee, in whole or in part, without the express written consent of the Owner, which consent shall not be unreasonably withheld or unduly delayed, provided that the Licensee shall be entitled to assign this Agreement to an affiliate of the Licensee, as defined in the *Canada Business Corporations Act*, upon written notice to the Owner.

13.5 Transfer The Owner may assign this agreement at any time and shall be relieved of all obligations to the Licensee under this agreement to the extent that the assignee assumes the Owner's obligations under this agreement.

This Agreement shall be binding upon, and shall enure to, the benefit of the parties and their respective successors and permitted assigns. Licensee shall remain liable under this Agreement notwithstanding any such assignment.

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

HOOPP Realty Inc. (the Owner)
by its duly authorized Agent,
Tonko Development Corp.

Per:  _____

Title:

Telus Communications Inc., (the Licensee)

Per:  _____

Title: Manager, Building Access, Western Canada

SCHEDULE B

LEGAL DESCRIPTION OF LANDS

CIVIC ADDRESS:

407-2nd Street SW, Calgary, AB

LEGAL DESCRIPTION:

Plan C

Block 25

Lots 16-20 inclusive

Excepting as to surface only the Street Widening on Plan 7410559